

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, October 21, 2008

ANDERSON COURT REPORTING

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## 1 P R O C E E D I N G S

2 (9:00 a.m.)

3 MR. FARMER: Let's get started,  
4 everybody, unless there is any objection. My name  
5 is John Farmer and I am the Chair of the Trademark  
6 Public Advisory Committee, and I welcome each of  
7 you. We have a stout attendance today. This is  
8 the first time I'd chaired a TPAC meeting so I  
9 didn't know how many faces I would be able to look  
10 forward to seeing aside from the members of TPAC  
11 and the USPTO leadership. There appears to be a  
12 lot of interest, so I hope that we are interesting  
13 for you today.

14 Aside from that, I really don't have any  
15 comments other than to thank all the folks who  
16 made this meeting possible, not just to the TPAC  
17 members who came, but the tremendous support from  
18 the USPTO leadership in digging up documents and  
19 pulling together information and making a lot of  
20 time available so that in TPAC can do our job.  
21 I've discovered that a lot of times we have to  
22 call folks, such as I have to call Lynne Beresford

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1 to talk about stuff, and folks have been  
2 incredibly available and we really appreciate  
3 that.

4           Aside from that, I have nothing to day,  
5 and so I will turn things over to the USPTO  
6 leadership. I don't know in which order they will  
7 wish to speak to make any opening remarks that  
8 they have.

9           MR. DUDAS: I just want to thank  
10 everybody for being here. There are a lot of new  
11 faces on TPAC and I had the pleasure and honor of  
12 swearing in three new members of TPAC yesterday  
13 and I want to welcome them again to TPAC. I think  
14 everybody who has been working on TPAC. Howard,  
15 thank you. This is my first chance to officially  
16 welcome John Farmer as the new Chairman of TPAC,  
17 principal attorney for the Leading Edge Law Group  
18 in Richmond and listed for the second time in 2008  
19 as one of the best lawyers in America in the field  
20 of intellectual property. I have a whole bio on  
21 you. I also want to again acknowledge this is the  
22 first time I'd had the chance to welcome you

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1 officially, Professor Conley, so thank you for  
2 being on TPAC. Gary, thank you again. I had the  
3 opportunity to swear you in, and Tim.

4 I just wanted to talk a little bit about  
5 what's happening in Trademarks, what's happening  
6 across the board, and then I'm certainly happy to  
7 answer any questions that you have. I'll give  
8 some legislative updates, and again just make  
9 myself available for what's happening from my  
10 perspective as Director in the trademarks world,  
11 what's happening here at the USPTO, and across the  
12 board.

13 You're here at a time, if you came in  
14 the main building and if you looked up at the far  
15 end you see Welcome to the USPTO and a banner that  
16 says Our Record- Breaking Year. So it's actually  
17 an excellent time particularly for trademarks, but  
18 for our office as a whole. The Government  
19 Performance and Results Act is a statute that went  
20 into place in 1993 that says you have to state  
21 publicly to the administration and to the Congress  
22 and most importantly to the customers and to the

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1 American people what your goals will be. We've  
2 been on a path to improving. Several years ago,  
3 in the year 2000, we had only met about an average  
4 of 25 percent of our goals under the Government  
5 Performance and Results Act. It was a statute  
6 that was less than 10 years old. People were  
7 getting comfortable with how to do that. But we  
8 didn't find that to be acceptable at all and we  
9 went on path to make certain that we helped  
10 educate the Congress about bringing all the money  
11 into the Patent and Trademark Office, that user  
12 fees need to be spent here, an aggressive  
13 strategic plan, and setting forth our goals.  
14 Trademarks met 100 percent of their key goals.  
15 They beat by a large margin the vast majority of  
16 their goals. They're aggressive goals. They're  
17 stretch goals. And we actually have I think  
18 realistic goals, but this really goes down to what  
19 the examiners are doing, what people are doing. I  
20 will tell you what Lynne Beresford is doing  
21 because essentially when I first came to the  
22 office we missed about 75 percent of our goals

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1 that year and the year before for a variety  
2 reasons and now we're meeting 100 percent of our  
3 goals.

4 Trademark applications, first action  
5 pendency was 3.0 months which is right on our  
6 target. We're actually examining largely to what  
7 we think pendency should be. We've talked a lot  
8 about an accelerated trademark examination  
9 procedure. But by and large an area that we're  
10 trying to address we're getting to. Quality of  
11 searching and examination has gone up. The actual  
12 percentages attained were 97.2 percent compliance  
13 for final action and 95.8 percent compliance for  
14 first action. I like numbers. I don't  
15 necessarily have to throw out all these numbers.  
16 We're still getting national awards not for  
17 government but just for being an entity that has  
18 teleworking that's leading the world, leading the  
19 United States, and we have 80 percent of our  
20 trademark examiners teleworking from home who are  
21 eligible to work from home. We have more people  
22 who are working in more states. We have 20

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1 examiners working in 12 different states and we're  
2 talking about doing a whole lot more.

3 One of the things I wanted to emphasize  
4 because I think everyone here on TPAC by  
5 definition has been less than 3 years is that it  
6 wasn't always this way. I've been here about 7  
7 years, and as I mentioned, when I came into the  
8 office we were missing about 75 of our goals. We  
9 didn't have the strategic planning in place that  
10 we wanted to have in place. There were a variety  
11 of reasons. The money that we wanted from  
12 Congress that you paid for wasn't coming in the  
13 door. But we also had a situation where there was  
14 a time with the dot-com boom we had a 33 percent  
15 increase in applications and then the dot-com  
16 bust, a 33 percent decrease in applications. At  
17 that time things weren't great. We had I think  
18 almost 100 examiners when I talked in the door,  
19 trademark examiners, were spread throughout the  
20 rest of the office because we simply couldn't take  
21 in the fees to support what Trademarks was trying  
22 to do. So we had people working in other areas of

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1 the agency on details. I think as recently as  
2 2005 we were having to bring money in from other  
3 areas of the office to support Trademarks because  
4 of what was happening at that time.

5 I think really that's one of the things  
6 I'm concerned about as we look at the economic  
7 times today, that the bottom line is with the  
8 strategic planning, with Lynne in place, with  
9 Howard working closely with everybody, with our  
10 examiners really being very open to change, what  
11 we've seen is a real turnaround. So as I  
12 mentioned, as recently as 5 years ago we had a  
13 RIF, a reduction in force, which is almost unheard  
14 of in government. And so we went from very tough  
15 times where we didn't have the funding that we  
16 needed, we didn't have people working the way they  
17 needed to work, to right now I would say it's as  
18 stable a time as we can possibly imagine. That's  
19 a real credit for Lynne, that's a real credit for  
20 primarily our examiners and for the office as a  
21 whole. Again, to go from meeting 25 percent of  
22 the goals to meeting 100 percent of the goals and

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1 update on legislation. As you know, the patent  
2 reform debate is raging. What people don't  
3 necessarily know is there are a couple provisions  
4 in that patent reform debate as it ended up at the  
5 end of the Congress that may affect trademarks.  
6 One of them affects directly the Trademark  
7 Advisory Committee, and one is the clarification  
8 of fee-setting authority. There is a provision  
9 that was in the Senate bill that talks about  
10 clarifying fee-setting authority and it proposed  
11 to give the office more authority over authority  
12 over setting of fees, but that scheme they had  
13 come up with, there's recognition that the office  
14 might be in a better position to set fees than  
15 Congress generally particularly at a time when  
16 there are bills that are being held up for years  
17 and years on end. The scheme that was thought of,  
18 and I don't mean scheme in a negative way, but the  
19 format was essentially to have the office come up  
20 with proposals for fee setting, do a study on  
21 that. Go through the TPAC and have the TPAC  
22 evaluate that, and then have a certain time period

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1 where Congress could reject the new fees, they  
2 could be raising or lowering fees, and then if  
3 there is no objection from Congress, the fees  
4 would go forward. So that's an important point.  
5 If that continues, that's something that TPAC will  
6 be directly involved in. Then there's great  
7 authority in accepting late filings. There's a  
8 provision in there that talks about that that I  
9 think could nominally affect what happens in the  
10 trademark area.

11 But otherwise, one of the more exciting  
12 things that's happening on the Hill is the issue  
13 of teleworking and the Telework Enhancement Act of  
14 2007 which is S-1000. That's a bill that talks  
15 more about teleworking. The USPTO, Trademarks --  
16 actually I wouldn't even say Trademarks in  
17 particular, following Trademarks' lead, Patents  
18 has had a huge up-tick, almost more than 1,500,  
19 between 1,500 and 2,000, patent examiners working  
20 from home. With such an established teleworking  
21 program in Trademarks, we know that as I mentioned  
22 before, 20 people working in 12 different states,

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1       our program is more advanced than where the  
2       government is and our program is more advanced  
3       than where government regulations are. So there's  
4       been a recognition in that bill or at least a  
5       discussion among members of Congress, how can we  
6       make certain that we push other agencies into  
7       teleworking or help guide them or encourage them  
8       is a better way to say it in teleworking. And how  
9       do we also take the areas where teleworking is  
10      advanced and give them the opportunities to go and  
11      work elsewhere.

12                 Our theory on teleworking is essentially  
13      more flexibility and more opportunity. Let's give  
14      people the choice to work from where they want to.  
15      One of the issues that we've had with our Patent  
16      Public Advisory Committee is some folks there have  
17      said we want you to have examiners in California,  
18      we want them in Denver, we want them here. The  
19      office's position has not been that we want to  
20      tell people you must leave and go to Denver, if  
21      you're comfortable in Washington, D.C., pick up  
22      and go to California because you know Silicon

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1 Valley types of applications. We think that can  
2 be done remotely, we think that it can be done if  
3 this system works well.

4 What we do want to do is exactly what  
5 we're doing right now which is tell examiners if  
6 you want to work in California, you should have  
7 that opportunity. If you want to work in Kansas  
8 for whatever reason, you should have that  
9 opportunity. We don't want the office meddling  
10 with whether or not people make that decision. So  
11 our theory really has been what the office should  
12 do is say if you want to go somewhere else, that's  
13 fine. We can make your duty station there. And  
14 then after you move there, you should have the  
15 responsibility, however many times you needed to  
16 come back to that office, that responsibility  
17 would lie with that examiner to pay for the trips  
18 back to the office, but we should give that  
19 examiner a limit. The office has proposed we  
20 should have a limit of four times and only for  
21 certain circumstances so that people can make  
22 reasonable choices about where they may go and why

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1 they may go there.

2 But I just want to be clear that the  
3 theory that we have for teleworking so that people  
4 don't get concerned is not to tell examiners or  
5 other colleagues we have here you must go  
6 somewhere else. It's if you want to go somewhere  
7 else, you should have that opportunity and then  
8 you can make that decision for yourselves. We  
9 don't want to get in the position of saying, yes,  
10 you can move to Philadelphia but, no, you can't  
11 move to Montana because that's not cost effective.  
12 We want to give the examiner and other employees  
13 the chance to make that decision for themselves.

14 On the international front, I can talk a  
15 little bit about ACTA, the Anti-Counterfeiting  
16 Trade Agreement. There is a lot of progress along  
17 those lines. For those of you who are following  
18 that, you can see that there's also litigation  
19 involved and what discussions are underway, the  
20 Freedom of Information Act requests, et cetera. I  
21 think the great news is Australia, Canada, the  
22 European Commission, Japan, Korea, Mexico,

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1 Morocco, Switzerland, the United States, and  
2 Uruguay are all involved in this Anti-  
3 Counterfeiting Trade Agreement and are having  
4 discussions. There was a time when it was thought  
5 it would only be the Northern Hemisphere, it would  
6 only be developed nations, and we're not seeing  
7 that. We're seeing a good number of nations that  
8 are interested in anti-counterfeiting. This is a  
9 good sign for all of us and we are looking forward  
10 to looking at possibly conclusion in negotiations  
11 at the end of this year is what we had hoped for  
12 and it looks like they might spill over into next  
13 year, but those discussions are actively underway.

14 The Pro-IP Act of 2008 was just signed  
15 into law by President Bush. Lynne can speak very  
16 personally about the Singapore Treaty on the law  
17 of trademarks. She's been a part of it from  
18 really the very beginning including the conception  
19 in a lot of ways and has taken it all the way to  
20 the end. Signing it was the first official act I  
21 think of the new Director General of WIPO Frances  
22 Curry. The treaty needs 10 accessions or

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1       percent increase this year and we were expecting  
2       about 6 percent.

3               MR. DUDAS: Filings aren't done.

4               MS. BERESFORD: They're down from our  
5       predictions. Lower than last year.

6               MR. DUDAS: People have asked both on  
7       the Patent side and on the Trademark side with  
8       economics do you see this dramatic downturn in  
9       terms of filings. We have not. Trademarks,  
10      obviously if there's 2 percent growth, it's not  
11      what was expected, but we haven't seen the kind of  
12      drops we saw with the dot-com boom and the dot-com  
13      bust. And in Patents we've seen about a 5 percent  
14      growth rate, but that growth rate is largely  
15      requests for continuing examinations which is not  
16      the same as growth in terms of original  
17      applications in which that growth was largely  
18      flat.

19              I am happy to answer any questions you  
20      have to discuss more deeply, or otherwise just  
21      thank you again for being here. It's a great time  
22      to be here on TPAC I think and there are a lot of

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1 really important issues where if I could ask you  
2 do one thing, just bring in all your experience  
3 that you have outside, be constructively critical  
4 of course, but please be critical. Help us figure  
5 out where we can do more and what we can be doing  
6 better. And let us be as open and as accessible  
7 as we can possibly be.

8 MR. FARMER: Thank you, Jon. Are there  
9 any questions from the TPAC members for Mr. Dudas?  
10 Hearing none, I think that takes us into our  
11 budget presentation unless there are any other  
12 presentations from the executive leadership of the  
13 PTO.

14 Before we start of under Article III of  
15 agenda where it says budget matters, we're going  
16 to reverse the order. So we're going to go C, B,  
17 A, instead of A, B, C, because when I was chatting  
18 with Ms. Garber before we started she said that  
19 would be a logical flow of information and it  
20 would build on itself better. So in that case  
21 I'll turn things over to you, Wendy, and to your  
22 colleagues, and you can start things off.

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1                   MS. GARBBER: Certainly. Thank you very  
2 much, John, especially with the flexibility with  
3 the schedule. I realize we got the information to  
4 the members late yesterday so I do intend to walk  
5 fairly slowly through these presentations.

6                   To tell you a little bit about myself,  
7 I'm currently the Acting CIO. My background is  
8 actually as a patents -- director so I've been in  
9 patents for about 17 years. I was asked about 6,  
10 7, to 8 months ago to work with Under Secretary  
11 Dudas and Deputy Under Secretary Peterlin in the  
12 front office. They wanted me to look into two  
13 different things. I tell you my background  
14 because I think it puts me in a unique position to  
15 ask some questions that you may have.

16                   One of the questions they asked me to  
17 look into in which our CFO will be discussing  
18 later today is the split between Trademark and  
19 Patents' costs. So they asked me to spend some  
20 time looking into those issues. So when Mark  
21 Olechowski is speaking with you later I will  
22 gladly share with you the things that I found

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1 during my inquiry into those issues.

2 The other thing they asked me to look  
3 into was the health if you will of our IT  
4 infrastructure, and so that was the second area  
5 where I spent some time. While I was working with  
6 them, an opening in the CIO position opened and I  
7 was in a position where I could fill the position  
8 until we found a permanent replacement. So that's  
9 where I have been for the last 4 or 5 months.

10 I was asked to look into those two  
11 issues because at the time didn't have a  
12 background in the CIO, I didn't have a background  
13 in trademarks, and I didn't have a background in  
14 finance. I didn't have a dog in the race so I was  
15 an objective person who could look into many of  
16 these issues.

17 So what I'm going to walk through with  
18 you now is this presentation. It looks like this.  
19 I had the opportunity to brief PPAC on the same  
20 subject matter a couple weeks ago so I would  
21 gladly tell you their response and any impressions  
22 that they may have had. They have heard this as

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1 well, but because this is I think a very crucial  
2 subject to have both patents and trademarks  
3 knowledgeable of because neither patents nor  
4 trademarks will be able to meet their goals and  
5 you're going to be discussing today goals and  
6 strategic plans looking forward to trademarks and  
7 without a healthy IT system, none of those goals  
8 -- attaining them will be possible. So I want to  
9 thank you for putting this on the agenda. I think  
10 it is a very important issue for everyone.

11 I would like in our current situation,  
12 owning a house where your roof is showing signs of  
13 wear and tear and you want to address the problems  
14 before you get your next rainstorm. The first  
15 page on the slide there you will see some of our  
16 current situation. It is the IT infrastructure  
17 issue in which I found myself several months ago.  
18 I do want to point out as any successful leader  
19 will tell you, they surround themselves with  
20 people more intelligent than themselves. So to my  
21 left I have the Acting Chief of Staff John Owens,  
22 and to my right I have the Director of our Budget

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1 and Finance area Keith Vanderbrink. I will ask  
2 them to speak and help me if at any time they  
3 think I could use the assistance.

4 But to tell you of the situation that we  
5 found ourselves in, and I think it took us about 5  
6 to 8 years to get in this situation, so what we've  
7 come up with is about a 5 year plan to help  
8 improve our situation or to get back on the right  
9 track in terms of our IT infrastructure. Our  
10 intermittent system failures have been rising and  
11 so again I would analogize it to your roof that is  
12 showing signs of wear and tear. In particular we  
13 had an outage of patent systems that lasted for  
14 about a day and a half not too long ago, several  
15 months ago and we also had a power outage that  
16 affected all of our employees. So with these  
17 intermittent system outages rising it is time for  
18 us to stabilize all of our IT infrastructure  
19 before these system failures rise anymore.

20 We have right now 2,300 unique server  
21 configurations and 5,700 desktop configurations.  
22 I don't want to patronize anyone in the room but I

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1       also don't want to presume that you have an  
2       understanding of what that means. What that means  
3       is all of us in our offices, all employees, have  
4       their own desktop work stations. If we in the  
5       OCIO want to manage, for example, we have to send  
6       out a security patch or we have to send out a  
7       software upgrade, or somebody calls from the help  
8       desk and we need to triage what their problem is,  
9       it is most helpful to us in the OCIO if  
10       everybody's computers look exactly the same. So  
11       they all have the same exact software on them,  
12       they all have the same exact versions of the  
13       software on them, and that way when somebody calls  
14       with an issue we can tell them how to fix their  
15       problem because we've seen the problem before and  
16       we know how everybody's computers will react to  
17       the fix.

18                       What we have instead is we have 5,700  
19       different computer configurations that have been  
20       deployed. What that does is it makes it  
21       exceptionally challenging for us to send out for  
22       example a security patch. So system vulnerability

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1 has been recognized, we need to send out a  
2 security patch. When you have this many different  
3 desktop configurations, different ones respond  
4 differently. Some of them may not recognize the  
5 patch at all, thus they don't get upgraded. The  
6 security patch may actually break some of them and  
7 so now we're getting help desk calls because of  
8 the security patch my computer is not working. So  
9 having this many desktop configurations is  
10 extremely problematic for us and so this is again  
11 one of the environments in which we find ourselves  
12 and it's important to move to industry standards  
13 so we can start to fix these issues.

14 Out network which obviously is the  
15 communication cables that allow all of our  
16 computers to interconnect is well beyond the  
17 maximum industry lifespan and most of our switches  
18 and most of our network hardware was last  
19 purchased in 2000 and 2001. I would analogize it  
20 for those of you who have a home computer, imagine  
21 the home computer you had in the year 2000 with  
22 your dialup modem, et cetera. So you can see how

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1 when you don't update your own computer systems,  
2 you're unable to take advantage of things as they  
3 modernize. And especially in an area such as  
4 trademarks that relies very heavily on telework  
5 opportunities, we have got to have a robust,  
6 modern network or we won't be able to take  
7 advantage of the full telework opportunities. So  
8 this is actually one of our top priorities to  
9 replace the network.

10 You can see in the fourth bullet there  
11 that our network capacity is often times at or  
12 above 80 percent at peak and what means is it  
13 starts to impact the availability and the speed  
14 and efficiency of our own software systems to our  
15 employees. So it makes our systems work more  
16 slowly. The public has the demand to get some of  
17 our information and we respond more slowly to  
18 public demands simply because our network is  
19 reaching its capacity. It happens particularly  
20 near the end of the fiscal year because that's  
21 where employees' demands on our network are  
22 greatest. So now we are past the fiscal year and

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1 that gives us a little bit of a slowdown in our  
2 network capacity or at least the demands being  
3 made on it by our own employees. But again the  
4 replacement of our network will help get this  
5 issue under control before it becomes a crisis.

6 Much of our data center hardware is  
7 beyond its maximum industry lifespan. Industry  
8 standards say that hardware and software are  
9 typically replaced on a 5 to 7 year cycle, and  
10 many of ours have not been replaced within that  
11 time period. So when you have something that is  
12 that old, it becomes more costly to maintain to it  
13 drives IT operations and maintenance fees up. It  
14 becomes more fragile so you need more people who  
15 are at hand so they can fix and in so many words  
16 apply Band-Aids or duct tape to these machines so  
17 that we don't show reduction in services to our  
18 employees or our customers.

19 I just thought of the idea right now so  
20 I'm throwing it off the cuff, John, and I  
21 apologize. I think if any of you would like maybe  
22 this afternoon if the agenda goes more quickly

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1 than we think it may, if anybody would like a tour  
2 of our data center later today, we will gladly  
3 give that to you because I think it will be very  
4 instructive. At least for me I had never seen a  
5 data center coming from Patents and so for me it  
6 was very helpful, so I think we can make that  
7 available to the group later today.

8 The next to the last bullet there is  
9 very important. Right now we lack an offsite  
10 disaster recovery capability. In the most perfect  
11 situation you want a complete replication of all  
12 of your data center and all of your capabilities  
13 at a remote site so if something were to happen to  
14 this site we could start back up immediately with  
15 the other site, all of our data is there and we  
16 don't lose much time and our employees can get  
17 back to work. We however do not at this time have  
18 such capability. As a matter of fact, we don't  
19 even have all of our data stored somewhere  
20 remotely let alone a complete replication of our  
21 systems. So what that does is I feel like I'm  
22 Chicken Little a lot of the times, the sky is

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1 falling, but you want to be prepared for the  
2 disaster before it happens, not after it happens.  
3 So this is a part of our modernization roadmap too  
4 to make sure we have not only all of our data and  
5 our systems stored remotely, but the ability to  
6 fail over to it in the case we have some kind of  
7 system failure here and today we don't have that  
8 capability.

9 Many of our processes, and coming from  
10 Patents I'm a customer, I've always been a  
11 customer of the OCIO, so there's been a source of  
12 frustration working many times with the OCIO. I  
13 think in the past it was due to many of the  
14 processes were done ad hoc or not according to  
15 industry standards so they weren't repeatable.  
16 What happens when you're a customer is it can  
17 frustrate you because it lengthens the process, it  
18 makes the outcome somewhat indeterminate. It can  
19 be a random output so you can't necessarily see  
20 where things are going. What it does is it causes  
21 work-arounds. So for example, since OCIO did not  
22 always have a robust process to buy new hardware,

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1 think of Blackberry, didn't have a robust system  
2 for doing that. So our customers who have a need  
3 for a Blackberry know if they contact the OCIO not  
4 only does it take too long, by the time I get it  
5 my need for it is gone, but I don't know whether  
6 I'll ever get one and I don't know who's going to  
7 pay for it. So what you do instead is you say I'm  
8 in Patents, I have money, I'll go buy Blackberrys  
9 because I can go to Best Buy and I can buy it  
10 tomorrow. But the problem that those things cause  
11 the OCIO is when that thing stops working or when  
12 you need assistance for it, that's when you give  
13 it to OCIO and you say help me. It's IT, it's  
14 electrical, I need you guys to maintain it. So  
15 what has happened is we've ended up with a list of  
16 approximately 50 some different versions of  
17 laptops we have out there. Fifty versions of  
18 laptops. So instead of having only two, three, or  
19 four versions of laptops that OCIO knows how to  
20 fix and knows how to support, we end up with 50  
21 and it drives up our IT costs. I think there's  
22 enough, I don't want to call it blame, but for

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1 lack of a better word, there's enough blame to go  
2 around where all the different business  
3 organizations have been a part of creating this  
4 problem, but I think it's OCIO's responsibility to  
5 fix it. So what we've come up with and what we're  
6 labeling our roadmap is our 5 year plan to fix it  
7 and then make sure we stay on track after that.

8           On the next page again as kind of a  
9 background, as I've already mentioned, I think our  
10 current environment or our current state evolved  
11 over time. I don't think anybody wakes up in the  
12 morning and says I'm going to go to work and I  
13 wonder what bad decisions I can make today. So I  
14 think our current state evolved over time with  
15 people making ad hoc decisions at the time without  
16 really taking an enterprise or a holistic approach  
17 to IT and what we ended up with is a house with a  
18 bunch of additions and a bunch of upgrades and  
19 none of it communicates with the others and,  
20 again, it drive up the cost for everyone.

21           Technology, as you know, anybody who  
22 owns technology, technology changes very rapidly

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1 and if we want the most agile, robust system then  
2 we need to cyclically replace our hardware and  
3 software to stay on top of the modernization and  
4 we haven't always done that. What we intend to do  
5 with this roadmap is to modernize according to  
6 today's standards and then get on a cycle where we  
7 are constantly upgrading. So in the future we  
8 don't intend to have oh my gosh, let's modernize,  
9 it will just become a part of our standard  
10 operations where no one will see that modernizing  
11 is taking place and we won't have to draw this  
12 kind of attention to this kind of effort because  
13 it will just be built into the standard operation.

