

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, September 2, 2010

- 1 PARTICIPANTS:
- 2 JOHN B. FARMER, Chair
- 3 LYNNE G. BERESFORD
- 4 MARY BONEY DENISON
- 5 JAMES H. JOHNSON, JR.
- 6 MAKAN DELRAHIM
- 7 RANDALL P. MYERS
- 8 DEBORAH LEE
- 9 TIMOTHY LOCKHART
- 10 BOB ANDERSON
- 11 JAMES CONLEY
- 12 JOHN OWENS, II
- 13 GERARD ROGERS
- 14 MARK OLECHOWSKI
- 15 ANN FARSON
- 16 MERYL HERSHKOWITZ
- 17 MARK DONAHEY

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

2 (9:00 a.m.)

3 MR. FARMER: Welcome to the meeting of
4 the Trademark Public Advisory Committee of the
5 United States Patent and Trademark Office. Thank
6 you for coming and thank you for your interest in
7 what we're doing. As you know, this meeting is
8 being web cast, so anything you say will be
9 broadcast and preserved and written down by a
10 court reporter, and your face may show up on the
11 screen.

12 We have an agenda today and I'm going to
13 stick to it pretty tightly, as is my habit. As
14 far as taking questions and comments or concern,
15 I'm going to follow the exact same protocol as I
16 have at previous meetings. And so if you've been
17 here before, you've heard it before, and I
18 apologize for that, and that is, we'll move down
19 through the agenda.

20 When we reach appropriate points for
21 questions, I will first ask TPAC members if they
22 have any questions they want to ask or any

1 comments they want to make, and then after that, I
2 will defer to our folks here who have come to
3 attend live, because I think if you make the
4 special effort to show up live, you deserve the
5 next spot in line as far as making any comments.
6 And then the people watching by web cast should,
7 assuming everything is working well, have the
8 technological ability to ask us questions. Also,
9 there's an email address which I presume has not
10 changed, and if it has not, it is
11 asktpac@uspto.gov. Again, that's ask, a-s-k,
12 tpac, t-p-a-c, @uspto.gov. You can send in your
13 questions or comments.

14 If we have time within that segment, and
15 if the question is not -- it's a legitimate
16 question, it's not just a rant, I mean we'll read
17 the rant, but if it's a legitimate question, we'll
18 try to pose it to the person who's on deck at that
19 time and get your questions answered.

20 And then also, the transcript of this
21 meeting will, once it's been proofed, be posted
22 online on the TPAC portion of the USPTO web site,

1 and so you can let folks know who are not able to
2 be here today that that transcript will be there
3 in case folks want to look at it down the road.

4 I'm going to start off this morning with
5 a few comments on some recent TPAC developments
6 just in the interest of transparency, and then
7 after that, I'll turn things over to Lynne
8 Beresford. And these comments I'm about to make
9 are just my personal comments as the Chair of TPAC
10 and they don't necessarily reflect the views of
11 all TPAC members. There's been not really a
12 recent change, but a recent strong reminder given
13 to us as to how TPAC should work. And I just want
14 everyone to know that the result of that will be
15 that TPAC will not be able to be quite as active
16 as it has been over the past couple of years. And
17 I hope that maybe down the road there will be some
18 loosening at the appropriate level of the
19 stricture so that TPAC can resume the level of
20 activeness and effectiveness that I believe it's
21 had over the past couple of years.

22 I raise this to you today simply in the

1 interest of transparency. When the Obama
2 transition team came in, they called me up, and
3 one of the things they emphasized to me is that
4 they really wanted TPAC to be transparent. And
5 David Kappos has also emphasized that to me
6 directly and strongly. And as a matter of fact,
7 he made a point right after he was sworn in as
8 Director of not attending a TPAC Executive
9 Session, but only attending a public session,
10 because he wanted to emphasize that we should
11 conduct our business on TPAC as openly as we
12 possibly can.

13 Well, recently we have been in
14 communication with the General Counsel's office of
15 the USPTO in which the following messages have
16 been emphasized. And as I'll mention in more
17 detail in a minute, I don't think this is a new
18 message to TPAC, but it is a very strongly
19 emphasized message, and that is that members of
20 TPAC are not to work on more than a de minimous
21 basis on more than 60 days per calendar year.
22 Well, actually not per calendar year, it's per

1 rolling year. From any specific date on the
2 calendar, you should not have worked more than 60
3 days during the previous 365 days.

4 A biggie within that was a reminder, a
5 strong reminder, that that means that TPAC members
6 not only can't get paid to work on more than 60
7 days per year, but TPAC members may not even work
8 on a voluntary basis on more than 60 days a year.
9 So, for example, if you were willing to put in
10 time for TPAC to try to advance the ball and not
11 write down your time and not get paid as a special
12 government employee for that time, even that is
13 not permitted.

14 We have been given guidance on what
15 counts and doesn't count as TPAC work. And, for
16 example, we have been given some rather specific
17 guidance on what constitute *de minimis* effort and
18 thus not work on a particular day. And I will say
19 it's been repeatedly emphasized to us that while
20 no threat was made whatsoever, that it could be a
21 felony for a TPAC member to exceed those rules.
22 We on TPAC, or at least speaking for myself, I

1 absolutely assume this is the law and will follow
2 it. I'll tell you that I'm not a specialist in
3 government employment law, so I simply have to
4 take it on faith based on what I'm told and what I
5 read that these, in fact, are the rules we must
6 follow, and we will follow them on TPAC, and we
7 have talked about that, and we said, well, if
8 those are the marching orders, we will march to
9 them.

10 Now, I will say in fairness to the USPTO
11 that these rules that were recently strongly
12 emphasized to us really aren't anything new. I
13 was personally told these rules when I became the
14 Chair of TPAC, and so I do not claim any unfair
15 surprise.

16 I know that some members of TPAC feel
17 like the advice migrated a little bit from the
18 advice that they were given in their ethics
19 briefing when they came on, but I think my view is
20 that the large picture was roughly the same. But
21 nevertheless, these are the rules and we're going
22 to live with them. But this is what the effect

1 will be.

2 TPAC will simply not be as active as it
3 has been over the past couple of years. We have
4 tried very hard and believe it's our role to
5 respond in a timely fashion to every issue that's
6 raised by the USPTO. And also we believe that
7 TPAC has a dual role as both sort of a body that
8 gives advice when questions are posed to us, but
9 also we're a little bit of, and I'm struggling to
10 find the right word, so I'll say watch dog,
11 although that really doesn't quite hit the target
12 I'm trying to hit, and what I mean by that is that
13 we on TPAC have a broad and varied experience in
14 the trademark community and bring that to the
15 table.

