

UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, February 20, 2009

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

2 (9:30 a.m.)

3 MR. FARMER: Ready? Alright. I'd like
4 to welcome all of you all to the Trademark Public
5 Advisory Committee Public Meeting and this will be
6 -- this is the first time that our meetings are
7 not only open to the public, it's been that way
8 for a while, but they're being web cast and
9 hopefully that will go technologically well. And
10 I know that everyone on TPAC is really excited
11 that we can be so transparent and be able to make
12 this available to folks interested in what we're
13 doing, presumably, around the world.

14 A few quick comments before I turn
15 things over to Lynne Beresford for some comments
16 and that is in addition to being web cast we have
17 the ability to receive questions and for those of
18 you who are watching remotely, you can send your
19 questions or your comments for that matter to
20 askTPAC@uspto.gov. Again, that's
21 askTPAC@uspto.gov.

22 Now this is a bit of a shake down cruise

1 for us and so I don't know that we will actually
2 be able to receive and process those questions
3 during this meeting today. My hope is that we
4 will grow that ability in the future, but TPAC
5 will look at all of the questions and comments
6 that are submitted and for those that are
7 questions, we will try to get those processed. We
8 don't yet know what sort of volume we're going to
9 see as far as those questions are concerned and so
10 that too will be a bit of a shake down cruise for
11 us but we do wish to be available to folks in that
12 matter.

13 As far as questions or concerning
14 comments, this is the pecking order that I intend
15 to follow with the meeting and that is after brief
16 presentations by whoever is speaking we will have
17 questions and comments from members of TPAC and we
18 see that as the primary purpose of our meeting
19 today, to have an interactive discussion with
20 people.

21 After we exhaust any questions or
22 comments that TPAC members have, we're going to --

1 if we have time available in that part of the
2 agenda, take any questions or comments from those
3 who have come here to attend the meeting who are
4 in the audience.

5 And after that, if we do receive them,
6 not sure they'll be brought in, we would process
7 and either just send in by email but again, I
8 don't know that they're going to be brought in to
9 us so we'll probably be handling those after the
10 fact.

11 Also, a quick comment on documents
12 posted on our website. That's another thing that
13 we are striving to do differently, in that, what
14 we have asked on TPAC is for anyone who will be
15 giving a presentation to us at this public meeting
16 to provide to us at least two weeks in advance the
17 written materials that they'll be providing so
18 that TPAC members have the ability to study those
19 so that we can be more effective as TPAC members
20 at our meeting.

21 And the folks at the office have done a
22 wonderful job in obliging on providing those and

1 we really appreciate in receiving those in advance
2 and those are actually posted on our website right
3 now. And for those of you watching from
4 cyberspace, if you want to see the documents that
5 have been provided, you just go to the USPTO
6 website into the TPAC area and you will see those
7 there. I believe there are four documents there.

8 Because of that, there will be a little
9 different dynamic at this meeting than at previous
10 TPAC Public Meetings in the past. We're not going
11 to entirely eliminate the ability of folks who are
12 coming to present to us to give us some opening
13 remarks, but we really are trying to change the
14 emphasis where we are provided information in
15 advance, the information is made available to the
16 public in advance, we promise to study it, and
17 thus we can really use more of our scarce public
18 time in order to have interactive conversations
19 and discussions with folks because we think that
20 will advance the issues a bit more.

21 So with that being said, I'd like to
22 turn things over to Lynne Beresford, the

1 Commissioner of Trademarks, to make a few opening
2 remarks; Lynne.

3 MS. BERESFORD: Thank you very much,
4 John. First of all, welcome to all of you and
5 welcome to our public for our first ever web cast.
6 Second, I have had some guidance from the folks
7 that ran the web cast at the Patent Meeting and
8 that is please when you are speaking, as a TPAC
9 member or as an audience member, please speak into
10 the mic.

11 If you don't do that your voice is
12 liable to disappear and you will be someone that
13 can't be heard by the folks that have tuned in to
14 the web cast. So please be conscience of turning
15 your microphone on and speaking into it.

16 I'm just going to give a brief overview
17 of the news as we see it right now that might be
18 of interest to TPAC that is not in the documents
19 that we shared and put on the website. Of course,
20 I have to say we're meeting our pendency goals.
21 This is something of great interest to everyone.
22 Our first action pendency is 2.8 months and our

1 final action pendency is a little over 14 months,
2 including suspended and inter partes cases.

3 Perhaps the more interesting news right
4 now is economic news. The office sees a
5 continuing downward trend in the filing of
6 Trademark applications. You may remember that in
7 fiscal year 2008 we had 401,000, slightly more
8 than 401,000 applications. Trademarks believe
9 that we were going to have a decrease in filings
10 in FY2009, the year that we're in now, and so we
11 forecast 390,000 level of filing.

12 We have since, again, predicted a
13 decrease in filings. We did this because at the
14 end of January we learned that the gross domestic
15 product, the GDP, had declined by 3.8 percent and
16 GDP is a leading indicator for Trademark filings.
17 So at this point we have revised our filing
18 estimates for fiscal year 2009 to 363,000 classes.

19 Of course, when we revise a filing
20 estimate, the other thing that we have to revise
21 is our income estimate because the two are
22 inextricably linked. However, even with our lower

1 estimated fee revenue, we expect, the Trademark
2 Organization expects to end the year with a
3 surplus.

4 We came into the year with a sizeable
5 surplus and we will believe that we will -- we are
6 in very good economic shape to weather the
7 economic storm that we're currently in.

8 In addition, the office has a relatively
9 lean examining core. The examining core has been
10 shrinking in size for the last three years and I
11 believe it's the right size core for the work we
12 have to do.

13 However, having said that, we are taking
14 what we think are steps to conserve the resources
15 of the office and to ensure that we're doing the
16 right thing, whatever the economy may do.

17 Let me give you some examples. We
18 recently capped the examining attorney production
19 bonus at outstanding; we didn't end the bonus but
20 we capped it at a much lower level because
21 management believes we no longer need to
22 incentivize super high production.

1 In addition, we've canceled some travel,
2 we've canceled our off sight management
3 conference, and done a few other things in order
4 to conserve fee revenue.

5 We didn't have to do this in terms of
6 conserving fee revenue, we think we have enough
7 money; we could have done these things. But in
8 terms of the long term outlook, we think it's very
9 important for us to manage conservative -- manage
10 our resources very conservatively at this point.
11 So we're taking those proactive steps.

12 On to another topic; next week we're
13 going to have customer service training. I'm a
14 big believer in excellence and good quality and so
15 one of the things we're going to do is have
16 customer service training for all Trademark
17 employees, including our examiners, our folks in
18 TAC, everyone. And this training will be targeted
19 to the particular areas that are being trained.

20 We've heard some complaints about
21 unreturned phone calls and we're hoping that this
22 customer service training will help us be better

1 in that area.

2 We're also having, in conjunction with
3 the training, a first ever Trademark open house.
4 All units within Trademarks will have a booth and
5 employees can come and meet the folks that work in
6 Trademarks. It might not fit into their daily
7 routine due to the size of the office and due to
8 our workload, lots of people don't know what other
9 parts of the office do and we hope this will help
10 bridge that gap.

11 Now let me turn to legislative updates
12 that concern Trademarks. As you know we have a
13 Trademark work at home program, a geographic
14 pilot. We have approximately 20 people working
15 remotely. And as you also may recall last year
16 there was S-1000 which contained language to allow
17 the USPTO the discretion to reimburse for travel
18 expenses when employees voluntarily move out of
19 the area and their official duty station changes.

20 At the end of the session, of course,
21 all bills died. But we have learned the key
22 players and both the House and the Senate want to

1 see telework legislation passed. It makes good
2 business sense to have telework.

3 And so telework legislation, we think,
4 is slated to be introduced in the Senate sometime
5 shortly after President's Day, probably in March.
6 And we are being told that the sponsors of the
7 legislation will be Senators Akaka, Voinovich, and
8 Landrieu. The language in the bill will be
9 similar to that in section 10 of S-1000.

10 In the international affairs area, the
11 fourth round of negotiations on ACTA, that's the
12 Anti Counterfeiting Trade Agreement, has -- took
13 place in Paris in December. ACTA is an effort to
14 combat global infringement of IPR, particularly in
15 the context of counterfeiting and pirating, by
16 increasing international cooperation. It's
17 reported that steady progress has been made on
18 ACTA. We had a Trademark Trilateral meeting and
19 agreements have been made to expand the number of
20 folks that can join our trilateral id list. So we
21 will soon be adding some other countries id's to
22 that list.

1 The Singapore Treaty of -- on the law of
2 Trademarks will enter into force on March 16th.
3 I'm very happy about that. I think it is yet
4 another treaty that is aimed at simplifying the
5 life of Trademark owners and making it easier to
6 obtain and maintain Trademark rights throughout
7 the world.

8 On the China front, the Joint Committee
9 on Commerce and Trade, the JCCT, IPR working
10 group, resumed meetings in September. This last
11 -- the last IPR working group was held in December
12 of 2006, just prior to the filing of the WTO case
13 against China.

14 In October, under Secretary Dudas,
15 visited China and signed an MOU in the field of
16 Trademarks with the State Administration for
17 Industry and Commerce and we will be working with
18 SAIC to develop a yearly work plan of cooperative
19 programs.

20 We are currently working with the China
21 Trademark Association. OIPPE is working with them
22 to co-host a program on how to file a trademark in

1 the U.S. and in China. We expect the China
2 Trademark Office will participate in this program.

3 Also on the international front, we
4 recently hosted a Trademark Foreign
5 Examiner-In-Residence training for the Brazilians
6 and the Indians and we have 10 officials here whom
7 we had for a two week training process that was
8 very, very successful.

9 Finally, let me just close by saying
10 I'm, of course, open -- I'll be here for the
11 entire meeting. I'm open for questions if there
12 are questions and we welcome TPAC's participation.
13 Your work is critical to helping the U.S. Remain
14 a world leader in IP, so thank you very much all
15 of you for your support.

16 MR. FARMER: Lynne, thanks for your
17 comments. We will now turn over the floor to John
18 Owens who is the CIO of the USPTO for some opening
19 comments then we'll have some discussion. And
20 John, I see I think I have the remote here. Do
21 you need a remote for something?

22 MR. OWENS: I was not going to display

1 any slides today. I was going to -- as you stated
2 in the beginning, John, I figured people have read
3 the presentation. I was going to mostly answer
4 comments --

5 MR. FARMER: Okay.

6 MR. OWENS: -- about it. But I can give
7 a high level.

8 MR. FARMER: Maybe just a few opening
9 minutes and then we'll jump right in. Thanks,
10 John.

11 MR. OWENS: So to continue the
12 conversation we had last time about the current
13 state of affairs in the CIO Shop and supporting
14 the electronic infrastructure that all examination
15 for both Patents and Trademarks uses and the
16 neglect that it happened over previous years.

17 As a Roadmap of transformation was
18 created, late summer of last year, and was
19 implemented at the beginning of this fiscal year,
20 and there were nine major initiatives. Everything
21 from organizational strengthening and training the
22 CIO's, employees, and filling its ranks which were

1 down some hundred, a little less than a hundred
2 people, to restoring our confidence in our network
3 but replacing ten plus year old equipment, as well
4 as, ten plus year old hardware that supports some
5 of the systems. As well as doing things like
6 enhancing the help desk response and disaster
7 recovery.

8 So the four major goals of this effort
9 was to stabilize, consolidate, optimize, and
10 maintain our current environment and create a
11 solid infrastructure on which to build further
12 evolutions of the product that would support
13 Trademark and Patent processing.

14 So since the beginning of our fiscal
15 year, which starts in October, we have started 40
16 projects. We have installed an industry based
17 system development life cycle as defined by IEEE
18 and we are managing those projects under that
19 framework, just like there is a process to
20 evaluate a Trademark there needs to be a process
21 by which CIO can do their work and it's
22 repeatable.

1 And some of the major mile stones that
2 have been completed since then with the help of
3 the CFO's office and procurement, we have
4 established what's known as the PTO Net III
5 contract to purchase and replace every last piece
6 of telecom equipment in the building that supports
7 our network, which was very old.

8 This was done in a very short amount of
9 time. Usually a procurement of this size would
10 take a year. It was done under six months and
11 done with an incredible amount of cooperation.

12 That first order has been placed on that
13 and we are going to proceed with replacing those
14 portions of the network that fit our three year
15 plan as described in the Roadmap. We have
16 launched an automated information system, or AIS
17 Swat Team that has started 11 out of the 20
18 evaluations that they were planned to do this
19 year, some of which involved Trademark systems
20 like TDR and TESS.

21 We have decided to upgrade our storage.
22 The storage was aging; 18 refrigerator sized racks

1 almost just slightly under a petabyte worth of
2 storage will be replaced by a much more efficient
3 four racks of refrigerator sized racks of
4 equipment, freeing up space, power, and cooling
5 issues that we are experiencing.

6 We had planned to move all of our data
7 back up to Boyers, Pennsylvania, where we have our
8 offsite. We hit a small snag there; we started
9 moving equipment and realized the floor that was
10 installed in the late 1950's couldn't support the
11 weight so we had to upgrade the floor. It was
12 kind of a gotcha we didn't know about. We do
13 discover things. And we repaired that floor and
14 are progressing now.

15 We're putting the data, as well as, the
16 first failover system which was TRAM, which is a
17 foundational system of Trademarks; was the first
18 to be tested between the two buildings east and
19 west here in Madison that fail over worked and for
20 independent tests. And now we will move back to
21 Pennsylvania as well. And we have upgraded 13 of
22 our AIS's onto modern platforms and databases

1 because they were on older platforms that were no
2 longer supported by the companies that produced
3 them.

4 At a very high level, we have hit a
5 couple of major snags. We have completed
6 staffing, basically an accounting of our staffing
7 skill, sat and realized that much of it was not up
8 to par. I would like to instill what I had
9 outside of this organization, which is a mandatory
10 40 hours of training a year.

11 And as part of that, we realized that we
12 had a major gap in how the CIO manages contracts;
13 everything from project management to task order
14 management, and we have instilled a program by
15 which we are training not only everyone in our
16 organization and our customers that deal with us
17 with how to do this work but also how to work
18 inside of our systems development life cycle I
19 spoke to earlier.

20 Also as part of this we've established a
21 project tracking system using Microsoft Enterprise
22 project management, which is open to folks at

1 Trademark, as well as, our accounting system which
2 is based on a product called EIS, so every
3 transaction of money in and out of the CIO is now
4 readily available to not only ourselves but our
5 customers. So that level of transparency I
6 thought was very important to bring since it had
7 not been there in the past.

8 I could tell you that our morale
9 improves. We were the first organization to meet
10 our goal for the combined federal campaign,
11 something in previous years the CIO had not met.
12 For those of you that don't know it's charitable
13 contributions by employees to what I would term as
14 thousands of charities.

15 CIO in the previous years had not met
16 their obligation. We not only met it this year,
17 we exceeded it at 110 percent. We were the first
18 organization to do so here and people don't give
19 if their not happier. So this was definitely a
20 sign.

21 Productivity has improved and we've even
22 gone to the extent of now this month allowing our

1 own people that have been providing telework for
2 years to other organizations, like Trademark, to
3 participate, a select number of them, to
4 participate once a week. So that was also a big
5 morale boost. Now you have to remember that well
6 trained happy people do better work. So it is --
7 this plan was a holistic healing effort for the
8 organization.

9 We have uncovered even more of the ties
10 between systems that I had spoken to earlier.
11 Last time we spoke I had a chart of how things
12 were tied together; it was like a mish mash
13 alliance. We continue to uncover more than that,
14 but the AIS Swat Team is continuing to break apart
15 those links and really determine why servers are
16 configured the way they are and put their
17 configuration into a configuration management
18 service.

19 We are using the ITIL model for that
20 effort and that's also an industry standard. And
21 one of the major issues that we have found is our
22 data center was at 96 percent of power and our

1 network was similarly at the upwards of above 90
2 percent utilization.

3 Now that may not sound troublesome but
4 you have to understand that when hardware is
5 turned down there's a big power spike and it's,
6 you know, as things charge up, which means we
7 couldn't turn on the data center all at the same
8 time, and as load goes up power utilization goes
9 up. So we are on a very scary edge there. We did
10 not realize that that was the way it was.

11 We are working with our facilities and
12 our CIO Shop to make changes to allow us to move
13 systems -- leave the systems that need to be on
14 fully redundant power and take systems off that
15 don't need to be on standard power. Our network
16 capacity is also being addressed in PTO Net III.

17 This does cause a little bit of a delay
18 on some things, for example, the upgrade of the
19 storage. There's literally not enough power to
20 plug in those four new units to back things up.
21 That back up takes weeks. A petabyte isn't
22 something you like back up in a few minutes. And

1 because of that we are having a very careful
2 choreography of what has to move into the data
3 center, get plugged in, get turned on, and what
4 needs to move out.

5 As we upgrade and we free up power,
6 going from 18 very large servers, racks of
7 servers, to four, that type of effort, of course,
8 frees up power, frees up cooling. So it's a very
9 important effort for us, for the infrastructure.

10 Last but not least, and I already
11 mentioned that; let's see. Enterprise
12 Architecture; we have made some changes in the
13 Enterprise Architecture model from previous CIO's.
14 I am fully embracing commercial off the shelf
15 products for where they make sense unmodified,
16 just configurable, commercial off the shelf
17 products.

18 I'm also heavily embracing the use of
19 multiple tools to do the job, so there is no
20 longer a necessity to wait for one data storage
21 system throughout the entire environment. That
22 doesn't make sense to me; it's the right tool for

1 the right job, not the same tool for every job.

2 So as part of our Enterprise
3 Architecture initiative, which is also a mandate
4 from OMB, we are incorporating those changes and
5 how we do business and business with our
6 customers.

7 The most important change we've made of
8 late, the Roadmap addresses how the organization
9 is going to heal the infrastructure so we can
10 carry forward. What it does not address, which is
11 critical to the long term mission of the USPTO, as
12 well as Trademarks, is how we are going to address
13 the systems themselves. And we have recently
14 started in the last couple of months, an effort
15 called the SITP or Strategic Information
16 Technology Plan.