14 At the bottom of slide number 3 you see  
15 that there are many parts of our IT infrastructure  
16 that all the different business organizations  
17 share. For example, email. Patents' employees,  
18 Trademark's employees, CFO employees, HR  
19 employees, everybody shares our email system today  
20 and that's just one example. So there are many,  
21 many parts of our IT infrastructure that people  
22 share, and John Owens will be talking a little bit

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1 more about that because I know that is one of your  
2 questions, Trademark's IT versus the rest of IT,  
3 and so we will be addressing that. The bottom of  
4 slide three just gives you an example of some of  
5 the things that we all share.

6 The top of slide four as I've mentioned  
7 already, what we expect what we're terming our  
8 roadmap to do is to stabilize and simplify our  
9 current environment. Again we need to make an  
10 enterprise or holistic approach to this  
11 modernization as opposed to ad hoc business  
12 decisions being made in order to please our  
13 customers. You're trying to make an individual  
14 happy, but it's hurting the whole, if you will,  
15 and so we need to take a more holistic approach.

16 What I've done in the middle there,  
17 these are Trademark systems that are specifically  
18 called out in our roadmap for 2009 that will have  
19 efforts being placed toward them, and they're  
20 FAST, TEAS, TRAM, TICRS, and X-Search, and if you  
21 have any questions, I can certainly address these  
22 at the end. Some of these systems are some of our

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1 more older systems that have not been modernized  
2 recently and it kills two birds with one stone if  
3 while working on these systems not only gives you  
4 or gives Trademark additional functionality and  
5 additional stability, but it also helps the whole  
6 of our roadmap and modernizing our IT  
7 infrastructure at the same time. So by working on  
8 these systems, and there are some Patent systems  
9 as well we intend to do this with, it helps both.  
10 It helps Trademarks as an individual business unit  
11 and it also helps the whole of our infrastructure  
12 become more modern.

13 What I've done on slide five, our IT  
14 roadmap is actually this very long document here.  
15 I can make this available. I made it available to  
16 the PPAC members. What I'd done in slide number 5  
17 is summarize it for you. It has nine  
18 interdependent initiatives. In no particular  
19 order they are organizational strengthening. In a  
20 nutshell what that means is we need to work on our  
21 workforce as well. Some decisions were made in  
22 the past to take money away from employee training

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1 for example. As IT changes we need to keep our  
2 employees knowledgeable about the most modern --  
3 I'm an electrical engineer myself. When I went to  
4 school I learned BASIC and FORTRAN. I'm not very  
5 helpful today. So the same is true for our  
6 employees. We need to keep them trained. And if  
7 we don't do that, what we do is we have to rely  
8 more and more on contractors which drives up  
9 costs. So what we've done in this 5 year plan is  
10 we've front-loaded with contractors because we  
11 realize we don't have a lot of the knowledge in  
12 house that we need, but while we are training our  
13 employees up, our reliance on contractors will go  
14 down. So in a nutshell, that's what the  
15 organizational strengthening pillar means. It has  
16 other components as well including some of the  
17 budget and finance systems that Keith Vanderbrink  
18 will be talking about.

19 Process standardization. As I mentioned  
20 before, we want to get away from ad hoc decision  
21 making and ad hoc processes and move to industry  
22 standards. So we've recently created an SDLC

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1       which is our system or our process through which  
2       we receive project requests and move all the way  
3       through the project, design, deployment, et  
4       cetera. So we've recently done that and moved it  
5       toward industry standards, away from ad hoc  
6       because ad hoc decision making has got us to where  
7       we are today. So in a nutshell, that's the  
8       process standardization.

9                 Data center stabilization is to upgrade,  
10       modernize, and update our entire data center. As  
11       I mentioned, we'll gladly give you a tour and show  
12       you. It's interesting because we can show you  
13       some of our older equipment and we can show you  
14       some of the issues that our data center has  
15       including such things as heating and air  
16       conditioning issues. As simple as that sounds,  
17       these machines need cooling. They don't always  
18       get the cooling that they need. We actually have  
19       portable fans that we use to cool some of our  
20       equipment.

21                 AIS stabilization. That in so many  
22       words is our software. So we need to upgrade all

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1 of our software. Some of our software systems are  
2 very old and they require a lot of people to sit.  
3 PALM is one of them, for example. I don't know if  
4 you guys are familiar with PALM. PALM is used by  
5 Trademarks, but it's used a lot by Patents. So  
6 for example if I'm an employee of the Patent  
7 Office and I want to look up where Debbie Cohn's  
8 office is, I can type her name in and PALM tells  
9 me where her office is and what her phone number  
10 is. PALM is a system that is so fragile, it has  
11 approximately 12 people working full time just to  
12 keep it up and running and that makes it very,  
13 very expensive. What these 12 people is they sit  
14 in a room, and trust me, they're staying busy, and  
15 wait for PALM to break because it breaks all the  
16 time. So that's just one of the systems that we  
17 intend to modernize. Trademarks, I think it is  
18 TRAM. TRAM is running its system on a very old  
19 machine using COBOL language. COBOL wasn't taught  
20 when I was in school. It was already outdated  
21 when I was in school. Finding people now to  
22 maintain and keep COBOL running is exceptionally

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1 expensive, so one of our intentions is to  
2 modernize those types of systems which decreases  
3 the costs for everyone because we can't afford to  
4 have systems that are so fragile that they keep  
5 breaking and raise costs.

6 MS. BERESFORD: Wendy, may I just  
7 interject that although TRAM isn't COBOL, it's not  
8 fragile, it's one of the most sturdy systems in  
9 the office, so Trademark folks, don't be worried  
10 about TRAM. It's chugging right along.

11 MS. GARBER: I don't think that's  
12 completely accurate.

13 MR. OWENS: It does cost an exceptional  
14 amount of money. We have over 20 people who  
15 constantly work on that system full time and  
16 that's just contractor staff.

17 MR. GARBER: It's robust only because so  
18 many people work on it all the time.

19 MR. OWENS: People work on it to keep it  
20 up and available and add functionality to it  
21 constantly.

22 MS. GARBER: Moving to our desktop

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1 stabilization, and I'll tell you that's not  
2 unexpected. When I was telling John Doll, the  
3 Commissioner for Patents, about our PALM system,  
4 he had a very similar reaction. He said, What do  
5 you mean? PALM works. PALM's great. Every time  
6 I go onto my computer PALM works. And he didn't  
7 know what was going on behind the scenes. And,  
8 frankly, business heads shouldn't have to be  
9 involved with what's going on behind the scenes.

10 Our desktop stabilization I mentioned to  
11 you already. It has to do with the number of  
12 independent desktops and images that we have out  
13 there, so we intend to standardize. What I met  
14 with the EPO I was telling them about the number  
15 of desktop images we had. Do you know how many  
16 they have for all their employees? One. Every  
17 employee in the European Patent Office has the  
18 same exact computer configuration. When I told  
19 them we had over 5,000, they were astonished we do  
20 as well as we do because that's just a vast  
21 number. So that is one of the elements that we  
22 intend to do.

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1                   Our service desk is one of our  
2 priorities. That's our help desk. We want to  
3 make that process quicker for our employees and  
4 our customers, being able to triage incidents more  
5 rapidly.

6                   Disaster recovery I mentioned to you  
7 already. We do need to bunker all of our data and  
8 ultimately get to where we can have a fail over in  
9 case of a problem so that our employees don't lose  
10 any examination time in the incidence of any kind  
11 of disaster at all.

12                   Network and telecom I mentioned as well.  
13 We intend to replace our network with a new  
14 network that will make our system able -- because  
15 I think both Patents and Trademarks have strategic  
16 visions for how they want for example telework to  
17 look in the future or electronic processing of  
18 applications or electronic examination, and we  
19 have to have a better network in order to meet  
20 those demands. Our network as it is today is able  
21 to meet the demands of our customers and the  
22 demands of our workforce, and as you know, Patents

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1 is vastly increasing every year in workforce and  
2 that puts additional stress on our network. So we  
3 have made a commitment to Patents that we will be  
4 able to meet the 1,200 hires for this year with  
5 the network we have, but at the same time we  
6 needed to start getting the funding and the  
7 prioritization to fixing it so they can happen in  
8 parallel, the upgrading of our network so that we  
9 never have to see an impact to our customers and  
10 our employees.

11 Enterprise architecture is so small it's  
12 a federal mandate for us to do and it sets forth  
13 industry standards for how you architect and  
14 create an IT system for an agency as large as  
15 ours.

16 If you look on the next page, we had to  
17 approach the business heads for this because it  
18 was such a large initiative for us that it  
19 required the approval of our Change Review Board  
20 and our IT Investment Review Board. It was  
21 interesting. I saw three responses. I think I  
22 can categorize the responses of both the business

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1 and the deputies into three different ones. There  
2 was a very small minority who said problem, what  
3 problem? We have IT problems? Because again when  
4 you come in in the morning and your computer turns  
5 on and you're able to do our email and you're able  
6 to do our word processing, you don't realize that  
7 your -- is showing signs of wear. So I think we  
8 were quickly able to educate that group into  
9 seeing that, yes indeed we have an issue that  
10 needs to be addressed.

11 There was a second minority who I would  
12 say when you're faced with an issue this large in  
13 scope, it's easy to seize up. As John would say,  
14 it's you work to get yourself toward Mount Everest  
15 and now when you're at the base of it you look up  
16 and say what a big mountain and it's easy to stop  
17 there and not start tackling it. So I think we  
18 also had a minority of people -- we had an OCIO  
19 organization, granted it was none of the three  
20 here, but we had an OCIO organization that for  
21 many years was saying things are fine. For sure,  
22 Patents you want a new development project? Sure,

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1 I'll do that. I think as I mentioned they were  
2 making ad hoc decisions with the best facts they  
3 had in front of them at the time, but the business  
4 heads were never really told until recently that  
5 IT infrastructure needs to be modernized. It was  
6 more of an education really than anything else.  
7 And I think the majority of people felt in so many  
8 words it doesn't matter how we got here, here we  
9 are, we have an agency need to fix it so we can  
10 become more agile, so what do we need to do to  
11 move forward?

12 So what we did, if you look on slide  
13 number 6, for people who were in the second group  
14 and had a tendency maybe to seize up, what we did  
15 is create for them a series of help checks  
16 throughout the process. We certainly couldn't  
17 afford to let this be an invisible process where  
18 we say thank you, give us lots of money and we'll  
19 come back to you in 5 years and tell you how it  
20 went because there was a certain lack of  
21 confidence in our ability to do that where you  
22 come to them and say we maybe didn't give you the

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1 whole picture all along so we're having an issue,  
2 they can use confidence in the OCIO's abilities  
3 because they hadn't told them up to then. Nobody  
4 wants to just give us a pot full of money and tell  
5 us to come back in 5 years. So what we tried to  
6 do to mitigate any of those concerns, because we  
7 can't afford to let this turn into an endless  
8 planning exercise until everybody has the full  
9 confidence in our plan. So what we did instead is  
10 we told them your roof is showing signs of wear,  
11 we need to get started, and so as to help you  
12 overcome your lack of confidence based upon past  
13 OCIO performance, we have a series of health  
14 checks. This is just an example of what we've  
15 done and we will be reporting back to the IT  
16 liaisons, we'll be reporting back to the deputy  
17 business heads and the business heads as well as  
18 we are spending their money because they deserve  
19 to know how we're making progress and whether  
20 we're making progress.

21 I would draw your attention to the  
22 left-hand column where again we go through the

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1 nine initiatives. What you'll see there are the  
2 2009 dollar estimates for the nine initiatives. I  
3 would point out to you network and telecom is the  
4 largest portion of it because as I mentioned to  
5 you, that is our top priority. So while we  
6 consider this to be a 5 year plan, our network is  
7 our top priority and that's why you see more money  
8 devoted to it in the first year. The same is true  
9 for disaster recovery and the software or the AIS  
10 stabilization. We believe all nine of these  
11 initiatives must be undertaken at once. For  
12 example, you don't replace hardware without  
13 replacing software and vice versa. It doesn't  
14 make any sense. So we believe all nine of these  
15 initiatives must be attacked at once. However, we  
16 have prioritized the nine against each other  
17 chronologically. We realize that network and  
18 increasing the scope and stability of our network  
19 is our most important priority in the short run,  
20 therefore we have focused more money at it  
21 initially. Some of the other items such as the  
22 help desk response for example will get more money

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1 devoted to it later. So there was a  
2 prioritization although it was a chronological  
3 one.

4 Moving on to page 7, it doesn't flow  
5 real well from the subject of the roadmap, but  
6 what you'll see in slide number 7 is an answer to  
7 one of your questions. It is as you'll see at the  
8 top, the 2009 estimated cost of the roadmap is  
9 \$38.9 million. We have received the approval of  
10 all the necessary bodies to move forward with this  
11 investment cost. What you see is the split  
12 between Patent and Trademark's percentages at the  
13 end is based upon the results of 2008 -- Mark will  
14 talk more about this later, but what we use is the  
15 2008 final split as a budgeting tool to guess the  
16 future and it's only after actual costs are done  
17 that we get back with the actual split, but I  
18 believe in the past, Mark can answer this better  
19 during his presentation, but our budgeting tool  
20 and our actual costs have only been off by 1 to 2  
21 percent at most. So what this split gives you is  
22 our best estimate based upon 2008 information of

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1       what the Patent and Trademark split will be  
2       between our roadmap.

3                 One of the questions, if I can feel free  
4       to anticipate what one of your questions may be,  
5       I've heard questions as to why would the Trademark  
6       share of the total be greater than its FTE  
7       percentage or the percent of its employees versus  
8       Patent's employees. Is that a question? What you  
9       see there is a 78/22 split. The way I would  
10      phrase it is that a computer doesn't care how many  
11      people use it or software doesn't care how many  
12      people use it. So to make a simplified example,  
13      let's say USPTO has 100 employees, 90 of them are  
14      Patent's, 10 of them are Trademark's. So 90  
15      percent of the USPTO is Patent's, 10 percent is  
16      Trademark's. If Patents were to come to the OCIO  
17      and say we need a system that does A, B, and C, we  
18      have to design the system to have those  
19      capabilities, we need to procure the hardware, buy  
20      the hardware that needs to be able to do those  
21      things, and need to architect the hardware so it  
22      fits into our overall data center and is able to

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1       communicate back and forth. We have federal  
2       regulations related to security so we have to work  
3       out all the security costs, et cetera. So we have  
4       to do all of those things all the way through to  
5       deployment. Let's say it costs \$1,000. So  
6       Patents comes and they ask us for a system and it  
7       costs \$1,000. Later the same year, and I am  
8       simplifying things, Trademarks comes to us and  
9       they want a system that does X, Y, and Z. We have  
10      to go through all the same things. We have to  
11      design the system so it meets the capabilities, we  
12      have to architect and procure the hardware so it  
13      fits overall, we have to do the same security, go  
14      through all of our federal mandates to make sure  
15      our vulnerabilities are covered, and it too costs  
16      \$1,000. If that's all that we were to do that  
17      year, the split between Patents and Trademarks  
18      would be fifty-fifty. We did \$1,000 for Patents,  
19      we did \$1,000 for Trademarks even though the split  
20      of employees is 90/10 because a computer system  
21      doesn't care how many people use it and it doesn't  
22      necessarily add to our cost. So Mark and Keith

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1 can both talk more about this later, but at least  
2 for me that's a good explanation as to why IT  
3 costs -- it would be more surprising if they did  
4 fall in a straight FTE percentage at least for me.

5 What I'd like to do before taking your  
6 questions is to move on to John Owens. One of the  
7 questions that is on the agenda, to answer your  
8 question number one under C, I've told you our  
9 2009 costs. We can't until the executive session  
10 talk more about 2010 and beyond costs. But I can  
11 tell you that overall it's a 5 year, \$200 million  
12 plan approximately. What I'll have John talk  
13 about is this is an opportunity since we say we're  
14 modernizing our IT infrastructure, it presents an  
15 opportunity for you guys to ask the question is  
16 this a good time to create separate IT systems.  
17 So that's something that I'd like John to speak  
18 about for you and then I'd happily take your  
19 questions.

20 MR. FARMER: Thank you.

21 MR. OWENS: This is a simplified  
22 diagram. I want to say one thing, just because

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1 something looks complicated doesn't necessarily  
2 mean that it's wrong. If you've ever looked at  
3 the back of your television or your AV equipment  
4 or your computer you see a lot of wires hanging  
5 there and they're connected every which way and  
6 many of us don't understand how they're all  
7 interconnected or why, just the fact that it  
8 works. Technology doesn't have to look simple on  
9 a piece of paper to actually be correct. So  
10 please don't draw the conclusion that just because  
11 something looks complicated that it was built  
12 improperly.

13 We do have many systems here that could  
14 certainly use an overhaul. As Wendy said, over  
15 the last 10 years much has changed with  
16 technology. I've been here for about 8 months now  
17 and I came from a company who did nothing but  
18 technology for 13 years. I was the technical  
19 director there. In the late 1990s and early 2000s  
20 that organization went through a complete reform  
21 and we modernized all of our systems to build on  
22 efficiency and reduce the cost of maintenance. So

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1 I'm going to go over here and tell you we're in  
2 much the same place. These are Trademark AISes.  
3 AIS stands for automated information system.  
4 Those are the actual applications that run. These  
5 are the servers that thee applications run on.  
6 Some of the lines have been removed, particularly  
7 the lines -- we have other business unit AISes.  
8 For example, you heard about PALM. PALM is more  
9 than just looking up someone in the directory.  
10 PALM is our single sign on authentication  
11 authority. So when you log in we know who you,  
12 what your rights are and so on and so forth due to  
13 the information in PALM. It's what allows all of  
14 these systems to connect to the user and to know  
15 that the user has the authority to do what they're  
16 doing.

17 RAM is our billing system. It's how  
18 credit card information is processed right down to  
19 who was charged for what and it stores all the  
20 information of who's paid fees. So all of these  
21 systems are shared across business areas. I was  
22 mistaken the last time I gave this presentation.

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1 You all do pay for part of these systems. The  
2 network zones, these are the different networks.  
3 All the data transfers over. These are shared  
4 resources as well. You have external trademark  
5 interfaces. These are things like FAST and TDR.  
6 And these are the databases. Again, we removed  
7 all the lines because we just couldn't see  
8 anything. These databases actually store all of  
9 the trademark data. These are the servers and  
10 these are the --

11 This type of architecture is more  
12 monolithic. It grew over time. Business needs  
13 were met. I can tell you from my examination over  
14 the last 8 months it looks like more of the  
15 trademark system is automated end to end than the  
16 trademark system is today. In fact, trademark  
17 systems have been around much longer and they have  
18 always been on the cutting edge far above and  
19 beyond where I think patents have been. PFW which  
20 is being done for patents is going to catch them  
21 up significantly, but more -- for trademark over  
22 time. Any questions on this? Feel free to ask

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1 anything. If I didn't explain something well  
2 enough, I'm happy to go back. It's hard to gauge  
3 sometimes where everyone is.

4 MS. GARBER: Why I asked OCIO to create  
5 a chart like this was to show that -- and if you  
6 recall from my presentation, on the bottom of page  
7 3 we do share all of the business organizations,  
8 not just patents and trademarks, but we do share  
9 much of our IT infrastructure and it's not as easy  
10 -- what this chart is meant to show is to a lay  
11 person it may sound very simple to separate, we're  
12 going to separate, finance will have their IT area  
13 over here, our CAO and HR will have their IT  
14 system over here, trademarks here, patents here.  
15 It sounds very simple possibly to a lay person to  
16 make that separation. But in reality we don't  
17 believe it's cost effective nor very easy. So  
18 what this chart is meant to show is just how many  
19 resources we share.

20 You have a couple of options. One is to  
21 completely duplicate all systems so that  
22 trademarks has a RAM system that only trademarks

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1 uses and patents has a RAM system that only  
2 patents uses, and I think all of us would agree  
3 that a complete duplication of systems leads to  
4 increased costs for everybody so it's not  
5 necessarily cost effective to do that. Then the  
6 other option that you have is to share all those  
7 things that can be shared and that's where we are  
8 today. What this is showing is that there are  
9 some trademarks -- for example, if we show you the  
10 data center, John can show you, these are  
11 trademark servers and so there are some things  
12 that are separate today and they are things that  
13 only trademarks spends money for, but the things  
14 that are separate today are the things that will  
15 be separate tomorrow. So the things that are much  
16 more difficult and increase costs to separate are  
17 things that we don't recommend separating.

18 MR. OWENS: What we are going to do  
19 during the roadmap is we are going to put industry  
20 standard architecture to work for us, things that  
21 have been proven in other organizations including  
22 public and private industry. That is first we're

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1 going to stabilize our environment. We're going  
2 to go to each one of the systems and we're going  
3 to document its interfaces, we're going to apply  
4 those standards, we're going to review what we  
5 currently have and we need to stop problems that  
6 cause the crashes today.

7           While that is going on, we are going to  
8 document those systems. Much of our documentation  
9 has not been kept up to date. Then we are going  
10 to remove the weakest links in those chains, all  
11 of those arrows on there. Some of them are not  
12 necessary. And the bigger piece of chain, you  
13 only need one weak link to break the whole. So  
14 when we talk about an end-to-end automated system,  
15 it's a gigantic chain of links and as soon as one  
16 breaks, the whole system does. So we shorten the  
17 chains. That's the way modern IT works. We  
18 shorten the chains and we make clean interfaces.  
19 The shorter chains act independently. So it's  
20 like instead of having one chain to pull your car  
21 out of the mud, you attack six shorter chains.  
22 You can still pull the same load, but with the

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1 shorter ones, if one breaks you can keep going.

2 That's the type of modern architecture  
3 principle that we will be applying to this effort.  
4 Over time we will simplify our systems to make  
5 them robust. We will make them redundant. We  
6 will have duplicative systems, one hot, hot spurs  
7 they call it. If one of them goes down, the other  
8 one is taken over. We have three systems that do  
9 that today, mail, patent search, hopefully soon  
10 X-search which rides on very much the same system,  
11 and the third one escapes me at the moment. These  
12 things that we talked about on page 4 answer your  
13 question that you asked us, is this the right time  
14 to do this work. Yes, it is. The roadmap states  
15 it, the presentation states it, this was planned.

16 I think the question is how fast can it  
17 happen. I equate this to what happened at AOL in  
18 the middle to late 1990s with the connectivity  
19 crisis that we had where people couldn't get on or  
20 get connected and it was very publicly known that  
21 that was a bad time. It's like crawling out in an  
22 airplane in flight and replacing an engine. You

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1 can't stop. We have to continue to search and  
2 produce work product. So we are going to be  
3 replacing all of this infrastructure and  
4 modernizing all of these systems while in flight  
5 and that takes a lot of planning and a lot of  
6 coordination. It's a huge choreographed effort.  
7 Much harder than it might seem on the outside.

8 MS. GARBER: The last point I'd like to  
9 get across is I likened myself to Chicken Little  
10 before and I did have to run in the last 3 or 4  
11 months and tell everybody the sky is falling, the  
12 sky is falling. We continue to meet our employee  
13 and customer demands so we don't have an immediate  
14 crisis where we believe we will stop being able to  
15 do that. Our crisis however is that we need to  
16 get started on the plan to modernize. Anybody who  
17 knows anything about IT knows that not only do you  
18 first have to get the money which takes time, then  
19 we have to go through the procurement effort which  
20 takes time, and then we have to architect and  
21 design everything which takes time. So my job in  
22 the last several months has been going around and

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1 gathering support for us to get the money and get  
2 started on the implementing so that we never have  
3 to lose any of our abilities of our systems to  
4 meet customers' both internal and external  
5 demands.

6 So with that I'll gladly take any of  
7 your questions. As I mentioned, I gave the same  
8 presentation to PPAC probably several weeks ago,  
9 so I can share any information with you. I know  
10 it's a lot to digest.

11 MR. FARMER: Wendy, as far as the  
12 possibility of separation of systems, I understand  
13 the comment that there are certain systems that  
14 are shared and thus it may be the case that it's  
15 cheaper to maintain one than two although I don't  
16 know if both systems are really if that's the case  
17 or not, but assuming that that is, are there not  
18 also systems that are not shared that are unique  
19 to patents or unique to trademarks and those could  
20 potentially be separately administered on the  
21 trademark side of the house in the case of  
22 trademark systems?

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1                   MS. GARBBER: I'll let John go ahead and  
2 answer that. He's more familiar.

3                   MR. OWENS: What do you mean by  
4 separately administered?

5                   MR. FARMER: As opposed to those  
6 trademark systems being covered in a central CIO  
7 function, they could be covered on a CIO function  
8 that falls on the trademark side of the house.

9                   MR. OWENS: To what benefit?

10                  MR. FARMER: So that the trademark side  
11 of the house would have greater control over its  
12 budget.

13                  MR. OWENS: I don't believe that one  
14 would lead to the other. If you're saying that in  
15 our data center you would like different system  
16 administrators to work on those systems, maintain  
17 them, work in the centralized space, that  
18 coordination effort alone, the duplication of help  
19 desks, the duplication of monitoring, the  
20 duplication of all of those shared resources that  
21 are above and beyond here, would cost a  
22 significant amount of money, not to mention we

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1 wouldn't have the space or opportunity to do it  
2 here. So I don't know exactly how to answer your  
3 question.

4           If you wanted to take everything ad hoc  
5 and move it somewhere else, that would be even  
6 more. I'd have to work on all of those shared  
7 systems and either duplicate them or build cleaner  
8 interfaces that would work over a long connection  
9 pipe depending on what area of the country you  
10 wanted to be in and that's even more complicated  
11 particularly for security. So could you narrow it  
12 down a little bit for me?

13           MR. FARMER: It's really not any more  
14 specific than item number 3 on the agenda, and the  
15 question is not presuppose an answer, it's simply  
16 that we see that there is going to be a tremendous  
17 expense incurred for a tremendous overhaul that  
18 appears to be very needed and this seems like an  
19 opportunity to examine all of the options as to  
20 whether the system should remain unitary or  
21 partially unitary and partially separate by patent  
22 and trademark sides of the house or entirely

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1 separate which I understand you all say really  
2 doesn't work, and thus we're just trying to fully  
3 understand all three of those options.