16 I wouldn't want to add up how many
17 collective years of trademark experience around
18 the table because that would make us look pretty
19 doggone old, and I'm not about to admit that. But
20 because of that, we bring issues to the USPTO that
21 may not be on their radar screen or maybe are not
22 exactly in the direction that the USPTO was

1 thinking of going, but we think that's part of our
2 role also, to be proactive in bringing issues to
3 their attention, even though we think on the whole
4 they're doing a very good job on the trademark
5 side, and that simply is not going to be as
6 possible going forward.

7 For example, you have to communicate
8 with people. And very often people, you know,
9 everyone has busy schedules, I can't talk to you
10 today, I can talk to you tomorrow, and the
11 difficulty with that is, it's hard to
12 compartmentalize when you do stuff, it's hard to
13 limit it to 60 days because someone is not
14 available this day, but they're available the next
15 day, someone can't talk to you then or they need
16 to talk to you then, something comes over the
17 trans from the USPTO and they need an answer right
18 away. We often get things on a very short
19 turnaround, sometimes a one week turnaround, and
20 so this will be a challenge.

21 We have talked about this on TPAC, and
22 what we're going to try to do is to have what

1 we're going to call TPAC Thursdays, and that is,
2 it's going to be not quite on the schedule as we
3 get through the annual report, because the annual
4 report, the way that work has to flow, you
5 couldn't get the annual report done by the
6 deadline if we only touched it on Thursdays.

7 But generally speaking, once we get that
8 done, our game plan, and we'll be flexible, going
9 forward, is the first three Thursdays of the month
10 are going to be the days in which we're available,
11 and if we have TPAC work, we're going to plan on
12 doing it. And so for those of you who may want to
13 contact us in our role as TPAC members, the days
14 to really circle on your calendar are the first
15 three Thursdays of the month. The math behind
16 that are that we've got meetings generally at the
17 USPTO four times a year for two days, that's eight
18 days. We felt like we needed to allow an
19 additional four days for travel, because some
20 people are not local and they have to travel the
21 day before the meeting, so that's 12.

22 If you allocate these three days a

1 month, that's more days. And we'll try to have
2 our telephone conferences that you all know about
3 on those days, and we'll try to do our business on
4 those days. And I've forgotten the math, I think
5 that saves something like 12 or 16 days, depending
6 on whether you need those travel days to get to
7 the USPTO that will be available to TPAC members
8 to get work done when it suits them the best when
9 they have to do it, and so that's how we're going
10 to try to do it going forward.

11 Obviously, the impact of this is going
12 to be, in the past, or we could turn something
13 around on a dime, we may have to say, well, we're
14 going to kind of have to punt this until we've got
15 another Thursday coming around, but that's how we
16 intend to try to work with it.

17 I'll just wrap it up by saying that I
18 know that TPAC members have made tremendous
19 sacrifices, probably in some cases in terms of
20 their income and in terms of their standing with
21 their employers in order to serve here, and I
22 salute them for doing so and know that you will

1 endure and do well under these tight guidelines.

2 And it's my hope, and we may give a more specific
3 statement down the road, that some sort of relief
4 will be provided in the future.

5 We're not looking to spend every day on
6 the phone with people at the USPTO and raise our
7 level of influence with them, but I'm hoping that
8 down the road there may be some loosening in these
9 rules, however that needs to be accomplished,
10 simply to acknowledge the fact that you can't
11 always say that we're only going to talk to you on
12 one day a week, that the pace of the business
13 world demands responsiveness in dealing with
14 things when they arise.

15 And so that's all I have to say about
16 that, and I thank you for putting up with me while
17 I make those comments. If any other members of
18 TPAC have any comments based upon what I've said
19 or want to rebut what I've said, you have the
20 opportunity right now. Not seeing anyone jumping
21 at the opportunity, so that being said, I'm going
22 to turn things over to Lynne Beresford now.

1 MS. BERESFORD: Thank you very much,
2 John. And I want to say thank you to all the TPAC
3 members, I know how hard you've worked and how
4 much you've helped the office with your advice and
5 with your concern and I really appreciate all the
6 work you do, so thank you very much. And on that
7 note, it's not on the agenda, but I would like to
8 talk about somebody who's helped TPAC tremendously
9 and who I think is one of our kind of unsung
10 heroes.

11 You know, when you see the swan going
12 across the lake, it looks very easy, but
13 underneath there's a lot of paddling going on, and
14 I think TPAC meetings, which come together and
15 look kind of seamless, there's a lot of paddling
16 that goes on and a lot of work behind the scenes
17 by the person who has to make sure you get your
18 airline reservations and your taxis and your
19 hotels and that you're reimbursed and all that
20 work. And so on that note, I'd like to present an
21 award to Ann Farson.

22 MS. FARSON: I can say a word or two,

1 and it's not just about me, it's about a team here
2 at the PTO, including trademarks, which are
3 fantastic folks. And Pat Beck is my right arm,
4 and my new left arm is Clarie Clemons, who is now
5 handling -- and she has done such a beautiful job.
6 She's only been here a short time and I think
7 you're going to grow to love her just as I have.

8 But TPAC is an exceptional group and
9 I've totally enjoyed working with all of you,
10 you're very special. And if there's anything I
11 can do outside of the 60 days, please call. Thank
12 you.

13 MR. FARMER: Thank you, Ann.

14 MS. FARSON: Thank you.

15 MS. BERESFORD: Thank you so much. And
16 on that note, Mr. Kappos and Ms. Barner are out of
17 the office today, so I'm going to deliver their
18 remarks and then go on and deliver -- talk about
19 the things that are on the agenda for trademarks
20 specifically.

21 Trademark's performance through the
22 third quarter, it looks like trademarks is doing

1 really well, and in my capacity as the Commissioner,
2 I'll talk about the trademark accomplishments.
3 It's in our booklet showing -- there's two pages
4 that I sent out regrettably late, because I know
5 TPAC likes things two weeks in advance. But those
6 statistics track, and I don't know if we can put
7 them up on the screen so folks at home can see
8 them, those statistics track trademark's
9 performance.

10 As you can see, we're basically meeting
11 our quality measures. First action quality at the
12 end of the third quarter was 97.2 percent. Final
13 action quality 96.5 percent, five-tenths of one
14 percent below the goal, but we know that that will
15 come up as we go towards the end of the year. We
16 are also meeting our E-government processing goal,
17 that is the percentage of applications that are
18 handled totally, the percentage of disposals,
19 either registrations or abandonments, they're
20 handled totally electronically as they go through
21 the system.