17 Now what that does is it drives the
18 business and technology to develop along with the
19 customer a strategy, and that strategy be
20 developed into a plan and that plan drive the
21 budget. In years past, it was budget drove
22 planning; that's backwards.

1 We need to have a good business
2 technology strategy that we can combine into a
3 plan and then plot for series of evolutionary
4 steps over the next few years. And the SITP will
5 be the end to end place where you will be able to
6 find the Roadmap from both Trademarks, as well as
7 CIO, on how the Trademark systems, the Patent
8 systems, and the other systems in the agency will
9 evolve over time.

10 And that has just started, that is in
11 its infancy. It's unfortunate it hasn't existed
12 since about the year 2000 here, and I do believe
13 that it will be the crux of how we will manage the
14 evolution of our systems in the future.

15 Now, part of the SITP will be the
16 Roadmap because we do have to fix the foundation
17 we're building the building on; it does no good to
18 build a building on top of a crumbling foundation
19 and the building happens to fall down. But it
20 does lay out a very good solid strategy on how we
21 will tell you about how we're going to evolve in
22 the future. That's about the high level.

1 MR. FARMER: Okay. Thanks, John. I
2 appreciate it. For those who don't know, TPAC
3 divides itself into subcommittees and at sometimes
4 within subcommittees we have champions and we do
5 have a subcommittee that's focused on electronic
6 issues and also on quality and our subcommittee
7 for that is Makan Delrahaim who can't be here this
8 morning, unfortunately, and Jeff Storie and Tim
9 Lockhart. And so what I thought I'd actually do
10 -- Jeff and Tim, I don't know if you all have any
11 questions or comments you wanted to make first, if
12 not I have some questions I can ask but I thought
13 I would defer to you all first since you are the
14 members of the subcommittee for that area.

15 MR. STORIE: Thank you John; both Johns.
16 As I look at your staff, and currently your office
17 is structured for 550 MTE's, right now your
18 current staffing level is around 450; isn't that
19 right?

20 MR. OWENS: Mm-hmm.

21 MR. STORIE: From what we've seen in the
22 presentation you've got -- you're short 96 people

1 that you would -- or so that you'd like to have
2 but out of that there's 50 or so of those that
3 have been identified as critical, as mission
4 critical.

5 Could you speak to, one, the importance
6 of those 50 spots in terms of your -- achieving
7 the goals that we're talking about in the Roadmap,
8 and two, the challenges that you're up against in
9 terms of finding those people and dealing with
10 those issues and procedures -- what's your
11 challenge and what the terms of being able to
12 being able to fill those spots in a timely manner?

13 MR. OWENS: Sure. It's important to
14 realize that, yes, my organization has 550
15 positions approximately, 450 which are filled, a
16 little over a hundred of those positions are not
17 technologists at all. My organization also houses
18 the Information Dissemination Organization so when
19 you call for a registered trademark or a
20 registered patent or you have -- need information
21 about a publication that you may purchase or a set
22 of data that you purchased, that comes from my

1 organization as well and that's mainly because the
2 Chief Information Officer Office is also in charge
3 of dissemination.

4 I have two main goals in my PAC. The
5 first is allow the processing of Patents and
6 Trademarks to continue; so examination is number
7 one. I have to, you know, support the system so
8 examination can go on.

9 The second one, number two, very close
10 behind, is the dissemination of information to the
11 public, and so about a hundred of my folks, a
12 little over a hundred of my folks, do that. We
13 keep about 350 people for the approximately 200
14 Automated Information Systems that we have here.
15 So that's not a lot. That's my first point.

16 Out of the 96 or so there are about 56
17 that I have identified and clearly gone through
18 with HR and scoped out their position descriptions
19 and what they do. It doesn't mean the others
20 aren't important, it just means that in the first
21 half of the year I've gotten half of them aligned
22 where we saw a skill gap. So let me tell you a

1 little bit about the skill gaps that I'm trying to
2 fill.

3 Most of these are heavy technology
4 positions. Whether they're expert project --
5 senior project managers or developers, which is a
6 little unusual from what I understand in the
7 federal government, but I've uncovered a couple of
8 the things in my investigations that would lead me
9 to need developers so I'm going to talk a little
10 bit about that; approximately 14 of these
11 positions are heavy developers, people that
12 actually write code.

13 And it's really a pretty basic thing. I
14 go to a contractor and I say here are my
15 requirements, I need you to build me X. And it's
16 true that in the past, and I think we as an
17 organization, Trademarks as well as CIO, need to
18 work on clarifying requirements and how those will
19 be managed, but even if we wanted a Cadillac and
20 we defined a Corolla and they delivered us a
21 Corolla, well that's an issue and we need to
22 address that and we are.

1 But the fact of the matter is that the
2 Corolla that we got delivered falls apart. It's
3 not of the right level of quality. And it's very
4 difficult to take a deliverable and look at it and
5 evaluate it if you don't have the skill set to
6 actually build it yourself. You don't bring a
7 software developer your car and ask it how the
8 engine is running. You don't bring in a mechanic
9 or a project manager with no ability to develop
10 software and ask it was that a quality software
11 deliverable? It's just you don't have the skill
12 to make that determination.

13 So we are -- I am trying to hit a very
14 heavy influx of technology oriented, technology
15 skilled people. Software engineers, software
16 developers, middle ware engineers, technologists
17 that deal with establishing hardware, bringing in
18 skills like using more modern web tool type style
19 technologies, and so on.

20 So the orientation of the 56, though
21 there are some project managers and some other
22 basic necessities in there, in large part orient

1 just toward heavy technologists, which we have
2 over the years removed from our environment. And
3 I think we need them back. I think for us to do a
4 good job and to measure the quality of the
5 products and services we deliver, we need someone
6 here that can look at that -- those deliverables
7 and say they are the correct deliverables, they
8 are of sufficient quality.

9 Now also linked to that we are modifying
10 contracts to make sure that the proper
11 deliverables are being made but the sheer lack of
12 knowledge inside of CIO right now, which rests in
13 a very small number of remaining technologists, I
14 could count them on a hand, has to be changed.

15 Now as far as challenges in the area, I
16 think that as we have gone through the beginning
17 part of this year we have found a few good people
18 to hire, but certainly, and this is going to sound
19 a little odd, but company failures in the
20 surrounding area, as well as imminent lay offs
21 from industry, have provided us an opportunity to
22 hire now.

1 I don't want to say that that's good for
2 anybody because I understand that it's not but it
3 is an opportunity for us, though there are
4 financial constraints, which I'm sure we'll go
5 over later, about -- that are placed on our
6 ability to hire. And those have to be weighed as
7 well because I need to be able to pay the folks
8 that I get. Does that answer your question?

9 MR. STORIE: Yes it does.

10 MR. OWENS: Probably a little too much.

11 MR. STORIE: Thank you John.

12 MR. LOCKHART: Well first of all, I just
13 want to thank John and his colleagues for the hard
14 work that they put in getting ready for this
15 meeting. We had, I think, a great subcommittee
16 meeting yesterday and I appreciate, John, you and
17 your team coming in and briefing us at great
18 length and great detail about all of the various
19 initiatives that you've got going and I think that
20 enabled us to get a much a better understanding of
21 exactly what the problems are and as you
22 acknowledged they certainly are daunting for a

1 number of historical reasons.

2 And we're so pleased with the progress
3 that you've been making and we look forward to
4 hearing your reports in the future about how that
5 progress continues to go. With respect to the
6 strategic IP plan, do you have a target date for
7 releasing that?

8 MR. OWENS: The first draft crossed my
9 desk this week and I certainly don't want to
10 release it yet; it needs a little bit of work.
11 The bulk of the work has to do with working with
12 the business units to incorporate their needs and
13 that should take several months. I don't have a
14 final date.

15 I would like a rough draft sharable with
16 the business units that don't have the sections
17 and 6(a), 6(b), 6(c). 6(b) I believe is the
18 section for Trademarks to be filled out. And that
19 should probably take two or three months.

20 MR. LOCKHART: So we're at the end of
21 February so you're thinking maybe May?

22 MR. OWENS: I would say mid summer would

1 probably be a better estimate by the time
2 everything goes through, but I'll be happy to
3 update you on that.

4 MR. LOCKHART: Okay; great. And did I
5 understand you to say that the strategic IP plan
6 will largely incorporate and replace what we're
7 calling now the Roadmap?

8 MR. OWENS: No the Roadmap will be a
9 part of the strategic plan; it's Chapter 5, I
10 believe.

11 MR. LOCKHART: Okay.

12 MR. OWENS: See, I see a nod in the back
13 there. And basically the difference is here's
14 what we're doing to maintain and fix the
15 infrastructure and then Chapter 6 is what are we
16 doing to enhance the end to end systems that are
17 used by examiners and the processing of Patents
18 and Trademarks.

19 MR. LOCKHART: Okay; great. So we'll be
20 working largely from the Roadmap from now until
21 you get the strategic IP plan out, correct?

22 MR. OWENS: Yes.

1 MR. LOCKHART: So we'll be looking at
2 the mile stones that are in the Roadmap and once
3 the strategic IP plan comes out that will contain
4 the mile stones going forward and sort of have
5 target actions and dates setting --

6 MR. OWENS: And costs.

7 MR. LOCKHART: And costs; okay.

8 MR. OWENS: It's going to be used --
9 again, it's developing the strategy and then from
10 that strategy the schedule and then the budget. I
11 mean not doing it in reverse.

12 MR. LOCKHART: Okay.

13 MR. OWENS: First the plan, then the
14 budget.

15 MR. LOCKHART: Okay. Well we look
16 forward to seeing that document. I'm sure that
17 will be viable just as the Roadmap has been viable
18 to us; and I'm sure to you and your team.

19 MR. OWENS: Oh, yes.

20 MR. LOCKHART: Thank you again.

21 MR. OWENS: Thank you.

22 MR. STORIE: John, one more thing. In

1 looking at the approach that you've taken, which
2 we applaud, because our concerns after having --
3 after the analysis, or after I guess the
4 assessment of the system that we learned of in
5 August, we were all very surprised to find the
6 deficiencies that we have had -- hardware and the
7 physical infrastructure. But it's also become
8 painfully clear that we've had a problem as well
9 in the overall ability of the OCIO Shop to be able
10 to handle the systems we have and to continue the
11 operations of the Trademark side.

12 This organization takes great pride in
13 what -- accomplished -- and what has gone on these
14 last few years and the service levels that we
15 retain on the Trademark side but we're also
16 incredibly dependent upon the IT structure in
17 order to deliver those things.

18 The efficiencies we have been able to
19 achieve have been two fold; the quality of our
20 workforce, the quality of the examiner core
21 combined with this increase in technology and
22 we're all real nervous that we're going to come to

1 a place where we're going to start losing the
2 edge, we're going to start losing it because we're
3 now going past -- we're, I guess crossing those
4 lines that say we can't keep this up anymore.
5 We're at critical max essentially.

6 I know that being a shop that's
7 independent, in a sense, of the Trademark
8 Operation and the Patent Operation, you sit in the
9 middle and both of these operations are your
10 customers. And as I look at the list, you had set
11 your goals on really a, sort of a four part list
12 to stabilize, to consolidate, to optimize, and
13 then the last one is maintain and enhance. To me,
14 that sort of becomes a list of five because
15 maintain and enhance -- enhance is the thing that
16 the business side -- we tend to look at first
17 because we're always looking at how do we improve
18 what we're doing. We're on this path to end to
19 end electronic examination so we're trying to --
20 and so I realize that from your perspective you're
21 stuck with this --

22 MR. OWENS: Legacy System.

1 MR. STORIE: Yeah, this Legacy System
2 says I've got to fix what I've got before I can do
3 an awful lot of things but we still have some
4 pressure to continue our excellence, to continue
5 this path. Can you talk a little bit about the
6 approach that we want to take? I know in your
7 program you talk about the -- we've talked about
8 the idea of collaboration with the business unit
9 and how you see that as being part of this
10 program.

11 Those first four parts we've got to do
12 in order to make this thing work and to maintain
13 what we have. At the same time, we've also got to
14 come into a new era of collaboration where we know
15 that the office on this side feels like they're
16 able to go to their supplier, the OCIO, and get
17 the stuff that they actually need and to be able
18 to have the kind of input into that process. And
19 I know we've talked a little bit about the
20 different views but I'd love to have you just
21 address this question of how are we going to
22 achieve collaboration?

1 MR. OWENS: Okay. It certainly isn't,
2 you know, if I didn't have that Legacy System to
3 deal with and in the situation that it's in, this
4 would be a much different conversation there
5 certainly. My background, where I came from, the
6 way I've been running this organization since I
7 got here is much more of a service.

8 I provide a service to the -- both
9 Trademarks and the Patent Examining Core. And
10 that service is the support of the technology that
11 allows us to process Trademarks and Patents. And
12 the reason I think I am partially independent, and
13 as the CIO Act was set up after -- Cohen, is
14 because the specialty of the creation and
15 maintenance of software is just that, a specialty.

16 And though I will tell you I will never
17 be the expert in patent examination or trademark
18 examination, it is important that I have a very
19 strong relationship with my customer and a very
20 collaborative relationship with my customer to
21 allow me to do the job efficiently and
22 effectively.

1 So you're right. The Roadmap, as I
2 said, the SITP covers the enhancements and the
3 future progress. The Roadmap, in and of itself,
4 in there says no new projects until mid year 2010.
5 Because some of the infrastructure is so fragile
6 in its current state, building a new floor on a
7 building where the foundation is literally
8 crumbling is not an effective use of money and any
9 new enhancements would of course increase the load
10 on that structure, then it can't support it.

11 I am at my peak now with over safe zoned
12 with networking, over safe zoned with power. I
13 have problems with cooling; I mean the
14 fundamentals, physical fundamentals of maintaining
15 and operating a data center and environment. But
16 I'm also at those very basic fundamentals with
17 software and systems that haven't been properly
18 maintained, that are in technologies that quite
19 honestly haven't been supported by their
20 manufacturers, if they still exist, in years.

21 So continuing to enhance them does scare
22 me a lot because even if I could enhance them, the

1 load that that would place on the overall system,
2 because we don't fully have documented how they're
3 tied together, is not predictable. And because
4 it's not predictable, and I am at such a peak
5 load, my nature to meet my number one goal of
6 continuing examination is don't put extra load on
7 it until I can figure out how it works.

8 Now, the Roadmap lays out a year and a
9 half worth of time that I needed to do that and
10 already I've made some discoveries as we talked
11 about before. So you're right. There are five
12 goals; the enhanced one is combined in the fifth
13 because there are some enhancements that I need to
14 do to gain efficiency.

15 But I didn't want to call it out
16 separately because I'm not doing a lot of it
17 because of the risk I just described. But the
18 SITP does talk about that evolution, those
19 enhancements, and the improvements that the
20 customer, Trademarks for example, would like to
21 make to the systems, that I would like to see to
22 the systems.

1 Because had this been a different
2 conversation where the Legacy System was strong
3 and it was not in such dire need of work, we would
4 be having a conversation about what priorities
5 would the businesses opposed to the outside like
6 to see built and then I would build them. And
7 that's where I'd like to get to. It's going to
8 take a little time to get there. We have to start
9 off slow, we have to fix where we are, but that
10 will come. And the SITP is an effort that was
11 already started so we can plan now because as you
12 know in the federal government the budgeting and
13 planning cycle is almost two years ahead of where
14 you actually get something done.

15 So we're at the right place. We know
16 some of the basics that need to get done. We have
17 evaluated several of our current systems and we
18 are proposing to the business -- this is the stuff
19 we need to change to the infrastructure, now what
20 do you need to change the environment to enhance
21 those systems. And then we will build them
22 starting, you know, next year.

1 So let's talk a little bit about
2 collaboration. In a service oriented environment,
3 and we are a service to our customers, I think the
4 customer has to take a very strong position in
5 helping this organization, not only to find what
6 the environment needs, but also how those things
7 get developed and work collaboratively with us to
8 get that done.

9 Now that relationship is being talked
10 about; that relationship is being talked about.
11 Lynne brought it to management counsel and I thank
12 Lynne for doing that. We are talking about that
13 actively right now. How are those relationships
14 and that relationship between the CIO and all of
15 the other business units, not just Trademark
16 being, you know, how is that going to be defined.
17 What role and responsibility are we going to have
18 between the different organizations? And I think
19 we all have our own opinion.

20 However, I think it was clear yesterday
21 in our conversation that having a process that
22 everyone sticks to, having a plan that we mutually

1 work together on, and having a collaborative
2 environment that draws a business unit at expert
3 with a heavy technology background onto our team
4 of technology, soon to be, I'm building,
5 technology experts is key.

6 Now the details of that has not been
7 decided; who will control what and so on. But we
8 are in a very difficult time because there is a
9 serious need, and I understand that need, from
10 both the public and Trademarks to enhance the
11 systems; but that has to be weighed and balanced
12 with the fact that those enhancements can cause
13 failures and have. And that's a difficult
14 position to be in.

15 MR. STORIE: Okay. Thank you very much.

16 MR. LOCKHART: I just have one follow
17 up, John, because I want to make sure I understand
18 how the two documents play together and what your
19 proposed schedule looks like. So except for any
20 what I call relatively minor upgrades that might
21 be covered by the Roadmap, basically then if
22 you're rolling out the SITP mid summer and you're

1 talking about then making upgrades based upon the
2 SITP starting in the middle of 2010, we're
3 probably looking at something around 16 to 18
4 months before your office would be in a position
5 to start doing some what I call significant
6 upgrades to curve Trademark electronic processing;
7 is that right?

8 MR. OWENS: From today?

9 MR. LOCKHART: Yeah.

10 MR. OWENS: Yes. That's pretty close.

11 MR. LOCKHART: Okay; great. I just
12 wanted to make sure I understood what your -- what
13 the schedule is.

14 MR. OWENS: The Roadmap said mid year
15 2010, which is about, well, a year from now, we
16 would actually start doing projects. So somewhere
17 around the 16 month mark before delivery of some
18 type of product isn't inaccurate. That's probably
19 in the ball park, of course, I don't have any
20 final schedules or anything else.