4 MS. GRABER: It's important to point out  
5 that we talk a lot about the roadmap. It answers  
6 part of your question because I don't want to  
7 exaggerate or overstate how much this is going to  
8 cost for us, because while it is a very important  
9 initiative and a costly initiative, it is less  
10 than 2 percent of our annual budget, so to think  
11 that you're modernizing your IT infrastructure for  
12 less than 2 percent of your total budget. I don't  
13 want to get out of control with how much money we  
14 talk about this costing because relatively it's  
15 not very much money. It's one of our goals to  
16 keep this modernization effort very cost effective  
17 for everyone. So that's part of your question  
18 because you did mention how costly this effort  
19 would be.

20 MR. FARMER: To my fellow members of  
21 TPAC, I have various questions I've written down,  
22 but I'm not hogging the floor, so jump in when you

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1       feel that you wish to. How much overall risk do  
2       you think the computer system is at for a major  
3       failure in that that the system could go down, be  
4       down 2 or 3 days consecutively or even longer?

5               MR. OWENS: I believe we had two outages  
6       of that scale last year.

7               MS. GARBER: I'll let John talk more to  
8       your technical questions, but for example, the  
9       software stabilization effort we're looking at,  
10      we're not doing it randomly and we're not doing it  
11      alphabetically. What we're looking at is this  
12      systems that we currently believe we have the  
13      highest risk of outage and we're addressing those  
14      first. So that's one of the efforts we're going  
15      through. John knows what the five systems are  
16      that we're looking at for this year more so than  
17      I, but we are trying to do it in the area that  
18      mitigates the most amount of risk.

19              Anytime you have a computer system,  
20      there is some risk of outage no matter how great.  
21      Even if everything worked perfect, there is a risk  
22      of an outage. So, yes, we believe there is a risk

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1 of outage and what we've tried to do is get this  
2 roadmap underway before the risk gets any greater.  
3 The important thing to note is, yes, there is a  
4 risk but, yes, we have a plan to mitigate it.

5 MR. OWENS: I think the answer to your  
6 question where I started saying that we had two  
7 last year one of which I was here for and was it  
8 related to power, it knocked out every system, was  
9 to set the stage for what I'm about to say which  
10 is very much what Wendy said. There is always  
11 risk. That risk in modern systems is lowered by  
12 having redundant and resilient systems, which  
13 obviously you see the state of our systems that  
14 we've just told you we haven't modernized. That  
15 type of modern architecture didn't come about  
16 until the mid to late 1990s for the most part. We  
17 are prioritizing the work here and instilling --  
18 the roadmap is our modernization effort to avoid  
19 system- level crashes, but there is always going  
20 to be risk.

21 MR. FARMER: I understand that with  
22 computer systems there are always risks. I ran a

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1 small business. I know how that is. But  
2 obviously from your testimony, we're at an  
3 elevated risk right now of the systems going down  
4 because of the problems that you've described.

5 MR. OWENS: It's watching the problems  
6 slowly increase which I think back in late 2007  
7 before I was here, many good folks at CIO said  
8 things don't seem to be going very well. We are  
9 going to do a much of independent assessments or  
10 what we call IVVs, independent verification and  
11 validation. And we did several which resulted in  
12 showing us many of the cumulative issues that we  
13 experienced. That in turn led to self-analysis  
14 which led to the roadmap which led to a 5 year  
15 plan to resolve the problem. We're being very  
16 proactive. It may not seem it, but over the last  
17 2 years we have taken huge steps, whereas in  
18 previous years I'd say like Wendy said between the  
19 last 5 and 8 years, very little had been done.

20 MR. FARMER: I'm not trying to look  
21 backwards and assign blame to anybody, I'm just  
22 trying to see how much risk there is. Are we

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1 under any material risk that the system would go  
2 down and stay down? In other words, it wouldn't  
3 be a day or two or 3 days, but it would just be  
4 down for the count until it's replaced or are we  
5 not under that kind of risk right now?

6 MR. OWENS: A disaster that took out  
7 this building and the data center?

8 MR. FARMER: Sure. I'm just talking  
9 about a failure within the computer system.

10 MR. OWENS: Barring that level of  
11 disaster, down for an extended period, it is hard  
12 to tell you how long things -- if we had a fire,  
13 some massive flood, some disaster --

14 MR. FARMER: I'm not talking about  
15 outside of the system, I'm just talking about a  
16 system failure. I was just asking if you see any  
17 material risk that the system itself would fail  
18 and just stay down, that you wouldn't be able to  
19 bring it back up in a day or two or three.

20 MR. OWENS: No, I don't believe so. In  
21 the last year or so we've made sure that the bulk  
22 of our systems and all of the trademark systems to

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1 my knowledge are all backed up and stored in a  
2 configuration management system. We're about to  
3 duplicate that within the next 6 months in Boyers,  
4 Pennsylvania, at our data facility.

5 MR. FARMER: Thanks for that answer.  
6 Based upon this timeline, when do you anticipate  
7 that we will have offsite data recovery that will  
8 have an offsite system that we can turn to if  
9 something happens here like a fire or something  
10 like that?

11 MR. OWENS: The current schedule shows  
12 that the data itself plus the configuration  
13 management is going to be done by I believe the  
14 end of Q2.

15 MR. FARMER: Excuse me?

16 MS. GARBER: The second quarter.

17 MR. OWENS: Fiscal Q2 of this year.

18 MS. GARBER: So soon, which is  
19 approximately March.

20 MR. FARMER: I don't know if I'm asking  
21 the right folks this question. If so, please tell  
22 me ask somebody else. But when the system is down

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1 entirely, what does the PTO do to get its work  
2 done? Do we just have to hang out until the  
3 system comes back up or are there other work-  
4 arounds that are in place?

5 MS. GARBER: It depends very much on the  
6 system, and I'm talking to you from a patents  
7 perspective and I trademarks is analogous from the  
8 examining attorneys sitting in their offices  
9 trying to do work. It depends on what the system  
10 is. Some systems were they to go down are merely  
11 inconvenient to not have. Some systems are more  
12 short-term loss of work concerns. Again I'm  
13 talking from patents so I'll let a trademarks  
14 person speak up about the examining attorney. But  
15 for patents, the average examiner uses a number of  
16 different systems so usually if one of them isn't  
17 working, there are other things you can do. For  
18 example, instead of writing an office action,  
19 maybe that system is down, the one that allows you  
20 to write correspondences. So you have to put that  
21 work aside and maybe start on a new application  
22 and perform the search because the searching

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1 application is still available. So often times  
2 it's a matter of convenience as opposed to  
3 everybody go home for 2 days and we'll pick back  
4 up work later. So at least for us on the patents  
5 side that's what our failures have been like.

6 MR. FARMER: What I take from that is  
7 whatever is down, that function in the office that  
8 needs that computer system just can't go forward.

9 MS. GRABER: In many cases that's true,  
10 but we've only had two in the last year outages  
11 that lasted more than an hour or so.

12 MR. FARMER: Is the PTO under any threat  
13 due to its computer system issues right now of  
14 data loss where the data would not be retrievable  
15 or are we in a pretty good situation there?

16 MR. OWENS: I think we're in a much  
17 better situation there only because all of the  
18 data is stored in RATA (?) databases which in  
19 English means that it's self- backed up here on  
20 site. What we are not prevented against is  
21 disaster.

22 MR. FARMER: This may be a question that

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1 you tell me that I'm either not asking the right  
2 folks or that we should take it up in executive  
3 session, but do we have any sort of timeline on  
4 when someone would be again in an appropriate  
5 position in the CIO position? Because I think  
6 Wendy you're acting right now. Correct?

7 MS. GRABER: I am. We actually have a  
8 timeline that will be next Monday.

9 MR. FARMER: That's pretty doggone  
10 quick.

11 MS. GRABER: I'm glad you asked.

12 MR. FARMER: Congratulations perhaps.

13 MS. GRABER: Not to me. John Owens will  
14 be our next CIO.

15 MR. FARMER: Congratulations.

16 MR. OWENS: Thank you. A question on  
17 the division. I just want to see if I have my  
18 mind around the money side of this correct. And  
19 this to my fellow TPACers this is the last  
20 question I had on my list. That is, looking at  
21 the full-time equivalence in the office in terms  
22 of employees, it looks like about 65 percent of

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1 the people are on the patent side, 5 percent are  
2 on the trademark side, and 65 plus 5 is 70, so  
3 that would leave 30 percent of the FTEs being in  
4 overhead so speak, they're neither on the patent  
5 or the trademark side. Then when I look at the  
6 division of cost, it's not quite 82/20. It's  
7 close to that, but not quite 80/20. So if I'm  
8 doing my math right, it looks like what that  
9 really means is that for the 30 percent of the  
10 FTEs who are in overhead, they're pretty much  
11 being split fifty-fifty between the patent and the  
12 trademark side, not quite because it's not quite  
13 80/20, but it's pretty close to that. Do I have  
14 my rough back-of-the-envelope calculation right  
15 there?

16 MS. GRABER: I think what I'd prefer to  
17 do is turn that over to Mark, and I don't know  
18 whether he intends to cover that. That may be a  
19 question that very much deserves an answer, but I  
20 don't know if it should wait.

21 MR. FARMER: If that's something that  
22 we'll address there, then we can defer until we

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1 get there.

2 MR. OLECHOWSKI: It will come up in the  
3 context of what I want to talk about, but if we  
4 don't answer the specific question, absolutely we  
5 can leave it.

6 MR. FARMER: I'll hold it until then. I  
7 didn't mean to hog the floor from fellow members  
8 of TPAC. What questions or comments if any do you  
9 have?

10 MR. STORIE: When you're working on --  
11 sometimes it's hard to know what you don't know.  
12 We have people still around who know what it's  
13 going to take deal with the pieces that have been  
14 layered on top of each other over time. I realize  
15 this is a challenge, but this system has been  
16 built more like a living organism and has  
17 continued to grow and it's grown based upon need  
18 rather than being a central plan to actually build  
19 it from scratch. Do we have folks in house still  
20 who have the knowledge of how we got to where we  
21 are?

22 MR. OWENS: Some. Not in every

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1 instance. There are some people here who have  
2 been here a very long time where we're trying to  
3 capture that institutional knowledge. In some  
4 instances we are going to have to pay people to  
5 come in as well as hire people to come in to work  
6 on this. Just to let you know, the CIO here has  
7 not had developers in years, actual people who  
8 write software. We are going through an effort  
9 right now. There are approximately 14 openings --  
10 in fact, I'd like to say that Gary Cannon from  
11 trademarks helped this panel many of those people.  
12 We're trying to bring in developers of our own as  
13 well as hire solid contractor developers to  
14 reverse engineer much of the systems that we have  
15 lost that institutional knowledge on,  
16 requirements, documents, standard operating  
17 procedures, those things that modern computer  
18 organizations would have in many instances because  
19 we have grown organically or ad hoc we do not, but  
20 we working very hard through the stabilization  
21 effort to do that for our systems.

22 Again that effort is taking the current

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1 computer systems and stabilizing them when we can,  
2 documenting them, and then actually planning for  
3 their rearchitecture, engineering, and development  
4 based on modern standards, modern interfaces.

5 MR. STORIE: Does that have an  
6 significant on the budget, this first leg of the  
7 process?

8 MR. OWENS: I would say yes to be up  
9 front, but not totally for that reason but, yes,  
10 because we have up fronted many contractors. If  
11 you look at the scale, we've up fronted  
12 contractors that trail off over the 5 years to  
13 lower than today just because we have to buy  
14 expertise in areas, the particular type of  
15 operating systems, some of the software that we  
16 need to get rid of.

17 MR. STORIE: The challenges you have,  
18 you're in an environment where the architecture  
19 we're using now will be obsolete in 4 months.

20 MR. OWENS: Many times.

21 MR. STORIE: So you're at the spot where  
22 you're having to now anticipate what the systems

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1 to point out too that we don't intend this 5 year  
2 plan to be 5 years and then we refer to how we did  
3 it before. So this actually dovetails very nicely  
4 into the industry standard of doing a capital  
5 replacement every 5 to 7 years and it just becomes  
6 part of your doing business. I appreciate very  
7 much what John said earlier about I don't want to  
8 turn this into a finger pointing or a blame  
9 placing how did Susie Smith ever make this  
10 decision, how did we come to this, because I do  
11 think this is an opportunity and where we are is  
12 where we are and we need to move forward and fix  
13 it as an agency. Part of the lessons learned here  
14 is this is not a 5 year plan and then we all just  
15 sit on your hands and watch that organic thing  
16 grow again. So the fact that this is 5 years is  
17 no mistake because it dovetails into the capital  
18 replacement plan of 5 year cycles.

19 MR. STORIE: In terms of the overall  
20 structure, when you look at the size of the  
21 particular systems, if you're looking at it from  
22 the standpoint of total operational size of the

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1 system and what it takes to keep it running, what  
2 portion of that system would you say is shared  
3 versus what are the portions that are dedicated?

4 MR. OWENS: Shared with?

5 MR. STORIE: Shared between the  
6 trademark side and the patent side.

7 MR. OWENS: I'd say the bulk is just  
8 trademarks because of the fence, the servers that  
9 we have that you pay for, the AISEs that only  
10 serve you all the stuff on the top. The very top  
11 box, there are many more than this, but these are  
12 all dedicated trademark AISEs that run on these  
13 dedicated trademark -- serve as hardware. These  
14 are systems in and of themselves that are shared,  
15 but as far as trademark goes if you're looking for  
16 percentage I'd say the bulk is definitely up here.  
17 I don't want to give you a percentage because I  
18 haven't counted them. I know that this is much  
19 greater than this whole, but these are fundamental  
20 systems. This is website hosting. TR runs on  
21 that. PALM which we already talked about RAM,  
22 these systems are shared for a reason, and it's

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1 not just trademarks and patents. Our business  
2 systems rely on -- as well.

3 MR. STORIE: So to make sure that I  
4 understand the implications of what you said, the  
5 systems that apply to trademarks, the system  
6 itself and the hardware assets, it's largely  
7 dedicated, a large portion of what we're using --  
8 dedicated to the trademark side of the house, the  
9 critical operations that ties this together and  
10 allows it to run may be a smaller portion of the  
11 overall operations and it's critical because  
12 everything relies on the foundation.

13 MR. OWENS: Yes. Getting back to the  
14 earlier question which was related to cost, if you  
15 just think about the network, we have one network  
16 and we're about to put in a new redundant network  
17 here with dual paths which means that if one path  
18 goes down it's like hydraulics in an airplane, if  
19 one goes down you have a backup. We don't have  
20 that today. We're going to work on that. It's  
21 part of the plan. It's part of the network  
22 replacement. I couldn't put in a third and fourth

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1 redundant network in the buildings. There's just  
2 not enough physical wire, fiber actually. We're  
3 actually going to use the fiber that's here. But  
4 everything from power, cooling, floor space, I  
5 couldn't possibly duplicate all of the overlapping  
6 infrastructure in this building to support a  
7 completely separate system. Physically it is not  
8 possible. It's just not.

9 MR. FARMER: Unless there are any other  
10 questions, so that we can keep the trains running  
11 on time, I would now move over to item 3-B which  
12 is the report on the review of the OCIO finances.

13 MS. GRABER: What I'd like to do to  
14 introduce Keith to all of you is one of the  
15 elements when I first took over that I asked for  
16 was a complete audit of the OCIO's financial  
17 resource management. How is it that OCIO manages  
18 its own financial resources? So Keith and  
19 Michelle Picard back here both helped. I used  
20 them because they were outside OCIO so they didn't  
21 have a dog in the race, so they just did an  
22 objective look at how OCIO manages its financial

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1 resources. I've asked Keith to be here today to  
2 tell you a little bit about what he found. Again  
3 this is part of one of our roadmap exercises, our  
4 organizational strengthening. I won't take away  
5 his thunder, but I think a lot of what he found  
6 had to do with how we plan for our IT expenses for  
7 upcoming years. So I'll let him address it, and  
8 I'm sure you'll have questions for him.

9 MR. VANDERBRINK: Thank you, Wendy.  
10 Again my name is Keith Vanderbrink. I'm the  
11 Director of Budget and Finance Division. I took  
12 over about 6 weeks ago.

13 MS. GRABER: When he was finished with  
14 the audit he did so well I put him in charge.

15 MR. VANDERBRINK: I don't know if that  
16 was a job well done or what the deal was on that.  
17 But it is important I suspect for you to know that  
18 between 1998 and 2001 I served in the same  
19 position, it was a different title and a different  
20 office, but it was resource management for the  
21 OCIO operation. Then I like to think I left and  
22 things started to fall apart so now I'm back. I

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1 offer that by way of some background.

2           The other thing that I think is  
3 important at least for me and so I'll share it  
4 with you is that while Michelle and I were doing  
5 this review, to some degree unbeknownst to us the  
6 roadmap effort had been launched at the same time.  
7 So whether Wendy had decided that that was going  
8 to be her plan of attack or not, I don't know, but  
9 you're going to see very quickly that one of the  
10 first things Michelle and I found in this review  
11 was that needs to get done and it needs to get  
12 done soon which is a plan to move away from this  
13 organic approach to actually determining our  
14 future and something that's more structured.

15           The last thing I'll say before I go to  
16 the first slide is when I can I kind of kick Wendy  
17 under the table. It was not an audit. Audit is a  
18 very specific term. It means very specific  
19 protocols, very specific, and that was not the  
20 case. It was quite clear to us that given the  
21 timeframe that we had, the need to come up with  
22 actionable information as soon as possible, not

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1 we'll get back to you in 8 months and we'll go  
2 through every transaction ad nauseam, it was a  
3 review, and it was a review that resulted in  
4 observations which clearly could then turn into  
5 next steps and you're going to see that as we go  
6 on here.

7           The first slide is as it indicates, and  
8 by the way, I'll do what Wendy did, you should all  
9 be looking at the slide presentation that has  
10 green on the top that says the OCIO Financial  
11 Resources Review. The observation summary was  
12 that OCIO needed very quickly to return to some  
13 fundamentals of resource management, and of course  
14 the standing joke that I've gotten since I've  
15 returned is you're the guy who's going to take us  
16 back to the 20th century, and to some extent I'm  
17 going to take us back to fundamentals, and that is  
18 where IT plans are driving IT budget formulations.  
19 What is it you want to do? What do we think it's  
20 going to cost to do it? And then let's secure the  
21 funds. As opposed to securing funds and then  
22 through either an attempt to be very customer

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1 service oriented delivering when we can where we  
2 can, trying to promise to deliver, not deliver  
3 because of some process problems that Wendy  
4 mentioned, but again, here's the plan, everyone  
5 knows about it, we know about it well enough in  
6 advance, here's the estimates, and then executing  
7 against that. That's the what, if you will.

8 The how is just as important as the what  
9 which was the sound IT estimating controls.

10 Having a guesstimate is obviously useful, having a  
11 rough order of magnitude is useful, but then as  
12 you get closer to executing that project, having  
13 some sound IT estimating controls so that you get  
14 as it says here a reliable IT budget and not  
15 something that you're going to execute where  
16 everybody is standing around going I wish they  
17 hadn't approved this because I'm not sure we're  
18 all kind of on the same page relative to the  
19 estimates and costs.

20 Then finally the who. What drives the  
21 presentation? I believe it's the investors. It's  
22 the folks who are actually going to pony up

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1       whatever the dollars are, whether it be patent  
2       fees on the patent side, trademark fees on the  
3       trademark side. I think it's important for the  
4       budget to be presented in a format that's  
5       meaningful to the individual who again is parting  
6       with those dollars in making that investment, not  
7       presented in an organizational structure for OCIO,  
8       and obviously the folks doing the work need to  
9       know where their money is, but we've sort of found  
10      that most of the budget presentations in the past  
11      were more organizationally driven, we're going to  
12      give this to this office, this to this office.  
13      You get a sense we're big on analogies at least  
14      this current group. It's like when you bring the  
15      general contractor in and you show them I'd like  
16      my kitchen redone, my den redone, and my bathroom  
17      redone. You have a conversation. He brings back  
18      an estimate to you that says my carpenters will  
19      need this much money, my electricians will need  
20      this much money, my plumbers, that's not helpful  
21      to you. You want to know I need this much for  
22      your kitchen, this much for your bathroom, this

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1 much for your den, so that if an estimate looks  
2 like it's not what you had in mind, you can begin  
3 to have a conversation about the kitchen. Why is  
4 the estimate as high as that? Because your plan  
5 was to use marble as opposed to laminate or  
6 something. So again it's that planning really  
7 driving the budget formulation, feeling confident  
8 about the estimates, presenting in a way that  
9 makes for a far more meaningful resource  
10 management process. Before I get off of this  
11 slide, you guys can probably get a sense that I'm  
12 more analytically driven. This side was answering  
13 the who, what, when, where, why, how. That's  
14 another aspect for me of the fundamentals of  
15 resource management. While there may be multiple  
16 ways to mow a lawn, at the end of the day there  
17 really are only like two or three ways, up and  
18 down, left and right, that kind of deal. So for  
19 me, resource management is not the area where you  
20 practice your creativity, it's where you say these  
21 are the fundamentals, everyone understands them  
22 and we just proceed with them.

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1           On the next slide it gets into a little  
2           more of what Michelle and I observed and our  
3           improvement plan and begins to give you a sense of  
4           where we are today, where I believe resource  
5           management should be -- is CIO in agreement and  
6           the presentation has been given to the USPTO  
7           Management Council. One of the first observations  
8           was IT plans are not driving budget formulation.  
9           You heard a timeframe from Wendy and John, that it  
10          took 5 to 8 years to get us to this point. We  
11          found that beginning in 2003 the IT plans that had  
12          been published and produced began to abandon  
13          milestones with dates. Obviously a plan needs to  
14          be meaningful. The folks who have to execute it  
15          need to be like it's very clear this is what we're  
16          supposed to do when we're supposed to do it, not  
17          something that's at a 70,000 foot level that's  
18          just sort of a vision if you will.

19                 The new process is working with our  
20                 quality management group, BFD is working with the  
21                 quality management group, to produce in the second  
22                 quarter an IT plan that looks like what the IT

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1 plan used to look like at the turn of the century  
2 around 2000. It had very specific chapters in it,  
3 two that most folks know about, Chapter 5 and  
4 Chapter 6. Chapter 5 talked about the plans for  
5 the infrastructure. We've got that for the most  
6 part. That's our roadmap. Chapter 6 was what are  
7 the plans for individual AISEs. That's where  
8 meeting with Lynne and her staff to talk about  
9 trademark systems, meeting with John and the  
10 patent folks to talk about patent systems, so that  
11 it's clear to everyone that over a 5 year horizon  
12 which is typically what the strategic plan is what  
13 it will be, forget typically, this is what we're  
14 planning on doing for the infrastructure, this is  
15 what we're planning on doing for the AISEs that  
16 are going to ride on that infrastructure. You had  
17 brought up a question about what do we anticipate  
18 the end game to be. In looking at a plan like  
19 this it's going to be clear for you to see the end  
20 game out of the Chapter 5 work and the end game  
21 out of the Chapter 6 work. It's not magic. It's  
22 obviously a commitment. And it's necessary, and

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1 that's just simply what we're going to do, turn  
2 back to that commitment and it's necessary.

3 Plans are great, and as I said, you put  
4 some resource estimates to it. That's the second  
5 one. The resource estimates need to be  
6 consistent, they need to be following some  
7 standard operating procedures. I don't think it's  
8 terribly helpful to the resource management  
9 process if when Mark is asked to give resource  
10 estimates he follows what he believes to be best  
11 practices, John follows what he believes to be  
12 best practices, and down the line. We want folks  
13 to be following some standard procedures by which  
14 we come up with estimates. And then as the  
15 actuals are coming in, we have the ability to  
16 refine those estimates because it's in a process  
17 that makes sense. It's not just take all your  
18 estimates to Mark because Mark just seems to be  
19 lucky and stay away from John because John will  
20 just end up giving you numbers that are -- we want  
21 to get away from that sort of situation. And we  
22 want again very much for there to be some

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1 structure, that there be some processes, and also  
2 for whatever tools are used, they're consistent  
3 across the board, there isn't some data that one  
4 is using that another is not using.

5 The third one that you see there is the  
6 budget presentation is not intuitive for  
7 investors. My goal in the second quarter of FY  
8 2009 is to create a transparent budget both in  
9 terms of execution, as well as in terms of  
10 formulation so that it's quite clear when you look  
11 at that budget you don't need a decoder ring, you  
12 don't need me to explain it to you, you can look  
13 at it, and to a certain degree you want a budget  
14 that you can drill down to and when you get into  
15 the weeds and you're like I need somebody here  
16 with me, I should be able to at least at a high  
17 level understand it, at mid level understand it.  
18 Wendy will often say if you can explain it to me,  
19 then it's good. If I still don't understand it,  
20 go back and keep working on it.

21 This might be a useful time for me to  
22 pause, and we'll talk a little about this, but my

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1 plan for the Budget and Finance Division in the  
2 short term, and for me short term is usually  
3 something that's about 18 months, 12 to 18 months,  
4 long term is beyond that, is to structure the  
5 Budget and Finance Division where it's focusing on  
6 budget formulation, budget execution, and cost  
7 accounting which is obviously something that's  
8 very key here, and then also project funding, and  
9 those three areas for me that's where I think the  
10 resource management fundamentals need to be  
11 practiced with connections among them and I can  
12 discuss in more detail later on that  
13 organizational structure and that sort of thing  
14 for those of you who like organizational behavior  
15 and development.

16 The process by which I will be reporting  
17 and tracking against this work is not by launching  
18 some separate organic -- it's the roadmap.  
19 There's an organizational strengthening initiative  
20 within the roadmap. This work is required for  
21 that organization to be strengthened, for those  
22 employees to be set up to succeed, I know what I'm

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1       supposed to do, I know the resources I have, now  
2       let me execute the plan. So you see at the bottom  
3       there that that's what I'll be tracking against is  
4       organizational strengthening.