22 We don't send any paper, and you don't

1 send any paper. We now have 66.3 percent of all
2 those registrations and abandonments handled
3 totally electronically. Of course, our goal is to
4 get that number up to our first action electronic
5 filing number, which is around 98 percent, so we
6 obviously have a ways to go.

7 And one of the things we're going to be
8 doing in the fall is having a roundtable to bring
9 in practitioners and law firms and others to talk
10 about best practices for handling electronic
11 communications. It's very important to us to
12 figure out how to get people to respond to us
13 electronically. Again, 98 percent of our filings
14 come in electronically, but we had a big drop off
15 after that into the 66 percent range for other
16 types of actions. So we're going to be working on
17 bring that number up, because electronic
18 communications really helps everybody. It
19 improves the quality of what's in the data base,
20 it makes sure nothing gets lost, it's really a win
21 win for both trademark owners, the trademark bar,
22 and the office.

1 Application filings, for those of you
2 who prosecute, it's good news. Here we have about
3 a five percent increase over last year, so that's
4 wonderful. And our pendency numbers again were at
5 about 2.8 percent on first actions, and 13 months,
6 2.8 months on first actions, and 13.3 months
7 estimated on disposal pendency, including inter
8 parties proceedings, and suspended cases, and
9 we're at about 11 months, if you exclude inter
10 parties and suspended cases.

11 We recently had something actually
12 publish seven weeks after it was applied for here.
13 And we see that with the electronic processing and
14 with the things that we've put into place, the
15 system continues to get faster. We think that the
16 post-registration number, the 13 months or the 11
17 months to final action or disposal, is going to
18 continue to go down in the next year or so as we
19 put various other pieces into place and as people
20 start using, again, the electronic processes for
21 more responses to office action.

22 So I think in terms of pendency, this is

1 all good news. It's created a bit of an issue for
2 us when we publish something for opposition so
3 quickly. We often have some Paris convention
4 issues, but we've talked with the Committee about
5 that and we're confident that we're headed in the
6 right direction there.

7 The second page of our performance
8 measures is looking at the productivity, quality
9 and timeliness in all of our areas that support
10 examination or post-registration. And for the
11 most part, these areas, too, are meeting their
12 performance goals. We have a few that we're
13 working to bring their numbers down, and they're
14 meeting their quality goals, and I'm really,
15 really pleased with how quality has improved in
16 all of our support areas.

17 We put a good quality metric in place
18 there, we put a good quality review system in, so
19 they are doing great. And our Trademark
20 Assistance Center, which has become the rockstar of
21 government assistance centers, is being visited
22 all the time by other agencies; because of their

1 metrics and because of how well they do, continues
2 to set a good pace with, as you see here,
3 answering 89 percent of their calls within 20
4 seconds or less. So those are the kind of
5 statistics that I personally love to see, and so I
6 think we're doing fine there. Human capital plan,
7 well, trademarks has a human capital plan and it
8 fits in with the USPTO human capital plan. We
9 have already set up some groups to look at some
10 topics such as communication that have been --
11 that we learned are items that we need to focus
12 on.

13 We recently received the results of the
14 human capital survey which was taken in -- which
15 was given in March of this year, and trademarks
16 did splendidly on that. More than 50 percent of
17 the highest scores in the agency belong to
18 trademarks, so we did really, really well, and the
19 Committee will be getting a briefing on that at
20 the next meeting.

21 We formed working groups to develop
22 action plans, and we've got performance metrics

1 and deadlines and all that sort of thing, so we're
2 moving forward on our human capital plan. I think
3 trademarks is a good place to work, has a lot
4 going for it, but we can always be better, so
5 that's what we're working on.

6 IT initiatives, let me congratulate Gary
7 Cannon. He's become our first ITSES in
8 trademarks. Gary, I know you're around here
9 somewhere, there you are. And we're very happy,
10 we know he'll work well with the OCIO in working
11 on trademark's next generation. The next
12 generation effort is going along. I'm rather
13 impatient, so it's not going as quickly as I had
14 hoped it would. The two objectives, of course,
15 that were initially talked about in trademark's
16 next gen were two separate trademark systems from
17 other PTO systems, and to virtualize the trademark
18 systems.

19 More than a year ago, this is one year
20 and one day ago, we sent forward four work request
21 forms which we thought would give us early wins in
22 this process, and we had hoped that one or two of

1 them would be in place by now, they are not,
2 nothing has happened there, although their work on
3 at least one of them seems to be going forward.
4 But again, my hope was that we would do this a lot
5 faster than we have been doing it.

6 In March we put out a notice asking for
7 comments on what should be the functionalities in
8 trademark's next gen, and we've gotten more than
9 200 comments from both internal and external
10 users. So this is good, they've been cataloged,
11 they've been categorized, and they're being put
12 into buckets for how they'll be developed into the
13 trademark's next generation system.

14 Telework bill, well, Congress is out of
15 session right now. There was a Senate bill passed
16 in May, and a House bill in July. So these two
17 bills are not the same, there's still some chance
18 that they'll be reconciled and passed, and, of
19 course, that's what we hope for. We want to have
20 a more robust telework program. Right now we have
21 86 percent of our examining attorneys working at
22 home virtually full-time.

1 The ones who work within a 50 mile
2 radius are in the enviable position of not having
3 to come into the office at all unless they're
4 called into the office. The ones that are working
5 in such exotic locations as Boise or Chicago or
6 San Francisco are in the less enviable position of
7 still having to report into the office, something
8 that would be solved by this telework legislation.

9 In addition, we've recently expanded the
10 geographic pilot, that is, the people that can
11 live outside the Washington, D.C. area and work at
12 home. We opened up a process for applying for
13 those positions. We had 41 applicants who wanted
14 to move out of the area and work at home. We had
15 25 slots, and we've, obviously, filled all 25
16 slots, and five of those folks are being deployed
17 this quarter, and then there will be five in the
18 next quarter and so on until all 25 of them have
19 gone home. And again, we're really hoping that we
20 get some legislative relief here for these folks,
21 because we have learned in our teleworking
22 program, our 13 or 14 years that we've had

1 teleworking, it's really not necessary for folks
2 to come into the office. I mean they have to come
3 in occasionally, but it's really not necessary for
4 them to come in on a bi-weekly basis, it just --
5 it doesn't make any sense.

6 In June I'm happy to announce we have
7 launched a leadership development program here at
8 the USPTO. All of our SES are going to be taking
9 part in 360 reviews. And the leadership
10 development program is really well done. It has
11 levels starting with people who want to be
12 leaders, who are not yet in management positions,
13 and going right up through the SES level, offering
14 lots of different ways to get training to help
15 yourself advance here at the USPTO. It's a really
16 terrific program.