21 MR. LOCKHART: No, I mean, are you
22 talking fiscal year or calendar year to 2010?

1 MR. OWENS: Oh, I talk fiscal.

2 MR. LOCKHART: Fiscal; okay.

3 MR. OWENS: Yeah, everything in the
4 government's fiscal. They taught me that early
5 on.

6 MR. LOCKHART: Okay; gotcha.

7 MR. FARMER: John, I have a few follow
8 up questions that I can roll through quickly if
9 it's okay with you. I'm not as deep into it as
10 Jeff and Tim are but my basic understanding when
11 we were looking at the Roadmap from the beginning
12 was that it was roughly a five year remediation
13 process, probably about 200 million dollars.

14 What I would like to ask is, is it still
15 looking like it's five years in total time and I
16 want to figure out where we are in that snack, in
17 other words, when did that five year clock really
18 sort of start running and do you still see it as
19 five years at that point and thus when will we be
20 looking at as a wrap up date?

21 MR. OWENS: So you -- there's a bunch of
22 things that have to be taken into account. The

1 plan started fiscal year October '09; that's when
2 it started. It was a five year, 200 million
3 dollar plan. It hasn't changed significantly;
4 we've discovered some things, we've had to adjust
5 some time tables. We still think it could be done
6 in that time if the funding is available and I'll
7 let the CFO talk to that but that's language that
8 I've learned to use; if funding is available.

9 Now, if funding is not available,
10 obviously I have to slow things down. That's just
11 a fact of doing business though, each in our own
12 businesses. You'd like to be able to spend money
13 on things but if you're not driving revenue then
14 you'd have to make hard choices.

15 And so is the plan still accurate as far
16 as the cost, given any major change in the
17 economy, which I cannot predict, or the original
18 time table, if funded at the level that we asked
19 for, yes, we're still on track. Will outside
20 economic factors influence our funding and, or the
21 economy possibly driving up and down costs of
22 actual physical hardware and, or costs of

1 contracting services? Yes; those I cannot
2 predict. Does that make sense?

3 MR. FARMER: Yeah, that does. How are
4 you all, as an overall view, doing on hitting the
5 benchmarks in the Roadmap as you go along? Are
6 you pretty much hitting them on time or are you
7 running a little behind schedule?

8 MR. OWENS: Out of the nine initiatives,
9 I would say that six are right on where we wanted.
10 Seventh is not far behind and two are a little
11 lagging, but not more than a month or so. Most of
12 that is due to discovery, for example, as I talked
13 about before, we're moving up to Boyers all the
14 data. Well, we get the hardware there, we start
15 putting it in place and the floor starts to crack.
16 Okay; you know, we didn't know the floor was bad.

17 No one knew that the struts were put in
18 in the 1950's; they had rusted out and, you know,
19 because on a raised floor, you know, there's metal
20 posts that connect to the actual mountain, the
21 physical granite mountain, and through moisture
22 and everything else, they have corroded. So that,

1 you know, things like that.

2 Power; we didn't realize that we were at
3 96 percent power. There is no monitoring of power
4 in our current environment. We're changing that.
5 Had there been consolidated monitoring we would
6 have known that but that discovery causes us a
7 delay in moving equipment in and out as we need to
8 turn it on and off, instead of just at once
9 throwing in all of the new equipment side by side
10 with the old, moving the systems and data over,
11 and pulling out the old equipment.

12 We didn't realize we were going to have
13 to do that. But we are well along the way on the
14 bulk of the initiatives we have going. We report
15 to management counsel here regularly. Deputies
16 get even more regular bi-weekly notification and a
17 monthly presentation on our, I believe Debbie,
18 that's still going on; a presentation on how
19 things are going. And I think it's, you know, out
20 of the nine, I'll be quite honest, we've had nine
21 initiatives, it's not surprising to me out of the
22 nine a couple of them are lagging behind. In

1 fact, you know, it's not surprising at all.

2 So -- but I think we're pretty much on
3 track right at the moment. My biggest worry is
4 that balance of needing to do features and
5 functionality at the same time as we're replacing
6 infrastructure and, of course, now funding, you
7 know, that's actually -- funding is number one.
8 If you're asking me what keeps me up at night,
9 funding would be it.

10 MR. FARMER: Sure, well, that's on
11 everyone's mind now a days given the state of the
12 economy.

13 MR. LOCKHART: John, excuse me just a
14 minute. In yesterday's subcommittee meeting we
15 asked John and his team to give us in writing, you
16 know, mile stone by mile stone exactly where they
17 are, what they've completed, what they're still
18 working on, if any of the dates have changed, that
19 kind of thing and you should be getting that
20 within the next several days, of course, I
21 forwarded it along to the rest of the committee.

22 MR. FARMER: That's fine; yeah.

1 Sometimes my questions -- I appreciate that, Tim,
2 are aimed more towards helping the Trademark
3 community that may be watching at home so to speak
4 to see where we are as far as things are
5 concerned.

6 John, one thing that's a big desire of
7 TPAC is to eventually get the Trademark
8 application process entirely electronic soup to
9 nuts because to the outside who prosecutes
10 applications, it looks all electronic, but I
11 understand it's really not in all details and we
12 can't really get there right now because the
13 system has to be remediated first, and we
14 certainly understand that.

15 And I was curious as to whether you had
16 any thoughts as to whether when the remediation is
17 done, whether the system will then be able to
18 allow us to go to total soup to nuts electronic
19 application processing and if you had any forecast
20 as to around when we might be able to get to the
21 date when we could start moving to that.

22 MR. OWENS: Well, I think the date to

1 start new development, baring any financial
2 changes, is still mid year, fiscal year, 2010. As
3 we have evaluated the AIS, let's take TDR for
4 example, we've evaluated that system, we have
5 found that it has some serious issues, needed, you
6 know, have crashed several times a day. We have
7 already taken immediate action to resolve those
8 crashes, but the enhancements that are needed need
9 to be discussed.

10 The SITP will layout much better for
11 you, so I don't want to talk about schedule and
12 time wise, but the SITP will really outline the
13 Roadmap to get to end to end processing.

14 This Roadmap is to fix the
15 infrastructure. That lays the foundation to build
16 the building, or fix the foundation of the
17 building. The actual plan to get to end to end
18 electronic processing, I would hope to give you an
19 update on when the SITP is available and I've
20 already had the time to talk to Trademarks to get
21 their influence into that plan. Like I said, it
22 just started so we need a little bit of time.

1 It is my goal to get that processing
2 completed. End to end processing of both
3 Trademarks and Patents is, I believe, critical to
4 gain efficiency for the future. But again, you
5 won't see any significant effort until mid fiscal
6 year 2010, as long as the financials don't delay
7 that too much.

8 MR. FARMER: Got it. I realize that you
9 have a real complex juggling act right now given
10 what you've got -- and that you're so close to
11 capacity in certain areas.

12 Do you anticipate that your going to
13 have to have some times in the future where we
14 just shut the system down for an extended period
15 of time in order to make some switch overs because
16 certainly, you know, the Trademark community, you
17 know, there's last minute-itis out there with some
18 clients, waiting on, responding to office actions,
19 and just sometimes we attorneys can be guilty of
20 that too.

21 And I wanted to look ahead to see if you
22 see any of those coming and if so, how much

1 warning you think you might be able to give the
2 community so that we can try to get the word out
3 so that hopefully folks wont plan to be on it the
4 last minute during those times.

5 MR. OWENS: You know we actually had a
6 conversation about that. I know Debbie and Lynne
7 were in my office the other day along with Patents
8 and I was going over what are all of the details
9 that not only notify the unions because examiners
10 have to do work but also notify the public. There
11 will be some outages. We're hoping to put them on
12 weekends. I'm hoping to give somewhere between 60
13 and 30 days notice of those actions. And we are
14 working collaboratively together on those. We are
15 putting together a pretty comprehensive schedule
16 right now, particularly for the network
17 replacement.

18 Most of the computer hardware I can get
19 stood up side by side, tested out, and then do a
20 switch over in my normal maintenance publicly
21 announced maintenance windows.

22 But for replacing major network

1 components in the data center, which is one of the
2 first places, as well as the firewalls that touch
3 the outside, those will need to be done over an
4 extended period of time and I'm not talking weeks,
5 what I'm talking is, you know, we'll have a
6 schedule that says we're going to replace the
7 phone and a few pieces of equipment and we're
8 going to be done over an entire weekend. And we
9 are trying to hit the weekend time frame for our
10 maintenance schedule.

11 MR. FARMER: Okay. That's very helpful.
12 I have two other questions.

13 MR. OWENS: Sure.

14 MR. FARMER: One, as you know,
15 Trademarks is really pushing the Trademark Work at
16 Home Program and we think that's been really
17 successful. How do you see the Roadmap
18 facilitating the ability of that program to
19 strengthen and grow?

20 MR. OWENS: Well I'd say the number one
21 -- so it's all about the weakest link in the chain
22 and we talk about that in technology a lot. So if

1 you have a chain with, you know, a number of
2 links, the weakest one breaks first and if you fix
3 that one then the next one will break.

4 The first weak link in the telework
5 chain and the complaints we here most often from
6 teleworkers is the slowness of the system, which
7 is directly related to our aging network and the
8 amount of load on that network.

9 Now we are taking practical efforts to
10 stopping non- business oriented load on that
11 network and we're working with employee relations
12 for the entire agency in general to reduce the
13 amount of load on the network of non-business
14 load. In the mean time --

15 MR. FARMER: What does that mean,
16 non-business? Is this just casual web surfing
17 sort of stuff or --

18 MR. OWENS: Yeah. Some of it's a little
19 more than casual, you know, people like to stream
20 music and listen -- watch videos and so on. So we
21 are being -- we are taking efforts to get that
22 done right now; that will free up some space.

1 We also looked at the trend of how much
2 load placed on the systems and network by hiring
3 examiners or moving examiners offsite. This has a
4 lot to do with Patent hiring and I believe we can
5 squeak by with the changes that we are planning to
6 do with the points of failure in the network that
7 we have by this replacement effort that we have
8 going on.

9 So as PTO Net III evolves, because we
10 have PTO Net II, and I replaced the switches in
11 the critical areas where the load is bottlenecked,
12 as well as on the edge, the firewalls and the
13 servers; they are to handle the increased load.
14 We will be okay. With the number of hires and the
15 number of folks we want to put offsite to at least
16 maintain the quota, the status quota they have
17 today.

18 Now, they'd like to see that improve.
19 And over time, as we enhance and develop the
20 network end to end and finish installing PTO Net
21 III, which has a -- the bulk of it'll be done in
22 two years, but the complete, you know, program is

1 three years long, things will be much better.

2 To the desktop it'll be, you know, 10
3 megabit to a gigabit and that's, you know, quite
4 a, you know, it's a hundred -- increase in
5 bandwidth, as well as going completely fiber on
6 our backend which is much larger bandwidth than
7 most of our system has today.

8 MR. FARMER: The take away -- tell me if
9 I got that -- get this right from that is that
10 there's no doubt that once the remediation is
11 complete that the tele-home -- the Trademark Work
12 at Home Program will work just fine, it's just a
13 matter of how quickly it improves as you roll out
14 the changes that you have. So it's just a
15 question of how quickly we get there.

16 MR. OWENS: The purchase of bandwidth to
17 our major provider right up to the entire
18 infrastructure will be completely modern. There
19 won't be a business on the planet that's not
20 experimenting with something that's not released
21 to the general public that will have a better
22 infrastructure than we do.

1 I'm hoping at that point the complaints
2 I get are because local ISPs are bogging down and
3 not me. But right now I can't say that. There is
4 a lot of bottlenecks here in the agency.

5 MR. FARMER: Sure. I appreciate that.
6 Last one I have and that is you talk about how we
7 are just so close to capacity in some areas such
8 as power and I think network capacity may have
9 been the other one. What sort of threat does that
10 present to the system and it's availability and
11 it's ability to come back? Is it just that things
12 might slow down and not work well or does it
13 present a more serious kind of threat that things
14 could actually crash and stay crashed for a long
15 period of time?

16 MR. OWENS: I can't say that that threat
17 is not there. I mean we've experienced it in the
18 past.

19 MR. FARMER: Mm-hmm.

20 MR. OWENS: So as far as power goes we
21 did have a power problem last year which brought
22 down the systems, both Patents and Trademarks, for

1 several days. I mean that did happen and it was
2 what caused us to look back and perform an
3 independent verification validation of the power
4 system.

5 So that threat is there and it's real.
6 It happened. I can't tell you that it's not.
7 What I can tell you now is we've not only
8 conducted that study and understand how the power
9 is laid out but we also have a short, medium, and
10 long term mitigation plan.

11 And you know, that will free up some
12 power, remove some systems that don't need to be
13 on completely redundant power because we have --
14 not only do we have coming into here two different
15 power grids, but we have a power generator for the
16 entire data center and a backup power generator
17 for the entire data center. So that's a lot of
18 redundancy.

19 We are looking at ways of splitting it,
20 you know, maybe using two power generators in the
21 two network grids and temporarily living with a
22 couple of trailers with backup power generators on

1 them and so on.

2 And we are working to re-commission the
3 data center to evaluate the cooling and the rest
4 of the power and change that configuration, of
5 course, that takes a little bit of time because
6 when you talk about power you talk about talking
7 to the city and then, you know, getting the right
8 engineers involved and so on and so forth, plus we
9 rent this building so we have to get those folks
10 involved. But that is actually progressing well.
11 In the mean time, we've shut down every system we
12 don't need to have. We've turned off a bunch of
13 the unneeded development environments and we are
14 working to replace power hungry equipment such as
15 those 18 racks of hard drives.

16 Hard drives are mechanical and not only
17 do they produce a lot of heat, they suck a lot of
18 power because they have motors in them. And like
19 I said, we've gone from 18 racks, and we're trying
20 to get down to 4, that will save us a significant
21 amount of power.

22 Now, we try to live at 70 percent power

1 utilization to handle spikes and just like the
2 network, which we also would like to be around the
3 70 percent, you have to plan for the spikes. So
4 what that means for power is we have to turn on
5 things slow and monitor our usage because if the
6 systems went down and we had to power them up, we
7 would take a much longer time to power them up
8 because we would spike the power to hunger at 100
9 percent, throw breakers, and then things would
10 crash again. So that's delicate, but not
11 unmanageable.

12 The network, however, does regularly hit
13 100 percent utilization because it's a constant --
14 it's like going out to the internet, sometimes you
15 hit a webpage and it's really fast and other times
16 someone in your neighborhood's downloading
17 something and it's slow.

18 Because it's a shared resource, the
19 network's a shared resource, we do regularly hit
20 100 percent which means that people both internal
21 and external, whether they're at home or at work
22 doing their job, will get slowness and that's just

1 a fact. Sometimes they'll do a search or
2 something and it'll come back with at 404 error on
3 the web or, you know, some error in the system
4 because we've lost packets and so on. So that
5 does happen; that is something we're working on
6 today.

7 MR. FARMER: But that wouldn't crash the
8 system; that just makes availability an issue.
9 The power sounds like the crash the system thing.

10 MR. OWENS: If the system -- there are a
11 few systems that are tied together in such a way
12 that if they lose network connectivity they will
13 cease to work until they're rebooted or touched.
14 TESS is one of those today. If it gets locked up,
15 it will crash. So that is possible.

16 MR. FARMER: Okay. We have about 10
17 minutes remaining. I wanted to throw it in the
18 floor to questions from other TPAC members and
19 then we'll throw it up even broader than that if
20 we can. Mary, you had a question?

21 MS. DENISON: Yes; as a user of the
22 USPTO website from the outside, you had mentioned

1 that sometimes you reach 100 percent. From my
2 experience, you reach 100 percent on the search
3 feature everyday and it's a common complaint among
4 the Trademark Bar that you have to try to get into
5 the search system five, ten times during peak
6 hours and I don't know if there's anything -- I
7 understand that you have major problems and you're
8 trying to fix them, but if there's any way you
9 could do anything about this particular issue, it
10 is a source of great frustration to the outside
11 Trademark.

12 MR. OWENS: You're talking about TESS?

13 MS. DENISON: Yes.

14 MR. FARMER: Yeah, and I think what
15 you're probably talking about is around 10 in the
16 morning, Eastern Time, and in California it --

17 MS. DENISON: When California comes on
18 --

19 MR. FARMER: Right. So to 10 to 2, I
20 think is a big zone.

21 MS. DENISON: Yeah.

22 MR. OWENS: That would be one o'clock

1 our time. It's very funny. We did several weeks
2 worth of analysis on TESS and one of the things we
3 got was a usage report and it seems at about one
4 o'clock, our time, there's this massive spike. It
5 is -- you could set your watch by it. I don't
6 know why but it's just a trend. And we have
7 certain spikes during the day, TESS crashes five
8 to six times a day.

9 Now, that's not the situation we want to
10 be in. We looked at that system. The search
11 product that's on that system hasn't been
12 upgraded, there's three or four versions new. I
13 have my Director of Engineering sitting behind me.
14 We have put together a plan -- or behind you --
15 put together a plan of how we are addressing that
16 issue.

17 We are actively working with the two
18 vendors that provide us software that we utilize
19 both for search and as well as routing of
20 information inside that system to make immediate
21 patches to improve it's stability.

22 So when you look at the AIS

1 stabilization work, their first goal is document
2 the current system because we don't have a clear
3 understanding all the time of how it's put
4 together, document it's failures, do the analysis
5 on it, look at low performance, you know, what's
6 breaking with it, what bugs do we know. Immediate
7 resolution of anything like, you know, what we
8 consider "life threatening," and critical, and
9 this was one of them that was on the list. And
10 we've made some of those changes but we've found
11 other issues.

12 And last but not least, develop a future
13 plan for how we're going to fix this thing
14 permanently to gain complete, 110 percent,
15 redundancy; fix the broken link in that chain.

16 Now, it just so happens that as we fix
17 links we've noticed that well the next link might
18 break. So I ask you for your patience. I'd like
19 to have, you know, the pixie dust or magic wand to
20 just fix it all at once but a lot of these are
21 literally -- we've sent a task team down for
22 several weeks, make fixes, make patches, make

1 plans, and then something else breaks, and then we
2 go there. And we are doing that continuously.
3 TESS will improve. I think it's getting a little
4 bit better but it's going to take some time before
5 you actually see improvement because as we go and
6 fix, some other things will break.