5               The last slide attempts to try to take  
6       again being the analyst a timeframe across the top  
7       to give you a feel. You heard me talk about short  
8       term, long term. This is mainly a focus on the  
9       short term actionable items, hit the ground  
10       running, where do we expect to be at the end of FY  
11       2009 heading into FY 2010. And down the left-hand  
12       side you see three areas that actually came up  
13       when Michelle and I were doing our presentation  
14       because we were not setting out to do an audit and  
15       look at every single invoice for the last 10 years  
16       or what not, we were focusing on processes,  
17       staffing, and tools, because again the resource  
18       management process that OCIO has that USPTO enjoys  
19       fundamentally rests with the processes, the  
20       staffs, and the tools.

21               On the processes side, we've already put  
22       in place a budget execution process that folks

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1 within OCIO are following. It's following  
2 internal controls, recognizes the work that's  
3 expected of us, recognizes the dollars associated  
4 with the roadmap, making sure that money is not  
5 spent -- the story at the end of the year was an E  
6 for effort, but this project was supposed to  
7 perform this work, it was allocated these dollars,  
8 and as the project proceeds how is it doing. The  
9 IT plan that you see up there in the second  
10 quarter, that's very important for me particularly  
11 as we have to embark on producing the 2010  
12 president's budget, revalidating, I'm sorry, the  
13 2010 budget, and then also getting ready for the  
14 OMB budget submission which you'll see there for  
15 budget formulation. In that same process vein,  
16 assessing IT budget estimating in the project  
17 funding area project funding area, making sure  
18 that again we've got some consistency across  
19 projects, we don't have a situation where we're  
20 overstating costs for our trademark system,  
21 understanding for patents, again, there's a  
22 standard if you will. That's what you would

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1 expect, that's what I would expect.

2 On the staffing side of it, Jon Dudas  
3 mentioned that a lot of change had been thrown at  
4 trademark examiners in the last several years.  
5 You can probably imagine in the last 6 weeks a  
6 great deal of change has been thrown at the Budget  
7 and Finance Division staff and assessing skills  
8 with them and working with them. I'm pleased to  
9 say that I have the utmost confidence in the staff  
10 that's there in terms of getting us, me, Jon,  
11 trademarks, USPTO, from where we are to where we  
12 need to be. There's going to be some coaching and  
13 mentoring and that kind of deal. This also looks  
14 at skills across OCIO because of the estimating.  
15 Obviously estimating for systems, the engineering  
16 work, the hardware work, software development  
17 work, it's not happening by 5, 6, 7 people in the  
18 Budget and Finance Division, it's happening by the  
19 software folks and engineering folks, bringing  
20 them up to speed and making sure that they're  
21 aware of what the expectations are and that kind  
22 of deal.

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1           Then finally the tools. For quite some  
2           time now USPTO has kept a checkbook where it keeps  
3           track of the obligations and so on and so forth.  
4           The core financial system is the official record,  
5           but because of this need to slice and dice to some  
6           extent we had been keeping a system and we're  
7           going to continue with that short term one, but  
8           our long term as you can see down there is to  
9           participate in the system, the corporate planning  
10          tool, that the CFO's organization is going to be  
11          launching this fiscal year and move into that  
12          along with the rest of USPTO and not maintain  
13          anything that is as I said separate as has been  
14          the case.

15                 At the very end of this slide you see a  
16          vertical block that says continuous improvement  
17          with the lines. Obviously you've heard Wendy say  
18          the roadmap doesn't just end and then someone else  
19          comes along and says I'd like to now start the  
20          next 5 year. The same deal here is to  
21          continuously improve in areas of cost accounting,  
22          in areas of budget formulation, budget execution,

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1 project funding and that kind of deal to truly get  
2 a sense as we're moving through this of the things  
3 that are working and not working. I mentioned to  
4 you that I have a fairly good idea from 10 years  
5 ago of what was working then and some of the stuff  
6 doesn't change. The environment has changed.  
7 Things are far more complicated now, whether it be  
8 that, or whether it be some of the financial  
9 requirements. Make no mistake, OMB does require a  
10 lot more from a federal agency for IT reporting  
11 than it did 10 years ago, but again just being  
12 prepared for that. And I believe that what I've  
13 just presented to you certainly does set us up to  
14 succeed in that vein and to be able to prepare  
15 that stuff. Mr. Farmer, I'll take questions at  
16 this point.

17 MS. BERESFORD: I have a comment, Keith.  
18 When you gave this presentation to Management  
19 Council, the thing that certainly got my attention  
20 at the beginning of your presentation was the  
21 statement that looking at the OCIO financial  
22 records was like digging through bad concrete and

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1 you had to keep digging and digging and digging  
2 until you found something that was solid and that  
3 meant going back to 2000 I think was the year you  
4 mentioned.

5 MR. VANDERBRINK: If I say, you were the  
6 one who as I gave it had indicated that what I was  
7 presenting, you were like this sounds like how  
8 things used to run about 10 years ago.

9 MS. BERESFORD: Absolutely.

10 MR. VANDERBRINK: And I mentioned to you  
11 when Michelle and I started our review we thought  
12 5 years. You got to start somewhere. Someone  
13 hands you a task of a review.

14 MS. BERESFORD: Right.

15 MR. VANDERBRINK: And we were like we  
16 need to probably let's look at 6, 7, we needed to  
17 go to a point where we were able to say here is  
18 going to be our jumping off point. So you're  
19 absolutely right, Lynne. You had identified that.

20 MS. BERESFORD: I'm not looking for --  
21 identified the problem early on, what I really am  
22 looking at, I'm thinking about -- do we have --

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1 just I'm curious, how much money got spent in that  
2 period? I mean, what was OCIO spending in that 8  
3 year period or 7 year period?

4 MR. VANDERBRINK: That was one of the --  
5 we certainly did look at those numbers. I don't  
6 have that specific number in front of me over that  
7 10 year period but I can certainly get you that  
8 number.

9 MS. BERESFORD: I'm just curious because  
10 it really shocked me when you said that. It  
11 really shocked me.

12 MR. VANDERBRINK: The other thing that I  
13 should mention is one of the reasons -- and if I'm  
14 overemphasizing this then guilty as charged, we  
15 had to go back as far as we did to find an  
16 instance where there were solid plans where  
17 everyone inside USPTO and even externally because  
18 we used to publish the IT plan, it was clear here  
19 is what we said we would do, here is what we said  
20 we would spend, here's what we did, here's what we  
21 spent, that kind of deal, and then kind of work  
22 our way up to the present on that.

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1                   MS. PICARD: Lynne, I guess there was  
2 never any question about the financial records.  
3 Keith had mentioned that the core financial system  
4 is still the system of record and there were never  
5 questions about that. It was the plans.

6                   MR. VANDERBRINK: I can say we didn't  
7 find any hanky-panky that is helpful. Michelle  
8 and I weren't tasked to find the smoking gun, find  
9 the evidence against a person or that kind of  
10 deal, help us -- but by the same token, one of the  
11 reasons why Michelle and I were asked was because  
12 of our reputation. So it was clear that we were  
13 going to look at stuff. We did not find anything  
14 that drew a red flag to us in terms of speculative  
15 obligations or unusual activity or that kind of  
16 deal.

17                   MS. BERESFORD: I wasn't implying we had  
18 anybody that bought an island in the Caribbean and  
19 retired there.

20                   MR. VANDERBRINK: I didn't think you  
21 were.

22                   MS. BERESFORD: It was just a concern to

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1 me that the level of the lack of records and other  
2 things that I think are important.

3 MR. FARMER: Keith, thanks for your  
4 presentation. A couple of questions.

5 MR. VANDERBRINK: I'm sorry. I was  
6 asked by my colleague here, you had mentioned,  
7 Lynne, lack of records, and there was certainly no  
8 shortage of financial records for us to pour  
9 through, it was the lack of plans that indicated  
10 to us that this was what we had set out. I  
11 apologize, John, for interrupting.

12 MR. FARMER: No apology necessary. Just  
13 for the purposes of looking forward and not  
14 looking back, I want to see if I've got a grip on  
15 things, and that is it sounds like we'll be seeing  
16 improvements going forward in the transparency of  
17 all of the budgeting process for CIO so that going  
18 forward we on TPAC who are charged with looking  
19 after the trademark interests will be able to get  
20 an easier feel as to this is how money was  
21 budgeted and how the cost was allocated between  
22 the trademark and the patent side of the house

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1 because of the improvements that you're going to  
2 be working on.

3 MR. OWENS: And what money was actually  
4 spent.

5 MR. FARMER: Right.

6 MR. OWENS: It's our intention to bring  
7 to our customers, Lynne being the representative  
8 of trademarks --

9 MR. FARMER: Did my rhetorical question  
10 make sense?

11 MR. VANDERBRINK: The word I liked in  
12 that rhetorical question was the transparency. It  
13 shouldn't be a mystery to Lynne when I come to her  
14 and say next year I'm going to need this much of  
15 trademark fees for her to have to know where it's  
16 going to. So definitely that transparency, that  
17 understandability, that clarity, is where I'm  
18 headed. You had asked specifically to the extent  
19 that the information would then be shared with  
20 TPAC and whatever the rules are that govern  
21 sharing that information with you I'm not that  
22 familiar with, but certainly if the rules say,

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1       yes, it's appropriate, this time frame or  
2       whatever, executive session, the material will be  
3       available, but I don't know specifically.

4               MR. FARMER: I probably didn't ask my  
5       question very clearly which is a problem, and that  
6       is one of the things we feel charged with doing on  
7       the trademark side of the house is we're one of  
8       two roommates living in the house. We're the  
9       trademark roommate and there's the patent roommate  
10      and we realize that the PTO has to do its overall  
11      mission well, but also as one of the two roommates  
12      we want to make certain that the split of the  
13      overhead costs is fair to both sides, and of  
14      course it's a challenge when you can't always  
15      understand the overhead accounting, so to speak,  
16      and it's sounding to me like that accounting  
17      should become clearer in the future so that it'll  
18      be easier for both sides of the house to look at  
19      it and say, yes, that division looks fair or that  
20      division may not, but I can now point more clearly  
21      as to what about this or what about that. Is that  
22      a fair statement where we can get to a point where

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1 we can now on each side of the house, the  
2 trademark and patent side of the house, look at it  
3 and assess it more easily?

4 MR. VANDERBRINK: I appreciate your  
5 restating it because what I heard in that one was  
6 more akin towards the cost accounting, the ABI  
7 model, the division if you will of what are called  
8 allocated costs. For me there is clarity there.  
9 What I'm going to be doing in 2009 and 2010  
10 through my participation on the ABI Steering  
11 Committee is to continue to see what can be done  
12 to improve, to refine. I've never gotten the  
13 impression that the model is the way it is and you  
14 have to move heaven and heck to make a change to  
15 it. There is a trademark representative, Karen  
16 Strohecker, who is on it. I have a good working  
17 relationship with her. So, yes, in those senses  
18 if there are ways to be more specific to determine  
19 using the roommate analogy that if the half gallon  
20 of milk can perhaps be more refined. But at this  
21 point for me there is clarity in the ABI model and  
22 I do have confidence in it. It's a question of

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1 continuous improvement and moving forward on it is  
2 where I'm coming from going into 2009.

3 MS. GRABER: Right. I wanted to clarify  
4 that it's easy to confuse the issues between  
5 budget formulation and planning along with cost  
6 accounting. One's the front end and the other is  
7 the back end. Keith's job and the OCI's job in  
8 terms of improving is on the front end so your  
9 customers know what our budget formulation is. We  
10 have greater insight into our budget formulation  
11 which allows us to give better estimates for how  
12 much different development projects will cost. So  
13 Keith does the front end.

14 The back end in terms of the allocation  
15 and the split is something too that I mentioned to  
16 you that in the front office I was asked to  
17 inquire into. I too am confident in the model  
18 that we currently have, but that's not what this  
19 is. This does not determine the split. What this  
20 does is give transparency into our budget  
21 formulation and estimation, so I don't want to mix  
22 those two things up.

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1 giving me all the credit for setting the schedule,  
2 but actually our schedule is set by the Office of  
3 the President so we follow the normal federal  
4 guidelines. We do enjoy the opportunity here  
5 because it's an election year to delay the  
6 development of the FY 2010 budget because there's  
7 going to be an administration transition no matter  
8 who wins. So our direction from the Office of  
9 Management and Budget at the Executive Office of  
10 the President is to submit a new 2010 budget in  
11 the early winter timeframe, January, February time  
12 frame. So our schedule which I will publish  
13 actually at Thursday's deputies' meeting will  
14 allow us to generate a draft 2010 budget by  
15 December 15 for ultimate submission in accordance  
16 with the plan that's yet to be published by the  
17 new administration, but sometime in the spring.  
18 Normally the president submits a budget to  
19 Congress the first Monday of February. That's not  
20 going to happen this year since a new president  
21 won't take office until January 20, so normally  
22 it's in the March/April sometimes even May

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1       timeframe. So while we have a little respite this  
2       year to develop our 2010 budget, normally the  
3       process would be in the summer timeframe of the  
4       year before is when we're doing the budget  
5       formulation process because we do owe our draft  
6       budget to OMB in the September time frame. I can  
7       certainly publish actually a slide that looks  
8       similar to Keith's last one that will list several  
9       different budget years and when you're executing  
10      and when you're formulating and when you're doing  
11      some strategic planning.

12               MR. VANDERBRINK: But normally, John, as  
13      you see on the slide, our OMB budget submission  
14      like in this case for 2011 goes to OMB in the  
15      fourth quarter of the fiscal year which is your  
16      July/August/September. It's usually in the month  
17      of September. So all T's are getting crossed, I's  
18      are getting dotted, all countries being heard from  
19      so to speak in that sort of summer timeframe  
20      moving towards the September.

21               MR. FARMER: I got it maybe in my own  
22      slowness, but if you could just point me toward

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1 specific months and years in which the budget  
2 internally within the PTO would still be fairly  
3 malleable so that we could have our input. Like  
4 you might say, TPAC, if you wanted to comment on  
5 the 2010 budget that will be revised, a good time  
6 for us to chat would be February, or the 2011  
7 budget, a good time to chat would be July. Part  
8 of that's because we have to schedule our own  
9 public meetings and there may be an opportunity to  
10 try to match those up with those malleable spots  
11 in the budget so that we can stick our nose into  
12 your business.

13 MR. OLECHOWSKI: I can do that. That  
14 would be easy.

15 MR. FARMER: Thanks. I appreciate it.  
16 Any questions from other members of TPAC? Hearing  
17 none then I think we can go as we continue to work  
18 up our agenda to item 3-A, the report from the  
19 CFO.

20 MR. OLECHOWSKI: I wanted to take a few  
21 minutes of your time to introduce myself and also  
22 members of my staff. We had mentioned Michelle's

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1 name several times. I think it would give credit  
2 to Michelle and the expertise she brings.  
3 Michelle works for Barry and I in the Office of  
4 the CFO as our senior adviser for the past year.  
5 However, prior to that she was our Director of  
6 Finance for the past 7 or 8 years, and she's been  
7 a PTO I'm guessing 10 or 12 years, so she  
8 certainly has been around the block several times  
9 and comes to us with great both private sector and  
10 public sector service. I also have people from my  
11 Office of Corporate Planning. Brendan Horrigan is  
12 a new employee of ours who came from TSA and prior  
13 to that Treasury, and Jonathan Frupp is our  
14 trademark budget analyst. Steve Porter, maybe you  
15 have seen Steve before in these meetings. Steven  
16 runs out of the Office of Finance our ABI Section.  
17 And then Mark Krieger is our new Director of  
18 Finance and has been in that position for about  
19 the last year, maybe 11 months, and prior to that  
20 he worked in the ABI division in finance and prior  
21 to that was CFO of a small business. So I think  
22 we can answer any of your questions that you may

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1 have. There always seems to be an abundance of  
2 them for the CFO so we enjoy the opportunity to  
3 participate again.

4 Let's just get right into the slides.  
5 Again I'd ask that you ask any questions along the  
6 way if we're either not being clear or we're  
7 certainly generating more questions than we're  
8 trying to answer. I'm going to make sure we do  
9 that to your satisfaction. The first slide, I  
10 guess it's slide 2, I'd really just like to read  
11 because it seems to be the question of the day  
12 about how we allocate costs to not only patent and  
13 trademarks but across all of PTO. And I'm sure  
14 you're all familiar with the language of the  
15 trademark fence, but the -- section seems to be  
16 the most applicable part, that all fees available  
17 to the director under Section 31 of the Trademark  
18 Act of 1946 shall be used only for the processing  
19 of trademark registrations and further activity,  
20 services, and materials related to the trademark  
21 and cover a proportionate share of the  
22 administrative costs of the Patent and Trademark

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1 Office, and certainly the key word there is a  
2 proportionate share. This language certainly is  
3 not lost on anybody who works at the USPTO. We  
4 generate along with the Office of Finance what we  
5 call a daily fence report. It gives us an  
6 accounting on a daily basis of the fees taken in  
7 all the way up to the day before as well as all  
8 the obligations and commitments that are on the  
9 books so that any particular requisition that  
10 comes through the system, we have a checkbook that  
11 we can check to make sure that there are adequate  
12 fees to cover the requisition that's in our hands.  
13 And that may be a requisition as small as buying  
14 supplies or a large CIO contract that's been  
15 negotiated.

16 Slide 3 is certainly what we consider to  
17 be the issue at hand based on the agenda that Mr.  
18 Farmer, the Chairman, sent to us. That is if the  
19 revenue streams for patent and trademarks is at  
20 typically has been over the past several years at  
21 the 11 to 12 to 89 to 88 percent rate, how come  
22 the costs associated within each individual

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1 business unit may be larger than the revenue share  
2 that is generated by the office between patents  
3 and trademarks? I just bring your attention to  
4 we've looked at a number before. If you look at  
5 the OCIO split, the patent share is 78.1 percent,  
6 the system share is 21 percent. So hopefully at  
7 the end of this we'll be able to answer and at  
8 least put to rest anybody's concern that there are  
9 questions about how we do the splits and how we  
10 assign costs and allocate costs across the PTO.

11 Slide 4. The costs are not always  
12 dependent on revenue organizational size. I think  
13 you'll see when Mark starts to talk about the  
14 model itself. There's not an input into the model  
15 that is determined on what the revenue size is or  
16 how much money either the Patent and Trademark  
17 organization brings in. Wendy gave an example and  
18 I'd like to actually have a slightly different  
19 example to show you, that just because you're  
20 procuring goods and services, it's not really not  
21 a factor in how much your revenue is. If Mark and  
22 I live next to each other and we're going to go to

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1 Best Buy and buy a computer and it's my wife and I  
2 and eight kids and just Mark and his wife, we go  
3 to Best Buy and we procure a system, the geek  
4 squad comes in and sets it all up, it's wireless,  
5 it's great, my kids are doing homework, Mark and  
6 his wife are working on their master's degrees,  
7 the cost of the system to each one of us was  
8 \$4,000. On my \$100,000 salary for instance,  
9 that's only a 4 percent investment on my part to  
10 procure that computer system, whereas Mark is only  
11 making \$40,000 and that \$4,000 to Mark costs him  
12 10 percent of his salary. Best Buy certainly  
13 doesn't ask us what my annual salary is to  
14 determine what the cost of that system I'm  
15 procuring it. It's more what system did I  
16 procure, what goods and services did I procure,  
17 not what the revenue stream is that's going to  
18 ultimately pay for those services.

19 I think another example might be if  
20 you're looking to associate why a proportion of  
21 trademark dollars a larger percentage of a  
22 function than patent's would be, another example I

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1 think that would be very close to everybody who's  
2 in this room is that we have two public advisory  
3 committees as we've mentioned before, patent's and  
4 trademark's. They are of the same size. They  
5 have an equal number of members. And we do pay  
6 your salaries, we pay your travel, we pay your per  
7 diem, and we pay all of your expenses related to  
8 you participating and help out this agency. And  
9 those costs over a year are about the same for  
10 both patents and systems, yet the TPAC is a  
11 greater percentage of trademark dollars than the  
12 PPAC is for patents. If we wanted to have an  
13 equality in the percentage of dollars spent  
14 relative to the income stream, TPAC would have to  
15 be maybe one and a half or two members and PPAC  
16 could be 12 members. So it's not always easy to  
17 say that because revenue streams are greater or  
18 less than that the split between business units  
19 should be relative to those incomes, it really has  
20 to do with costs and services procured. So the  
21 question is how can we accurately and reasonably  
22 account for those costs of goods and services.

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1                   Page 5. This is a chronology and I  
2                   really don't want to spend a great deal of time  
3                   going over each and every line on it, but the  
4                   purpose of the slide is to try to explain the  
5                   activities that the USPTO has gone through over  
6                   the past year and a half to 2 years as some of  
7                   these issues about cost allocation methodology and  
8                   the model has been raised, and to the extent that  
9                   we have engaged with not only trademark's  
10                  organization and patent's organization, but all  
11                  the business units to explain and have  
12                  transparency in our processes. So the first block  
13                  between January and May, we spent a great deal of  
14                  time with not only the trademark executives but  
15                  also all of the other business units explaining  
16                  the model and I think in very excruciating detail.  
17                  We have documented all of those presentations. I  
18                  think it was Wendy had mentioned and Keith had  
19                  mentioned what the CIO model is. We have models  
20                  for each and every business unit that drives those  
21                  costs and how we split the allocation of those  
22                  goods and services down into the patent and

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1 trademark. So we went through each and every  
2 model with not only the trademark organization but  
3 the individual business units, took notes, took  
4 action items, brought those issues. If we  
5 couldn't resolve them there, made sure we took  
6 action items to resolve those issues at that time.

7 I mentioned in the June and August  
8 timeframe we expanded from not only the CIO model  
9 but to each and every business unit. We reviewed  
10 each and every business unit's ABI model down to  
11 really the individual people and the individual  
12 activities that they were doing to try to explain  
13 and get some transparency to the business units  
14 about the model and how it was developed. Once  
15 again, those issues that were raised that we could  
16 not resolve at the table, we reconstituted an  
17 organization called the ABI Steering Committee.  
18 The ABI Steering Committee had existed several  
19 years ago to address the same sort of concerns.  
20 We reconstituted that. We wrote a charter. We  
21 know what our roles and responsibilities are. And  
22 that ABI Steering Committee has addressed each and

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1 every issue that came up in the months prior as  
2 well as any issues that a business unit may have  
3 with cost accounting, with budgeting, with the  
4 financials and everything else. And we have a  
5 team room which documents all of the issues, all  
6 of the resolutions, and every business unit has a  
7 voting member on the committee. So that if a  
8 particular business unit brings an issue,  
9 consensus has to be gained prior to us either  
10 implementing the change or evolving into a new  
11 portion of the model. And every issue that's been  
12 brought to the ABI Steering Committee -- our  
13 documentation which actually most of this has been  
14 sent to our professor member of the committee so  
15 that we can have an engaging conversation. We  
16 enjoy the opportunity for him to review the model.  
17 My point is in bringing this up is there's been a  
18 great amount of interaction between all the  
19 business units to answer all of the questions and  
20 to get the issues out to have an openness and  
21 transparency in the process. I think the end  
22 result of the ABI Steering Committee is that over

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1 the past year since it's been reconstituted there  
2 has not been an issue that's been brought to the  
3 table that has not been unanimously agreed to.  
4 While some of those issues have been very  
5 difficult to work through, we've always managed to  
6 gain unanimous consent on all of the items.

7 Slide 6. There has been a times over  
8 the past at least year or two since I've been here  
9 a question about validity of the system for  
10 allocating costs here at PTO. We're quite proud  
11 of the fact that we believe that our ABC or ABI  
12 system or ABM, there's lots of different  
13 terminology for it, whether you call it activity  
14 based costing or activity based information or  
15 activity based methodology, but it is the system  
16 of choice and it's actually encouraged by several  
17 financial management standards that are imposed on  
18 the government for managing costs, managing  
19 financial information. It is the system of choice  
20 and there are many, many agencies that are using  
21 it already. I mentioned the GAO study here on  
22 which agencies are and are not using it and you

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1 can see that across the board there are many  
2 agencies that do use some form of ABC to not only  
3 track their costs but allocate them to their  
4 various business units.

5 The next three slides I'd actually like  
6 Mark give an overview of. And please just like  
7 Wendy mentioned, if we're insulting anybody's  
8 intelligence because we're all very, very smart  
9 people here and we're at too high a level, please  
10 let us know. We'd be able to dive into any amount  
11 of detail on the model. If you've been at TPAC  
12 for the past year or two, you've certainly been  
13 able to formulate your questions and your  
14 concerns, so we can take those from new members  
15 where we can provide an education to answer any  
16 detailed questions that you may have.

17 MR. KRIEGER: Thank you, Mark. I would  
18 like to piggyback on your request if in February  
19 TPAC members would like to come and look at our  
20 ABI system and look at how we do these models I  
21 would encourage that. We could do it at the same  
22 time in February at any time at your convenience.

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1                   MR. OLECHOWSKI: I would even go a step  
2 further. We'll travel to you. If you truly have  
3 a concern of learning the system and everything  
4 else, I'll send my people to you whether it's at  
5 your lunchtime because I know we're all busy  
6 people or after your normal working hours, we'd be  
7 glad to come and visit and have a sit down with  
8 you. We're certainly willing to learn. I know  
9 Mr. Conley has a great deal to offer from his  
10 background. We're absolutely willing to learn and  
11 make changes if people have concerns and  
12 improvements. We'd love the opportunity.