17 Trademark Expo is upcoming, October 15th
18 and 16th, and the purpose of Expo is to engage
19 people in the trademark -- understanding
20 trademarks, the importance of trademarks, how
21 trademarks work. Last year we had more 7,000
22 folks attend it. It looks like we're going to

1 have an equally good Expo this year. If you're in
2 town, I suggest that you attend it. And also, for
3 those of you who have -- if you have the time, you
4 should go look at the wonderful exhibit that's in
5 our museum right now on food. Patents and
6 trademarks, through the years, with food
7 technology and food trademarks, it's very, very
8 interesting, a very, very interesting exhibit
9 right here at the USPTO in the museum.

10 And I think that concludes my remarks on
11 behalf of Under Secretary Kappos and Deputy
12 Secretary -- Under Secretary Barner. If there are
13 any questions, I'd be happy to answer them now.

14 MR. FARMER: Any questions on this part,
15 we're going to go through in a second with Lynne
16 on a more detailed report on some other issues
17 that are within her domain as Trademark's
18 Commissioner. And also, just so certain -- who
19 does what on TPAC, for the most part, Kathryn
20 Barrett Park is our champion for trademark
21 operations issues, and so I'll defer to Kathryn to
22 take the first shot at questions and things such

1 as that. But not all of the issues under III on
2 the agenda are Kathryn's, we didn't want to
3 overload her too much, so somebody passed it out
4 to people on other sub Committees.

5 So basically what I'm going to do,
6 Lynne, is, I'm going to give you the floor and let
7 you kind of go down the agenda. Kathryn may jump
8 in with questions, or others, and I may follow
9 behind her with some, but I'm just going to kind
10 of let you roll down the agenda, if that's okay
11 with you.

12 MS. BERESFORD: Okay. Again, thank you
13 very much. The first item on the agenda is
14 accurate descriptions of goods and services,
15 minimizing deadwood in light of the *Bose* decision.
16 Ongoing discussions are being held in the office
17 about the best way of doing -- of ensuring
18 accurate identifications of goods and services.

19 We are looking at more of the
20 post-registration area, looking at some kind of a
21 pilot in the post- registration area to see -- to
22 try to get a handle on is there really an issue

1 with inaccurate descriptions of goods and services
2 or not. And we've had extensive discussions with
3 the TPAC Sub Committee on this matter, and I think
4 we'll be going forward, first of all, with a
5 possible rule change for post-registration to
6 enable us to run our pilot in a more robust
7 manner, and then we will -- and had feedback on
8 that yesterday in the Sub Committee meeting, but
9 this is an issue that we continue to engage with.

10 MS. PARK: Right, and we did discuss it
11 yesterday in terms of what the pilot would be and
12 how it would be run. And we're also going to, on
13 TPAC, spend some time to look at some of the other
14 things, Lynne, that were on the list that you had
15 prepared after our meeting in April and give
16 further feedback on some of those ideas, as well.

17 MS. BERESFORD: Okay, thank you very
18 much. That will be extremely useful. Next,
19 upcoming changes in trademark fees. Again, I
20 think this was discussed yesterday. We proposed
21 at an earlier meeting that perhaps one of the
22 things that would help all of us is to propose a

1 fee for paper filings.

2 TPAC has given us essentially a thumbs
3 up on that. We're writing a proposed rule, and
4 like all proposed rules, it will be published for
5 notice and comment, and we encourage everyone with
6 an interest in this matter to comment. That is
7 the only thing we have on our possible agenda for
8 fees. We don't have any plans at the moment to
9 decrease any fees looking at our budget
10 projections, et cetera, but that is something that
11 we will be proposing in the near future.

12 MR. FARMER: I think we're fine and we
13 can go on to the next item.

14 MS. BERESFORD: Okay. Discussions about
15 trademark filings being made by online
16 non-attorney services, well, we've had, again,
17 rather vigorous discussions about this issue
18 internally and with TPAC, and I think we've come
19 to a conclusion that there are relatively limited
20 tools available to the USPTO in this particular
21 area. If we suspect that there is unauthorized
22 practice of law, we can notify the person that we

1 think is doing that, and then if they don't stop
2 or don't explain, we can, of course, notify the
3 state bars.

4 We don't have any authority to go out to
5 their house and yank them out by their collar and
6 yell at them or anything else. So we are limited
7 in the scope of what we can do in this area.

8 We think this is something that we will
9 continue to monitor. We're looking at statistics,
10 filing statistics, email statistics and other
11 things which you will continue to share with PPAC,
12 but I think, hopefully, we've explained what the
13 limitations are in our ability to do anything
14 here. We will continue to do what we can. And if
15 we -- but I think we're pretty much -- we've done
16 all we can at this point.

17 MR. JOHNSON: Lynne, is there anything
18 the outside bar can do to help the PTO on this
19 issue if we suspect some unauthorized practice of
20 law or consumer issues, and if so, if there's a
21 particular person we should report such things to,
22 please let us know.

1 MS. BERESFORD: Well, you're welcome to
2 report what you suspect is happening, but if
3 there's a consumer issue, then that's, you know,
4 if you suspect there's a consumer issue, the
5 consumers need to step forward. That's, you know,
6 you can't say I think people are being defrauded,
7 somebody has to come forward and say, you know,
8 something has happened and so on.

9 And, of course, we're happy to --
10 certainly when we have a situation where we have a
11 company that holds itself out to look almost
12 exactly like the USPTO, and you have the sense
13 that a consumer reading their web site or their
14 whatever, the letter they've sent, would think
15 that they really are the USPTO and they're asking
16 you for money to do something, those things we, of
17 course, immediately when we know about them, we
18 immediately report them, and we have a process for
19 that.

20 But in terms of other companies or law
21 firms that hold themselves out as giving you full
22 legal services when perhaps that isn't true,

1 that's an entirely different matter. This is
2 something -- this is an issue that appears in a
3 lot of different ways, and depending on how it
4 manifests is -- depends -- that shows how we can
5 deal with it.

6 MR. FARMER: Just so everyone knows, Jim
7 Johnson on TPAC has been our champion in this
8 issue, so, Jim, thanks for handling it. I wanted
9 to add an additional comment on this just from my
10 individual view. This raises actually two
11 concerns, there's the unauthorized practice of law
12 concern and that's what the PTO has been looking
13 at.

14 But also, one thing we've been talking
15 about on TPAC, and I don't really know how to make
16 it happen, but I'd really love to get the FTC's
17 interest in this issue and have them take a look
18 at it.