7 MS. DENISON: Thank you.

8 MR. FARMER: Jackie?

9 MS. LEIMER: This is Jackie Leimer -- I
10 just have a quick follow up to that. Did you say
11 TESS goes down five or six times a day?

12 MR. OWENS: Yes.

13 MS. LEIMER: And so is some of the time
14 that we can't get in it's down time, not over --

15 MR. OWENS: It crashes; it's not planned
16 for down time. The load goes up such that the --
17 ceases to function --

18 MS. LEIMER: Right.

19 MR. OWENS: -- the searches don't
20 happen, and the system gets in a loop in which
21 case it --

22 MS. LEIMER: Well, we non-technical

1 types have ourselves assumed it was just too many
2 people at one time. But if it's crashed six
3 times, it seems to me there may be a benefit in
4 communicating to the users to, you know, for
5 quicker results to get in, use before nine and use
6 between two and three. That may help and if it
7 avoids crashes, it just sounds like you are in a
8 cycle of spending a lot of your resources fixing
9 crashes and we've got a lot of frustration.

10 If there's a way around that -- I know
11 my team, I think would enjoy seeing communication
12 and they would redo their days if they knew at
13 three o'clock in the afternoon that's a better
14 time, they'd go in there then. It's all trial and
15 error right now for us and it does -- I shared
16 that with Mary, it's quite frustrating.

17 MR. OWENS: I mean I'd be happy to post
18 what we think the high times are but as soon as we
19 post something to that, high times would move. I
20 mean that's -- I'm willing and open to do that.

21 We have some predictability in knowing
22 when some of the peaks are which are obvious, but

1 you have to understand that a posting that says,
2 you know, could everyone, you know, avoid the one
3 o'clock Eastern hour --

4 MS. LEIMER: And I wouldn't suggest
5 doing it that way. I'd say the hours between X
6 and X may be better to get in, there'll be less
7 users. We get those kinds of postings from all
8 other providers, even our own -- system would post
9 that because we have a European team that's using
10 it from these hours -- work up into that.

11 MR. OWENS: I'd be happy --

12 MS. LEIMER: I would put it in the
13 positive not the negative though. That's my
14 suggestion.

15 MR. OWENS: I think we can do that.
16 There's no reason not to be able to do that so I
17 think that's a reasonable request. Though the
18 problem will be if people decide to all shift, you
19 know, to a similar time. It's really the system's
20 capability. It's that --

21 MS. LEIMER: Understood.

22 MR. OWENS: It's that, you know, getting

1 the Corolla and driving it off of the lot and then
2 pieces start falling off as you drive down the
3 road. The system shouldn't have been developed
4 that way; it shouldn't have been architected that
5 way, it shouldn't have been delivered that way and
6 it should have been caught in testing.

7 And to do that we really have to focus
8 on bringing in the technologists to make sure that
9 the quality of product we're getting delivered
10 meets the expectation of the customer. And that's
11 really why I'm focused. I'm more than happy to
12 post that type of thing but it's really about, as
13 far as this conversation is, what I want to convey
14 is you really have to understand it's about fixing
15 the problems as they --

16 MS. LEIMER: Thank you. And we really
17 appreciate your efforts.

18 MR. OWENS: Thank you.

19 MR. FARMER: Any other questions or
20 comments from TPAC members? Any questions or
21 comments from any other folks here, USPTO
22 officials, or anyone else? Yes; ma'am.

1 MS. SALA-KING: Do I come up here?

2 Okay.

3 COURT REPORTER: And please identify
4 yourself.

5 MS. SALA-KING: Michelle Sala-King;
6 International Trademark Association. I have two
7 questions for you. First is just following up on
8 Jackie and Mary's comment. We get a lot of
9 comments about TESS being down and I wondered if
10 there was a way that you could have, you know, a
11 notice that the system's at, you know, 90 percent
12 capacity right now. There are ways that you could
13 put little, you know, website analytic right on
14 the system. And I know other vendors do that type
15 of thing so that's one question.

16 And then the second is, I noticed the
17 voicemail system is down. There's a -- right at
18 the top of the USPTO website right now it says
19 that the voicemail system will be down for the
20 next like 10 hours and I was wondering if you
21 could just speak a little bit to that. I don't
22 know if -- maybe that's not your jurisdiction, but

1 --

2 MR. OWENS: The voicemail system is
3 mine.

4 SPEAKER: --

5 MR. OWENS: Oh, so that's -- yeah. We
6 had scheduled maintenance that -- we're putting in
7 a redundant voicemail system this weekend. I
8 don't believe it's down right at this moment but
9 it will be down.

10 MS. SALA-KING: Yeah, Friday night to
11 like --

12 MR. OWENS: Friday night --

13 MS. SALA-KING: -- Saturday --

14 MR. OWENS: Right.

15 MS. SALA-KING: -- afternoon or
16 something.

17 MR. OWENS: So that's -- yes, that's
18 planned maintenance.

19 MS. SALA-KING: Okay.

20 MR. OWENS: Okay. So yes, that's right.

21 So let's talk about monitoring in any
22 organization, any technology -- monitoring

1 technology organization, you'd like to have the
2 appropriate monitoring so when you know a system
3 has crashed. Unfortunately, that monitoring has
4 to be engineered into the system and many of our
5 systems do not have that.

6 When TESS locks up we don't notice until
7 the system actually fails. Now as part of our
8 remediation plan we are putting in the
9 appropriate monitoring. If I had an automated way
10 to let you know, trust me I would. But the
11 system's just not had that in it at all times and
12 sometimes that monitoring process will say well
13 look, TESS is up, it's running, it's just locked
14 in an endless loop going nowhere. So that is
15 something that we are looking at as well,
16 holistically for the whole organization.

17 We're not only -- we are not only -- do
18 not have a central system to monitor things like
19 power and cooling in the data center -- which is
20 kind of fundamental in my opinion.

21 But no, not all of our systems have that
22 type of monitoring built in but it is a tenant of

1 my organization to make, you know, that I am
2 proliferating through my organization to build
3 that type of monitoring capability into our
4 systems.

5 MR. FARMER: You had a follow up?

6 MS. SALA-KING: Yeah, I just have one
7 follow up about the -- sorry. Just one more
8 follow up about the voicemail. I was just
9 curious. It seems like the whole system will be
10 down. Is there -- that was troubling to me and I
11 -- receive some comments about the voicemail
12 system being down so it's sort of a black hole
13 because if someone calls they aren't able to leave
14 a message. Is there any way to have sort of a,
15 you know, a catch all mailbox that we catch, you
16 know, that's sort of like a backup --

17 MS. FARMER: Ma'am.

18 MS. SALA-KING: -- "voicemail" system
19 because people leave messages for people and --

20 MR. FARMER: Ma'am, it sounds like
21 you're saying this is not just a recent thing,
22 it's a recurring thing that you've run into in the

1 past, is that right?

2 MS. SALA-KING: Well --

3 SPEAKER: No.

4 MS. SALA-KING: -- not necessarily but
5 the system does go down and this is a planned
6 outage. But I just wondered if there was a catch
7 all way that someone could leave a message so
8 essentially if you want to leave a message you
9 can't because --

10 MR. FARMER: Right; but my question was
11 it's not just something recent as in only today,
12 it's happened several times in the past? Is that
13 what you're saying?

14 MS. SALA-KING: There have been problems
15 in the past --

16 MR. FARMER: Okay.

17 MS. SALA-KING: -- with voicemail, yeah.

18 MR. FARMER: Okay; all right. Thanks.

19 MR. OWENS: So part of what we're doing
20 this weekend is part of the overall look at making
21 the systems redundant. Right now today our
22 voicemail system is a single unit. It may have a

1 couple of machines but they're all tied together
2 in a single unit. When it fails, it fails and we
3 have had in the past failures.

4 What we're trying to do today is build
5 in some redundancy so we could have a backup into
6 the future. But to do that you have to take the
7 system down, you have to add the new hardware, you
8 have to change the configuration, you have to test
9 it, and you have to install it. So in fact, what
10 we are doing this weekend is entirely to avoid
11 this problem in the future.

12 But you have to pay the toll at some
13 point, I mean to make the system redundant we will
14 have take things out, switch out hardware, add
15 hardware, and so on. So as much as I hated not
16 having the ability, which I physically do not
17 have, to have a temporary system to gather these
18 messages, in fact, what we are doing is to allow
19 that into the future.

20 MR. FARMER: Okay. Thank you, John.
21 I'm going cut things off here on our OCIO
22 presentation just so we can stay on schedule and

1 so, John, thank you very much for your
2 presentation and thank you for reaching out to me
3 earlier. I appreciate that and thank you for
4 working closely with Jeff and with Tim. I know
5 they really appreciated that. We're going to take
6 about a four minute break and then we'll come back
7 and we'll chat with the OCFO folks then.

8 (Recess)

9 MR. FARMER: All right. Time waits for
10 no man and so we won't wait for time. Our next
11 segment is going to be a discussion with the
12 office of the Chief Financial Officer and I'm
13 going to guess that -- Mark, are you going to be
14 speaking on behalf of the OCFO?

15 MR. OLECHOWSKI: Yes, sir.

16 MR. FARMER: Okay. So we have Mark
17 Olechowski and Mark, I turn the floor over to you.
18 Thanks for coming today.

19 MR. OLECHOWSKI: Thanks, Mr. Farmer. I
20 appreciate the opportunity, as always, to --

21 MR. FARMER: Please call me John or I've
22 got to bring my dad, one of the two.

1 MR. OLECHOWSKI: I'll try to remember.
2 I told you there's too many Johns around the
3 Patent and Trademark Office so you've got to at
4 least use the second name as well; but thanks,
5 John.

6 I appreciate the opportunity to come
7 talk to TPAC every quarter and we also appreciate
8 the opportunity and the availability you've made
9 for your subcommittee to spend some more time with
10 us to try to, I think as James told us yesterday,
11 to help translate the things we do on a daily
12 basis that may seem overly familiar to us to try
13 to put it in a little bit different terminology
14 and everything else so that it's clearer, more
15 understandable, to the rest of your committee.

16 So we appreciate the opportunity to have
17 them on board with us and we'll do our best to
18 spend some more time with them and allow them to
19 help us get you the information you need.

20 So today I just want to talk about three
21 things that you've asked us to comment on. One of
22 them being the Trademark Fee Study, which is in

1 progress; all be it not going as quickly, I think,
2 as anybody would like it to but it's certainly
3 going and I'll have Mark Krieger, my Director of
4 Finance, if there's any specific questions about
5 that we can address those. There's a couple
6 questions on cost allocation methodology and we'll
7 want to address those that are on the agenda.

8 And then finally, spend some time, I
9 think, talking about where we are in 2010 budget
10 and what the plans are for 2011 and how the TPAC
11 can help us out getting that thing going as we
12 approach the 2011 process.

13 The Trademark Fee Cost Analysis was
14 something that we undertook for a couple reasons.
15 One, if you'd look at the couple of slides that we
16 presented on it, we had an audit done in
17 accordance with OMG Circular 825 that one of the
18 findings was that the USPTO should conduct a
19 bi-annual fee study of cost related to user fees
20 in accordance with 825 requirements for both the
21 Patents and Trademarks side of our business lines.

22 We also believe that it's just good

1 business sense if in fact the Trademark
2 Organization, along with all of their
3 stakeholders, desires to look at their fee
4 structure and make possible changes in the
5 upcoming months or years. It just makes good
6 business sense to know what those costs are so
7 that we can have an engaging conversation on what
8 the fees should be whether they're to recover
9 costs or whether they're to effect behavior. But
10 I think everybody would agree that it just makes
11 sense to know what the costs are and so we're all
12 doing that.

13 And also, of course, you're specific
14 request to get this done at our last meeting. Do
15 I have the clicker for that or do you just want to
16 move ahead to slide -- it would be my slide four.

17 SPEAKER: --

18 MR. FARMER: Do you need this?

19 SPEAKER: Yeah --

20 MR. OLECHOWSKI: Assuming I know how to
21 use it; which way am I pointing?

22 SPEAKER: I think you're pointing over

1 there --

2 MR. OLECHOWSKI: There we go. So
3 anyway, we formulated I think a pretty strong
4 project team made up of folks from Trademarks, my
5 Finance group, and then people from Corporate
6 Planning.

7 Both the team members from Finance and
8 Corporate Planning are members of the team that
9 also participated in the Patent Fee Studies we've
10 done over the past years so they bring a lot of
11 not only experience in doing it, but a lot of
12 lessons learned that we learned the hard way by
13 working with Patents in preparation for issuing a
14 couple fee packages. So we've been able to
15 implement some lessons learned for the Trademark
16 Fee Study; we hope will make the process a little
17 bit easier to accomplish, but a very strong team.

18 The next two slides are what it was at
19 the -- two weeks ago, John, when you asked us to
20 publish our slides. That was the -- our working
21 group had gotten together for the very first time
22 and come up with a draft schedule of events and

1 activities that we thought we needed to get done
2 to accomplish the task at hand.

3 The very same day that we sent our
4 slides off to you, the working group continued in
5 that time period and we've received comments from
6 the Trademarks Organization again, so we do have
7 additional comments and additional changes to make
8 to the schedule.

9 I committed to Elizabeth yesterday to
10 keep her informed on any changes to the schedule
11 and the scope of work and everything else, so I
12 think in the coming week or so we'll have an
13 adjusted schedule with the better defined
14 activities and a better defined date for each of
15 those activities. Now Mark, is there anything you
16 want to comment on in terms of the methodology
17 we're using or the conduct of the study?

18 MR. FARMER: If you could also introduce
19 yourself for the folks at home.

20 MR. KRIEGER: Sorry about that. My name
21 is Mark Krieger. I'm the Director of Finance.
22 There are some things we need to talk about with

1 the Trademarks team and we are meeting with them
2 on Tuesdays, every Tuesday, and for the duration
3 of the Fee Study.

4 And we're going through the basic steps
5 of validation of the Trademark Fee Model, the
6 Trademark Model, and we did the same thing with
7 the Patents Organization.

8 It was very successful to start from
9 that angle; to go back to basics, figure out the
10 mappings, and make sure they're on cue. We
11 planned to do that and we -- on Tuesday we're
12 going to meet and finalize the schedule. And
13 that's the plan we have for now.

14 MR. OLECHOWSKI: Thanks, Mark. The next
15 topic we'd like to talk about and was placed on
16 the agenda is some questions that have arisen over
17 the cost allocation between some final reports
18 that came out since TPAC last met between final
19 '07 costs for the Trademarks Organization and the
20 final '08 costs for the Trademarks Organization.
21 I did want to put up our, you know, busy slide for
22 you just to remind everybody that the basic

1 premise that we used to allocate costs at the PTO
2 is to collect those costs and then decide through
3 the Model and through certain drivers and
4 allocation methodology how they get split to both
5 the Patents and Trademarks business line.

6 So I can certainly go over this in any
7 amount of detail you'd like to. It's more as a
8 reminder to everybody that we have a system that
9 does our cost allocation methodology and it's
10 really based on collecting costs from all of the
11 business units, whether that be time or contracts,
12 driven to all of the various activities and then
13 allocated there through the Patent and Trademark
14 lines.

15 So there's a specific question that was
16 raised about that the percentage of cost allocated
17 to the Trademarks Organization, and the CFO and
18 CAO business units, had risen at some percentage,
19 17 and 6 percent.

20 But I'd like to put that -- those
21 numbers in context to give you an idea that we
22 actually believe -- and the numbers, I think

1 indicate that, that your concern that you've
2 expressed certainly over the TPAC meetings that
3 I've been to, that as the Patent Organization has
4 grown, what is happening to the Trademark
5 allocation. And so the numbers do show that in
6 between FY07 and FY08 the actual cost to the
7 Trademark Organization has gone down by almost 13
8 million dollars.

9 It's also, the numbers show that the
10 indirect share that the Trademarks Organization is
11 absorbing has gone down by about 11 percent. The
12 Patent direct costs are up by almost 140 million
13 dollars.

14 So I think at a more global view of
15 what's happening with the cost allocation, those
16 dials on that dashboard are all going in the right
17 direction. I think we're seeing that. I think
18 the Model's proving that out.

19 Certainly the question of why the CFO
20 costs and CAO costs, which I'll address in a
21 minute, we can certainly have that discussion, but
22 what we're talking about is a cost shift of about

1 a million dollars into Trademarks over 200 million
2 dollar budget when, in fact, their costs are going
3 down, their indirect share is going down, and they
4 think, like I said, the dials on that dashboard
5 are all going in the right direction in light of
6 the growth to Patents Office.

7 So a couple things have changed between
8 FY07 and FY08 which I think account for the
9 specific cost -- percentage of cost increases to
10 the CFO and CAO Organization. The biggest thing
11 that we did between FY07 and FY08, which I think
12 we tried to explain in greater detail to the
13 subcommittee yesterday, was we instituted a very,
14 very large change to the time and attendance
15 system. We implemented what we call the ACR, the
16 Account Code Restructuring Program.

17 The Account Code Restructuring Program,
18 which took affect the very first day of FY08,
19 eliminated between eight and 10,000 time codes
20 that had existed for many, many, many years and
21 substituted those or replaced those with what we
22 call PPAs, Program Project and Activity Codes.

1 Those PPAs allow business units to more accurately
2 charge their time to the receiving customer where
3 that activity is being charged.

4 So for instance, in the Office of
5 Finance, in FY07 we had about 80 time codes that
6 we were using that mapped 56 different activities.
7 In FY08 we only have 12 time codes that map to 12
8 activities in the Office of Finance. We're more
9 accurate -- we're able to more accurately charge
10 our time to the business units.

11 However, as we explained to the
12 subcommittee yesterday, in the Office of Finance,
13 for instance, we have one activity which is called
14 Reporting -- or Managing, Reporting Financial
15 Information, Mark's -- one of Mark's, in fact two
16 of Mark's groups, one is our ABI group, one is our
17 Financial Reporting Division; those activities,
18 for the most part, cannot be charged to specific
19 business units.