13                   MR. KRIEGER: This is our basic  
14 waterfall methodology and what we do here is we  
15 take the costs in each bucket and we split them  
16 and we go down through different activity drivers.  
17 For example, if you look at the top you see MGE  
18 which is general expenses for the entire agency  
19 and we drive those costs to patents, trademarks,  
20 policy, resource management with CFO and CIO, and  
21 then we keep going down a step until we drive it  
22 to the ultimate two way split which is patents and

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1 trademarks. A good example is OPM payment. We  
2 have to make an OPM payment which is all future  
3 pension benefits, life insurance benefits for  
4 anybody that's an FTE or full time fed. What we  
5 do is we go through painstaking detail. We get  
6 every employee data download and we split those  
7 costs based on that actual information so that we  
8 know we're doing it accurately because some  
9 organizations are inherently higher salaries than  
10 others and that's just the way it is. And that's  
11 a good example to take. That then gets driven to  
12 CIO where it -- the activities in CIO and we take  
13 it down to the two way split.

14 The next slide is also a good  
15 methodology or a good picture view of our  
16 methodology where we talk about what was spent,  
17 how was it spent, and what was produced. So you  
18 see that column that says resources. That column  
19 will agree in total to the activity column that  
20 will agree to the cost object. There's no  
21 different in dollars, they're all the same, it's  
22 just the different slice or a different view of

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1 the information. A good example for this is the  
2 help desk where we have salaries and we have  
3 contract costs for the help desk. That is driven  
4 by a PPA code or a program project and activity  
5 code that I use on my time sheet, I'm not in help  
6 desk, but that's an example of someone in CIO who  
7 would record their time to a PPA code. That would  
8 then be the activity and we would sum all that up.  
9 Then we have the number of help desk tickets by  
10 system.

11 MR. OLECHOWSKI: Let me try to maybe  
12 explain that a little more. We have a cost for  
13 what the help desk costs the USPTO to run. It's  
14 people's salaries, it's contracts, it's buying  
15 equipment, it's phone systems and everything else.  
16 So we collect those costs and now we have to  
17 allocate those costs across the USPTO.

18 MR. KRIEGER: Exactly, and that's what  
19 we do. It's as simple as that. Some of the  
20 drivers are very good usages like for example  
21 gigabytes of storage. Those are very good usage  
22 based drivers that we can use.

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1           The last slide talks about where we can  
2           get the information. There's a couple of inputs.  
3           We have WebTA which is where I record my time.  
4           Every federal employee records their time in a  
5           system called WebTA. That gets processed by NFC  
6           who is our payroll service provider. We also have  
7           inputs from our contracts. They have to record  
8           their -- what they call a receiver which is I  
9           received the goods and services, they record a  
10          transaction in our core financial system that  
11          tells what activity they were performing. We take  
12          that information along with the information from  
13          our payroll services and that gets into our  
14          activity based information system, and from the  
15          other side comes the workload drives that we have  
16          and that makes up our activity based information  
17          system. Up top what you see there are some of the  
18          outputs which is fee setting, financial  
19          statements, budgeting, performance reporting, we  
20          have cost efficiency measures that are really good  
21          that are good indicators of where we stand.  
22          That's our ABC or ABI methodology in a nutshell.

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1           If you have any questions, we would be  
2 happy to answer them. Steve and I have been  
3 involved in this for a while and we've looked at  
4 it in painstaking detail.

5           MR. OLECHOWSKI: I'd like to tie the  
6 loop on what the original question though is why  
7 aren't business unit costs tied directly to the  
8 revenue stream, it's because there's a more  
9 accurate way of determining what those goods and  
10 services are that are being procured. For  
11 instance we mentioned help desk. It would seem  
12 unfair at least to us and many who are familiar  
13 with the model to charge the help desk strictly on  
14 the revenue stream. If the help desk receives 30  
15 phone calls from the trademarks organization and  
16 only 20 from the patents organization and maybe  
17 from the support organizations, there has to be a  
18 better methodology and a more reasonable way to  
19 allocate those costs based on those drivers. The  
20 same thing where Mark mentioned on the OPM  
21 payment. The Post Office does it as well. We're  
22 the only federal agency besides the Post Office

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1 who actually has to pay that bill. When we became  
2 a PBO, part of the deal was that we would pay  
3 postretirement benefits for our employees so  
4 that's a more accurate methodology. We know  
5 exactly where everybody works and what  
6 organization they go to so that's a much better  
7 driver to determine where those costs should be  
8 allocated.

9 I think the last slide, what's important  
10 about the last slide is, there are opportunities  
11 here to improve the model all the time. The  
12 places where we have these little people are where  
13 people have to input into the system. So that's  
14 an opportunity on a daily basis for not only the  
15 workers, the managers, and the supervisors to make  
16 sure that the input that's going into the system  
17 is accurate. Also when we talk about drivers and  
18 resource objects, that's another opportunity to  
19 say is that the most reasonable way to drive  
20 costs. Maybe help desk tickets is not the most  
21 reasonable way, but that's what the ABI Steering  
22 Committee is for. It's for somebody to raise

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1 quickly, Mark, as I mentioned to the group, one of  
2 the things I did for the undersecretary was to  
3 look into this model and particularly the drivers  
4 as they concerned the IT costs in the OCIO. One  
5 thing to point out is when you do modernize your  
6 IT equipment, you do get better insight into the  
7 drivers. As Mark said, the thing that impressed  
8 me the most about this ABI team and these models  
9 is that they are indeed living in that you can  
10 improve them, so there might be a time where you  
11 only have a coarse insight into what the drivers  
12 are. A good example is the number of gigabytes of  
13 storage that Mark mentioned. We may have a piece  
14 of equipment and we know that trademark data and  
15 patent data are both stored on it, but we may not  
16 have because the technology is older -- for  
17 example, in the past we may not have had insight  
18 into what percentage of the total gigabytes of  
19 available storage are used by trademark data and  
20 what percentage are used by patent's data. And so  
21 maybe at one we had a coarse drive that was all  
22 discussed and agreed upon that the size of the

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1 underlying system will be the drive for dividing  
2 up the cost of this storage unit. But as our IT  
3 modernizes, we get finer and finer drivers and so  
4 now we have the ability to know how many gigabytes  
5 of storage is trademark's, how many gigabytes is  
6 patent's.

7 So I think what you'll find with the ABI  
8 model and the thing that impressed me most about  
9 it is that these drivers are constantly revisited  
10 and as our IT modernizes we get more insight into  
11 actual usage, like Mark said, CPU usage of this  
12 box. We're better able to determine each time we  
13 modernize the equipment as we go along.

14 MR. OLECHOWSKI: I guess my final point  
15 is that the drivers are only used to allocate  
16 costs that can't be strictly identified to patents  
17 or trademarks. It's very easy to conceive that if  
18 Lynne's examining attorneys are examining  
19 trademarks, that's a direct PPA code that says I'm  
20 working on trademark stuff. When Wendy's and  
21 John's gang are doing development or fixing TRAM  
22 or TEAS, there are PPA codes that drive that thing

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1 right directly to a trademark cost center. It  
2 becomes a little more challenging, John has this  
3 chart up there, when you have infrastructure  
4 systems that are shared. When somebody goes and  
5 works on RAM because RAM went down last night and  
6 your customers couldn't get in and pay their fees,  
7 how do we drive that cost to patents and  
8 trademarks? How do we split the HR people's time  
9 when they're doing their stuff? Or how do we  
10 split the CFO time when we're generating financial  
11 statements which are done for the entire PTO? How  
12 do we split a lawyer's time when they're reviewing  
13 our appropriations bill? That's the key to having  
14 a solid ABI system and drivers that's a living,  
15 breathing document to constantly review that  
16 information to make sure we're as accurate and  
17 reasonable as we can be.

18 MS. PEARCE: I'd like to say something.  
19 John came up with a good analogy and I was trying  
20 to put all of this in my head in terms of the  
21 roommate analogy that you came up with where  
22 you're sharing the rent. A lot of times with

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1 roommates, one's got a bigger bedroom than the  
2 other and the rent will be based on who's got a  
3 bigger room. But there are certain shared costs.  
4 The electricity that runs the refrigerator for  
5 instance. How do you allocate that? Does one  
6 roommate cook more than the other? Do you really  
7 want to have to keep track of that sort of thing?  
8 Can you do it fairly? The electricity that runs  
9 the cable TV, that runs the air conditioner,  
10 everybody benefits. Does somebody benefit more  
11 than another? If you're sharing an apartment with  
12 a flight attendant who's only there 2 weeks out of  
13 the month, maybe, but if you're both living there  
14 full time, you got eggs in the refrigerator and  
15 nobody's a vegetarian. I've known roommates who  
16 broke up because they started initialing the eggs  
17 as to who bought what and what belonged to whom  
18 and everything in the refrigerator got labeled.  
19 You could do that with cleaning supplies. You can  
20 do that with a lot of things.

21 I am impressed that you're really making  
22 an effort with the drivers to drill down where you

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1 can and pleased that as you are updating the  
2 system you'll be able to do more and more of that.  
3 But I think there are times when it's just the  
4 cost of doing business for shared services. You  
5 can try to do a better, fairer job about that in  
6 the future, but essentially nobody wants to do  
7 without electricity in an apartment because you  
8 can't figure out how to divvy it up.

9           Some of it is just what you have to live  
10 with and you try not to be unfair to people. If  
11 one roommate is a vegetarian, then clearly that  
12 person doesn't need to be paying for the eggs if  
13 they're not being used. But otherwise, you just  
14 hope that people are as fair as they can be about  
15 it and any transparency in the reporting that you  
16 can do that you can explain to us so that we just  
17 feel like we've being vigilant, that makes a huge  
18 different. But I think I'm getting a better  
19 understanding now of how difficult it can be to  
20 take some of these gray areas and really slice  
21 them and dice them to perfect. You really can't,  
22 but I'm glad to see that probably going forward

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1       you're going to be able to do that with more and  
2       more precision just because of the drivers that  
3       you've built into the system.  It's very  
4       encouraging to hear.

5                   MR. OLECHOWSKI:  I appreciate your  
6       comments, Elizabeth, and it is hard and it is  
7       complex and I think we are open and transparent,  
8       and to pile onto the roommate analogy, you not  
9       only have two roommates in the room, you actually  
10      have three other ones who aren't even paying rent.

11                   MS. PEARCE:  I see you met my husband in  
12      college.

13                   MR. OLECHOWSKI:  So you're not only  
14      discussing between yourselves what the patent and  
15      trademark share should be, you're arguing about I  
16      have to pay the CFO, CIO, CAO, OGC rent also.  How  
17      much of my hard earned \$10 should go to paying his  
18      portion of the rent.  So it is a very complex and  
19      moving piece of equipment that needs to be  
20      addressed.  But I do think we do a good job of  
21      managing those cost allocations.  We're certainly  
22      open as I mentioned before to improvements.  We

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1 want to get as much automated. We want to drive  
2 as many costs directly to the patent and  
3 trademarks business lines as we can. The  
4 challenge as you mentioned always is those other  
5 organizations that are shared between the patents  
6 and trademarks.

7 MS. PEARCE: Another thing to keep in  
8 mind if you're concerned about the price of  
9 electricity in the apartment, perhaps if you both  
10 chip in and buy an energy efficient air  
11 conditioner. Everybody benefits. There are  
12 always things that you can do better. Perhaps  
13 you're paying a little bit more up front more than  
14 you feel like is completely 100 percent your  
15 share, but in the end the cost savings will get  
16 passed along to you. So sometimes you have to  
17 bite the bullet on that a little bit too.  
18 Combining your cable and internet and the phone  
19 service wound up saving us a lot of money also  
20 when we moved into a new apartment. So I think  
21 you're taking all of that into account. There can  
22 be some efficiencies in throwing your resources in

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1 together. And perhaps separating these things out  
2 is not going to be as cost effective for either  
3 group as we might have hoped.

4 This was a very good report. I  
5 understand a whole lot better this year than I did  
6 last year about what the different factors are and  
7 how you reached your decisions. And I'd like to  
8 take you up on that tour. I know John. John's  
9 going to schedule us for a tour in February.  
10 Right?

11 MR. FARMER: Yes, we're going to be a  
12 lot of touring.

13 MS. PEARCE: We're going to be doing a  
14 lot of touring. But I think that that would be  
15 helpful and I'd like to take you up on that.

16 MR. KRIEGER: And those are the types of  
17 questions we want to answer with ABC, how we can  
18 combine resources, how we can do things better and  
19 more efficiently. Those are the questions. We  
20 want to raise the questions and try to get answers  
21 and try to get better.

22 MR. FARMER: Before I ask any questions,

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1 let's reverse things. Do other TPAC members have  
2 questions or comments that they wanted to jump in  
3 with?

4 MR. STORIE: I had one. I think  
5 certainly there are a number of circumstances  
6 where we could look at the two offices and see  
7 where trademarks might have a disproportionately  
8 higher portion of costs. For instance, even using  
9 your example of help desk. If we are a system as  
10 we've talked about before that is more highly  
11 automated than the patent side, then it would make  
12 sense that we might have proportionately more  
13 calls to the help desk because we've got more  
14 people -- more often perhaps. In terms of we're  
15 looking at the drivers, are there areas that come  
16 to mind as the committee looks at drivers that you  
17 still see are being most subjected in the process?  
18 Are there places in terms of costs where we still  
19 use a fairly subjective means of determining what  
20 that is?

21 MR. KRIEGER: There is one area that is  
22 subjective and that would be in the policy

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1 organizations. Some of them that cannot be driven  
2 directly are based on a survey split. For  
3 example, enforcement in the policy organization  
4 splits their time by survey fifty-fifty saying  
5 they spend an equal share of time on patents and  
6 trademarks.

7 MR. STORIE: And that's a survey of the  
8 personnel?

9 MR. KRIEGER: People who do the work.  
10 So once again we want to encourage the Office of  
11 External Affairs and OIPPE too when they're  
12 working on a patent issue, when they're working on  
13 trademarks, when they travel with Lynne to the  
14 Singapore Treaty, that's a trademarks function and  
15 they should be charging directly to trademarks.  
16 But when they're out talking just about general IP  
17 and enforcement IP policy, it becomes a little bit  
18 more subjective, what percentage of your work do  
19 you believe is patents or trademarks? So that's  
20 just another methodology of getting information  
21 into the system. While we'd love to have  
22 everybody's time directly charged, we know where

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1 the CIOs work and we know where the CFOs work, and  
2 there are those things where things are more  
3 subjective. So instead of having a pure PPA code  
4 or a driver, we use the survey to determine how to  
5 drive those costs.

6 MR. STORIE: Do all of our FTEs actually  
7 use a PPA code for all of their stuff?

8 MR. KRIEGER: Yes, and there's a fine  
9 line there. Do you want people spending an  
10 inordinate amount of time on their timesheet or  
11 would you rather than do the work and there is a  
12 gray area there where you need to draw the line  
13 somewhere.

14 MS. LEIMER: This is Jackie Leimer at  
15 Kraft Foods. Our organization is going through a  
16 restructure now whereby we're adopting a shared  
17 services model and we're just beginning some of  
18 the work related to the allocation of costs for  
19 the various functions including the legal function  
20 which I'm a part of. One of the things that we're  
21 doing is is discussing a lot of the same things  
22 that you raise here in terms of drivers that lead

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1 to these costs. But the corollary of that are the  
2 contracts if you will that we're entering into  
3 with the buyers of our service for service level  
4 expectations and a whole variety of terms. That  
5 gives the buyer of our services some flexibility  
6 in choosing whether, A, they want the service.  
7 Some services are required others are lines that  
8 cost. If you want to turn around a 24 hour legal  
9 service, you pay more than if you can wait 3 days.  
10 So we're going through a very in depth discussion  
11 about service level requirements and I was curious  
12 as to what you do here on that side, what I would  
13 call the flip side of this coin, in terms of  
14 entering into agreements so that the functions  
15 have -- the buyer pays, but the function has to  
16 serve.

17 MR. STORIE: Accountability.

18 MS. LEIMER: And accountability, yes.

19 So I'm curious about that side and what you do on  
20 that. Perhaps that's for another day. That may  
21 be a complex methodology as well, but I'd be  
22 curious to have a top line I think if you could

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1 today.

2 MR. OLECHOWSKI: Thanks, Jackie. I'm  
3 going to answer the question, and if it's not the  
4 question you asked please either restate it or  
5 we'll certainly for an action. All of the  
6 business units who perform services for the Patent  
7 and Trademark organization, the CFO, the CIO, OGC,  
8 the CAO, actually have service level agreements  
9 for the products and services they provide and  
10 those are tracked. The CFO tracks those on a  
11 monthly basis and reports out. It's actually part  
12 of my performance plan and it's part of the people  
13 in OGC. They may be a straightforward as I have  
14 one day to get a requisition into the system. My  
15 Office of Procurement has 24 hours from when a  
16 requisition is entered into or assign it to a  
17 contracting officer and get it working down its  
18 path. I'm sure Wendy can talk about the SLAs that  
19 are within the CIO as well as OGC. OGC, I'll pick  
20 one off the top of my head, when we ask them a  
21 question on appropriations law or something like  
22 that, they have a 5 day turnaround and those are

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1 monitored. They're actually reported out to our  
2 Deputies' Committee on a quarterly basis. We  
3 report out on how well we did on our SLAs.

4 I'm not so sure if that ties into cost  
5 accounting in terms of if that's where your  
6 question is, but we do have agreements with our  
7 business units and we're held responsible for  
8 delivering our products and services. And we can  
9 certainly provide you copies of those SLAs to give  
10 you an idea of what types of agreements we have  
11 with our business units.

12 MR. TOUPIN: I'm not speaking as a  
13 lawyer but as a business unit person, in terms of  
14 what Mark was saying about the relationship of the  
15 SLAs to cost drivers, we just went through a  
16 situation in the Office of General Counsel which  
17 concerns administrative law advice from which he  
18 gets the fiscal law advice. We said at our  
19 current staffing level we will not be able to make  
20 these SLAs next year. So we went to the deputy  
21 the choice to either change the SLAs or fund  
22 additional staff for that office and they made the

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1 decision to fund the additional staff. So to that  
2 extent the SLAs are a driver of costs.

3 MS. LEIMER: That's helpful. Thank you.

4 MS. BERESFORD: Yes, but I will say if  
5 they aren't met they -- a driver down of cost.

6 MS. LEIMER: That's an interesting point  
7 and I guess that gets to the linkage because in  
8 the model we are developing at my company we  
9 clearly have a decrease in costs if we don't  
10 receive the services and vice versa. We certainly  
11 are adopting mechanisms for election as you point  
12 out and that's important. We can choose to  
13 upgrade the service by paying more, but we have  
14 the flip side of that as well. So perhaps that's  
15 a discussion we should take on another time, but I  
16 think it's important to discuss the linkage  
17 between the service agreements and the cost.

18 MR. OLECHOWSKI: I agree. I think it's  
19 certainly a worthwhile topic to talk about. Once  
20 again, there's a lot of moving pieces as Elizabeth  
21 noted on our other discussion. Mark can attest to  
22 this and all of my directors, we've entered into a

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1 discussion at the CFO level about SLAs. We've  
2 been able to meet our SLAs this year for the most  
3 part and my question to them is at what cost. I  
4 know you're not spending overtime on it. Are you  
5 using uncompensated overtime? What's not getting  
6 done? If you're spending all your time getting  
7 this stuff done, what's not getting done? So I  
8 think it's a little bit more complex. And Jim can  
9 certainly attest to it, to bring in to a group of  
10 people who are going to make a funding decision  
11 and say here's the data. I can't get this stuff  
12 done. I think it hits home because we're  
13 customers of the Office of General Counsel as well  
14 and we can see that, so it's certainly worth the  
15 discussion whether it drives the cost down or  
16 drives the cost up. It's day to day things that  
17 need to be addressed and we're certainly willing  
18 to report back or have that discussion.

19 MS. LEIMER: Yes, I think it would be  
20 useful to have more discussion that. And the  
21 other point that I think it would be interesting  
22 to discuss at that time would be to what extent do

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1 the business units have an option to decline  
2 services, and that's again part of our model, what  
3 are mandatory services and what are optional  
4 services. In the context of the General Counsel's  
5 office when we were having this debate on can a  
6 business unit in my company decline compliance  
7 service? No. That is a mandatory service. It  
8 must be provided and the business will pay. There  
9 are other services it can decline. So I think  
10 it's an interesting dialogue and I think it's  
11 something that's very current in business and  
12 something perhaps we could pick up at --  
13 discussion about agenda setting. I don't mean to  
14 take over that part, but I think it's an  
15 interesting topic.

16 MR. OLECHOWSKI: No, I think that's a  
17 great topic about what should our core businesses  
18 be not only in terms of patent and trademarks, but  
19 what services should we be providing, whether they  
20 be outsourced or not done at all. I think that's  
21 certainly worthy of review.

22 MS. BERESFORD: For those who are new to

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1 the committee, one of the reasons that the issue  
2 of overhead and indirect costs is so vital to the  
3 trademark organization is because in the past  
4 we've spent less than half of our income on direct  
5 costs. So the majority of trademark fee money is  
6 paid out to units that support trademarks and  
7 that's been a big issue for us. If you're in an  
8 organization where you have 10 percent overhead,  
9 it's less important, but when you're in an  
10 organization where you have 50 percent overhead,  
11 then it becomes a cost that you have to be really  
12 concerned about. So for the trademark  
13 organization, the allocation of costs is an  
14 extremely -- it's as important as our business  
15 model because it spends as much money. So for new  
16 members who aren't conversant with why are we  
17 talking about ABI so much, this is one of the  
18 reasons we're talking about it.

19 MR. OLECHOWSKI: Let me just take a  
20 minute, Lynne, to respond to that. While Lynne is  
21 correct that the direct trademark cost is less  
22 than 50 percent, that's not all the direct charges

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1 to the trademark business line. When I charge  
2 directly to trademarks, if I have a PPA code  
3 that's charged directly to trademarks that's not  
4 included in Lynne's number. When the CIO does  
5 work, when the OGC does work, when HR does work,  
6 those in our cost accounting are still allocated  
7 direct costs. So if you add the Office of  
8 Trademarks in what Lynne terms as direct plus  
9 those allocated direct costs, it climbs upwards of  
10 70 percent which I think may provide a little bit  
11 better overview of what truly is direct. And why  
12 I said in the ABI model what we want to make sure  
13 people are doing is charging direct to patents or  
14 trademarks as much as they can so that those  
15 costs, there's no intermediate driver or research  
16 driver, it goes right to the patent or trademark  
17 business line and then it's only those unallocated  
18 or indirect costs that truly have to be driven to  
19 a business line.

20 MR. KRIEGER: I would also like to give  
21 a couple more examples. We fund things for  
22 efficiency. For example, rent. Rent is paid out

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1 of MGE and it's driven, but that's actually  
2 treated as a support cost. But you need rent.  
3 You need power. All that stuff is funded out of  
4 MGE. It's a little misleading because it's the  
5 way we fund things for efficiency purposes. We  
6 don't want every office to do a requisition in  
7 here for rent. It's inefficient. So we do one  
8 overall for rent and then we drive it. On the  
9 surface it looks like it's a support cost, but  
10 it's directly related to trademarks or patents.

11 Another example of that is server space.  
12 You need a place to put the servers. Right? So  
13 you have rent and that's another example. These  
14 are things that we just can't do without.

15 MR. OLECHOWSKI: I think a really great  
16 example is this room. This room today is being  
17 used exclusively for trademarks but the costs for  
18 this room, we do not charge today's activities  
19 directly to a trademarks cost code. It's bundled  
20 up into EA. This rent space actually belongs to  
21 External Affairs, and so that's driven to the  
22 patent and trademarks line by the EA split

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1 essentially. So in this case, I don't know what  
2 the EA split is off the top of my head, it's  
3 probably like 75/25 or 2 to 1, so actually the  
4 commissioner of patents is paying a good portion  
5 of this bill today for us to use this space. But  
6 the point is that we have to make sure we have a  
7 cost allocation methodology that is reasonable,  
8 that will drive costs in a reasonable method  
9 without burdening everybody to go measure how many  
10 minutes of a day some office is being used and  
11 then directly charge that. We still have time  
12 when it's down and in the middle of the night.

13 MS. PICARD: May I give a point of  
14 clarification? I've heard us talk about two  
15 different terminologies and I think that we've  
16 done a really good job of explaining the  
17 difference between allocation and percent of  
18 income. I get back to Mark and Wendy's examples  
19 earlier in their presentation. Lynne is  
20 absolutely right that given the income in  
21 trademarks is smaller, it is a bigger concern on  
22 the shared services that are allocated to the

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1 trademark organization, but it's not that the  
2 allocation to the trademark organization is 50  
3 percent. The allocation is the split between the  
4 two organizations. On that first chart Mark  
5 showed it's the 7921. That's your allocation.  
6 Back to Mark and Wendy's example that for the  
7 trademark organization the percentage of their  
8 income just happens to be higher than the patent  
9 one. So I just wanted to make that we're talking  
10 apples to apples and we're using the word  
11 allocation.

12 MR. FARMER: I wanted to go back to see  
13 if I had bring up that -- calculation I was doing  
14 earlier just so see if I'm off base. That is,  
15 looking at some numbers, it looks like the full  
16 time equivalents side of the patent side of the  
17 USPTO has about 65 percent of the full time  
18 equivalents in terms of employment, and the  
19 trademark side has 5 percent of the full time  
20 equivalents, and that leaves roughly 30 percent  
21 that fall in neither, it's somewhere in the  
22 overhead in the administration of the office and

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1 functions that see over both parts. When I look  
2 at the OCIO division of costs between the two  
3 sides it's roughly 80/20. And if I'm doing my  
4 math right, that would mean that roughly that cost  
5 for the overall function, that 30 percent, is  
6 being fairly evenly split between the patent and  
7 trademark side. I'm not saying that that's wrong  
8 or not properly determined by our models, but is  
9 my back of the envelope calculation roughly  
10 correct?