19 I'm not saying this is necessarily
20 taking place, but I do have a personal concern
21 that some of these services may give individuals
22 who are not attorneys the impression that they

1 will do more for them than they actually intend to
2 do, that an applicant's hands will be held from
3 soup to nuts, that they'll be taken all the way to
4 the goal line of registration and they'll get the
5 registration that's appropriate for them, and I
6 just have concerns as to whether, and I would
7 encourage the FTC to look at this, whether the
8 representations being made by these organizations
9 indeed match up with the actual level of service
10 that they provide, and that's on top of the whole
11 lawyers doing what only lawyers should do sort of
12 issue. I don't really know how we get their
13 interest in it, but that's one thing that I just
14 would like folks to be cognizant of, and I hope
15 there will be a deeper interest in it in other
16 parts of the government down the road. Any
17 comments from TPAC based upon what I've said? I
18 think we're off to the next issue then.

19 MS. BERESFORD: Okay. Should examining
20 attorneys be required to put their email addresses
21 in office actions? Well, we've done a little
22 survey on this and we've determined that about 30

1 percent of examining attorneys now put their
2 emails in office actions.

3 We actually, as part of the office, we
4 have no real objection to this. You know, we
5 encourage people to communicate electronically, so
6 it seems to us that having examining attorneys
7 include their email address makes sense.

8 But at the same time, we have, and we're
9 going to move forward with this idea, but at the
10 same time, we have some other issues that we need
11 to solve. First of all, we need to figure out a
12 real process, a standard process for what happens
13 when the person sending the -- something to the
14 examining attorney, sends a response to an office
15 action. We do not allow responses to office
16 actions to come in by email, they really need to
17 come in on the response to office action form so
18 that the data is tagged and can be uploaded into
19 the system. And we do not want to get back into
20 the business of having email responses where
21 someone at USPTO has to key enter the data into
22 our systems, because this is one thing we've

1 learned about key entry is, you make a lot of
2 mistakes. Even if you double blind key entry, you
3 make a lot of mistakes. So it's almost like
4 getting a paper when something like that happens.

5 So we want to put a process in place so
6 everyone knows what they're supposed to do, and
7 they're clear about it. So we have some things of
8 that nature that need to be solved. But this is
9 something that I think makes perfect sense, and so
10 we'll move forward with it. We need to talk about
11 it with the union, we need to come up with some
12 procedures, but it's certainly something we think
13 makes sense.

14 The second item here, phone numbers of
15 examining attorneys in the data base, all the
16 examining attorneys' phone numbers are available
17 online with the employee locator. We haven't
18 thought about putting them in the data base
19 because they're already there, but we will look
20 into this. Again, this is an IT issue, so we will
21 look into this to see how --

22 MR. FARMER: I think we can actually

1 take that one off your plate.

2 MS. BERESFORD: Oh.

3 MR. FARMER: Sorry, I didn't have a
4 chance to give you the news yet. We chatted about
5 it yesterday, and I think we've decided it's not
6 really an issue anymore.

7 MS. BERESFORD: Okay then, never mind.

8 MR. FARMER: But on the -- well, that's
9 our fault for not getting the word to you. And on
10 the email issue, just so everyone knows, Bob
11 Anderson has been our champion on that. Bob, I
12 don't know if you have any comment on this issue
13 or not.

14 MR. ANDERSON: Not at this time. I've
15 had several discussions inside the agency with
16 people, and Lynne pretty much has covered
17 everything I've been told.

18 MR. FARMER: Tim.

19 MR. LOCKHART: I just have a question.
20 You said you did a survey of the examining
21 attorneys and about 30 percent are putting their
22 emails on there now. Of the remaining 70 percent,

1 roughly what percentage thought it was okay to
2 have the emails, or roughly what percentage said I
3 don't think that's a good idea?

4 MS. BERESFORD: We didn't survey
5 examining attorneys, we surveyed office actions
6 just to see the percentage. We surveyed to see
7 what percentage of them -- we took a sample and
8 looked at what percentage of them included that
9 information. We didn't go out with a survey to
10 examining attorneys. If I misled you, I'm sorry.

11 MR. FARMER: A few additional things
12 here, mainly just to help folks outside of TPAC
13 know what's going on. I think the big change here
14 is, before the question was really if, and now
15 it's more when and how for these emails, and so I
16 think that's a development.

17 Also, to let you know, we've been having
18 deeper discussions with Lynne's team about overall
19 just trying to facilitate good communications
20 between folks who are prosecuting applications and
21 trademark examining attorneys, and they've been
22 very helpful and very open to ideas, and we really

1 appreciate that.

2 On the bar side, one message that Lynne
3 has given to us, and I'll pass it along, so for
4 those of you here representing the bar
5 organizations, if you could help get the word out
6 to your members, we'd certainly appreciate it, and
7 that is, one thing we're hearing back through
8 Lynne from trademark examining attorneys is that,
9 you know, you get caught up in phone tag sometimes
10 with examining attorneys, and we're talking about
11 the examining attorney side of that, and I'll get
12 to that in a second, but also to encourage members
13 of the bar to not take the attitude that the only
14 time they should talk on the phone is when they
15 place the call, but also try to be as available as
16 you can to receive calls from trademark examining
17 attorneys when they come in just so we can make
18 the communication, get the issue disposed of, and
19 so I'd just encourage folks to be solicitous of
20 the office in that regard.

21 And also, presently, when you file an
22 application, as the prosecuting attorney, if

1 you're an attorney, you can give them one email
2 address, it's possible that down the road, that
3 may open up so that you will be able to give two
4 email addresses.

5 Many firms, especially bigger firms I
6 think presently have the policy that they want all
7 those emails floating to their docket clerk so
8 that no one misses anything, or if someone leaves
9 a firm or they're sick or on vacation, the
10 deadline is not missed, and it's perfectly
11 understandable. But we may see the world down the
12 road where you could give two, you could give the
13 attorney who's handling the file and the docket
14 clerk, and the purpose behind that is then maybe
15 down the road the examining attorney could drop an
16 email to that attorney saying, hey, I want to
17 discuss something with you that may lead to an
18 examiner's amendment, when would be a good time to
19 chat. And it just facilitates communications, but
20 you still have an email going to your docket clerk
21 so that it still gets into your docketing system.

22 Flipping back to the office side of

1 things, this is just in the preliminary stages of
2 discussion, and obviously there are a lot of folks
3 -- a lot of issues that will have to be worked out
4 with the examining attorneys, we're not going to
5 railroad over them.

