

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

Mailed: December 4, 2003

Cancellation No. 92042537

TPK Pharmaceutical, L.L.C.

v.

Clientele, Inc.

Nancy L. Omelko, Interlocutory Attorney:

On December 2, 2003, respondent filed its answer, affirmative defenses and counterclaim against application serial no. 76492358. However, a counterclaim may not be filed against a pending application. See *Pyttronic Industries Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 n.2 (TTAB 1990) (counterclaim to cancel "any registration which might issue in the future from pleaded application" was improper), and *International Telephone and Telegraph Corp. v. International Mobile Machines Corp.*, 218 USPQ 1024, 1026 (TTAB 1983) (counterclaim to "refuse any application filed by petitioner" was improper).

Dates remain as set in the Board's institution order.