11 MR. OLECHOWSKI: I'm not so sure I  
12 follow the back of the envelope calculation, sir,  
13 but the slide on page 3 will show you that the  
14 split among those support organizations if that's  
15 what we're going to call them are not fifty-fifty.  
16 If you look at policy, it's 21 to 78. The CIO  
17 it's 22 to 78. The CFO is 21 to 78. So I think  
18 the important point would be to make sure that the  
19 model is as accurate as it can be, that it's a  
20 living document, that if there are concerns  
21 whether they be from TPAC or the trademark office,  
22 the Office of General Counsel, or even within the

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1 support organizations, that the costs are properly  
2 driven to the right business line. So I want to  
3 make sure I answer your question, Mr. Farmer, but  
4 I want to lead us away from doing back of the  
5 envelope kinds of calculations because it really  
6 has to do with the goods and services procured and  
7 how those costs are driven from the goods and  
8 services that are procured.

9 One of the examples, when we started  
10 talking about the IT split, could we have  
11 trademark's IT and patent's IT, I think the  
12 example is the same in cost allocation for all of  
13 the business units. We absolutely as I mentioned  
14 want to drive costs as much as we can directly to  
15 patents and trademarks. The question is what do  
16 we do with those costs that are unable to be  
17 driven because we don't want to have people doing  
18 things to 5 minute timeframes or they're doing  
19 something on behalf of the whole office, they're  
20 preparing financial statements or they're  
21 providing a question on appropriations law. I  
22 want to make sure that the model itself will drive

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1 those costs appropriately to patents and  
2 trademarks.

3           There are certain things that are  
4 absolutely FTE driven. Off the top of my head,  
5 I'm sure Mark or Steve can give you an example,  
6 the OPM transfer is a really great example. We  
7 know exactly where people work. That cost which I  
8 believe is close to \$5- or \$6,000 a year per  
9 person are driven right to the person who is in  
10 our retirement system. So the 5- or 6,000 patent  
11 employees and the 700 trademark employees are  
12 easy, but then when you get to Wendy's, I guess  
13 next week when she goes back to patents, John's  
14 retirement benefits, mine, Mr. Toupin's, those  
15 still have to be driven to patents and trademarks  
16 because they're the only two income streams we  
17 have.

18           MS. PEARCE: I have a question I'd like  
19 to ask and I'm not sure you're off the hook, Mark.  
20 It's actually for Karen who is my statistician.  
21 She and I were going to talk at some point, and  
22 you may not know this off the top of your head,

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1 but I just thought I'd ask because it might be  
2 interesting to make it a public record. Looking  
3 at page 3 here which is 2008, Karen can you tell  
4 me whether or not these numbers are in line with  
5 2007? My instinct is that the trademark  
6 percentage has gone down a smidge from 2007 for a  
7 lot of these offices. Am I wrong about that? And  
8 if you don't know, that's perfectly all right.  
9 You and I can talk about it later. But I was  
10 wondering if you would happen to know.

11 MS. STROHECKER: My name is Karen  
12 Strohecker. The actual cost, the \$202 million  
13 that's reported here for 2008, is actually lower  
14 than the cost for 2007 reported to trademarks. So  
15 it's a decrease of about 5.2 percent I believe.  
16 But the actual percentages are pretty close to the  
17 same in terms of the splits.

18 MS. PEARCE: That was something that  
19 I've got to do, the budget section for the annual  
20 report, so this is why I knew Karen was working on  
21 this material for me. But the overall amount did  
22 go down a little bit which is good.

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1 MS. STROHECKER: It did. It actually  
2 increased on the patent side because overall for  
3 the PTO the actual costs in 2008 were higher than  
4 they were in 2007. I think I've already sent to  
5 you, and if I haven't I can give it to you again,  
6 the actual distribution on a percentage basis of  
7 the different organizations showing the patent  
8 share and the trademark share based on the cost  
9 allocation from the ABC model.

10 MR. FRIEDMAN: There's been a lot of  
11 talk about the cost allocation. Particularly for  
12 the new members at TPAC, I'd always viewed this as  
13 two issues. One is the one we've been talking  
14 about for the past 2 hours which is are costs  
15 allocated fairly between trademarks and patents.  
16 And then the issue that we always drill down to is  
17 in particular are costs allocated fairly when it  
18 comes to the OCIO department. But the other issue  
19 I want to raise more as a comment than a question  
20 simply goes like this. Even assuming the cost  
21 allocation is fair or especially if we still have  
22 questions about how fair the cost allocation is to

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1 trademarks when it comes to OCIO, are we getting  
2 the kind of service that trademarks deserves where  
3 we're spending \$55 million? I would suggest if we  
4 circle back from your presentation to the  
5 presentations of John, Wendy, and Keith and  
6 Michelle and others, is that since TPAC for a  
7 number of years has been very concerned about the  
8 level of service delivered to trademarks when we  
9 thought the OCIO shop was doing pretty well, you  
10 can imagine at least sitting in the cheap seat  
11 that I'm in as a nonvoting member, but I assume  
12 that voting members agree also that I would be  
13 much more reluctant to accept at face value that  
14 at least for 2008 the \$55 million that we're going  
15 to spend is going to deliver the type of service  
16 that we hope.

17 We were always concerned, it's always  
18 great when I can speak for the commissioner, I  
19 assume Lynne in all seriousness has always  
20 expressed concern about whether she was getting  
21 value for her dollar, and we were doing that in an  
22 environment where we thought things were okay in

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1 the OCIO. So the only thing I would add if we  
2 combine this presentation with these presentations  
3 is I'm that much more skeptical that at least  
4 speaking on behalf of trademarks we're going to  
5 get or expect that we're going to get what we  
6 deserve. Yes, procedures are being put in place,  
7 there's a roadmap, obviously there's a lot of  
8 cleanup that has to take place, but I think we all  
9 agree that that cleanup takes time and I'm  
10 concerned in 2008, maybe I'll be a little less  
11 concerned in 2009, and maybe it will abate  
12 completely in 2010 though I doubt it. But a lot  
13 of concerns in view of the fact that we have cost  
14 allocation issues and wondering what value we get  
15 even if the cost allocation is fairly on spot.

16 MR. FARMER: Thank you, Howard. Are  
17 there any other comments or questions before we  
18 wrap up the morning session?

19 MR. STORIE: Just one quick question.  
20 In the reporting would it be a significant task  
21 for us to be able to see in calculations like this  
22 what the allocated direct costs were from the

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1 shared departments?

2 MR. OLECHOWSKI: Absolutely.

3 MR. FARMER: Anything else? In that  
4 case we'll take a lunch recess until 12:50 p.m.  
5 and at that time we will kick off Section IV of  
6 the agenda. Also before we break in case there  
7 are -- specially on the financial side and the CIO  
8 side that won't be here if that's the case, I'd  
9 like to thank each of you for your time and your  
10 service and your preparation to come and speak for  
11 us. We really appreciate it and don't think that  
12 our tough questions implies to anything but total  
13 respect and gratitude for your services.

14 (Whereupon, a luncheon recess was  
15 taken.)

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1       it a more useful filing treaty. What we wanted to  
2       bring to the TPAC today to get comments on were  
3       some of the suggestions that are currently being  
4       vetted at WIPO. I don't particularly expect that  
5       you will all come down with a final answer today,  
6       but we are interested in hearing at least your  
7       perspective on how you view these changes at least  
8       as a first cut. We may come back to this at the  
9       next meeting when folks have had a chance to talk  
10      to other trademark holders that they know or other  
11      organizations that they know about these  
12      proposals.

13               Having said that, you were all sent this  
14      little paper in advance to look at the various  
15      suggested changes such as getting rid of the  
16      requirement for basic application or registration,  
17      things about linguistic diversity, and other  
18      items. And you may have ideas of your own. So I  
19      just open the floor for discussion. Sharon, do  
20      you want to say anything?

21               MS. MARSH: Sharon Marsh, USPTO. Maybe  
22      I'll give them just a little bit more information

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1 about the proposal that's outlined in this paper  
2 which everyone may not have had a chance to read.

3           There's a series of working group  
4 meetings of the Madrid members, both agreement and  
5 protocol countries. Amy Cotton from our  
6 international office as well as someone from  
7 trademarks attend those meetings. Under this  
8 proposal to end the requirement for a basic  
9 application or registration, the trademark owner  
10 would still be able to file one application with  
11 one set of fees in one language, and also after  
12 they obtain international registration and  
13 extension to the various countries, have a  
14 centralized place for renewal, so that all would  
15 remain the same. The change is that the trademark  
16 holder would no longer have to have a basic  
17 application or basic registration in their country  
18 of origin.

19           I think we've identified probably four  
20 major ways that would change the current Madrid  
21 system, and I'll just briefly run through those.  
22 One, if the international registration is no

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1 longer dependent on a basic application or  
2 registration in the home country, the concept of  
3 central attack disappears. Central attack was the  
4 idea that a trademark owner could seek to cancel  
5 or oppose an application or registration in the  
6 country of origin and if they were successful then  
7 all of the countries to which the trademark holder  
8 had extended, the registrations in those countries  
9 would also become inactive so that that feature  
10 would disappear if you are just filing directly  
11 into each of the countries. You would have to go  
12 after registrations in each country.

13 The other function that disappears we  
14 think is what Amy has labeled the gatekeeper  
15 function where now when someone gets into the  
16 Madrid system, they've been through the  
17 application process in their country of origin so  
18 if they filed an application that doesn't even  
19 have the basic information in it, if they have  
20 filed for a mark that's generic, theoretically  
21 those get weeded out of the system by the country  
22 of origin and then none of the designated

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1 countries have to address those problems. Again  
2 if instead you filed applications directly into  
3 each of the countries to seek to register in,  
4 those offices would have to deal with the problems  
5 individually.

6 The third issue I think this affects is  
7 the issue of identifications of goods and  
8 classification. Under the current Madrid system,  
9 the IB sets classification, number one, and number  
10 two, once they've done that you can't add classes  
11 or move goods around too much or add goods. So  
12 that would be gone under this system. You would  
13 be able to file individual applications and  
14 presumably you could add on to applications in  
15 each country as you needed to. Perhaps more  
16 importantly, one of the complaints we've heard  
17 from U.S. trademark owners about Madrid is that if  
18 you file through Madrid, they are limited by the  
19 USPTO's very strict policy regarding information  
20 of goods and services so that because if you limit  
21 your goods in the U.S., then you also must limit  
22 the goods in all of the countries you've extended

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1 to. That would disappear if you could file  
2 individually into each country.

3 Then the last potential issue, our  
4 colleagues from the Japanese issue have raised an  
5 issue in the working group meetings about a  
6 problem that they face along with other countries  
7 that use languages that have non-Latin characters  
8 like China, Korea, et cetera. The trademark owner  
9 in the home country files in their own characters,  
10 so Chinese characters, Korean characters,  
11 Vietnamese characters, whatever. But then when  
12 they want to do business in other countries, they  
13 frequently are not using their native language.  
14 They're going to use the language, either a  
15 transliteration or a translation of the term in  
16 the other country and so the Madrid system doesn't  
17 work for them because their basic application  
18 isn't for the same mark. So that's another issue  
19 that's before the working group. It could be  
20 attacked either through the current Madrid system  
21 or this idea of getting rid of the basic  
22 application would also address that problem. So

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1 that's just a little bit of background. And like  
2 Lynne said, we don't expect you all to have  
3 decisions or opinions today, but we are  
4 desperately seeking feedback from users as to what  
5 you want the Madrid system to be in the future.

6 MR. FARMER: Comments from TPAC?

7 MR. LOCKHART: What would be the  
8 advantage --

9 MR. FARMER: Wouldn't that be the  
10 elimination of central attack in that for example  
11 you might be hesitant to take a U.S. -- tell me if  
12 I get this right, Sharon, you might be hesitant to  
13 take a U.S. application to make it the base  
14 application for a Madrid filing because of the  
15 various and sundry ways that that U.S. application  
16 could get knocked out or because you're going in  
17 with a narrower description of goods and services  
18 than you might otherwise have to?

19 MS. MARSH: I think central attack can  
20 work both ways. If you're going after the bad guy  
21 you can file one opposition against their home  
22 country application and kill off all the

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1 applications in the other countries. But it's  
2 also what you describe, if your home country  
3 application gets attacked and cancelled for some  
4 reason, then everything else dies as well.

5 MS. BERESFORD: Some people view central  
6 attack is like a safety valve against really bad  
7 registrations that somehow get in the Madrid  
8 system and get spread across a number of  
9 countries. Others see it as you've just described  
10 it, as maybe my own basic application or  
11 registration is a little shaky and if central  
12 attack weren't around I wouldn't have to worry  
13 about this. So really it's depending on which  
14 side of the fence you're looking at.

15 MS. LEIMER: And to add, I think the  
16 central attack period right now is pretty long and  
17 so there's a long period of uncertainty 5 years  
18 where we're not sure whether we might be subject  
19 to a central attack when we're the applicant and  
20 that doesn't give us the kind of certainty that  
21 our businesses need. In some of the countries the  
22 registration could issue much, much sooner than

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1       that period so that has prompted some of us to  
2       have what I think are redundant portfolios. We  
3       have international registrations and we have  
4       separate national registrations which is really  
5       kind of a crazy to proceed, but that central  
6       attack has been the reasons cited for that.

7               MR. FARMER: Since right now all that  
8       we're really talking about is we'll be interested  
9       in taking the next step so that a dialogue can be  
10      engaged in with I guess other Madrid partners so  
11      that we could eventually down the road see what  
12      language may look like, and of course the devil is  
13      in those details.

14             MS. MARSH: Yes, and I think what Amy  
15      has said is we don't want go to Geneva and  
16      encourage this discussion to continue to take  
17      positions on proposals and then find out that  
18      that's not what the U.S. bar wants. So it would  
19      be really helpful to us if we have a sense going  
20      into this what the needs of users are.

21             MR. FARMER: Are there any TPAC members  
22      who feel that it would not be productive to go

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1       that next step and just to start seeing what these  
2       changes would look like? In other words, are  
3       there any TPAC members who feel like we ought to  
4       consider freezing things now and not looking  
5       further? I'll now state it in inverse to give you  
6       a chance to knock it down that way, and that is do  
7       you share my sentiment, and this is just my  
8       individual sentiment, that it's worth taking the  
9       next step and see what it looks like because it's  
10      an intriguing concept, and of course the devil  
11      will be in the details?

12                 MR. JOHNSON: I see no reason not to  
13      continue to pursue it. I don't see any down side  
14      for U.S. trademark owners. The one comment I  
15      didn't understand and maybe you can help me with  
16      is about the language diversity issue. If there's  
17      an exact translation of the Japanese mark, why is  
18      that stretching the foreign equivalency doctrine  
19      beyond the breaking point?

20                 MS. MARSH: I think that was just a  
21      comment that to try to apply this theoretically to  
22      every case that might come up could result in some

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1 results that we hadn't anticipated. Amy, do you  
2 want to address that?

3 MS. COTTON: The Japanese delegation has  
4 issued another paper in exploring this linguistic  
5 diversity idea and talking to other delegations  
6 informally. What they decided was that linguistic  
7 diversity really can't be addressed within the  
8 existing system because of this idea of sameness  
9 between Japanese characters and English, that in  
10 some cases it might be exactly the same but in  
11 other cases it might be different. If you look at  
12 Apple versus pomme in French, it could very well  
13 be a different commercial impression and so for us  
14 it's not equivalent on the doctrine of foreign  
15 equivalence, but it's really going to depend on a  
16 case by case basis. So you couldn't say every  
17 time that just a strict translation is going to be  
18 same mark and the same commercial impression, and  
19 from what I understand, translations are an art  
20 and not a science. So I think from that  
21 perspective that's what I meant when I was saying  
22 it might stretch the doctrine of foreign

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1 equivalence to have a rule saying, yes, you can  
2 file your international application in a  
3 translated form of your basic every time. It  
4 might very well be a different mark in most of  
5 those cases and it could be that there's going to  
6 be gamesmanship of the system to do that, here's  
7 my basic and a slight difference here, or with  
8 transliteration there's many different ways to  
9 transliterate a mark with Japanese or Chinese  
10 characters in particular how it sounds, they use  
11 the characters but it sounds -- like when you  
12 speak it those characters -- when you say those  
13 characters. So there's just too board of an area  
14 that the sameness of the mark is not going to be  
15 something that can be applied across the board  
16 consistently without stretching the rights or  
17 expanding the rights when you really didn't want  
18 to do that to the system.

19 MR. JOHNSON: So your position would be  
20 against this language diversity?

21 MS. COTTON: Actually, Japan came back  
22 and said we don't think we can address linguistic

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1 diversity within the existing system and the  
2 existing rules. We think the best approach is  
3 probably going to be to get rid of the basic  
4 requirement, the basic -- requirement. So the  
5 extent that somebody with linguistic diversity in  
6 their system has said that, that's very persuasive  
7 to me that there may not be a way to approach the  
8 issue of linguistic diversity within the existing  
9 system and therefore a diplomatic conference would  
10 be in order in order to change the system to  
11 accomplish that. The question for you and for the  
12 U.S. Bar is do we want to entertain the notion  
13 that linguistic diversity is an important element  
14 to consider in going forward in addressing the  
15 Madrid system and so we want to accommodate that.  
16 For us for the most part we're using English --  
17 basic mark is in English characters and it goes  
18 out in English characters so it's not as much an  
19 issue, for those countries that have different  
20 language requirements it is a bigger issue. So do  
21 we care? Do we feel for those countries that this  
22 is a problem enough so that we want to address

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1       that -- maybe, maybe not, but I put that question  
2       out there.

3               MR. JOHNSON: I guess I worry about the  
4       translations and meanings and trying to -- trying  
5       to figure out is this translation accurate, but  
6       that's the same you face anyway.

7               MS. MARSH: Jim, if we move to getting  
8       rid of the basic, they would just file individual  
9       applications for the Japanese version, the English  
10      transliteration or translation of that.

11              MS. BERESFORD: Just allow me to make  
12      one more comment here. I looking at changing  
13      Madrid I hope you will not limit your thoughts to  
14      the ones that are presented here. Would Madrid be  
15      better if WIPO had a universal application, for  
16      example? And you fill that out and that was a way  
17      of dealing with transmitting your marks and how  
18      would that application have to be tied to the  
19      basic application or registration? Could it be  
20      partially tied? Do you have to have everything  
21      that's in the basic application? Or can you add  
22      classes? You really have to I think take the

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1 bricks apart and start sorting them in a variety  
2 of ways and saying if I were writing this treaty  
3 today in this day and age how would I do it to  
4 most take advantage of both the ability of  
5 computers to do things but also in a sense the  
6 smallness of the world where trademarks are  
7 concerned where there are so many folks  
8 registering in so many places? This is a treaty  
9 based over 100 years ago when paper was the medium  
10 and it's also a treaty based on a international  
11 model of trademarks. It's really not based on  
12 common law model at all. So think this is a time  
13 when you can actually really think outside the  
14 box. If there's a way that we could set up a  
15 filing treaty which is what Madrid is starting  
16 over, what would you want in that treaty? Here's  
17 an opportunity to really think about what would be  
18 the most effective way to have one of these  
19 treaties and maybe the answer is just simply get  
20 rid of the basic application or maybe it's  
21 something else. But here's an opportunity to  
22 think about is there some other way that we could

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1 have a model here that would be really, really  
2 useful to U.S. trademark owners.

3 MR. FARMER: Are there any comments from  
4 TPAC based on Lynne's comment?

5 MS. LEIMER: I just want to say thank  
6 you very much all of you who have brought this to  
7 our attention and gave us this opportunity. I  
8 personally think that the Madrid system is a good  
9 one and an important one and to the extent that we  
10 can improve it and therefore make more people use  
11 it, it will be better. So I certainly an  
12 encouraged, and thank you that we're having this  
13 opportunity and we'll certainly want to talk to  
14 our colleagues and come back with other ideas.  
15 And I think, Sharon, you mentioned that you will  
16 be reaching out to other associations and I  
17 certainly encourage that to get as broad a view as  
18 possible from as many owners.

19 The Europeans are much more familiar  
20 with this system than U.S. practitioners because  
21 of their long history and if you have an  
22 opportunity to speak to European mark owners, you

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1 might get some other ideas, and I would encourage  
2 you to do that.

3 MR. FARMER: Than you, Jackie. To put a  
4 bow on this issue though, I think your basic  
5 question was should we continue to explore this  
6 and pursue it or not and I think that the answer  
7 of the committee is yes. And if you need us to  
8 say that in any other way except right now orally  
9 just let us know and we'll find a way to do that.  
10 I think that takes us down to item IV-B which is  
11 fee setting, should the USPTO postregistration  
12 Section 9 fee? Perhaps the topic will end up  
13 being a little broader than that, and I'll turn to  
14 Lynne.

15 MS. BERESFORD: We've talked about fee  
16 setting here in the Public Advisory Committee off  
17 and on for a number of meetings. I feel that  
18 trademarks should be run as efficiently as  
19 possible and that we should in fact end the year  
20 with maybe a little bit of surplus but not too  
21 much and have good budgets so we know we have  
22 enough money to fund our various requirements in

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1 the following year. This year trademarks is going  
2 to overcollect and have a surplus. When we  
3 initially sent this information to the TPAC  
4 members we had a different number for this  
5 surplus. This number keeps changing from as we go  
6 through tying up the budget in the spending  
7 numbers. But we also had a different economy even  
8 more importantly than we have at the moment. So I  
9 think things have changed radically.

10 Again if I am confident that we can  
11 support ourselves with the fee money we're  
12 bringing in and I have access, I'm willing to  
13 lower fees. That's what I want to do. At the  
14 moment we change the application fee which is our  
15 big income fee because it's considered to be  
16 statutory and we have to get Congress to change  
17 that fee. But all the other fees that trademarks  
18 charges are set by rule making and it can be  
19 changed. One of the suggestions was that we look  
20 at our postregistration fees and talk about  
21 changing those fees and there's a lot of  
22 discussion within the office about doing a fee

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1 study about how much we're spending actually doing  
2 postregistration work. The obvious thing is the  
3 fee right now is I believe \$400 and it used to be  
4 renewal actually included an examination of  
5 specimens and other things, but with the change  
6 that we made in our law to make renewal a mere  
7 request for renewal and the examinations actually  
8 with the Section 8 affidavit that's filed at or  
9 around the time the renewal request is filed, the  
10 renewal fee didn't change even though the amount  
11 of work associated with the renewal changed rather  
12 dramatically.

13 So with that background TPAC input on  
14 this matter, we're looking for you input on this  
15 matter. Again, we're in a little shakier economic  
16 times than when we first proposed this, but still  
17 something that we're interested in getting  
18 feedback on.

19 MR. FARMER: Lynne, do you have any  
20 feeling given the economic slowdown we may be  
21 experiencing or are about to experience whether we  
22 will be in a position to cut fees or whether it's

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1       uncertain enough that we can't really go there  
2       yet?

3                   MS. BERESFORD:  My own view, we keep  
4       redoing our filing estimates which is a big income  
5       driver is how many people file, and we are now  
6       expecting actually about a 2 percent drop in  
7       filings next year.  So the original income  
8       estimates that we had for next year are quite a  
9       bit different than the estimates we're having now.  
10      At this point in time I'm not sure whether we can  
11      sustain a fee cut at this point.  I think we'll  
12      know more maybe in February, but I'm not sure.  
13      Again I remain committed to trying to put the fees  
14      at a level where we pay for our services and pay  
15      for our infrastructure costs and that's it.  We  
16      are in the business of making money, I don't want  
17      to make money, I just want to pay for things.

18                   MS. PEARCE:  We did discuss this in  
19      subcommittee yesterday, I think James will back me  
20      up on this, we really urged that there be a fee  
21      study done so that we can figure out what the  
22      actual cost is for doing an -- declaration or a

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1 renewal or statement of use so that we can  
2 determine which of these fees are out of line  
3 which helps justify where cuts might be made.  
4 They seem to think that we could make great  
5 headway on that study by February, that we'd have  
6 more information by then. Apparently they've  
7 already done this for the Patent Office and indeed  
8 had started doing it or considering it doing it  
9 for the Trademark Office. So they were well aware  
10 of the need for it.

11 I also think that we wouldn't have to do  
12 massive cuts right away, that there could be a  
13 period where things were done one at a time in a  
14 measured matter just seeing how the economy is  
15 going to go. There probably is going to be a drop  
16 in filings next year, but at least historically  
17 things do not continue to drop. There will be a  
18 drop and then things come back. My feeling  
19 representing a trademark owner is the filing fees  
20 are pretty fair. You get a lovely discount for  
21 filing electronically and for using TEAS Plus. I  
22 feel like those are pretty much in line. The fees

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1 that had never been examined have been the  
2 postregistration fees. So I think that the study  
3 which we've asked for will give us a lot of  
4 insight there.

5           And I believe that we are going to be  
6 able to make some inroads there. We've not quite  
7 sure what yet and I think it's going to be over  
8 time. You want to be wise about this. But I  
9 think it's a wonderful testament to the Trademark  
10 Office that this can be done in an economic  
11 climate where the cost of everything else is going  
12 up to be able to legitimately reduce the cost of  
13 something makes a great deal of difference. It's  
14 also my understanding, Lynne, that for the  
15 Trademark Office, a whole lot less income is  
16 dependent on postregistration fees than it is for  
17 the Patent Office. The Patent Office, that is a  
18 huge cash cow for them. They would have major  
19 problems if they had to cut their maintenance  
20 fees. It is a less drastic matter for the  
21 Trademark Office.

22           MS. BERESFORD: Definitely. Most of our

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1 income comes from our application fee. Again,  
2 we've made every effort to make electronic filing  
3 attractive, so in fact we're lowered our  
4 application fees twice in the not too distant past  
5 so we have addressed that to some extent. But  
6 we're more than willing to do a fee study and  
7 we'll be happy to see the results.