6 But we've begun to have very preliminary
7 discussions, not just about the email issue that
8 Lynne has raised, but about the phone issue, in
9 that not always, but sometimes we get feedback on
10 TPAC that I never get an examining attorney when I
11 call, it's always them having to call me back.

12 Now, they have quality initiatives in
13 place presently in the trademark operation that
14 are trying to address that, but also that
15 sometimes the permissible working hours for
16 examining attorneys have a broader footprint than
17 the usual working day of an attorney in private
18 practice or anyone else for that matter, and maybe
19 start looking at ideas that would identify
20 specific hours during the week for examining
21 attorneys when you have a higher chance of
22 catching them on the phone, when they're going to

1 say that, you know, I'm probably going to be
2 taking calls, making calls during this time.

3 So all preliminary, there will be a lot
4 of issues to work out, but what we're trying to
5 work on in TPAC here are both in email and phone
6 is just increasing the percentage of instances in
7 which you can make first contact and get in
8 contact and get things dissolved so you just don't
9 have to play tennis. And so we've heard the bar's
10 thoughts on that and we're working on it. And,
11 Lynne, do you have any follow-up comments based
12 upon what I've just said on that or did I get
13 lucky and get it right or --

14 MS. BERESFORD: I think you got it
15 correct, John. This is something we all have an
16 interest in, better communications. Examining
17 attorneys often want to talk to the applicant or
18 applicant's attorney as quickly as possible, they
19 have an interest in that, let's figure out ways we
20 can facilitate that on both ends of the spectrum.

21 MR. FARMER: Any questions or comments
22 from other TPAC members on that issue? Folks in

1 attendance? Okay, let's roll into the next thing
2 then.

3 MS. BERESFORD: The next item is the
4 congressionally mandated study coming out of the
5 Trademark Technical and Conforming Amendment Act
6 of 2010, which essentially was a question looking
7 at litigation tactics in the trademark area.
8 We've been working closely with TPAC to come up
9 with a list of questions for a survey, and we've
10 got some wonderful comments and some wonderful
11 help from TPAC members, thank you very much.

12 Our next -- we're refining a few of the
13 questions, and then our next item of business is
14 to figure out how to get the survey done, and
15 we're looking at various options for having this
16 survey done.

17 Of course, the study, the
18 congressionally mandated study, the survey is a
19 small part of it. Lots of the things that are
20 required in that survey is really explaining how
21 trademark rights work in the United States,
22 because it seems to make an assumption that if you

1 send somebody a cease and desist letter or
2 anything of that nature, somehow you're doing
3 something that's aggressive or wrong, and yet
4 under the U.S. Trademark law, if you have a mark,
5 it's absolutely your obligation as a mark owner to
6 retain the rights in that mark, to tell people
7 that it's your mark and to ask them to stop using
8 something that's confusingly similar. So a large
9 part of the response to this request from Congress
10 will be explaining how the U.S. Trademark system
11 works.

12 Also, I think there will be some
13 information, looking at the trademark litigation
14 system versus litigation systems throughout the
15 U.S., how much of what we're seeing here is part
16 of just litigation and the U.S. legal landscape,
17 not just the trademark legal landscape.

18 So we continue to develop the results,
19 we continue to work forward with this, and I think
20 as we go forward, we'll certainly meet our
21 deadline. We had a year to do this and I think
22 we'll meet our deadline. And I really appreciate

1 the help from TPAC members on these questions.

2 Thank you.

3 MR. FARMER: Thanks, Lynne. Tim
4 Lockhart is our champion on TPAC and that issue.
5 Tim, do you have anything to say on this issue at
6 this time?

7 MR. LOCKHART: Well, I just -- I think
8 the folks at home would be interested, Lynne, to
9 know when you think it might be possible for them
10 to comment in response to the questions. I know
11 we're still sort of searching for exactly the
12 right vehicle to do that, but do you anticipate it
13 would be in the next month or two or longer?

14 MS. BERESFORD: Well, I think if we keep
15 to the schedule which we've been on, it will be in
16 the next month or two. You know, we have a
17 schedule on how to develop this information, et
18 cetera, and I think it should be in the next month
19 or two.

20 MR. LOCKHART: And I'm assuming that
21 there will be an announcement on the PTO web site
22 so that folks who want to comment, if they're

1 monitoring the web site, they can read that
2 information and that will direct them as to where
3 to go and how to put in their comments?

4 MS. BERESFORD: We will put an
5 announcement on our web site, and we will
6 certainly do everything we can working with INTA
7 and AIPLA and IPO and other groups to ask them to
8 help us in this matter, because, obviously, if
9 we're asking questions, this isn't just let's have
10 the corporations answer the question, we want
11 small businesses, we want individuals, so the more
12 we can get the word out, the more apt we are to
13 get a cross section of folks who are trademark
14 owners and trademark practitioners answering the
15 questions in the survey. So we will do what we
16 can to -- we will use our resources to make sure
17 that the questions -- people know about them.

18 MR. FARMER: Lynne, thank you. Unless
19 anyone has any questions or comments to that,
20 we'll move to the SOU issue. And Kathryn is our
21 champion there. This is another later
22 development, Lynne. I think the sense of TPAC is

1 that we don't really -- it's not an issue we're
2 pushing anymore, we've thought about it more, and
3 because of some of the deadwood implications,
4 we'll keep an eye on it, and if the office has
5 recommendations down the road, and Kathryn may
6 have more to say about this in a second, as to the
7 changes you want to make, we'd certainly look at
8 them, but we're not as gung ho as we were before,
9 so we're not really pushing it. And, Kathryn, do
10 you have any comments more on that?

11 MS. PARK: Well, I think, Lynne, as
12 we've discussed many times, I think from a
13 prolifically pragmatic perspective, it's not that
14 big an issue. And I think that was sort of the
15 conclusion that the INTA USPTO Sub-Committee also has
16 sort of reached, that it's terrible when it
17 happens to you, but it doesn't happen all that
18 often. So I think for all the reasons John
19 articulated, we've decided that's not something
20 we're going to keep pressing on for now.

21 MS. BERESFORD: All right, thank you. I
22 think this is something that will be solved partly

1 by -- and I think INTA and others will be looking
2 at this issue in their legislative agenda because
3 part of this has to do with how the law is
4 written, and also part of it is due to how our
5 computer systems are set up. So hopefully with
6 the more flexibility the trademark's next
7 generation will offer us, we may be able to be
8 more flexible than we are now with a solution to
9 this problem.

10 MR. FARMER: Okay. I think we're off to
11 the quality issue now, and just so everyone knows,
12 Bob Anderson is our quality champion on TPAC.