20 When Mark's group does all of the
21 financial statements, all of the internal control
22 we've used, all of the collection of information

1 for our financial statement audits, we can't
2 charge those to any particular business unit.

3 We don't come in one day and say okay,
4 today we're going to do the financial statements
5 for the Trademark Organization and tomorrow we're
6 going to do the financial statements for the
7 Office of External Affairs. We do it as an entire
8 agency. And so those costs, when Mark collects
9 then through the web TA system, need to be driven
10 to the Patent and Trademarks Organization.

11 The one change we did make in that
12 particular organization was we split that cost
13 evenly across all of the business units. So those
14 costs then need to be allocated down to the Patent
15 and Trademark line. So while I would say that the
16 CFO share of costs to the Trademark Organization
17 went up by \$700,000 and the CAO share went up by
18 \$400,000, I would attribute that more to, or more
19 accurate representation of the work being done,
20 rather than any increase in the amount of services
21 or the increase in amount of costs. It's really a
22 factor of better capturing of those costs and a

1 better allocation to the business line.

2 There was a question also on policy
3 offices and I don't want to, once again, get into
4 too much detail with you but the way the waterfall
5 works, and as costs have driven to Patent and
6 Trademarks, right before it's driven to the Patent
7 and Trademarks line, there's a three way split
8 between Patents, Trademarks, and our policy
9 organizations. Our policy organizations are the
10 Under Secretary's Office, the Office of External
11 Affairs, Public Affairs, and the Office of General
12 Counsel.

13 So every time, for instance, once again,
14 if I and the CFO's Office are working on a
15 contract or an interagency agreement for External
16 Affairs and I charge a dollar to External Affairs
17 through a PPA code, that cost is tracked as a CFO
18 cost into EA, or into policy, and then that split,
19 78, 22, so every dollar I charge to policy,
20 Trademarks absorbs 22 percent or 22 cents on that
21 dollar. So once again, it's a function of a
22 better methodology and a better PPA code structure

1 that we have now that we can charge, whether it be
2 the Finance Organization, whether it be my
3 Corporate Planning Group who does budgeting,
4 whether it does my procurement group, I can charge
5 to specific business lines but they still need to
6 be driven to Patents and Trademarks through a
7 variety of drivers and allocation methodology.

8 Are there any questions on -- and as I
9 mentioned to the subcommittee yesterday, we can
10 provide any amount of information, any amount of
11 detail that John, you and your group would feel
12 comfortable with.

13 We look forward to interacting a little
14 bit more on this topic with both James and
15 Elizabeth but if there's any follow on questions
16 that we can answer, we'll be glad to take those
17 and forward them to the group for their review.

18 MR. FARMER: All right.

19 MS. BERESFORD: Yes, I have a question
20 about a couple of things you've said, Mark. You
21 said that in the areas that are rolling up
22 activity, budgeting, et cetera, for the entire

1 USPTO, you drive the costs equally to each unit
2 because you're doing them all together at the same
3 time; you don't do Patents and you don't do
4 Trademarks.

5 And that would seem to indicate that you
6 spend an equal, since this is supposed to be
7 activity based, it would seem to indicate that you
8 think you spend, your office spends an equal
9 amount of time on the Patent budget, the OIPPE
10 budget, the Trademark budget, that it's an equal
11 amount of time and yet there's great, many more
12 complexities in some of those budgets than in
13 others. So it doesn't seem to be that an equal
14 split actually reflects the activity in the
15 office. That would be my first comment.

16 And secondly, you said there was really
17 -- Trademarks' share went up 16.9 percent but
18 there was no really increase in the amount of
19 services, which I agree with, there wasn't, there
20 was just an increase in the costs.

21 If we have activity based costing and
22 our costs go up 16.9 percent, there should have

1 been, in my view, an increase in the activity that
2 was directed toward Trademarks. So I'm not clear
3 about how this activity based costing methodology
4 is being used in CFO. Thank you.

5 MR. OLECHOWSKI: Okay. Thank you,
6 Lynne, for your questions. So let me try to
7 address the first one where you indicate that if
8 the costs are being driven equally, and I have my
9 Director of Finance, Mark Krieger, here next to me
10 and he can help me out here. He used to also be
11 in our ABI Division.

12 When we talk about having PPA codes for
13 particular activities, we -- for instance in
14 budgeting, you're right. We do have to break up
15 costs and there are certain budgets that take more
16 time than others but I have a PPA code that allows
17 me to charge to particular business units.

18 So if in procurement, I have different
19 PPAs that allow me to charge to different business
20 units when I work on those particular contracts, I
21 have one for Patents and one for Trademarks, those
22 are very easy to do.

1 If my folks are working on a Patents'
2 contract or they're working on a Trademarks'
3 contract, we charge directly to those PPA codes,
4 they're charged directly to those business units.
5 When we work on CIO contracts, I have a PPA code
6 for that, or External Affairs, or policy. We
7 charge directly to those.

8 So I think, maybe Lynne, I've missed --
9 either misinterpreted your question or you've
10 misinterpreted my answer. While we do split the
11 -- what I mean when we split those equally, we
12 have the ability to charge to those particular
13 business units, then you're right, they do have to
14 be driven to the -- ultimately to the Patents and
15 Trademarks business line.

16 So if I cannot directly charge my
17 activities to a particular business line with
18 those PPA codes, and in fact now in procurement
19 I'm charging 94 percent of my time right to a
20 business unit, then I have a leftover pot of
21 charges that I do need to drive and those are
22 split equally.

1 So it's -- we can certainly provide, and
2 I know we have and if it helps we can get it
3 through the subcommittee for the TPAC, we do have,
4 like I said, those allocation methodologies that
5 are reviewed not only within our own organization
6 but through the ABI Steering Committee; any
7 questions of that sort, any questions on drivers,
8 any questions on costs allocation methodology is
9 brought to the ABI Steering Committee where
10 they're resolved.

11 With respect to your second question, I
12 apologize if I wasn't clear in my answer. I
13 thought I was and so I apologize for that. The
14 Trademark share of the CFO and CAO costs did
15 increase between 2007 and 2008; that is not at
16 issue.

17 And I also stated that the level of
18 service we agree probably did not change. What
19 changed was our ability to more accurately reflect
20 the time we're spending doing those activities.
21 So in fact, if -- as you claim that the service
22 did not change between '07 and '08, what changed

1 was our ability to more accurately capture the
2 time we're spending and that time is allocated
3 through the methodology that we talked about to
4 the Patents and Trademarks Organization.

5 So I don't think you can take the
6 numbers in isolation and simply say that the
7 Trademarks share of costs went up by so many
8 thousands of dollars and relate that to an
9 increase or decrease in the amount of service. I
10 think what you have to look at first is where the
11 costs accurately captured, were they driven in a
12 reasonable manner, and are they allocated
13 properly. And if there's still a question on
14 that, as always, we certainly will bring any of
15 those questions up to the Steering Committee for
16 review and modifications to the Model.

17 I think we've been open to all sorts of
18 changes and all sorts of questions and we have
19 made modifications to the Model as they've come up
20 over the years. So -- and we'll certainly look at
21 this, Lynne, and we'll bring these questions up to
22 the ABI Steering Committee the next couple times

1 they meet and we'll see what their resolution is.
2 But I'm comfortable with the allocation
3 methodology that we used both in '07 and the
4 changes we made through '08 and where they are
5 now. But we're certainly open to review of those
6 and making any changes that need to be made.

7 MS. PEARCE: Hi. I had one point that I
8 thought might be -- but it sort of pulls together
9 what the two of you were talking about. To use
10 your procurement example, Mark --

11 MR. FARMER: Elizabeth, for the folks
12 listening at home, could you introduce yourself?
13 As a matter of fact, before you do I'll do it for
14 you.

15 MS. PEARCE: Okay.

16 MR. FARMER: For the folks listening at
17 home, I mentioned we have subcommittees earlier.
18 We have a Budget and Finance Subcommittee within
19 TPAC and it's composed of Elizabeth Pearce, on my
20 left, and James Conley, who's seated right next to
21 Mark over there, and Elizabeth, I'll give the
22 floor back to you for a question.

1 MS. PEARCE: I try to absorb all of
2 these numbers. I'm not so much a numbers person
3 but you said for instance in your procurement
4 contracts you've got about 94 percent that you can
5 charge directly to the particular business units
6 and there's 6 percent that's left, that gets
7 charged equally. Does it make more sense to
8 charge that on the allocation model that you were
9 talking about before, 22 percent to Trademarks,
10 for instance, just because that seems to have been
11 the number that you were -- it was sort of a
12 median that you were working from. Does that make
13 more sense?

14 MR. OLECHOWSKI: Well I -- maybe I
15 confused -- I wasn't clear in my answer. The 22
16 percent, Elizabeth, the 22, 78 percent is the
17 policy split. So any dollar that flows into
18 policy from any organization, unless it's directly
19 charged, is split 78, 22 percent. So Mark, I
20 don't know if I make -- being clear in the way I'm
21 answering that or --

22 MR. KRIEGER: I think you are. The one

1 thing for procurement, for example, that there's
2 -- that's a -- Mark is right. Almost everything
3 is directly charged to a business line. There is
4 some leftover stuff, for example, manage the
5 purchase card program. Now, that's the latest
6 improvement.

7 We can get the number of transactions by
8 business line and now drive that. But before, we
9 did it in equal share because we found that, in
10 general, it's an equal share of transactions. Is
11 that clear?

12 MS. PEARCE: So it's sort of on a case
13 by case basis then as to what the split of the
14 leftover would be?

15 MR. KRIEGER: In this case --

16 MS. PEARCE: In this particular case?

17 MR. KRIEGER: -- yes, for the remaining
18 -- and again, you're talking very small dollars,
19 but yes.

20 MS. PEARCE: Okay.

21 MR. OLECHOWSKI: But I would say case by
22 case basis, Elizabeth, it's in every case. Every

1 cost has to be driven somehow and so as we talked
2 about yesterday, we have, you know, a list of
3 many, many different drivers to drive those costs,
4 you know, from when they're realized to ultimately
5 the Patent and Trademark Organization.

6 So yes, it is case by case but it's
7 every case. Every cost needs to be driven back to
8 Patents and Trademarks. And each one -- some
9 share the same drivers, some have different
10 drivers, some have very unique drivers.

11 Obviously the ideal thing to do is to
12 know that you're working directly on a Patent or a
13 Trademark issue, whether that be in John's
14 organization -- I'm working on TICRS, I'm working
15 on TRAM, I'm working on PALM. I charge directly
16 to Patents. If we're working on a Patent or
17 Trademark contract, absolutely, we want to charge
18 directly to Patents and Trademarks.

19 But there are other items that we cannot
20 do that; we can't, the financial statement audits
21 for instance, we cannot charge directly to a
22 business line so there has to be some mechanism to

1 drive those costs to Patents and Trademarks.

2 MS. BERESFORD: Yes, I have a follow up.
3 One of the issues that we also raised was that,
4 and perhaps this is one that will be a little
5 easier for folks to understand, is that Trademarks
6 had a 6 percent increase in its costs from the CAO
7 between 2007 and 2008.

8 And one of the reasons this is a -- is
9 surprising to us is because most of what the CAO
10 does, it appears is driven by the number of folks
11 in the organization, they do hiring and 52s,
12 performance actions, the sort of things that are
13 related directly to the number of employees. In
14 2008, Patents hired 1,200 folks. Trademarks hired
15 37 people and actually got smaller.

16 So the increase, if the activity, if the
17 CAO costs are being driven by activity based
18 costing in CAO, it would appear that the number
19 for Trademarks, the percentage of Trademark,
20 should be going down because our use of CAO
21 appears to be decreasing as we have fewer folks in
22 the organization.

1 So again, in talking about activity
2 based costing, Trademarks takes a very practical
3 look at what activities could we be causing in CAO
4 that would cause our costs to increase and since
5 CAO is pretty much employee number driven, we were
6 quite curious about that change in our costs.
7 Thank you.

8 MR. KRIEGER: I'll take that question.
9 Remember now CAO consists of OCS, okay, and OCR.

10 MR. OLECHOWSKI: You may want to explain
11 this.

12 MR. KRIEGER: I'm sorry; Office of Civil
13 Rights, Office of Corporate Services, as well as
14 OHR, Office of Human Resources. So Civil Rights
15 is almost like procurement, where they drive
16 directly to a PPA, to a business line. Okay.

17 So that pretty much is direct, okay. It
18 is activity based because it's whoever is getting
19 the value of the service. OCS is driver based.
20 One of the big items there, we did see a large
21 increase for Trademarks and it's the number of
22 file repository -- what was the drive number?

1 SPEAKER: Internal.

2 MR. KRIEGER: Internal file repository.

3 And we saw a decrease in the number of files
4 requested for Trademarks but we saw a larger
5 decrease for Patents, and therefore, that was the
6 big activity for OCS and a large portion of that
7 was driven to Trademarks. Now to address your
8 question about the number of hires, remember --

9 MR. FARMER: Mark, I didn't catch -- I
10 think you said first that there was one thing for
11 Trademarks that just increased and I just didn't
12 catch that before you went onto the second thing
13 where you said Trademarks went up a bit and
14 Patents went down a bit.

15 MR. KRIEGER: Yes, the -- what actually
16 increased for Trademarks, directly, was the
17 provide file repository services, internal; that's
18 the actual activity. Now we would probably have
19 to get someone here from OCS to explain what
20 comprises that and the function achieved.

21 MS. BERESFORD: That's ordering files
22 from the warehouse.

1 MR. KRIEGER: Okay.

2 MR. OLECHOWSKI: Correct. And that --
3 John, that's one of the things. We talk about
4 having a driver where, you know, our first choice
5 or anybody's first choice would be to directly
6 charge something to Patents and Trademarks.

7 If we're unable to do that, we want to
8 have drivers that are based on usage that are
9 easily captured. So if somebody's going to
10 request files, if they're going to do queries into
11 a system, if they're going to take up storage
12 space on a computer where we can better measure
13 that, then those are also very desirable drivers
14 to do that. So in answer to Lynne's question, I
15 think that certainly at face value, you can look
16 at an increase and say why did that happen if
17 Patents is growing.

18 I think you need to look at, you know,
19 the down -- the details behind that and I think as
20 Mark mentioned, there are other organizations
21 within the CAO that we have to drive costs back to
22 Patents and Trademarks.

1 I would also indicate that Patents does
2 have an awful lot of HR services that they conduct
3 on their own and they have contracts to provide
4 that services so they are doing a lion's share of
5 their own recruiting and everything else and those
6 costs are captured inside of Patents.

7 So if they have a contract out to have
8 HR help, if they bring in people to, you know, get
9 announcements out, to process the paperwork, and
10 help recruit and everything else, that cost will
11 not be shown in the CAO office.

12 I think John's probably talked about at
13 certain times where some of his costs are hidden a
14 little bit because Patents has an IT group as well
15 that is doing some work and so it complicates
16 matters when you can't just look at a single
17 number and see that if a cost went up or down
18 there's some digging that needs to be done and
19 we're certainly, as always, willing to dig down
20 into those numbers and provide a better
21 explanation.

22 I would also remind folks that

1 Trademarks does absorb a share of all of the other
2 corporate organizations, the CIO, the CFO, the EA,
3 and everything else, so when HR provides services
4 to them, Trademarks absorbs a share of those costs
5 as well.

6 MS. PEARCE: Lynne, it's my
7 understanding that part of the reason you're
8 pulling so many files out of storage is because of
9 scanning them and putting them online for the sake
10 of the Trademark community which I cannot thank
11 you for enough. I'm sure all of the other
12 Trademark practitioners here, equally delighted
13 with that program. In that case, how close to the
14 end of that project are you, in which case you
15 could expect to see some of your costs go down?

16 MS. BERESFORD: We will in fact finish
17 that project in the next few months. We only have
18 -- we have less than 30,000 files left to scan. I
19 think that it's important to note that the costs
20 we're talking about here is the cost of the
21 warehouse space, which, I believe, that's what
22 this driver represents, the cost of warehouse

1 space. And it's based on file ordering rather
2 than square footage or anything. So we do expect
3 a drop in the amount of Trademarks' share of this
4 particular cost.

5 I think it's interesting that our -- the
6 thing that caused our cost to rise 6 percent is
7 ordering files, for their cost for CAO services
8 rose 6 percent because of file ordering, something
9 that's been ongoing for a number of years. It's
10 interesting to me that -- it appears to me that
11 the driver isn't -- that something is not quite
12 right there, but we'll look into it.

13 MR. KRIEGER: That wasn't the only cost,
14 there was others as well.

15 MS. COHN: What were they? What were
16 some of those other costs? Could you elaborate a
17 little bit?

18 MR. KRIEGER: When we talked about --
19 the perfect example that Mark just described was
20 if Mr. Owens is looking for somebody to work on
21 TESS, okay, that's a -- and they need to hire
22 somebody, that's going to come out of the CAO

1 budget to hire somebody for CIO. That's going to
2 directly affect Trademark system. That's an
3 example of when a service is being provided by
4 CAO, for CIO, who's then going to work on a
5 Trademark system.

6 MS. COHN: Thank -- let me introduce
7 myself; Debbie Cohn from Trademarks. Mark, I
8 understand what you're saying and of course that's
9 true if CIO is hiring somebody to work on
10 Trademark systems, then CIO has to recruit and
11 hire. But in fact, did that happen to raise costs
12 in Trademarks in FY08?

13 MR. OLECHOWSKI: Debbie, I think that,
14 as I tried to explain, I don't think that it's --
15 to look at a single number for such a complex
16 system, that you can make generalities in terms of
17 I hired a single CIO person or anything else. I
18 think it's a very complex answer and it has to do
19 with all of these things.

20 It has to do -- probably the biggest
21 change is the change in the PPA codes where we're
22 now more accurately charging both the CFO time,

1 the CIO time. All of the business units have more
2 specific PPAs that they can charge to to more
3 accurately manage their time.

4 So that was a huge change between '07
5 and '08 and I know you were personally involved in
6 that because you were the acting CAO at the time
7 we implemented that. So that is probably the
8 largest change factor between '07 and '08. It's
9 also very complicated to compare sometimes between
10 '07 and '08, as I mentioned, because we used to
11 have many, many, many codes that we've done our
12 best to map those codes to the new activities so
13 that we can have some history. But as I
14 mentioned, that's not always perfect. I mentioned
15 in the Office of Finance we used to have 80 codes
16 and 56 activities. We now have 12 codes and 12
17 activities.