8 MS. DENISON: I wanted to add that the  
9 proposal was 400 to 100. Is that right?

10 MS. BERESFORD: Yes.

11 MS. DENISON: If there's concern, you  
12 could go to 200 or 300. It doesn't have to be  
13 that.

14 MS. PEARCE: This was my question  
15 originally Mary. If a statement of use costs  
16 \$100, and that's not to say that's what it costs,  
17 but that's what you're charged for it, what is the  
18 difference in effort between a statement of use,  
19 an 815 declaration, and an 89? There didn't seem  
20 to be a tremendous amount of difference in this  
21 electronic age, and that was purely where the 100  
22 came from. That was why she was using it as the

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1 basis. But you're correct. There's no reason  
2 we've got to go to 100. Maybe all we can do is go  
3 to three and that's three per class and a lot of  
4 times with these older registrations that saves a  
5 significant amount of money. Perhaps in these  
6 economic times where people are not filing as much  
7 they will be especially if it were affordable a  
8 lot more likely to renew what they already have.

9 MR. FARMER: The other thing that I  
10 would be curious about is that presently we have a  
11 fee for filing a statement of use even though you  
12 don't get a discount for filing a 1-B application  
13 or a 1-A application. And I would be curious to  
14 find out whether there is an increasing cost when  
15 someone doesn't put in their proof at the time of  
16 the filing of the application but puts it in later  
17 during amendment to alleged use or a statement of  
18 use, whether that adds costs to examining the use  
19 or not. Are there any other questions or  
20 comments?

21 MR. LOCKHART: In the context of doing  
22 this I hope too we could look at the fee for

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1 before they make up their minds.

2 MS. BERESFORD: I agree. I think one of  
3 the things that has to be considered is the policy  
4 behind the fees and what the fees do for the  
5 trademark system because obviously we're all  
6 interested in having the system operate as well  
7 and efficiently as possible, so that's something  
8 that has to be considered too.

9 MR. FARMER: Anything else on this  
10 issue?

11 MS. BAYLOR: I wanted to say something.  
12 I agree with Elizabeth. I work in the Trademark  
13 Assistance Center. That is one of the common  
14 issues that we have when assisting customers is  
15 that they never have intentions on actually  
16 showing use of their 1-B application and therefore  
17 once they found out how much the fee costs,  
18 they'll say I'm using the mark differently anyway  
19 so they'll go ahead and allow the application to  
20 abandon and just refile. But also in reference to  
21 what John said as well, once we're assisting  
22 customers of the procedures of filing a trademark,

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1 when they know that they have to pay an additional  
2 fee to filing a statement of use later on as  
3 opposed to just paying the initial filing fee. If  
4 they're filing on a 1-A they're more likely to not  
5 file a trademark at all until they're actually  
6 using the mark to save from having to file that  
7 additional \$100 later on in the process.

8           So we explain the process to them they  
9 are more so -- even though they are attracted by  
10 filing online because there are cheaper filing  
11 fees, they recognize the fact that all of the  
12 requirements for TEAS Plus is not applicable to  
13 them so they're looking for other avenues to save  
14 money with the economy. So what they'll do is  
15 because I cannot file on a 1-A, then I'll just  
16 wait until 6 months or a year from now once I'm  
17 actually using the mark and just go ahead and file  
18 then and then that will save me having to file  
19 requests for an extension of time for \$150 or  
20 either the statement of use later on for \$100. So  
21 that may be also a reason why filing applications  
22 is not as much as it used to be because they're

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1 looking at ways of saving money.

2 MR. FARMER: To put a death grip on that  
3 obvious point, it means that by having a fee for  
4 an SOU later you discourage folks reserving marks  
5 they're never going to use and it keeps more marks  
6 available for others to use.

7 MS. BAYLOR: Yes.

8 MR. FARMER: I'm slow, but I -- thanks.  
9 That's a good comment. Any others from TPAC? I  
10 think we can go on to the next issue then. Item  
11 C, should the USPTO accept a geographical  
12 indications registration of another country as the  
13 equivalent of a trademark registration?

14 MS. BERESFORD: I'm going to turn this  
15 issue over to Sharon who will discuss this, or is  
16 it Amy?

17 MS. MARSH: I'll start it off. I don't  
18 know that we have to get into a lot of detail.  
19 You have a paper that was given to you that has  
20 some of the issues laid out. The question is  
21 under Section 44, as you know, that's the basis  
22 for application or registration based on the

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1 application or registration you have in your  
2 country of origin where you have either a domicile  
3 or a commercial establishment and that applies.  
4 The way we've always applied is that you have to  
5 have a trademark registration or a service mark or  
6 collective or certification mark registration in  
7 your home country. The question that's come up  
8 recently is whether or not an applicant who has a  
9 registration or a geographical indication in their  
10 country of origin, should they be allowed to use  
11 that as a basis for application or registration  
12 here under Section 44. When this issue came up,  
13 our International Office was cheering because we  
14 go around the world. The geographical indication  
15 issue is a hot international issue. Our standard  
16 way of approaching it is saying that we have  
17 trademark registration and geographical  
18 indications are trademarks and you can use our  
19 trademark registration system to protect your GIs.  
20 So accepting GI registrations under Section 44  
21 would I think further that line of thinking.

22 So we are seeking opinions from TPAC,

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1 and again it doesn't have to be today, on whether  
2 you think that that would be acceptable or not.  
3 In your materials we copied the relevant  
4 provisions of the Paris Convention and Section 44  
5 of the Trademark Act and you can take a look at  
6 those at your leisure.

7 MR. FARMER: Any comments or questions  
8 from TPAC? I know that the International and --  
9 Subcommittee did some listening to and thinking  
10 about that yesterday. So especially if there are  
11 any comments from that subcommittee from those  
12 members.

13 MS. LEIMER: This is Jackie Leimer at  
14 Kraft. Thank you, Sharon, for that report. I  
15 think there are a lot of questions about how this  
16 would actually be executed, the devil is in the  
17 details, if you will, and so I think we would  
18 appreciate to have continued dialogue as you  
19 development further refinement on this. But I  
20 think as an interesting issue it certainly is  
21 consistent with the U.S. Government's view that  
22 GIs are protected in the United States as

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1 trademarks and to execute this would be further  
2 reinforcement of the U.S. position and it's a  
3 position that Kraft Foods shares, that GIs can be  
4 trademarks and should be protected as trademarks  
5 in the United States. That means going through  
6 the rigors of the trademark examination and  
7 meeting all the other statutory requirements in  
8 the United States.

9 So that being said, from a personal  
10 Kraft point of view, this is certainly something  
11 that we'd like to hear more about as you answer  
12 some of the questions that I know you have.

13 MS. BERESFORD: I don't think there's  
14 any idea that we're not going to examine these  
15 just like we examine everybody else who comes  
16 through the door asking for a registration. This  
17 isn't a shortcut to registration. This is just  
18 are these acceptable under Section 44 as bases for  
19 either a priority claim or as basis for ultimately  
20 a registration under Section 44. And it's a very  
21 interesting issue, one we faced some years ago  
22 with registrations and applications coming from

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1 OHED and I think we consulted the Public Advisory  
2 Committee many years ago on that topic and they  
3 ultimately decided that it was okay to use an OHED  
4 application and registration as the basis for  
5 filing into the United States. So it's a similar  
6 issue but also slightly different.

7 MR. FARMER: Any other comment on this  
8 issue? James?

9 MR. CONLEY: I just have one question.  
10 This is James Conley from Northwestern. I know  
11 that this is just being discussed but in looking  
12 downstream, could this applicant who is the owner  
13 of the GI take the U.S. Registration and then  
14 subsequently take it to the country where the GI  
15 is not a vehicle for trademark prosecution but use  
16 the U.S. trademark status to achieve trademark  
17 registration in that country where the GI was not  
18 grounds for trademark registration?

19 MS. MARSH: They'd have to meet the  
20 country of origin requirements. They've had to be  
21 doing business in the U.S. or be connected to the  
22 U.S. in some way.

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1                   MR. CONLEY: The assumption is that  
2                   because we go through this that they get trademark  
3                   registration in the U.S. Could they take that and  
4                   use that as their basis for getting around the law  
5                   of the land that as stated here would not accept a  
6                   GI?

7                   MS. MARSH: Right, but probably to use  
8                   their U.S. Registration to obtain registration in  
9                   another country they'd have to show that they were  
10                  connected to the U.S. Because they were a  
11                  national or have a domicile or a commercial  
12                  establishment here. If they could do that, maybe.  
13                  I don't know.

14                 MS. BERESFORD: The Paris Convention  
15                 requirements would still apply. You have to have  
16                 domicile, nationality or a real and effective  
17                 industrial or commercial establishment in that  
18                 country where you're claiming your trademark  
19                 rights from. So if you've come into the U.S.  
20                 With a GI and you get a registration but you  
21                 actually don't have use here which of course you  
22                 can do under Section 44, then it would very hard

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1 for you if anybody looked at your trademark  
2 application in another country to argue that you  
3 effectively those rights in that country because  
4 you don't have domicile, nationality, or an  
5 effective industrial or commercial establishment  
6 in the U.S. So there's a built-in check in the  
7 terms of the Paris Convention.

8 MR. FARMER: Any other comments there?  
9 I'm going to gather that the sense of the  
10 committee is keep us posted. Let's go on to IV-D,  
11 proposed rules. Should there be a fee for a  
12 certificate of mailing? I guess that's -- more  
13 than one option.

14 MS. BERESFORD: Right. I think we sent  
15 you a paper on this. When we put out our proposed  
16 rule to amend certificate of mailing and  
17 certificate of facts transmissions to exclude  
18 certain documents in February, we got a lot of  
19 feedback, some of it negative, some of it  
20 positive, all over the map, from various trademark  
21 owners and various bar groups. Of course, we take  
22 all those really seriously. One of the comments

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1 was that in certain circumstances it's very, very  
2 important to continue to have certain options  
3 available. Of course, the office's horse in this  
4 race is we continue to nudge people as much as we  
5 can toward electronic filing of all documents. We  
6 aren't going to force anybody to file  
7 electronically but we keep nudging them toward  
8 that because from our experience it's good for  
9 everybody in the long run. Maybe in the short run  
10 it's not so easy, but in the long run we get  
11 better quality. Applicants once they learn how to  
12 use our electronic systems are quite happy with  
13 them and want to continue that. And it totally  
14 improves the quality of the data in our database.  
15 Makes it a much stronger place to find out exactly  
16 what's in applications and registrations.

17 So the proposal here was instead of  
18 eliminating certain options, we would just simply  
19 charge a fee because essentially we're still  
20 handling paper in those options if you want to  
21 continue to use those options. Sharon, do you  
22 want to add anything to that?

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1           MS. MARSH: I don't think so. We put  
2 this issue before the committee back when we did  
3 the initial rule making proposal to just eliminate  
4 certificate of mailing and the response was quite  
5 negative from the public. It seems that the bar  
6 wants a safety net. They raised questions about  
7 what happens if I'm trying to file my paper at 11  
8 o'clock on the day before it's due and TEAS goes  
9 down or my computer goes down? They wanted to  
10 have a way to feel confident that they would be  
11 able to get a timely filing off even if something  
12 happened to the computer system. So this is one  
13 alternative that came up of we'll let you file  
14 paper and use certificates of mailing but you have  
15 to pay an extra fee if you're going to do that.

16           MR. FARMER: And you would probably just  
17 pay that fee at the time you're submitting your  
18 filing by certificate or mailing, just put the  
19 check in there?

20           MS. MARSH: That would be one question.  
21 Would we accept the paper if you forgot the extra  
22 fee? I know again for the safety net factor,

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1 people would want to say that I can file my paper  
2 and if I forget to include the extra fee for paper  
3 that the PTO will give me 30 days to pay the fee.

4 MR. FARMER: A safety net with a safety  
5 net.

6 MS. MARSH: Yes.

7 MR. FARMER: If hypothetically TPAC was  
8 of a mood that it sounds like a sensible proposal  
9 to encourage electronic filing by charging a fee  
10 so that you still leave that option open, what  
11 would happen next in the process to try to make  
12 this the rule? Would there be a proposed rule  
13 making along that line?

14 MS. MARSH: Yes, I believe so.

15 MR. FARMER: Does anyone on TPAC  
16 disagree with the concept of potentially charging  
17 a fee there to encourage electronic filing while  
18 still keeping the option --

19 MR. STORIE: Personally I don't think  
20 that the charge is going to have the effect in the  
21 sense that the only thing that's been penalized is  
22 filing at the last minute because if I mail this

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1        thing 2 days before or 3 days before, it's still  
2        being handled on paper. So it's really just this  
3        question of my having used this stamp that gives  
4        me this extra day. So it's really just a penalty  
5        for utilizing the last day. It doesn't change the  
6        work whatsoever at least from the best I can tell.

7                    MS. BERESFORD: I think it will change  
8        the work because what will happen is folks who  
9        right now routinely use paper filing, when they  
10       get into the situation that they're filing at the  
11       last minute, will have to make that difficult  
12       decision, do I fire up my computer and file this  
13       online or do I pay the extra money. Some people  
14       will say I can't really genuinely justify a \$50  
15       fee, I will grit my teeth and I will file this  
16       electronically. I think eventually that that will  
17       in fact change behavior.

18                   MR. STORIE: You've always got this  
19       question of how sophisticated this user is,  
20       whether or not his computer system is reliable,  
21       whether or not the network or their online access  
22       is reliable. Sometimes you get on and it works

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1 well, sometimes it doesn't.

2 MS. BERESFORD: They still have the  
3 option of filing on paper with the fee. But I  
4 think this will a rather gentle but over time  
5 behavior changing process. I could be wrong about  
6 that. I've been wrong about many things.

7 MS. DENISON: But it just encourage  
8 people to file by FedEx 1 day earlier.

9 MS. BERESFORD: That's exactly right.

10 MR. STORIE: But you don't get the same  
11 protection with FedEx. You may feel confident  
12 that FedEx is going to arrive because you trust  
13 FedEx, but you lose the legal protection.

14 MS. DENISON: I understand.

15 MS. MARSH: Could I just clarify? I  
16 think we're hearing that you think that we're only  
17 charging a fee if you use a certificate of  
18 mailing. The fee would be for a paper filing  
19 whether you have certificate or mailing or not.

20 MR. STORIE: That was not my  
21 understanding.

22 MS. MARSH: So if you file 2 days early

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1 on paper you would still have to pay the paper  
2 filing fee.

3 MR. STORIE: So any response on paper  
4 that could be filed electronically would have this  
5 \$50 fee or whatever it's going to be?

6 MS. MARSH: Yes. If you're filing  
7 electronically there is no fee.

8 MR. STORIE: So anything that's filed on  
9 paper that could have been filed electronically  
10 regardless of when it's filed.

11 MS. MARSH: Right.

12 MR. JOHNSON: Does \$50 cover the extra  
13 cost? Is the \$50 fee based on the additional cost  
14 to the office? That's what you've calculated?

15 MS. MARSH: Yes.

16 MS. BERESFORD: I'm sorry I explained  
17 that wrong. My apologies.

18 MS. MARSH: The other thing I think we  
19 should mention, in the comments to the original  
20 rule making notice the other complaint in addition  
21 to the safety net issue was that to file a TEAS  
22 response to office action where you have many

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1 attachments was cumbersome and that there are  
2 limits on the size of each page that you attach to  
3 a TEAS response to office action form. So they  
4 felt that it was a lot of extra work to use the  
5 electronic system and so that was another reason  
6 that they wanted the option of paper filing.

7 MR. MORRIS: Craig Morris, USPTO. I'm  
8 not sure if my list was written actually because  
9 this is referencing extension of the 3 megabyte  
10 location and we've already expanded it to 5  
11 megabytes, so we did try to address that concern.  
12 In the middle of that fourth paragraph though  
13 there is unfortunately an overstatement of what  
14 we've done where it says that we -- there is  
15 currently on TEAS form for that purpose.  
16 Certainly that's something that we want to do in  
17 the future but we have not in fact implemented  
18 that -- look on TEAS for request to divide form,  
19 it does not exist at this point.

20 MS. BAYLOR: I wanted to make the  
21 statement that I think like Lynne said it would  
22 just be a gradual process. Normally customers who

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1 call in if they have to submit it in paper form  
2 and utilize the certificate of mailing it's  
3 because not that they waited -- yes, they waited  
4 until the last minute along with maybe something  
5 is wrong with TEAS or something is wrong with  
6 their computer and they're pressing for time. So  
7 I don't think they'll be really too concerned  
8 about paying the fee having to send it by paper  
9 but you do have those customers who are really  
10 just stuck in paper filing and they will call way  
11 ahead of time before they have more than enough  
12 time to submit their documents but you have those  
13 customers who are not computer savvy or they don't  
14 have access to a computer and they're set in their  
15 ways to do a paper filing so they have no problem  
16 with paying whatever fee the agency puts on the  
17 limitations as far as submitting a paper filing.  
18 So I think that if the concept is to charge a fee  
19 so that will use the electronic base, we won't see  
20 too much of a change, maybe later on down the  
21 line, but more so now we'll just see the change of  
22 paper filings being paid for by maybe attorneys or

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1 pro se applicants whose system crashed or it got  
2 stuck or something of that nature and they have to  
3 pay the fee but for those who are continually  
4 filing documents by paper, we won't see that  
5 change probably for a good while because they're  
6 just set in their way of paying whatever the  
7 agency sets so that they can continue to file a  
8 paper filing.

9 MS. DENISON: When you have a large 2F  
10 submission, frankly it's a whole lot cheaper to  
11 pay the \$50 and submit it on paper than it is to  
12 pay the paralegal to sit there if it takes a long  
13 time to break it up into different things and get  
14 it all ready for an electronic filing. So I don't  
15 think that's going to be a deterrent for that sort of  
16 filing.

17 MS. MARSH: And that does come up  
18 periodically. I love the electronic system. We  
19 use TEAS Plus for absolutely everything we can,  
20 but every now and then like Mary said we've got a  
21 2F or something that's very much the exception to  
22 the rule and sometimes those 2Fs because they're

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1 waiting for evidence from business units, the  
2 stuff gets to you at the last minute or you've  
3 held out to the last minute hoping you could get  
4 more that's clearly not coming. It's easier just  
5 to go ahead and ship it off in paper form and let  
6 somebody else handle that, but we don't begrudge  
7 anybody the extra fee and we only do that once in  
8 a very blue moon, but there probably are going to  
9 be some exceptions like that that are always going  
10 to turn up. And we would pay for whatever the  
11 cost is of the administrative work and we don't at  
12 all mind doing that, and we try not to abuse the  
13 system of course, but there will always be some.

14 MS. BERESFORD: I think it probably  
15 would be useful for the committee to know I think  
16 the last time we looked at the percentage of  
17 electronic filing of responses to office actions  
18 was at about 60 percent. So we know that 40  
19 percent of the filings come in on paper and 40  
20 percent of them don't have large attachments, 40  
21 percent of them aren't being filed at the last  
22 minute. I understand everyone's concerns because

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1 nobody wants to lose an option, but in looking at  
2 it from the perspective of can we move people more  
3 toward this system because there are some really  
4 systemic advantages both to trademark owners and  
5 to the office for this. We think that there are  
6 reasons to go forward with this, but of course  
7 that's why we're talking to TPAC about it.

8 MR. MORRIS: The flip side of that  
9 issue, do you think it would be fair where you in  
10 fact you are submitting a voluminous amount of  
11 paper we in turn have to scan it.

12 MS. MARSH: Absolutely.

13 MR. MORRIS: So should we be able to  
14 charge a fee for our cost to get it into our  
15 system?

16 MS. MARSH: Yes. I completely agree  
17 with that.

18 MR. LOCKHART: Actually arguably that's  
19 provided for in your fees now because there is an  
20 hourly charge for work that doesn't fall within  
21 the four corners of the individual items that are  
22 listed up above and you could say if you submit

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1 more than X number of pages of attachments or  
2 exhibits and we have to scan it, it's going to be  
3 at the hourly rate.

4 MS. BERESFORD: That is another way to  
5 look at the fees. Again we are proposing a fee  
6 for the paper filings because having an across the  
7 board fee encourages electronic submission and in  
8 a sense it spreads the cost of paper filing onto  
9 everyone who chooses to file. So if you file a  
10 100 page paper filing you pay the same amount as  
11 the person who files the 2 page paper filing. So  
12 it's just another way of looking at it, but again  
13 there's nothing wrong with thinking about --  
14 except it's kind of hard to administer a per page  
15 type fee. Then you have to start keeping track of  
16 the pages in individual paper filings which has  
17 its own administrative cost, but it's something  
18 certainly worth thinking about.

19 MR. FARMER: I'm not trying to cut off  
20 anyone's question. I'm gathering that the sense  
21 of TPAC is that we find this concept interesting  
22 enough and don't such a big reason to try to spike

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1       it now, that it would be reasonable for it to go  
2       onto the next step where there would be a proposed  
3       rule to look at.

4               MS. BAYLOR: I just have one more thing.  
5       Sharon spoke earlier that if the paper filing came  
6       in and they say they didn't submit the fee, would  
7       it still be processed or would they be able to get  
8       a letter and be able to submit that fee within 30  
9       days. That's somewhat the same concept if they  
10       were to have to revive the abandoned application  
11       and they needed to file a request, they have to  
12       file their request for an extension. So the  
13       office would send them a letter letting them know  
14       that they have to submit this payment by a certain  
15       timeframe if they want their application to  
16       proceed forward. I think if that option is  
17       somewhat available and if they are filing on  
18       paper, we'll be more prone sending out more 30 day  
19       notices requesting the fee as opposed to if they  
20       know they send in this request by paper and they  
21       don't submit the fee that it will not be processed  
22       if it's not done timely. So I think it would be

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1 more work for the agency if we do accept the  
2 paper, give them a letter you have to submit this  
3 money within 30 days, and then we can go ahead and  
4 proceed forward, it's going to put more work on  
5 the office because I think we'll be sending out  
6 more letters than getting rid of the concept of  
7 them filing by paper, period.

8 MS. MARSH: And I think that's one of  
9 those things you've got to build into the fee  
10 time.

11 MS. BAYLOR: Right.

12 MS. MARSH: We need to think about all  
13 of these costs. There's absolutely no reason you  
14 need to be cutting people a special deal for  
15 anybody out there particularly a trademark  
16 practitioner who's responding to a 2 page office  
17 action response which may be something as simple  
18 as a clarification of goods and services or a  
19 disclaimer and they're filing by paper and their  
20 client is getting charged extra for that. The  
21 clients need to wake up and take notice. All of  
22 that, but all of the costs should be built into

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1 that, and you're right, there are additional back  
2 and forth costs unless something has been charged  
3 to a deposit account or something along that line  
4 and all of that needs to be taken into account.  
5 But there are times, yes, we have filed those  
6 voluminous 2Fs by mail. Mea culpa.

7 MR. FARMER: Let's go on to the next one  
8 then, accelerated examination.

9 MS. BERESFORD: This is a rule that's  
10 still in house. It hasn't been published for  
11 comment because of some fee issues that are  
12 associated with accelerated examination. For us  
13 the sticking point I think in house is this  
14 proposal has been discussed and we've looked at it  
15 as being exception processing. Someone makes an  
16 accelerated examination request, somebody gets  
17 assigned to it and they shepherd it along. In  
18 general the view of the office is we shouldn't  
19 have exception processing, if we're going to have  
20 a process for accelerated examination it should be  
21 planned to be where you file a particular type of  
22 application, he's handled by the computer, it's

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1 identified by the computer, it moves through the  
2 computer system. So when we initially wrote up  
3 this rule, and I think we shared the rule with the  
4 committee at the last meeting, we had a \$500 cost  
5 which was associated with doing exception  
6 processing, assigning a human being to the  
7 application and having that human being shepherd  
8 the application along.

9 We're now considering what the cost  
10 would be if we modified our IT systems for this  
11 cost and I would assume that given the costs of IT  
12 in this agency that the cost would be considerably  
13 higher, but until we have those figures and until  
14 we can go forward with this, the rule is still in  
15 house and we're still considering it. Sharon?

16 MS. MARSH: The other update, we did a  
17 draft rule and OMB has designated the original  
18 draft rule with the \$500 as significant and they  
19 have some questions about whether this is  
20 necessary given our very low pendency rate  
21 currently and also the impact on all applicants  
22 because if a few applicants are getting

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1 preferential treatment that might slow down  
2 everybody who's behind them. So we're really just  
3 at a point where it's a wait and see. We're  
4 answering questions from OMB and as matters  
5 progress we'll keep you updated.

6 MS. BERESFORD: We're just trying to  
7 keep everybody on the committee up to date on  
8 where we are with this proposed rule.

9 MR. FARMER: Go ahead, Jeff.

10 MR. STORIE: Given the nature of our  
11 examination process and the need for publication  
12 and those kinds of things, I have clients who I  
13 think would like this idea. As was talked about I  
14 think in one of the pieces we got about the  
15 dynamics of trademark filing, ICUs are filed a lot  
16 of times emotionally. People get tied up in their  
17 new business venture and they're really pumped up  
18 and they're convinced they have to race their  
19 competitors to the courthouse and the only thing  
20 you can tell them is you're going to have your  
21 registration in a year they're completely undone.  
22 No matter how many times you tell them, they still

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1 don't get the fact that it necessarily doesn't  
2 mean -- that they don't have in hand before they  
3 go do their business. Those things are hard to  
4 get them to understand sometimes but the emotional  
5 part of that, I can see some people saying \$500  
6 and I can get in front of the line, let me do  
7 that.

8           The thing I'm curious about though is  
9 really how much benefit can we really give them in  
10 light of the opposition, in light of the  
11 publication requirements and how things are going  
12 to work? Are we really just talking about saying  
13 we'll have you respond back or first action back  
14 in a month or is it going to be a whole different  
15 kind of process? I don't think we can change  
16 fundamentally how we examine a trademark so I'm  
17 just not sure how much of a benefit we can create.

18           MS. MARSH: If I remember correctly too  
19 from this, the onus is on them to respond to  
20 office actions within a month also. So the  
21 applicant bears some responsibility for moving the  
22 process along too. It's not just a matter of

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1 sitting back passively and waiting for the office  
2 to do all of the work.