13 MS. BERESFORD: We are still working on
14 our excellent First Office Action Initiative. You
15 know, we've been sending out office actions to bar
16 groups and having them comment in a grid for each
17 office action we sent them. We're now at about
18 600 office actions that have been commented on.
19 Believe it or not, we have a line-up of bar groups
20 that want to do this for us. I'm always amazed.
21 New York Intellectual Property Law Association has
22 said they would like to review 200 of our office

1 actions and give us comments on them. We continue
2 to -- and the Ohio Bar is weighed into, and we
3 continue to look at those results. We think it's
4 been extremely valuable in helping us hone in on
5 what actually constitutes excellent quality.
6 We'll continue to share the metrics with TPAC and
7 with the world. And our quality initiative now is
8 in kind of a pilot stage. We have a pilot award
9 for this excellent quality. We'll know at the end
10 of this fiscal year, or we'll be able to look at
11 what we've done at the end of this fiscal year, so
12 in October we'll start looking at has this award
13 made a difference, is there something we can do to
14 tweak it, how can we move forward with this.

15 But all of this is in an effort to
16 really reward excellence in the entire office
17 action as opposed to our earlier measure of
18 quality, which was decision-making. So that
19 continues to be an ongoing issue. And if there
20 are any comments --

21 MR. ANDERSON: I'm Bob Anderson, and
22 John put me on the quality team because when we

1 first talked, I discussed a situation and a case
2 in which I was an expert witness, in which there
3 was some less than stellar examination quality, in
4 my opinion.

5 However, after talking to the people in
6 the office, including Lynne, Sharon Marsh, the
7 head of the Trademark Quality Review Function, and
8 seeing what the office is doing, I've become more
9 and more convinced that we're really talking about
10 instances where there are small things happening,
11 that the general quality of office actions that
12 are moving through the office at this point is
13 very high, and that, in fact, quality has improved
14 substantially since I left the office back in
15 2004, and I think the efforts being made by the
16 office to improve quality are excellent, and I
17 strongly support them, and that will be reflected
18 in the annual report. Thank you.

19 MR. FARMER: Hey, Lynne, I gather from
20 your comments and from what we've been chatting
21 about that down the road, when you have statistics
22 at your port, you're going to have a new

1 benchmark, I guess it's called total quality or
2 whatever.

3 MS. BERESFORD: Right.

4 MR. FARMER: And you'll have a target
5 percentage and your actual achievement during the
6 past reporting period. Do you have any time
7 forecast as to when you expect that benchmark and
8 the first reporting on how you all are doing
9 against that benchmark to start rolling out to the
10 public?

11 MS. BERESFORD: Well, we're hoping to
12 have enough information to benchmark in the next
13 fiscal year, so that would be after September
14 30th. Again, I'm a little hesitant because we
15 haven't looked at all the statistics yet, but that
16 certainly is where we want to go with this. This
17 will --- and I'm tooting trademark's horn here,
18 which I'm so good at, this will be the third time
19 we will -- or actually the second time I guess we
20 will have changed our quality metric in the last
21 ten years.

22 And the amazing thing here is the

1 examining core simply rises to the occasion and
2 does the right thing and meets the goals that we
3 set for them. Of course, there's lots of
4 discussion about them and lots of training and all
5 that sort of thing, but I really think this new
6 benchmark, this new quality standard is going to
7 really move the examination quality up to an
8 unprecedented level.

9 And I'm very -- I think there's a lot of
10 support for it throughout the trademark
11 organization and certainly from Director Kappos
12 and Deputy Director Barner, so --

13 MR. FARMER: Sounds great. I think
14 we're off to the next issue then.

15 MS. BERESFORD: Okay, the consistency
16 mailbox. Well, as you know, we opened a
17 consistency mailbox more than a year ago, and we
18 were a little disappointed with what's come into
19 it, because it hasn't gotten that much use.
20 However, we expanded the consistency -- what could
21 be filed in the consistency mailbox to include
22 some ID related issues. And so in FY '10 thus

1 far, we've had 15 requests into the trademark
2 consistency mailbox; only one of them was ID
3 related. So we were very concerned when we
4 expanded the criteria that we were going to, as
5 always, using the legal term, open the flood
6 gates. And, unfortunately, somebody hasn't
7 figured out the lever on the flood gates yet, so
8 we haven't seen that.

9 In '09, we had 18 requests, seven were
10 granted, seven were denied, and four just didn't
11 belong in the mailbox. We've had 15 requests so
12 far in fiscal year '10, which we're almost
13 through, one more month, and only one was ID
14 related. Of these 15, eight were granted, four
15 were denied, one was moot, and two are still
16 pending.

17 So we're dealing quickly with what comes
18 into the mailbox, but it's still not something
19 that's used a lot. And, obviously, if this trend
20 continues, we will then open it up further and
21 have more things that can be filed into the
22 consistency mailbox, because, again, as part of

1 our quality initiative, we're also interested in
2 consistency. So we'll be looking at the results,
3 which so far are a little disappointing, but we'll
4 be looking at the results and thinking about how
5 we could expand the reach of that mailbox.

6 And while I'm on user feedback, it was
7 at the behest of TPAC that we put a feedback
8 button on the main page of the trademark -- of the
9 web site, and we established that mailbox to
10 gather complaints and praise and other things,
11 other things from the public on how trademarks is
12 doing and whatever is on their mind.

13 So we opened it on February 24, 2010,
14 it's -- as of the 27th of August, we've had 72
15 submissions into that mailbox. So here's a little
16 mini report on what has come into the feedback
17 mailbox, and it's a very mixed bag.

18 We've had six very positive compliments
19 into the mailbox. We've had 21 suggestions for
20 improvements or complaints, and these are all over
21 -- let me just say these are all over the map.

22 In the suggestions area, limit the

1 number of attachments of third party registrations
2 and web site print-outs being used by the
3 examining attorney. Clicking on the link to the
4 office action should take the user to the office
5 action with attachments as one printable document.
6 A lot of these came in when we opened
7 up asking people for functionality for trademark's
8 next generation. Add a missing and parenthesis in
9 one portion of the -- text for responses, so, you
10 know, again, these are suggestions.

11 Complaints, some of them -- a couple of
12 them -- of the one, two, three, four, five, six,
13 seven, eight, nine, ten, 11, 12, 13, 14, 15 -- a
14 couple of the 19 complaints that we got are things
15 that turned out to be user error, so we won't go
16 over that.