18 Well certainly we want to make sure that
19 we can, for historical sake and for trending data,
20 you know, make those connections in a map. But
21 they've become very difficult to do with -- when
22 you started out with, you know, some 8 to 10,000

1 codes and you're trying to map those to all of the
2 activities.

3 So the combination of a PPA change, the
4 combination of cost drivers by, whether they be
5 direct charges or by usage, whether they be by the
6 other activities that are done by the CFO and CAO
7 organization, they have all added up over those
8 two years to an increase in the Trademark share.

9 But I would also remind you that that
10 share is -- the increase is just such a small,
11 small percentage of the overall Trademark budget
12 when I think, in fact, the bigger picture to look
13 at is does the dashboard show that as the Patent
14 Office grows that the Trademark share is being
15 reduced, and I think we're seeing that and I think
16 we'll continue to monitor that. We'll certainly
17 continue to answer any specific questions. I
18 guess I'd just like to leave you with it's just
19 not a simple answer and I think as your folks know
20 and our folks know, to dive down deep into it does
21 take some time and effort and we're willing to do
22 that. And certainly if there are follow up

1 questions from this, we'll provide them both to
2 the Trademarks Organization and to the TPAC in
3 general.

4 MS. COHN: Mark, thank you for that
5 explanation and I do understand and appreciate,
6 you know, what's transpired over the past year or
7 so. I guess what we, and Trademarks, and I'm sure
8 TPAC, ultimately want is to all be able to
9 understand what the various components of these
10 numbers are and I was simply responding to Mark's
11 discussion of the file ordering services as being
12 the one thing that he named as responsible for the
13 increase in the CAO costs.

14 And then when you went on to say that
15 there were other items responsible, I think we
16 need to know what some of those other, or all of
17 those other items are so we can take a look. But
18 I do understand it's a very complex multi-step
19 process so hopefully we'll work on that together.

20 MR. OLECHOWSKI: Thanks, Debbie. And I
21 mean I'll take an action here. We'll take this
22 question and we'll take our response to it through

1 the ABI Steering Committee and get their comments,
2 solicit their input. If there's changes that need
3 to be made to either the drivers or the allocation
4 methodology, we'll be absolutely happy to do that.

5 MR. FARMER: Do other members of TPAC
6 have questions?

7 MR. CONLEY: This is James Conley from
8 North Western University and I do have, actually,
9 a couple of questions that more or less follow up
10 on the dialogue that Elizabeth and I had in the
11 subcommittee yesterday. So I'll address these to
12 Mark.

13 And the first one is that there's an
14 important difference between the 2007, 2008 year
15 that Debbie already pointed to. In the 2008 year,
16 you actually are using the PPA codes, right?

17 MR. OLECHOWSKI: Correct.

18 MR. CONLEY: So in 2007 you were not?

19 MR. OLECHOWSKI: Not the codes we have
20 today; but that is correct.

21 MR. CONLEY: Right. You're using some
22 other code?

1 MR. OLECHOWSKI: Yes.

2 MR. CONLEY: And the purpose of going to
3 the 2008 code is to have more accuracy, more
4 transparency in exactly how the costs are being
5 allocated; is that more or less correct?

6 MR. OLECHOWSKI: Correct.

7 MR. CONLEY: So it could be
8 hypothetically, in 2007, I'm not saying this
9 exactly, that the actual -- the smaller share that
10 the Trademarks paid in 2007 of CAO and CFO, that
11 might not have been as accurate as it is in 2008;
12 assuming all other things being held equal?
13 That's the hypothetical.

14 MR. OLECHOWSKI: I would say in general,
15 yes. But I would hesitate to say specifically
16 yes, even though I'd like to say oh yeah, that's
17 the answer James. I agree that it's true; you
18 would think that if we had more accurate codes
19 then we have a better representation of the costs
20 driven to both Patents and Trademarks. I agree.

21 MR. CONLEY: Granted that's a lose
22 hypothetical, which I never allow my students to

1 make, but I'm going to do it myself. The second
2 question is there is always, especially in this
3 economic climate, going to be tension about how
4 these codes are defined and how the drivers are
5 defined, and in fact, the presence of attention
6 for me of someone who sits on TPAC is a welcome
7 thing. This is never clear where it's implemented
8 in any organization so the presence of the
9 struggle is just evidence of the fact that we're
10 trying to get this right and I'm delighted to see
11 it actually.

12 The question really is, is there a third
13 party coming in to sort of review this and
14 understand and give both sides some inside on
15 whether or not the PPA code, and the way that
16 costs are being driven, and the overall activity
17 based costing system is being administered is best
18 practice?

19 MR. OLECHOWSKI: James, that's correct.
20 And we mentioned and I know the Trademarks
21 Organization has been involved in this. The PTO
22 has contracted with an outside company to come in

1 and take a look at our ABI System. The statement
2 of work was generated -- a collaborative effort
3 between Patents, Trademarks, and the CFO
4 Organization. The selection of the contractor was
5 done in a collaborative effort among those
6 organizations as well and I believe they showed up
7 on --

8 SPEAKER: Tuesday.

9 MR. OLECHOWSKI: -- Tuesday of this
10 week. So they're just beginning their review.
11 Mark, the name of the company again?

12 MR. KRIEGER: Philbara.

13 MR. OLECHOWSKI: Philbara. So we can
14 certainly provide the TPAC with the statement of
15 work that was generated so that you have an idea
16 what the scope of effort's going to be.

17 MS. PEARCE: This is Elizabeth again. I
18 have one quick scheduling question for Mark and
19 Mark. I appreciate enormously the detailed
20 schedule that you've given us for the Trademark
21 Fee Cost Analysis and I understand, of course,
22 that there's still more refining that needs to be

1 done. We typically will have our next TPAC
2 meeting in Alexandria in mid June. Early June or
3 mid June, John?

4 MR. FARMER: Probably around that time,
5 although to jump in with you, I think I saw, Mark,
6 in your materials that there may be a window of
7 opportunity for TPAC to comment on the in process
8 011 budget this summer and so we'd also, in
9 addition to trying to hit what I think Elizabeth
10 is going to say in terms of the Fee Study, that's
11 another thing that we'd like to be in the right
12 time zone fore.

13 MS. PEARCE: Yeah, we'd like to
14 coordinate that. It looks like we're going to be
15 far enough along, possibly, on at least phase one
16 of the Fee Study, to be able to get some input and
17 a status report from you guys. So we would like
18 to be able to coordinate that.

19 I know that you're going to get me a
20 revised schedule within the next week or so but
21 that's something that we would like to be able to
22 do, is to be able to take a substantive look on

1 the progress that's been made at our next meeting,
2 along with some budget numbers.

3 Just so you guys -- we're giving you a
4 heads up. And we're not hard and fast about a
5 date. I mean, that's part of why we seek guidance
6 from you about when the best time for us to come
7 would be. Early June, mid June, late June, and I
8 don't think that we have any strong feelings about
9 that; we just want to make our time as productive
10 as possible.

11 MR. FARMER: Yeah, I think the main
12 thing there is just the earlier we can figure it
13 out, the early it is people can start planning for
14 it and so, you know, that's always helpful.

15 MR. OLECHOWSKI: I roger that,
16 Elizabeth. What we'll do is, because I understand
17 it's difficult to bring the entire TPAC together
18 and schedules to mesh and everything else, so we
19 will endeavor to keep you informed of the progress
20 on not only the Fee Study, but on any ABI changes
21 or budget issues as we progress week by week so
22 that at some time here in the next month or so you

1 can lock down better the next TPAC meeting.

2 MR. FARMER: Mark, just to be clear,
3 could we -- we'll leave the ball in your court and
4 if you could just come back, and you can go
5 through James and Elizabeth since I know they're
6 your usual points of contact and just say we're
7 looking at it and maybe this particular week in
8 June looks like a good one to A, catch the Fee
9 Study at a good time and B, would provide a time
10 when we'd be able to take a peak at the 011 budget
11 and provide any input that we may have. So if we
12 could leave that ball in your court, we'd
13 appreciate it.

14 MR. OLECHOWSKI: Yes, sir.

15 MR. FARMER: Okay, thanks. I appreciate
16 it.

17 MR. CONLEY: Just one last question,
18 John. There's going to be a written deliverable
19 for this ABI study? I'm sure that's in the --

20 MR. OLECHOWSKI: Yes.

21 MR. CONLEY: Yeah, great. Thank you.

22 MR. FARMER: Are there questions from

1 other members of TPAC for Mark and the OCFO folks?
2 Are there any questions from the other folks in
3 attendance today for Mark and the OCFO folks? We
4 may have cut you off earlier, was there anything
5 else that you all were looking to say today that
6 we didn't give you the chance to?

7 MR. OLECHOWSKI: I certainly don't want
8 to -- I know you have a very tight schedule. If I
9 could make a couple of comments on 2010 and 2011,
10 because you specifically asked about it, John,
11 that we --

12 MR. FARMER: We have about five more
13 minutes for this segment.

14 MR. OLECHOWSKI: I'll try to be brief
15 then. In 2010, as I mentioned last time, because
16 of the election it's a different process to
17 develop the 2010 budget. It's gotten, in fact,
18 more unique here at the PTO because we are a fee
19 funded agency. OMB has given us a little bit of
20 leeway in terms of what our deliverables are.

21 The rest of the federal government, if
22 their appropriated bureau has submitted to OMB

1 their full budgets this past week, what we were
2 able to talk to OMB about was just delivering some
3 top line numbers to them because there is so much
4 fluctuation in our forecast for, not only the
5 remainder of 2009, but certainly as we begin 2010,
6 that they've given us a little bit more time to
7 actually develop the written text of the budget.
8 So we provided OMB just last night our current
9 estimates of where we think we'll in 2010 last
10 night.

11 And then the budget will actually be due
12 -- the President will submit the budget in late
13 March or early April to Congress. So we will
14 continue to keep the Budget Committee informed on
15 the progress on that. 2011 is -- it just seems to
16 roll back to back to back.

17 The process for developing a budget in
18 the federal government really is to issue some
19 guidance here at the PTO to all of the business
20 units, grab all of their input back at a certain
21 time, develop the budget, get it back out to
22 everybody so they can review it.

1 I left -- I put up here the rough
2 timeline, Mr. Farmer, because I know you're
3 interested in having an impact on the budget and
4 then we have had some discussions on conference
5 calls in the past. A time to have a great impact
6 on the budget is when we develop the guidance. So
7 if the TPAC has visions for not only the
8 Trademarks Organization, but the PTO in general,
9 where they want to be in the future, that -- the
10 time to provide us that information is when we're
11 developing that budget guidance for all of our
12 business units. So I would suggest as a group
13 that if you could provide us those kind of
14 visionary statements that you want to see where
15 PTO can be in 11, 12, 13, and beyond, that we can
16 incorporate that into our guidance.

17 We send that guidance out to our
18 business units and they develop initiatives for
19 getting us along the way to fulfilling that
20 vision. So we'll be issuing guidance, as I say up
21 on the slide, sometime in the April timeframe.

22 While that's a nominal timeframe, that

1 might also be altered by when we get an Under
2 Secretary, an Under Secretary that comes in, we'll
3 certainly have his or her ideas of where the
4 office needs to be and we'll certainly have great
5 input into that guidance.

6 It would still be our desire to stick to
7 that timeline and I'm sure when we do have an
8 Under Secretary we'll have an opportunity to brief
9 him on the budget process and what we would like
10 from them. But in general, in the April timeframe
11 we issue guidance and we get stuff back from our
12 business units in June and at that time we can
13 certainly share all of the initiatives that the
14 business units have given us, hopefully prior to
15 your TPAC meeting to give you a chance to absorb
16 them and answer any questions about what's been
17 submitted by the business units. So 2010 and 2011
18 if there's any questions I'd be glad to try to
19 answer them for you.

20 MR. FARMER: Hey Mark, I appreciate
21 that. Looking at your slide, it says brief TPAC
22 on the status of fiscal year 2011 budget requests

1 in July. I'm wondering if that might not be the
2 time for us to have our next public meeting
3 because we I really envision is that we would see
4 a draft budget and, you know, what the allocations
5 roughly look like and that would be -- we would
6 say well why is the Trademark share of such and
7 such, such and such, a percentage and it sounds
8 like you might be around that stage at that time.

9 MR. OLECHOWSKI: If we were to follow
10 this timeline, John, and get guidance out, get
11 initiatives back from the business units in June,
12 the July timeframe -- we could certainly brief you
13 on the status of those initiatives.

14 I'm not so sure that the PTO would have
15 finished its entire deliberation process of having
16 all of the, as we do now, having all of the
17 deputies review all those initiatives,
18 prioritizing them, and everything. The ultimate
19 deliverable for the process, the very first
20 deliverable outside the agency is to OMB in
21 September. So we usually take the summer time,
22 get the initiatives back in the June-ish timeframe

1 and then take July and August to prioritize them
2 and everything.

3 So while I fully understand what you
4 would like to do, I guess I'd like a little bit of
5 time to mesh the schedule with your desires and
6 try to make sure that we can provide you a
7 timeframe for you to have an impact on that
8 process but also maybe get some of the
9 preliminaries done with some of the initiatives
10 and the prioritization that the deputies would do.
11 So if I could just at least take an action to go
12 back and refine the schedule and get back to you,
13 sir, about what the best time would be for the
14 TPAC team.

15 MR. FARMER: Sure, I appreciate that.
16 As a matter of fact, looking at your slide more, I
17 see that later you have a submitted draft of the
18 FY 2011 budget request all business units for
19 review and that's in August and that may actually
20 be a time for TPAC to look at the same time.

21 So I could see that we might get
22 together in June, in person, for Fee Study

1 purposes and plus we don't want to go too long
2 between public meetings. And then at that time we
3 can certainly decide when we'd meet again. I
4 guess we haven't actually fixed whether we'll meet
5 three or four times a year, that's a bit flexible
6 too. But we'll aim roughly for June. We'll nail
7 down that date with you and then we'll figure out
8 things from there; just as a rough plan, not
9 setting anything in stone yet.

10 MR. OLECHOWSKI: We can do that and
11 we'll do our best. We'll keep the Budget
12 Committee informed of where we are, provide them
13 all of the information as well, and then come up
14 with the best date.

15 MR. FARMER: Sounds good. Ready for
16 break time? Okay. Let's take a five minute
17 break, then when we'll come back we will chat with
18 judge -- our Chief Judge David Sams about TTAB
19 things.

20 (Recess)

21 MR. FARMER: Let's go ahead and get
22 started so that we can try to finish at a decent

1 time. A bit of a programming note, I think that
2 we will probably run a little long today and while
3 I'm usually the stickler on time, I anticipate it
4 may be more like 12:15 before we finish and the
5 reason being is that we will certainly open it up
6 to public comments on any other issues as we
7 planned on the agenda. But I already know of two
8 things that are going to take some time and that
9 is Lynne is going to give us a little presentation
10 then on possible changes in the appearance of
11 registration certificates and I've also promised
12 Howard Friedman, our Examining Attorney Union
13 Representative, some time on the floor to make
14 some comments given the recent economic situation
15 and I'm sure Lynne will have some comments too.

16 I mean I could go on forever about that
17 but that is going to cause us to go past noon so
18 I'll just give you that programming note. That
19 being said, for about the next half an hour we are
20 going to chat about some TTAB stuff and we're
21 fortunate to have the Chief Judge of the TTAB,
22 David Sams, with us; and so I'm going to turn the

1 floor over to David for a few introductory
2 comments and we'll go from there. Thanks for
3 coming, Judge Sams.

4 MR. SAMS: My pleasure, John. Thank
5 you. I don't intend to give an extensive
6 commentary to begin. I perceive this segment of
7 the program to be a discussion for members of the
8 TPAC on some issues effecting TTAB and our --
9 we've been fortunate enough to work closely over
10 the last months since the last meeting with the
11 subcommittee, providing information to the
12 subcommittee on issues of interest to the TPAC.
13 And we will be discussing those in greater detail
14 at this meeting.

15 I could say just as a preliminary
16 matter, things are I think going very well. The
17 TTAB right now -- our first quarter numbers were
18 in. We were very pleased to see that we are well
19 under our production goals, our pendency goals for
20 this year.

21 In the last couple of reports that I've
22 made to the committee, we have been a little short

1 of making the goals that we had set for ourselves,
2 but this year by -- of a great deal of effort and
3 some very hard work by our Judges, our
4 Interlocutory Attorneys, and our paralegals, we
5 have managed to stay, as I say, well under our 12
6 week decision goal on both final decisions and on
7 motions, contested motions. So with that, I think
8 I will just turn this over to the subcommittee
9 members, perhaps, if John is in agreement with
10 that.

11 MR. FARMER: Absolutely.

12 MS. DENISON: I'm Mary Boney Denison
13 from Manelli, Denison, and Selter. And I wanted
14 to start off by thanking Chief Judge Sams for his
15 assistance to the subcommittee. We're very
16 appreciative of all of the efforts that you have
17 made and we would like to, the subcommittee would
18 like to commend the TTAB for the significant
19 progress that they have made in speeding up the
20 decision process.

21 The Trademark Bar has always wants
22 faster decisions and we're getting them now. So

1 we're very happy about that and we commend the
2 TTAB for their efforts. There are two particular
3 initiatives that we're interested in hearing about
4 today from Judge Sams, if possible.

5 One is called the ACR, Accelerated Case
6 Resolution, and the other is the Performance
7 Appraisal Plan called a PAP for interlocutory
8 attorneys, both of which we hope will impact the
9 speed with which the TTAB is able to issue
10 decisions.

11 We have been doing an informal gathering
12 of information on the satisfaction level of the
13 Bar, with the speed of the TTAB, and to date I
14 would say that the data we've gathered has been
15 inconclusive. And so what we're going to do is
16 we're working with the TTAB to, and the various
17 Bar Associations, IP Bar Associations, to put
18 together an informal survey to gather more data on
19 more specific data on the TTAB and we may also
20 include some examination issues in the same
21 survey. So Judge Sams, would you be able to talk
22 about the ACR process and the interlocutory

1 attorney PAP?