3 One thing I was thinking of, and this is  
4 a little bit how our economy has changed, we're  
5 somewhat victims of our own success. Many years  
6 ago, and are some young people in this room who  
7 may not remember this, IP work was not considered  
8 glamorous, it was not considered interesting.  
9 People did not want to talk to you about it at  
10 cocktail parties. Now thanks to the glories of  
11 branding, everybody's new favorite word, this is a  
12 hot, hot thing. What this means is if somebody is  
13 starting up a new business particularly if they  
14 think they might be selling that business of  
15 they've got interested investors, they want to  
16 file at least a provisional patent application to  
17 protect something. They want to be able to brand  
18 the name of the company plus any notable products.  
19 They want registration as quickly as they can get  
20 it because they understand that looks good in the  
21 eyes of the public. Even to be able to say that  
22 they've applied for accelerated examination,

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1 anything along that line that will look good in  
2 front of investors or potential buyers is  
3 something that this is chicken feed compared to  
4 what they're hoping to get that kind of payoff on.  
5 That's how the economy has changed. Ten years ago  
6 this would never have come up. But this is the  
7 way in the internet world things work now.

8           Initially I thought accelerated  
9 examination, why do you need that? Things have  
10 gotten so great. But as Jeff said, there may be  
11 people out there who are seeing it differently  
12 from a business point of view than we do and there  
13 may be a market for that. We have to make sure  
14 the system does not get abused and that may be  
15 setting a realistic fee, maybe \$500 is too low,  
16 and it may be a matter of not getting more than an  
17 extra month or two just because pendency is so low  
18 anyhow, but there may be times when that's worth  
19 it to someone as long as they understand what  
20 their responsibilities are and realistically what  
21 the timeframe could be.

22           MS. COHN: If I could just add onto

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1 that, Debbie Cohn. The proposal as it currently  
2 stands I believe really calls for accelerated  
3 examination and then publication in less than 6  
4 months hopefully, but not necessarily registration  
5 in less than 6 months, and the answer to that  
6 question really depends on your consideration of  
7 the next issue which is what are our obligations  
8 under the Paris Convention and it is an issue  
9 because right now we're at the point with TEAS  
10 Plus where we're publishing applications in less  
11 than 6 months and in a few cases they're actually  
12 going to registration. So we need to consider  
13 that issue anyway, but certainly in the context of  
14 accelerated examination and what it would mean if  
15 the acceleration only leads to publication and  
16 then things stop. So that's something that we  
17 would certainly want to consider.

18 MS. BERESFORD: And just for this  
19 committee's information, I believe that last month  
20 about 3 percent of our applications that were  
21 published were published in less than 6 months and  
22 the number is growing. We are in fact getting

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1 faster and faster as the workflow continues to be  
2 very efficient. So there are at least 3 percent  
3 of our people who are already getting to the  
4 publication stage prior to the 6 month timeframe  
5 and we expect to have that happen more and more  
6 often which is one of our issues.

7 MR. FARMER: Before we go to the next  
8 agenda item which is that 6 month issue, to  
9 continue the conversation on the previous one, one  
10 thing just speaking for myself individually and  
11 speaking for the committee that I like generally  
12 is anything that makes the process go along  
13 quickly because those of us here who experience  
14 trademark -- things are going pretty doggone fast  
15 right now and that's a credit to your  
16 administration. But folks in the business world  
17 still are here a year or 13 months and it's longer  
18 than they -- they shouldn't have expected that. I  
19 see opportunities for speed aside from this simply  
20 when you can realize your 21st century plan and so  
21 that things from notice of publication assuming on  
22 opposition through registration issuance go

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1 faster, and I'm very interested in electronically  
2 issued certifications of registration so that you  
3 can just pop it out and it doesn't have to go to  
4 printing and maybe you have an option that if  
5 someone really wants the sheepskin so to speak  
6 they pay an additional fee and they get a nice  
7 looking little certificate, but still you can get  
8 your PDF which you may need for certain domain  
9 name reasons or other reasons right away and then  
10 you're getting your registration faster even if  
11 you don't have accelerated examination and if you  
12 do and it doesn't mess you up on your regular  
13 speed applications, that's gravy.

14 MS. BERESFORD: Of course the issue of  
15 electronic certificates is one that's also under  
16 discussion in the office and has a lot to do with  
17 the roadmap that you heard about earlier. In  
18 terms of our processing mapping, let me say that  
19 we still have parts -- we've done this 2 year  
20 processing mapping in trademarks, there are still  
21 parts of that processing mapping that we're  
22 putting into place which are going to further

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1 reduce the time after publication. I fully expect  
2 that in the next year we will see back end  
3 pendency dropping further -- the registration  
4 pendency dropping further and some drop-off in the  
5 time between examination and publication. So I  
6 fully expect we're going to get faster. I think  
7 that is something realistic to expect.

8 In terms of electronic certificates, in  
9 internal discussions, one of the things that we've  
10 discovered is that as the way the roadmap  
11 proceeds, doing electronic certificate in kind of  
12 a rational way which means doing it as part of the  
13 improvement of trademark systems means putting it  
14 off for a while because the cost of doing it and  
15 doing it kind of out of order will slow down other  
16 parts of the roadmap. So that's been put on hold  
17 although we're still discussing and trying to  
18 realign things internally. But it's not something  
19 we've given up, we just think it will happen but  
20 the electronic certificates isn't going to happen  
21 right away, and that's where we are there.

22 MR. JOHNSON: I have a concern and it's

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1 all about educating your client, but if you start  
2 charging them \$500 on expected review, their  
3 expectation is going to be they're going to have  
4 the certificate in hand and not just get --  
5 faster. All you're going to get is a refusal from  
6 the trademark office or an opposition and they're  
7 going to say but I paid my \$500. It's not a  
8 reason not to do it but it's just managing that  
9 expectation which as we try to explain things to  
10 them as Jeff says he explains over and over that  
11 your trademark rights are based on years and not  
12 registration, it doesn't matter if you get the  
13 certificate today or tomorrow. I've spent my life  
14 telling clients that too and it doesn't seem to  
15 register. I just know that if they hear about  
16 this expedited process or even experience it --  
17 even get one fast, faster you're now setting  
18 yourself up for the next 10 times when it doesn't  
19 go through that fast and they'll say why did I pay  
20 my \$500?

21 MR. FRIEDMAN: Probably a related issue  
22 is if I exhibit it 5 weeks after it's submitted

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1 and I give you a refusal then we're going to have  
2 some hurdles to overcome with the client as far as  
3 expectations. Obviously you can talk until your  
4 face is blue, but the fact you get to pay more  
5 money -- relationship to getting publication and  
6 registration but you're going to have to manage  
7 some more difficult expectations when they get  
8 that refusal in 5 weeks instead of 3 months.

9 MR. JOHNSON: That's what they're  
10 hearing, so I paid \$500 to get to no faster.  
11 That's what you have to explain to them. That's  
12 just something we'll have to worry about.

13 MR. MARSH: That's when you tell them if  
14 they were filing a patent how bad it would be.  
15 This is how I manage expectations in my office.  
16 Every time the trademark whine, I tell them about  
17 patents and I tell them about Venezuela. Always  
18 my favorite example of how slow a trademark office  
19 can be. And that does at least let them see how  
20 much progress we've made in the United States.

21 MR. FARMER: Mary, you had a comment?

22 MS. DENISON: When I first heard about

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1       this I did an informal poll of some ENTA (?)  
2       members and there was not very much interest in  
3       the procedure. Since then I personally have used  
4       the U.K. accelerated system twice for clients.  
5       When I told them it was going to save them a  
6       month, they still wanted to pay the money because  
7       in one case they had a potential licensing deal  
8       and they wanted to move it forward as quickly as  
9       possible. In the other there were some  
10      infringement issues. So in both cases they  
11      thought it was worth the extra money to pay the  
12      extra \$100 even though I told them I didn't think  
13      it was worth it, but they made that call and they  
14      did it. So there may be more interest than I  
15      originally thought there was going to be.

16               MS. MARSH: And you actually got those a  
17      month earlier than you would have expected to?

18               MS. DENISON: They're in the 3 month  
19      transition period.

20               MR. FARMER: Sometimes you want to  
21      quicker for litigation purposes too because you  
22      want to get those presumptions as quickly as you

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1 can that come with having an issued registration.

2 MS. BERESFORD: I think one of the other  
3 thing that -- needs to perhaps think about is if  
4 you have accelerated exam, what should be the  
5 limitations on it. Clearly we would have an  
6 accelerated examination process where you had to  
7 show exceptional circumstances to get accelerated  
8 exam, and maybe that's going to be in litigation  
9 or something is happening in your business model  
10 that your really need a registration for that  
11 purpose. If you limit it that way then you really  
12 limit down the demand and you make it a special  
13 process. On the other hand, if you pay us enough  
14 money and you get accelerated exam then you have  
15 the whole other set of issues that go with that  
16 because I don't want to have accelerated exam if  
17 it affects pendency for the person who's paid the  
18 regular application fee. They shouldn't have to  
19 suffer because of accelerated exam. Again as with  
20 most things in life, there's a whole array of ways  
21 that this could be done. The question is do we  
22 need to do it and how should we do it, and of

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1 course this is why we're getting input.

2 MS. MARSH: The petition to make special  
3 -- patents, didn't you used to have to give a  
4 reason and you no longer do? Does anybody here  
5 know?

6 MS. GARBER: I can speak up. I was in  
7 charge of accelerated examination patents so I  
8 know a little bit about it. In the old petition  
9 to make special which wasn't completely replaced,  
10 you had to give a reason, but you just had to  
11 state it, here's my reason, I'm old. I'm sick.  
12 There were reasons. What -- we replaced it, we  
13 kept age and health as reasons for old  
14 applications to make special, but under  
15 accelerated examination now you no longer have to  
16 give a reason, but what you have to do is the  
17 preexamination search and the examination support  
18 document where we ask the applicants to help bear  
19 some of the burden of the examination, if you  
20 will, before they come on board. But the old  
21 petitions to make special aren't completely gone,  
22 but you did have to state a reason. It wasn't

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1 merely paying a fee. It was more than that. Does  
2 that answer your question?

3 MS. MARSH: Yes.

4 MR. LOCKHART: I believe the Copyright  
5 Office had an accelerated registration procedure  
6 in anticipation of litigation and I realize they  
7 don't do anything like the -- examination of  
8 applications done here, but I wonder if it would  
9 make sense for somebody to talk to the folks at  
10 the Copyright Office and see what percentage of  
11 those applications are requested to be done on an  
12 expedited basis, how they handle it, does it cause  
13 problems.

14 MR. FARMER: There's a big multiple  
15 though isn't it, Tim, compared to copyright based  
16 application fee to the accelerated?

17 MR. LOCKHART: The base fee is \$40 per  
18 work, so what it is for --

19 MR. JOHNSON: Isn't it \$1,000?

20 MR. FARMER: I think it's at least a  
21 multiple of which is a big difference than just  
22 knocking it up 25 or percent.

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1                   MR. LOCKHART: But I'm just wondering if  
2                   it would be worthwhile since they do it so they've  
3                   got some real world experience to maybe just see  
4                   what their experiences were. And I realize it's  
5                   not an exact --

6                   MR. FARMER: They don't look at right in  
7                   those --

8                   MS. MARSH: But they would have some  
9                   understanding of the administrative costs and that  
10                  kind of thing that might be useful.

11                  MS. BERESFORD: We can call Mary Beth  
12                  and ask her.

13                  MR. FARMER: We're just at the  
14                  exploratory stage. Would it be fair to say that  
15                  the sense of TPAC is that we realize that we're at  
16                  a very exploratory stage of this and it's worth  
17                  exploring it further to get an idea as to what the  
18                  fee would be like in the recommendation of the  
19                  office and whether you feel that you could pull it  
20                  off in a way that wouldn't create pendency  
21                  problems for the general applications because I  
22                  think that I would be surprised if there were

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1 support on TPAC for slowing down regular  
2 applications to speed this up? Does anyone  
3 disagree with what I just said?

4 MS. BERESFORD: That's fine. Thank you.

5 MR. FARMER: Let's go on to the 6 month  
6 issue then.

7 MS. BERESFORD: We gave you some  
8 background material for this, but essentially  
9 under the Paris Convention we give priority rights  
10 to anyone who files based on a foreign application  
11 or registration if they file within 6 months of  
12 their first filing in their home country. One of  
13 the advantages of course is that you have  
14 advantages over maybe an earlier filed U.S.  
15 application. That application might be suspended  
16 and your priority based application would go to  
17 publication and possibly registration ahead of the  
18 later filed U.S. application. Let me rephrase  
19 that -- the earlier filed U.S. application filed  
20 after your priority period. Is that too  
21 confusing? Should I start over from the  
22 beginning? Does everybody understand because I

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1 didn't say that very clearly?

2           The question of course is do we have an  
3 obligation as we publish more and more things  
4 before the 6 month priority is up -- do we have an  
5 obligation to check and see if anything has been  
6 filed with an earlier priority date? Do we have  
7 an obligation to hold those things if we find  
8 something with an earlier priority date? What are  
9 our obligations under the Paris Convention? It's  
10 a serious issue in this country mostly because in  
11 Lynne's opinion it changes the costs of opposition  
12 which can be a fairly hefty amount of money. If  
13 you give the priority filer the right, then the  
14 later filed -- the earlier filed but with no  
15 priority right U.S. applicant has to bear the cost  
16 of the opposition and this is serious money here.  
17 So making this decision is one where you're  
18 balancing what do you think are obligations are  
19 under the Paris Convention. Do we have an  
20 obligation to these priority filers to check and  
21 make sure we're really honoring their priority?

22           I can tell you from my own experience in

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1 a number of countries, nobody cares about this.  
2 They register and if you have priority rights you  
3 are expected to come in and defend those priority  
4 rights. So there is certainly precedent in other  
5 countries for just saying you have a priority  
6 right but that's your problem and your cost if the  
7 U.S. applicant manages to get to publication or  
8 registration ahead of you.

9 MR. JOHNSON: So Lynne you know of no  
10 trademark office that does this check that you're  
11 talking about from around the world, any other  
12 Paris Convention?

13 MS. BERESFORD: I do not know of any  
14 other -- that would be a fair question. Let's  
15 face it though, I don't know about that many --  
16 there are hundreds of trademark offices, I only  
17 know of a few, and various trademark offices and  
18 various trademark systems have various ways of  
19 allocating costs. Here it's pretty clear that  
20 there are very serious cost consequences to doing  
21 this one way or the other as all of you know  
22 better than me. But I do know of no country, even

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1 common law countries like the United States, that  
2 have examination processes -- I know of no country  
3 off the top off my head where applications are  
4 held up in order to publish and register or  
5 there's a check done at the 6 month period to make  
6 sure that there is no priority filing. Amy?

7 MS. COTTON: I do not know of any.

8 MR. FARMER: Sharon?

9 MR. JOHNSON: So there's no obligation.  
10 Maybe some people would consider it a service to  
11 be alerted that there's now a pending application  
12 that's there, but you'd have to pay an extra cost  
13 to have you go back and check.

14 MS. BERESFORD: If we wanted to have a  
15 service alerting people, that would be something  
16 we could offer if wanted to do that and of course  
17 it wouldn't be a free service, we'd have to charge  
18 for it, but the question here is are we meeting  
19 our Paris Convention obligations, and again we  
20 sent you all the language out of the Paris  
21 Convention and out of Section 44 so you could look  
22 at it and make sure that we are all on the same

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1 page about whether or not we have an obligation to  
2 check at the 6 month period to make sure there are  
3 no Paris Convention obligations out there and then  
4 if we find something, if we find a priority filing  
5 for the same or similar mark or for the same or  
6 similar goods and services, do we have to hold up  
7 the U.S. applicant and go forward with the Paris  
8 Convention filing. So those are the questions for  
9 TPAC. I haven't been clear, but hopefully all of  
10 you know enough about this subject matter that you  
11 can answer the question.

12 MR. FARMER: Lynne, has there been or  
13 would there be any analysis from the General  
14 Counsel's Office and the -- Office as to what they  
15 think of this or do you think it's really best for  
16 only TPAC?

17 MS. BERESFORD: Jim's office would  
18 necessarily be the office that would do this. It  
19 would probably come out of our Office of  
20 International Affairs that would be the office  
21 that would go analysis of this. Have they asked  
22 you for a statement on this, Amy?

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1 MS. COTTON: Not formally, no.

2 MS. BERESFORD: Amy Cotton has just  
3 indicated that we have not formally asked for an  
4 opinion out of our International Office on this  
5 particular issue.

6 MR. FARMER: The reason I asked that is  
7 that I wonder if we may not be better advisers on  
8 policy as opposed to writing a judicial opinion.  
9 We're all lawyers and practice trademark law, but  
10 I think the feedback that's going to come from us  
11 is probably going to be more in the nature of what  
12 would work well. Does anyone have any thoughts on  
13 that concept before we discuss the merits  
14 generally of this issue? It was discussed some  
15 yesterday in International Subcommittee and there  
16 were some good thoughts there. I sat in on that  
17 for a while and I'm interested in the reaction of  
18 the other TPAC members to this. When I actually  
19 started running hypotheticals in my mind where  
20 someone would end up losing their opportunity in  
21 the Paris Convention it became hard for me to come  
22 up with a line of circumstances where it would

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1 actually be a problem because you figure if  
2 someone is filing a U.S. Application that gets to  
3 registration in 6 months, it's probably going to  
4 be a 1-A application where they file their proof  
5 up front. If they go 1-B, it would be almost  
6 impossible them to get through in time. Which  
7 means that unless they're lying or mistaken that  
8 they have a usage date that predates their date of  
9 filing and if that's the case it just seems like  
10 the entity that the Paris Convention writes is  
11 rarely going to be in a circumstance where they  
12 can win. So even if we put them in a position to  
13 have to file a petition to cancel, they're rarely  
14 going to look at it and say, yes, we can win that.  
15 Or at least they wouldn't know that they'd have to  
16 gather information through discovery to find out  
17 that it would be difficult to win. So it was just  
18 hard for me to see.

19 MR. JOHNSON: Not if you had an intent  
20 to -- application.

21 MR. FARMER: Those wouldn't tend to get  
22 through in 6 months.

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1 we were not going to put them in a position of  
2 filing a cancellation petition, you'd have to stop  
3 before publication.

4 MS. BERESFORD: Right.

5 MR. FARMER: So I don't know what  
6 percentage of applications get to publication or  
7 approved for publication within 6 months.

8 MS. BERESFORD: Three percent right now.

9 MR. FARMER: That's going to climb.

10 MS. BERESFORD: It's going to climb.

11 MR. FARMER: And I don't think we want  
12 to slow down our system that Lynne has worked so  
13 hard to speed up.

14 MS. BERESFORD: That is definitely a  
15 consideration that it's going to add to our  
16 pendency.

17 MR. FARMER: To take us into TPAC, I'm  
18 not sensing anyone throwing up stop signs saying  
19 that we should try to stop now and keep things  
20 from going to publication within 6 months. Does  
21 anyone see that differently?

22 MS. BERESFORD: We'll look more into the

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1 legal -- we'll get an official legal opinion if we  
2 can and we'll talk to WIPO about this and see if  
3 they have any sense of how this particular clause  
4 of the Paris Convention operates in countries  
5 around the world.

6 MR. FARMER: Shall we go on to the next  
7 issue? Hearing no objection, we're off to V,  
8 report of recent changes/events, A, consistency  
9 mailbox.

10 MS. BERESFORD: Our consistency mailbox.  
11 That is a mailbox that we put up. We put out an  
12 announcement about it, and in limited  
13 circumstances where it's the applicant that it  
14 believes that it's getting inconsistent treatment  
15 in two of its applications or in an application it  
16 recently published in a recently registered mark,  
17 they can email the mailbox and under the procedure  
18 we've set up we will put together a little  
19 committee that will look at the complaint  
20 essentially. This was an attempt, and at the  
21 moment it's very limited as to who can file into  
22 this mailbox. It has to be an applicant with two

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1 applications or an application -- or three  
2 applications or something, or a recently  
3 registered mark can do this. We limited this  
4 because over the years probably the most  
5 consistent quality complaint we've had is our lack  
6 of consistency and we thought here's a possibility  
7 to actually start addressing this in another way.  
8 But we didn't want to make it too easy because we  
9 weren't sure we wouldn't get a thousand things  
10 dumped into it and we want to be prompt in  
11 addressing these issues. So we've very narrowly  
12 defined what could come into the mailbox, and as  
13 of last week we had two items in the mailbox. Now  
14 we have four. It opened on the last day of  
15 September and we're now 20 days into October and  
16 we have had four items in the mailbox which I  
17 assume we're dealing with in the way that we said  
18 we would. So I'm just giving the committee a  
19 heads up on this what we thought was going to be  
20 maybe the flood of complaints has turned out to be  
21 the trickle. Of course, it may be just that  
22 people haven't -- we sent out a mailing about this

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1 to all the people who are on our trademark mailing  
2 list. We have several thousand on that mailing  
3 list. We sent that out. We put out an  
4 announcement about it, et cetera, but sometimes it  
5 takes a while for people to figure out that this  
6 process is available. But just to let you know,  
7 we haven't had a lot of action in the consistency  
8 mailbox as yet.

9 MS. PEARCE: Lynne, we were talking  
10 about this one at lunch which is one of the great  
11 virtues of lunch, you get lots of different points  
12 of view, and one thing that came up was that those  
13 of us who've had issues with this in the past  
14 usually have been able to work them out fairly  
15 easily with the examiners. Is there a requirement  
16 that they discuss this with the examiner first or  
17 is it encouraged that they discuss it with the  
18 examiner first before they go to the consistency  
19 help line?

20 MS. BERESFORD: You mean in terms of our  
21 announcement? Everyone is always encouraged to  
22 talk to the examiner first because if you can work

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1       it out with the examiner then your problems are  
2       solved. Sometimes you have two different  
3       examiners and you can't get the problem solved  
4       easily and that is again something that we get  
5       occasional complaints about, examiner A won't do  
6       what examiner B is doing and they won't talk to  
7       each other and they both insist they're right and  
8       so on. So this was one of the objects of this  
9       mailbox, although again business hasn't been good  
10      in the consistency mailbox which I'm happy about.  
11      But we do encourage the applicants to talk to the  
12      examiner first.

13               MS. COHN: That was actually in the  
14      announcement itself, that encouragement. Also  
15      this is limited to substantive issues and we  
16      specifically excluded identifications of goods and  
17      services issues because those things generally are  
18      worked out between the examining attorneys and  
19      that would be just a humungous flood into the  
20      mailbox if every --

21               MS. BERESFORD: Although if business  
22      doesn't pick up, Debbie --

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1 MS. COHN: Actually, Lynne, and Cynthia,  
2 you said that four messages were in that mailbox.  
3 Actually one of those messages was from an  
4 internal examining attorney just simply copying  
5 the mailbox on a message to this manager, so  
6 really it's even fewer than four.

7 MS. BERESFORD: So we're not doing too  
8 well on the consistency mailbox business. Again  
9 the plan was that if we went through a period of  
10 time and we didn't get much response from the  
11 public to this mailbox, we'll expand the criteria  
12 so that more things can come into it because again  
13 we want to expand what we consider and when we  
14 talk about consistency we want to keep moving the  
15 bar up and getting the feedback.

16 MR. FRIEDMAN: Since business is slow,  
17 do I hear a motion to -- consistency mailbox or do  
18 we wait a few months? I know the first two -- was  
19 the fourth one earmarked to the committee or is it  
20 still being --

21 MS. COTTON: I think it just came in  
22 today so I don't think anyone has looked at it

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1 yet.

2 MS. BERESFORD: So we encourage you if  
3 you encounter inconsistencies in your practice,  
4 please feel free to email the consistency mailbox.  
5 We'll be happy to hear from you.

6 MR. FARMER: Shall I go on to the next  
7 item?

8 MS. BERESFORD: Rule packages. I'll  
9 turn this over to Sharon. We've talked about  
10 almost everything that's in progress. Is there  
11 anything?

12 MS. MARSH: There's not a lot to report.  
13 We talked about the accelerated examination rule  
14 and a certificate of mailing rule. Earlier this  
15 year we issued notices of proposed rule making, a  
16 housekeeping package, and some rules on signature  
17 requirements, most of that just codifying current  
18 practice, and we're developing responses to the  
19 comments and are moving forward with the final  
20 rule and the committee of course will get a copy  
21 of the final rule at the appropriate time.

22 The only one I think that's still

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1 pending is the proposal to change the request for  
2 reconsideration after final procedure. If you  
3 recall, our initial proposal was that you have to  
4 use TEAS and respond within 3 months or request  
5 for reconsideration after final. Response to that  
6 was pretty uniformly negative and we're still  
7 considering what options we should move forward  
8 with.

9 MR. FARMER: Anything in response to  
10 that? Legislation?

11 MS. BERESFORD: I think we already had a  
12 legislation report from John Dudas.

13 MR. FARMER: We can check that one off?

14 MS. BERESFORD: Yes, we can check it.

15 MR. FARMER: Are there any questions  
16 from TPAC members, if any, on any other issues  
17 before the office? Any other information that  
18 Lynne sent out or other things?

19 MR. LOCKHART: I do not have anything  
20 else.

21 MR. FARMER: In that case, let's go to  
22 VII. Are there any members of the public who've

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1       joined us or other who work for the office who  
2       want to make any comments or pose any questions to  
3       TPAC to the folks here? In that case, I will  
4       thank you all for coming. I want to thank all the  
5       folks at the PTO who put so much time and effort  
6       into preparing reports, talking with us on the  
7       phone, educating those of us who are new, and we  
8       thank you for your service and look forward to  
9       working with you more, and I'll declare the  
10      meeting to be adjourned, and after we can clear  
11      the room, TPAC would like to reconvene in  
12      executive session just to do some planning stuff.

13                               (Whereupon, at 3:00 p.m., the

14                               PROCEEDINGS were adjourned.)

15                               \* \* \* \* \*

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