2 MR. SAMS: Sure. I definitely can do
3 that. Accelerating Case Resolution is really not
4 an entirely -- oh, sorry. I'd be glad to do that.
5 Accelerating Case Resolution is not an entirely
6 new idea at the TTAB. It's just that we've never
7 always labeled it that way.

8 Over the course of years and many years
9 passed, occasionally we would have parties to
10 litigation before the Board -- come to us and ask
11 whether or not they could submit cross motions for
12 summary judgment, avoid a trial, and have us treat
13 that -- those submissions as the final record for
14 purposes of issuing the final decision of the
15 Board that was appealable. And we have done that.
16 And that goes back many, many years.

17 We saw that model as possibly something
18 that could be used more widely than it had been
19 and over the last couple of years we have tried
20 more and more to become active in suggesting to
21 litigants before the Board that this might be
22 something that would enable them to get a quicker

1 and cheaper resolution of the dispute that they
2 were bringing to us.

3 There are many, many cases at the Board
4 which are fairly straight forward and do not have
5 too many issues that need a full trial of the sort
6 that we sometimes see. So we have encouraged
7 parties in cases, particular cases, to consider
8 the idea of doing something in the nature of
9 written submissions, like motions, affidavit
10 submissions like motions for summary judgment.
11 Some documentary submissions limit discovery and
12 bring to us the case ready for determination in a
13 much shorter time frame.

14 We have had the ability to suggest this
15 in a context of the new discovery and settlement
16 conferences that have occurred as a result of our
17 new rules. And many of our interlocutory
18 attorneys are talking with parties when they were
19 asked to participate in these discovery and
20 settlement conferences about this as a potential
21 way of shortening the time it takes to get a
22 decision.

1 So what we're planning to do is
2 advertise to a greater extent, if possible, that
3 this is an available means for getting a quicker
4 and cheaper resolution of the case and perhaps
5 even think about formalizing the process by which
6 requests for this kind of procedure can be made
7 with the TTAB and we will want to work with TPAC
8 to get their input on how this kind of resolution
9 might become more of the norm than it is now.

10 On the other point, Mary, that you
11 mentioned, the Performance Appraisal Plan, we felt
12 very good about being able to work out with our
13 Interlocutory Attorney Staff and the Bargaining
14 Unit Representatives a new Performance Appraisal
15 Plan, which is a much more detailed plan than
16 interlocutory attorneys have worked with in the
17 past.

18 In the past it was more of a generic
19 standard which was applied to the work they do.
20 Now we have worked out a plan where there are
21 production requirements and timeliness goals,
22 which aligns more with our own TTAB goals and the

1 strategic goals of the agency.

2 My own view of it is that this is
3 already showing good results in the fact that our
4 first quarter statistics show a wonderful
5 reduction in the time it's taking us to decide
6 motions. And that's a great tribute to
7 interlocutory staff to have worked very well for
8 this plan and we are very appreciative of their
9 efforts.

10 The idea of shortening TTAB time, you
11 can look at it in a couple of ways. One is
12 shortening the time it takes us to render a final
13 decision or render a decision on motions. And
14 we've been working hard in both of those
15 categories. But the subcommittee's also talking
16 about the possibility of maybe overhauling to a
17 greater degree the overall time, under our current
18 rules in practice, it takes to get a case through
19 the system.

20 We want some input from the committee.
21 We don't have any answers today. I can give you
22 about whether that's a good idea, a bad idea, or

1 some modification of it might be good or bad. I
2 think what we want is what the committee is
3 prepared to help us get is the general views of
4 the Bar and of Trademark owners as to what would
5 be a possible change to our practice that would be
6 in their best interest as far as getting cases
7 through the TTAB. We're open to it. We want to
8 hear what the community believes is the best
9 approach and we will work toward that end.

10 MS. DENISON: Thank you.

11 MR. FARMER: Judge Sams, thank you for
12 that. One thing I'm curious about -- I'm perhaps
13 the guy who started this fire on TPAC as far as
14 looking at this issue. And the reason why I
15 wanted to look at it is, in some cases the --
16 going through the regular process, which would
17 take I think over three years if you follow it
18 through, works for folks. Sometimes it can
19 provide the basis for strategic behavior, for
20 example, you could be applying for a mark
21 registration on a 1(b) basis and you may be
22 looking to see how that fairs in the process

1 before you really commit to it; someone can come
2 in, they can oppose it.

3 If they really want to we all know that
4 you can drag that out a good bit and you might be
5 in the TTAB for four or five years, not through
6 any fault of the TTAB, it's just that sort of
7 strategic behavior is possible. And thus, I'm
8 wondering -- and this is not a question to answer
9 today, it's a thought to lay on the table for us
10 to think about in the future.

11 I'm wondering if there may eventually be
12 an opportunity for two different tracks to be
13 available and either party would have the ability
14 to elect a fast track and if a party is afraid of
15 strategic behavior or they really have the need to
16 find out sooner rather than later, then a party
17 could say we're going to go on the faster track
18 but still have the slower track available for ones
19 where it suits the interest of all parties because
20 in some cases, due to expense reasons, due to
21 ongoing settlement negotiations that are
22 engendered by the opposition or the cancellation,

1 sometimes the fast track may not be appropriate.

2 I'm going to take a wild guess that as
3 we look deeper into the opinions of the Trademark
4 community, that you're probably going to find a
5 real split of opinion and you're probably going to
6 find some folks that say yeah, let's continue to
7 make marginal improvements but I'm not looking to
8 go to the rocket docket.

9 And you're probably going to find other
10 folks who feel like, you know, I really get
11 strategized, that may not be the right verb, or a
12 verb, here, by the fact that things can be dragged
13 out and it would be really good to be able to go
14 into the faster option and not be held to the
15 slower one.

16 And so I realize we can't solve all of
17 that sitting here today but that's a thought that
18 has been going through my head lately as far as a
19 way to possibly still preserve the slower process
20 for when it works but maybe look as to whether ACR
21 or something else might provide a faster process
22 for instances where it's needed to prevent abuse.

1 MR. SAMS: Thank you, John. I know that
2 was a rhetorical question but I'm going to answer
3 it to a certain extent, I think. Well, at least
4 to the extent to saying that I'm also open to that
5 kind of thing. Our ACR process, I should
6 emphasize, is now undertaking only when both
7 parties agree and you're positing at least a
8 possibility where we might have another kind of
9 procedure which would be at the option of one of
10 the parties to take it down a more, let's say, a
11 faster track. Again, I'm looking for input on
12 that and the interest that might be among those
13 that come and bring their cases before the Board
14 to that possibility.

15 MR. FARMER: Sure. That sounds great
16 and maybe that's one thing that we will be able to
17 explore as we get a wider feeling for the
18 sentiment of those in the Trademark community.
19 And for those watching at home right now, I'll
20 remind you that we have our e-mail box,
21 askTPAC@uspto.gov, and so if any of you all have
22 views on this, e-mail them in. We'd certainly be

1 glad to hear them. If it's okay with everyone I
2 was going to turn the floor over to James Johnson,
3 to Jim Johnson, right now because he wanted to
4 also chat a little bit about an issue.

5 MR. JOHNSON: Thank you; Jim Johnson of
6 Sutherland. Dave, I believe you've talked a
7 little bit about Medinol and your recent decision
8 and then we'll talk about how TPAC and the
9 Trademark community might look at addressing some
10 of those Medinol issues.

11 MR. SAMS: Yes, Jim. I don't have a
12 whole lot to say in the way of updating the line
13 of cases involving fraud on the USPTO that came
14 with and after the Medinol decision that the Board
15 rendered a few years back.

16 There is now pending before the Federal
17 Circuit a case in Re:Bose, which will we presume
18 address some of these issues and then the court
19 will have a statement about Medinol and its line
20 of cases, at least there's an opportunity for that
21 to happen and we'll see what they do. That case
22 has been briefed; it has not yet been set for our

1 oral argument, to my knowledge.

2 And within the Board itself, we have had
3 only one decision of note that's precedential in
4 the area of fraud and that one we issued at the
5 end of January. It involved a case where there
6 were two pleaded registrations by an opposer and
7 each of those registrations was in two different
8 classes, one goods, one services.

9 The party against whom these
10 registrations had been asserted, the applicant in
11 that case, counter claimed to cancel these two
12 registrations on the grounds that although the
13 mark -- registered mark was being used on the
14 goods, it wasn't being used on the services in
15 either -- with respect to either of the
16 registrations. And we moved to cancel the
17 registration, the multiple class registration in
18 its entirety.

19 The significance of the holding was that
20 although there was no doubt about the non use and
21 the -- we found fraud as to the services class,
22 there had been no allegation of any fraud as to

1 the goods class, and therefore, we found that the
2 registration deemed multi- class was going to
3 treated class by class and that we -- there was no
4 basis for concluding that there was fraud on the
5 PTO with respect to the goods, and therefore, that
6 part of the multiple class registration would not
7 be canceled on that ground. Beyond that we
8 haven't and further jurisprudence at this point.

9 MR. JOHNSON: Thank you, Dave, for that
10 explanation of Medinol and your recent decision.
11 The TPAC and the Trademark community appreciate
12 your guidance and the Board's guidance on this
13 very, very important issue.

14 It still remains to be seen and there's
15 still concern about being accused of fraud by the
16 U.S. Government for a misstatement in the
17 identification of goods. And if I were ever in
18 that position, I don't know if I would -- I would
19 have to decide whether I would want to report it
20 to my client or just make a run for it. That
21 would be a very serious, serious allegation and so
22 the question that we have on TPAC and from other

1 members of the Trademark community is whether the
2 characterization of that behavior, that mistake,
3 as fraud is the appropriate description and
4 whether the remedy of canceling the registration
5 is the appropriate remedy.

6 We, of course, all share in your desire
7 and the Trademark Office's desire to promote the
8 integrity of the register. No body -- I mean it
9 helps everyone to assess the risk in adopting
10 marks and to get a clearer picture of what the
11 situation is. But there is a difference between a
12 death penalty and a parking ticket and that's what
13 we're wrestling with.

14 So what we hope to do is put together
15 some options for looking at the issue to try to
16 address -- to balance. Creating an incentive for
17 people to correctly state what they're using the
18 mark on, to be careful about that, but not
19 creating a situation where the behavior may be
20 mischaracterized or, you know, what is the gravity
21 of this; how should that be addressed.

22 It's a very complex issue as many of

1 these issues are and so we're hoping to put
2 something together, talk about it with the
3 Trademark community, come back to you for some
4 things to consider. It may be that the Bose
5 decision, as you mentioned, may resolve all of
6 these issues. I just wouldn't count on that. And
7 it still would be important to see that regardless
8 of what the Bose decision is, do we need
9 legislative or other redress if the Bose decision
10 doesn't handle it. And so we've got to -- I've
11 got to sit down and look at what the options are,
12 get it out to the community, get feedback, I
13 invite the people who are listening to this
14 program to give us input and guidance on this
15 issue; how should we address, how should we
16 resolve and balance the desire to have a register
17 that fully reflects accurately what's going on
18 with the Trademark, that discourages sloppiness
19 with regard to filing applications.

20 At the same time, provides the
21 appropriate remedy for people who make a mistake.
22 Is it as simple as you pay a fee for the cost of

1 amending the registration to make it -- to reflect
2 the truth or do you do something else? I don't
3 know. There's probably some mid ground or some
4 appropriate thing but that's what we're wrestling
5 with and we're hoping to make some significant
6 progress in the next few months and maybe by the
7 next meeting have some proposals for you, if not
8 before then, to consider, to think about, as what
9 the Board can do and what the Trademark Office can
10 do to address this increasingly important issue.

11 And would we have something different
12 between the handling current registrations and in
13 going forward; would there be a different process?
14 I don't know. But those are the kinds of things
15 that are going into our decision recommendation
16 process. I don't know if you have any further
17 comments but that's all I have.

18 MR. SAMS: The only comment I have to
19 that, Jim, is that we certainly appreciate the
20 concern level that -- is hard to miss the concern
21 level. But from the TTAB's point of view, what we
22 try to do is decide the cases that come before us

1 as best as we can based on the law as we
2 understand it.

3 Now, the kinds of suggestions the
4 subcommittee is talking about, maybe
5 brainstorming, would be -- obviously we would have
6 to -- it wouldn't necessarily by the Board that
7 would be implementing whatever solutions, if any,
8 would come from that process.

9 We would have to bring in the Examining
10 Operation because that's probably where a lot of
11 it would be discussed in greater detail as far as
12 the procedures or practice that might result from
13 the suggestion. But I think I speak for Trademark
14 Examining, as well as the TTAB, that we're open to
15 listen to whatever the TPAC comes up with as ideas
16 or recommendations on that score.

17 MR. JOHNSON: David, we appreciate your
18 willingness to listen, and Lynne Beresford's
19 willingness, and Sharon Marsh, and all of that.
20 Again, we share, we all share, the same goal, the
21 dream of having the perfect register.

22 It's how to get there is the problem and

1 so -- and this is going to take a community
2 effort, I think, on all of our parts to reach --
3 to strike the right cord for this and it's a tough
4 issue but it's one we've got to tackle as people
5 that serve the Trademark community. Thank you.

6 MR. FARMER: Were there any other
7 questions or comments from TPAC members for Judge
8 Sams? Any from the other folks in attendance here
9 today? David, thanks for coming and also I
10 realize that TPAC is an activist organization now
11 and it maybe hasn't always been quite so much and
12 so thanks for working with us as we become a bit
13 more inquisitive and ordering than maybe we were
14 in the past. We really appreciate that.

15 With that we are finished with that part
16 of the agenda. We're into the public comment
17 section. What I would like to do is first turn
18 the floor over to Lynne who's going to make some
19 comments on possible registration stuff.

20 After that, I'm going to go to Howard
21 and probably back to Lynne to talk about some
22 budgetary stuff, and then after that I will

1 provide some time for any other issues to be
2 raised if there's anyone who came today to raise
3 an issue. And so Lynne, the floor is yours.

4 MS. BERESFORD: Thank you very much.
5 And this is show and tell time. As you know,
6 we've talked about having an E-certificate but
7 with the issues that we have with our electronic
8 systems that's temporarily on hold. However, part
9 of the E-certificate idea was that we would get
10 rid of the old fashioned certificate and come up
11 with something that could be printed in house and
12 could be ordered and would be suitable for
13 framing.

14 So what we have in this folder that I'm
15 passing out, and I hope this can be captured by
16 the T.V. camera, is we have four mocked up
17 certificates and we have inside the folder a
18 little room for comment. And these certificates
19 could be produced in house with printers that
20 Trademarks already has, and they would be -- they
21 meet the requirements for being sealed and they
22 are -- they don't need a cover bind. Oh, you've

1 got them there? Good. They don't need a cover
2 bind and we think that they are suitable for --
3 some of them are quite attractive, but they don't
4 look like -- we're on to the next certificate if
5 you can get it on the -- okay; on the frame there.

6 We think they're quite attractive and
7 they are all examples of the kind of thing that we
8 would be looking at in the future. All right; and
9 each one of them has different formats, they all
10 have the -- they're all printed so that the
11 maintenance requirements are attached as the
12 statute requires; often they're on the back of the
13 page.

14 Each one of them has a certificate
15 number on every -- here, John, let me give these
16 to you. Each one of them has a certificate number
17 on every page so that you know what belongs to
18 what and each one of them has a page number on it.
19 So these are a beginning, a mock up, of what we
20 are thinking about when we go to the new
21 registration certificate, without the cover bind.

22 Again, they'll be cheaper because we

1 don't have to get them outside of the USPTO. They
2 can be printed here on the printers; they'll be
3 faster and easier for us to produce. And while we
4 wait for the opportunity to have electronic
5 certificates, we think these paper certificates
6 are an interim step.

7 So I don't expect you to do your voting
8 right now on the spot, but I hope all of you will
9 take a look at these and make the decisions about
10 what you think is the design, or what you would
11 like changed about the design, what the design of
12 the future would be. So thank you for your time
13 on this matter and if there are comments from any
14 of the TPAC members I'd be happy to hear them.

15 MR. LOCKHART: Lynne --

16 MR. FARMER: Lynne --

17 MR. LOCKHART: I just have -- I'm sorry.

18 MR. FARMER: Lynne, would it be
19 appropriate to put these up in the TPAC portion of
20 the website so that folks can take a look at them?

21 MS. BERESFORD: We'll talk about that.

22 I have to make sure -- I have to clear that with

1 our Office of General Counsel sitting back there
2 but we will -- if it's possible, if we can get an
3 okay on it, we'll certainly put them up on the
4 website. Again, there's nothing about these
5 certificates that can't be changed. We produced
6 them this way because the folks -- we tried to
7 think of different ways of presenting that would
8 get all of the necessary information on the
9 certificate in a way that was useful. So we've
10 sometimes moved class numbers around, and put the
11 reg. number in different places, and done other
12 things. Please take a look at these. Think about
13 what your clients might want and let us know what
14 you think.

15 MR. LOCKHART: I just have a question.
16 Do you have any idea of what the annual cost
17 savings would be?

18 MS. BERESFORD: I'll be happy to send it
19 to you. I don't know it off of the top of my
20 head. It's not a large amount, but as we go
21 towards electronic certificate, it becomes more
22 and more obvious that the ancient machines that we

1 have that do the sealing and the ribboning of the
2 cover bind, we don't really want -- they're all
3 old and they need to be replaced and we don't want
4 to get into the business of replacing them at this
5 point. So this is a step forward into getting us
6 to where we think we want to go in the future.

7 MR. FARMER: For the folks listening at
8 home, a messianic goal of TPAC is to while not
9 maybe messing with the initial three month
10 pendency to ultimately have registrations come out
11 as quickly as they can because we think that's
12 just good for the Trademark community. And one
13 thing that we've communicated to Lynne is that
14 maybe someday we will reach the point where a
15 registration is actually an electronic certificate
16 that issues immediately so you don't have that
17 time on the tail end with an option of receiving a
18 paper one should you choose to.

19 We're a long way away from that because
20 we have a lot of remediation has to be done to the
21 computer system beforehand and also there may be
22 other priorities that need to be ranked vis a vis

1 this. But just so the public knows where TPAC is
2 going, that's a desire of ours. Did I see a
3 question over there, Tim? No?

4 MR. LOCKHART: I just had one question
5 which Lynne answered so -- and Lynne, I think the
6 certificates look great.

7 MR. FARMER: All right. Well we --

8 MS. BERESFORD: Thank you -- sorry.

9 MR. FARMER: -- certainly --

10 MS. BERESFORD: Thank you very much.
11 And I just want to let people know we have 70
12 people on the web cast at this point, so a lot of
13 it -- we're all rock stars.

14 MR. LOCKHART: Lynne, I just have one
15 question. I know you don't have the figures right
16 now, but is there a difference in price in one of
17 the formats? If you could find out, that would be
18 good, you know, because if they're all the same,
19 of course, we'd go with cheaper. But anyway, if
20 you could find that out that would be great.

21 MS. BERESFORD: No problem. I don't
22 think any of these costs any more than any others

1 but I'll check. Thank you.

2 MR. FARMER: Having covered that issue,
3 I'm now going to turn the floor over to Howard
4 Friedman. Howard, if you'd introduce yourself for
5 the folks at home so you can make a few comments.

6 MR. FRIEDMAN: Sure. Howard Friedman,
7 President of NTEU 245. And Lynne, I think it's
8 great that the entire Friedman family is watching
9 from home. Good morning. I have a few remarks
10 and I hope that a lot, or some of what I say,
11 turns out to be wrong. I would like nothing
12 better than to be wrong with regard to the
13 discussion that's going to take place today.

14 I also want to profess my remarks by
15 saying I admire Lynne greatly, I admire Debbie
16 greatly, and the Trademark management, and so of
17 course, sometimes business diverts from personal,
18 and of course, this isn't personal, this is
19 business.

20 I wanted to address the issue of whether
21 the office is, to use Lynne's phrase, managing
22 conservatively enough during this, I think we

1 would all agree, severe economic downturn. I
2 think I and our union bring some credibility to
3 this discussion for a number of reasons.

4 I think one, as Lynne would probably
5 agree, our union has often supported the office
6 even when other unions of the PTO have not
7 supported the office. And that is always a
8 difficult thing to do because you generally want
9 to work together with all of the unions but we
10 have taken a stand in the past different from
11 other unions when we think it's in our best
12 interest and in the office's best interest.

13 I think one example, again, from a
14 credibility viewpoint going back nine or ten
15 years, is when our union supported interest in the
16 office and people on the outside having the office
17 become a government corporation and at that point
18 in time we were actually willing, under certain
19 limited circumstances to give up our Title 5
20 rights, which unions generally don't do in the
21 federal government.

22 So I think that provides some

1 credibility. More recently, two days ago, all of
2 the unions, including our union, attended a
3 function that was held on campus by the office
4 where we brought people up from the hill to
5 discuss telework legislation and we have been
6 working very closely with the office on the
7 telework legislation and supported exactly what
8 the office wanted to do last year and I suspect we
9 will be on the same level and the same floors and
10 be in agreement on that particular issue this
11 year.

12 That said, we have a huge problem that
13 requires immediate action. We believe the
14 downward spiral in the economy has resulted in
15 less Trademark applications being filed, and all
16 of us, I think, expect matters to get worse and
17 last for some time.

18 We are very concerned about maintaining
19 an inventory of new cases. Let me emphasize that
20 we don't have a problem with what Lynne and the
21 office did when it came to the reduction of our
22 bonuses, even though it clearly means a lot less

1 money for a lot of our people.

2 This was made clear to me and our
3 Executive Board at a meeting with our Bargaining
4 Unit yesterday. Our attorneys are more than
5 willing to have some skin in the game and help out
6 the office in any way they can. The problem is we
7 believe the office has not gone far enough and
8 needs to take additional steps immediately to make
9 sure our new case inventory does not become
10 further depleted.

11 We have a problem, our Executive Board
12 has a problem, and the people we represent have a
13 problem, with the projections the office has used.
14 We believe they have underestimated the problem.
15 There is also a credibility issue here, as
16 conveyed to us by our bargaining Unit yesterday.
17 Since a few short weeks ago when January 22, the
18 office went on record to say, you know, everything
19 was fine and our bonuses were not in jeopardy.

20 As was made clear to us yesterday when
21 we met with the Union, which fully supports
22 everything the Union has done on this matter, the

1 Unit's level of confidence in the office's
2 projections and their management is pretty low
3 right now.

4 Here are excerpts from an e-mail I
5 received today from a Bargaining Unit member.
6 "Please emphasis to Lynne and the rest of
7 management how important it is that they arrange a
8 meeting face to face with the Examining Board and
9 discuss the concerns we all have about the
10 shrinking inventory of cases. I don't think
11 management should be surprised by the concern and
12 fear that Lynne's Fridays e- mail elicited.

13 Just three weeks prior to her e-mail she
14 told us they were keeping a watch on things, that
15 there was no need to change course in the
16 immediate future. In fact, I recall when the word
17 RIFF was mentioned in a question. Lynne
18 particularly said they didn't want to discuss it
19 because we weren't in that kind of situation. So
20 to get an e-mail last Friday afternoon that is
21 completely about face with no further
22 communication from management, understandably

1 creates confusion, worry, and fear.

2 It is also important that management
3 hold a meeting to allow people to discuss their
4 concerns directly with those making the decisions
5 and let us know, to the extent possible, the
6 reasoning behind those decisions, because right
7 now, it seems like management is hiding up in its
8 ivory tower on the 10th floor.

9 If they insist on sticking to the
10 "model," that they have personally invested in,
11 then they should be held accountable by holding a
12 meeting. It's too bad that though they are
13 organizing extra details and have implemented the
14 bonus cap, they haven't woken up to the fact that
15 this "model" doesn't cover all matter of real
16 world situations, including the one we find
17 ourselves in.

18 Continuing on, I have to say that I am
19 really disappointed that management won't even
20 consider more adjustments or a temporary small
21 reduction in production goals. Have we not as an
22 agency met or exceeded all of our performance

1 goals? They have consistently told us what a
2 great job we are doing. I guess those were just
3 empty words. I really love my job and do the best
4 job I can, as so many of us here do. Given our
5 great performance over the last few years, it
6 seems only right that management risk, doing a
7 little bit more than necessary to get us all
8 through the lean times (eg: Reduce production or
9 more adjustments), rather than doing a little and
10 hoping that it's enough to get us through without
11 a RIFF.

12 Moreover, it seems like the agency would
13 be better off, rather than falling into a fire and
14 rehire pattern. Since last Friday when all of the
15 Bargaining Unit got notice, we have been working
16 very hard to offer solutions. We have offered
17 solutions regarding putting people on detail,
18 putting a lot of people on detail, doing it
19 immediately.

20 We have offered solutions when it comes
21 to coming up with quality bonuses that would
22 address during a down time of filings, how we can

1 improve quality, always something that would be of
2 interest to the Bar. We have put a number of
3 training initiatives on the table, we have
4 suggested a reduction of production, we have
5 suggested adjustments to production, we've put
6 every conceivable idea on the table.

7 To date, other than the office's
8 reduction and production announcement last Friday
9 and the waiver of the first action requirement for
10 the year, to my knowledge, I don't think anything
11 else has been implemented by the office. The
12 consequences of failing to take additional and
13 immediate action now, as I think the letter very
14 eloquently stated, far out way, whatever the
15 office thinks it might gain by conducting business
16 as usual.

17 When you get right down to it this isn't
18 about unions or management. It's simply about
19 making sure we do all we can now so that our good,
20 hardworking attorneys will continue to be able to
21 provide the kind of services all of you in the
22 room expect." Thank you, thanks John -- thanks

1 John, to John, and thanks to the rest of TPAC for
2 giving us this time.

3 MR. FARMER: Thanks Howard. Now we'll
4 turn the floor over to Lynne and then we'll see
5 where we go from there.

6 MS. BERESFORD: Thank you John. Well, I
7 think Howard has stated the concerns that he's
8 hearing. They're also concerns that we have too,
9 in some ways. First of all, let me say that on
10 January 22nd when I addressed the all hands
11 meeting, my understanding then, looking at what we
12 knew about the gross domestic product and other
13 things, was that we were on track. We got
14 additional information on January 30th that there
15 had been a 3.8 percent drop in the gross domestic
16 product. That in fact was one of the things that
17 determined that we would cut and cap the
18 production bonus.

19 I certainly have no objection to having
20 a meeting with examining attorneys. No one has --
21 it's been a very busy week, as one might imagine,
22 and that hasn't been something that I've thought

1 about scheduling, but I don't have any problem
2 with doing that.

3 And Howard's suggestions, among them a
4 quality bonus, a decrease in the production goals,
5 and some others, some training initiatives, et
6 cetera, are certainly all on the table. And as
7 Howard knows, we have met practically everyday
8 this week with either Howard or the Executive
9 Board of 245, or both, to discuss the various
10 issues that are before us.

11 The issue of reducing production levels,
12 reducing the required production, is simply a
13 non-starter because we have set production levels,
14 historically, to be what people should be doing in
15 order to earn their paycheck. And reducing those
16 levels of production, we think, would send a very
17 bad message. We think it would be the equivalent
18 of giving people more money -- the same amount of
19 money for doing less work. As a manager, I can't
20 -- I simply can't see that as an option.

21 Now, in terms of quality, I am always
22 interested in improving quality and we have a

1 quality bonus in place and I've been very clear,
2 and I've said this over the past several years,
3 I'm more than willing to consider additional money
4 for quality bonuses but only if I can be sure that
5 I'm getting additional quality and that we're in
6 fact raising the level of the quality of the work
7 that's being done.

8 And although we have not had a lot of
9 issues with quality, the Bar as in general, I'm
10 not being specific, but in general, pretty happy
11 with our quality. There is no question in my mind
12 that there are a number of places we could improve
13 quality and so that's something we want to
14 explore. And we certainly have -- are having
15 discussions within management about how one could
16 structure a new quality bonus. But it's not so
17 simple as we're going to give a bonus for quality.

18 First of all, you have to figure out
19 what quality it is you're going to measure. Then
20 you have to figure out how to get us significantly
21 -- a statistically significant sample size for
22 every individual whose quality you're looking at

1 and have someone look at that size of a sample of
2 their work, and then you have to have the
3 discussions with the Union about the quality
4 measure and how to roll it out. So it's something
5 we're already looking at but it's not something
6 that will happen over night. But certainly,
7 again, I'm always interested in improving quality.

8 I cannot -- I do not believe that we are
9 in a crisis situation at this point. I simply
10 don't believe that. We are looking at the size of
11 our workforce, we're looking at the size of our
12 inventory, which is a little lower than we'd like
13 it, I think it's like 63,000 and we'd like it to
14 be around 70,000. We don't see that as a good
15 thing, but we don't see that as crisis at this
16 point.

17 So we're taking a number of steps and
18 it's been a week since the announcement was made;
19 I don't think management has been slow in its
20 reactions here. And again, I can only say that
21 I'm more than willing to meet with examining
22 attorneys to talk about this. And I guess that's

1 it; that's all I have to say. Thank you.

2 MR. FARMER: Questions or comments from
3 other members of TPAC on this issue; any?

4 MS. PEARCE: I do have just one thing
5 and I don't work for the Federal Government,
6 Lynne, so I'm not an expert on this, but Howard
7 did mention the possibility of detailing people.
8 Is that something that's been discussed or is that
9 a possibility also?

10 MS. BERESFORD: Yes, we have ongoing
11 discussions. We have generally details where
12 people go for three months or six months and work
13 at the TTAB or in the General Counsel's Office or
14 other places. We have a certain amount of those
15 already in our model.

16 We are looking at other areas where
17 people would -- and again, the work on the detail
18 has to be worth while, it has to be attorney work,
19 it has to be things that we think will enhance
20 their ability to do their work as a Trademark
21 Examining Attorney.

22 But on the flip side, we have a number

1 of areas of the office that are more than
2 delighted to hear they might be able to have an
3 examining attorney come and work as a detailee in
4 their office because -- and I see Amy over there
5 nodding from OIPPE, but also there are other areas
6 in the office where they really are quite happy to
7 hear they might be able to get a detailee when
8 normally that wouldn't be in the cards. So yes,
9 we are working on providing additional details for
10 examining attorneys.

11 MS. LEIMER: Thank you. Jackie Leimer
12 from Kraft Foods; I speak for myself, not for
13 Kraft Foods. But I can say my views are informed
14 by being an employee of Kraft Foods where just
15 last week our CEO addressed our 100,000 person
16 employee base on some of these very same points.

17 You know, we're living in the most
18 difficult times, hopefully, that any of us will
19 ever see, that we'll never see anything worse than
20 we are in right now in economic times.

21 And I appreciate what you have to do
22 with respect to change quickly and be agile about

1 judgments you make and decisions you make because
2 the world is changing quickly around us and these
3 very same comments were made by our CEO last week
4 is that -- and you know, I think, personally, the
5 most important thing is for us, individually, as
6 consumers, as Americans, as employees, is to
7 maintain as much confidence that we can in the
8 organizations and institutions that are trying
9 very hard to solve this problem. And that
10 includes our government and our employers.

11 And confidence is earned by what I think
12 you're doing, which is being transparent, being
13 open. I certainly encourage that you meet with
14 employees and this is the way to maintain the
15 confidence. I have been on the TPAC for two
16 years; I've had an opportunity to observe, Lynne,
17 your management -- your management's team, and I
18 can tell you I have full confidence in what your
19 team has done in good times and I have that same
20 confidence that you will make the right judgments
21 in these very bad times. And I just wish you good
22 luck.

1 MS. BERESFORD: Thank you.

2 MR. FARMER: Thank you, Jackie. Members
3 of TPAC, are there any other issues or comments
4 you wanted to bring forward at this time on any
5 issue?

6 MR. FRIEDMAN: Could I add a few
7 comments, John?

8 MR. FARMER: Sure, Howard.

9 MR. FRIEDMAN: I think where we disagree
10 on fundamentally is whether we're at crisis or
11 near crisis. I think that's really where we
12 disagree. And whether or not you're right and
13 maybe I'm wrong, the bottom line is -- one of the
14 bottom lines that I made in my comments have been
15 what the person who had written us had said, which
16 is they'd rather you take, perhaps, a little more
17 action now and avert what we went through six
18 years ago and take what the Bargaining Unit and I
19 believe is to measure steps for the moment. We
20 just feel more things need to be done. I think
21 the other problem is, or additional problems that
22 the Bargaining Unit and I are struggling with, is

1 under the best of circumstances the room or margin
2 for error is very slim.

3 This first action pendency has to be
4 between 2.5, 3.5 months, and at the end of January
5 I believe we were at 2.7 months. And it doesn't
6 take much of an economic cycle going south for
7 very long, particularly when you're already at 2.7
8 months and you have at least 380 attorneys, which
9 is about what where we were when we went through
10 the reduction -- force in 2002 to get into
11 trouble.

12 So whether it's a rhetorical or other
13 question, it's something that the Bargaining Unit
14 would still want to know is how much worse does
15 the office think it needs to get before it takes
16 additional action.

17 Another issue that was raised, a good
18 point yesterday at the -- at our particular
19 meeting, is would the office be willing, in
20 concert with the Union, to have a third party come
21 in and look at their forecasting models and
22 projections.

1 Now there was an excellent article two
2 days ago in CNN Money Magazine which was sent to
3 me by one of our Executive Board members. And I
4 know, Lynne, and Debbie, and the office want to
5 get the projections right, as do we, but in a
6 wonderful interview with a gentleman who
7 apparently is the world's top expert on
8 quantifying the forecasting skills of political
9 experts, he's made it very clear that most experts
10 are wrong, usually are, and barely beat out a
11 random forecast generation. And basically, he
12 finds that experts' predictions barely beat random
13 guesses; the statistical equivalent of a dart
14 throwing chimp.

15 I don't share, nor does our Bargaining
16 Unit, particularly in view of what took place six
17 or seven years ago and what representations were
18 made before Congress, we just don't share the
19 confidence that the projections and filings are in
20 line, that we're going to have enough inventory to
21 work on. It's as simple as that. We also feel,
22 as a result, that time is of the essence; that we

1 need to do something now. Thank you.

2 MR. FARMER: We could go back and forth
3 forever since I gave Howard the first word, I'm
4 going to give Lynne a brief last word and then
5 we're going to move on.

6 MS. BERESFORD: Thank you. First of all
7 we are, Howard, not standing by doing nothing. We
8 have work projects and details, some of which will
9 be announced either this afternoon or on Monday,
10 that we're moving forward with. And we have been
11 working closely with you and with the Executive
12 Board and we'll continue to do so. I'm more than
13 willing to talk about getting a third party in
14 here to look at our model; that gets a little more
15 complex in terms of procurement and things like
16 that. But I do not have an alarmist view, and I
17 know you don't agree with me on this and that's
18 fine, but you can believe that I have the
19 interests of every Trademark employee at heart.

20 MR. FARMER: For everyone in attendance
21 here today, are there any questions or comments
22 you wanted to bring up to TPAC? If there are none

1 then what I'd like to do is first I'd like to
2 thank all of the PTO folks who spend so much time
3 helping us out on TPAC.

4 We are an attention grabbing machine and
5 reach out and touch a lot of people and they
6 provide us with a lot of information very quickly
7 and we really appreciate that. We realize that's
8 probably taking some getting used to and we thank
9 them for the service; and Lynne, especially you.

10 You've been very helpful and I really
11 appreciate that and I have total confidence in
12 your leadership. You're doing a great job. And
13 I'd also like to thank all of the members of TPAC
14 for their hard work, including Howard. Folks are
15 putting in a lot of hours here. You all are just
16 seeing the tip of the iceberg and I really
17 appreciate the professional sacrifices that all of
18 them are making in order to make TPAC so
19 effective. So that's it; we're done.

20 MS. BERESFORD: Thank you.

21 (Whereupon at 12:18 p.m., the
22 PROCEEDINGS were adjourned.)

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3 I, Carleton J. Anderson, III do hereby certify
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17 in and for the Commonwealth of Virginia

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