17 And some of them are -- and again, these
18 are all over the map, everything from letter of
19 protest not granted, the overall web site is not
20 user friendly, no reminder was sent that a renewal
21 filing was required, don't make my address
22 publicly available on the web site, I got

1 something from a company asking me if I wanted to
2 use them to file a response, you know, you name
3 it, it's in this box. We take it all seriously.
4 We answer them as best we can. But anyway, that's
5 the sort of thing that we're getting there.

6 And then we have 36 that should have
7 gone somewhere else, like the Trademark Assistance
8 Center, you know, asking a status question or
9 something of that nature. So this is the sort of
10 thing we're seeing in the feedback mailbox. A
11 very large percentage of what's coming in probably
12 is not in the right place, but nevertheless,
13 people are using it. And when we get comments
14 from the public, we take care of them. We respond
15 to the ones we can respond to and deal with the
16 others, send them forward to the Trademark
17 Assistance Center for response or whatever. But I
18 just thought you all would like to know what's
19 going on with that particular mailbox.

20 MR. FARMER: Not seeing any hands going
21 up, I think we can go on to the next item.

22 MS. BERESFORD: Okay. Official Gazette

1 in html, that is not part of what's -- that could
2 possibly happen in trademark's next gen. One
3 thing we have done with the Official Gazette is,
4 we've put up a user friendly optimized Official
5 Gazette which should download much faster, a 400
6 percent decrease in file size, and therefore, a
7 much faster download, so that's something that
8 we've done to improve access to what's in the
9 Official Gazette.

10 Obviously, we know that in the future,
11 what people really want is to be able to just
12 download their publication, their mark that's been
13 published in the Official Gazette, not the entire
14 Gazette. That will be something that we'll deal
15 with down the road in trademark's next gen, it's
16 not on the radar screen, it's just not on the
17 radar screen to do it right now, so --

18 MS. PARK: I think, though, making the
19 OG download so much faster has been a huge
20 improvement for users and so we are very
21 appreciative of that.

22 MS. BERESFORD: Oh, good.

1 MS. PARK: Yes.

2 MS. BERESFORD: I'm glad people noticed,
3 you know, good, okay, so that's terrific.
4 Anything that helps our users out, we're good
5 with. Electronic certificates of registration
6 with an option to get a paper certificate, again,
7 I think this is going to be something that goes on
8 in trademark's next gen, it's not something that
9 we can do right now for a variety of reasons.

10 And then on to TMEP issues. OCIO is
11 working on having manuals available in a user
12 friendly format with Wiki possibilities and other
13 things. That, you know, was one of the things,
14 one of our four WRF's. That I think John
15 discussed and we'll discuss when he talks about
16 what OCIO is doing.

17 But again, we've remained -- trademark
18 remains really wanting to be able to update the
19 TMEP quickly. I don't know that they'll ever be
20 on a daily basis, it gets too difficult for
21 versioning purposes and for lawyers who have to --
22 who want to cite to the TMEP probably don't want

1 8,000 versions out there, which is what would
2 happen if it's updated too quickly, so we will
3 have to, as we get the possibility of actually
4 doing updates in real time, we'll have to
5 establish a schedule.

6 Whether it's monthly or quarterly or
7 whatever, we will work on that process. But at
8 this point, we're still waiting for the -- for
9 progress from OCIO, and hopefully in the next
10 year, we will be able to see this TMEP with Wiki
11 and with the ability to update it quickly
12 available to all of us.

13 MS. DENISON: Lynne, may I ask a
14 question about this?

15 MS. BERESFORD: Sure.

16 MS. DENISON: AS you know, the TTAB has
17 been updating the TBMP, and I wonder if you could
18 be cognizant of coordinating with the TTAB in the
19 future about how often you're planning to update,
20 because they're considering at this point, once
21 they get this major revision completed, how often
22 they should be completing, and I think it would

1 just be helpful to have coordination. And also
2 they're considering whether they would do a Wiki
3 version of the TBMP, and so anything that you
4 learn, since you're, you know, a little bit
5 farther down the path than they are, I think it
6 would be helpful for you to speak to one another
7 on that. You probably will, but I just wanted to
8 make that note.

9 MS. BERESFORD: Oh, well, of course,
10 we'll talk to the TTAB about this. And actually I
11 think they're part of these -- I hope they're part
12 of these meetings on xml tagging and on the TMEP,
13 because this is -- really the reason this is being
14 pushed is because patents wants the patent manual
15 of examiners, the MPEP, this is a wonderful
16 initial discussion, they want the MPEP up and with
17 the ability to search and change, et cetera. So
18 there's a -- that's part of the reason this is
19 moving along.

20 But, yes, we'll definitely talk to the
21 TTAB. We'll definitely coordinate with how we do
22 our updates. This is all -- and this is just not

1 the TBMP and TMEP, et cetera, this is also what
2 we're hoping to use for our internal manuals, for
3 instance, that are used by our LIE's and other
4 manuals. We're looking at how we can put the --
5 form paragraphs into this format and be able to
6 update them more quickly and also give the bar and
7 opportunity to comment on that if anybody has the
8 time and wants to comment. We really see this as
9 an opportunity to really improve our paper tools
10 here, our book tools, they're on longer in paper,
11 of course, but this I think is just a tremendous
12 opportunity for the office to be able to offer its
13 manuals and its training materials and other
14 things in a way that will make them far more
15 useful to the people that use them outside the
16 office. And, Jerry, I don't know if you have any
17 comments or not, but --

18 MR. ROGERS: I second yours.

19 MR. FARMER: I think that takes us to
20 the end of our session with Lynne Beresford.
21 Lynne, was there anything else you wanted to talk
22 about?

1 MS. BERESFORD: Video, we have a video.
2 Is the video ready?

3 MR. FARMER: Okay. It's the movie hour
4 now at TPAC.

5 MS. BERESFORD: Okay, everybody, get out
6 your popcorn. We're going to look at the next
7 video that's been prepared for online to help
8 those folks who don't read the instructions but
9 want to know something about it anyway. We've
10 been producing videos to tell them about that. So
11 here's after you file.

12 (Video played.)

13 MS. BERESFORD: Thank you so much. And
14 I thank the folks. These are all in-house actors,
15 and all in-house production. The production staff
16 is absolutely amazing and has done a wonderful,
17 professional job. We're going to put them in for
18 an academy award. But it's just -- I think it's
19 great and I think this is the kind of thing that
20 people really need to know when they don't read
21 the instructions. Thanks.

22 MR. FARMER: Thanks, Lynne. And just so

1 everyone knows for these laws on TPAC, TPAC's own
2 movie critic is Jim Johnson, so you can always
3 contact USPTO directly if you see any issues with
4 the videos. But also, Jim is the one who's
5 watching that on TPAC. Jim, do you have any
6 comments?

7 MR. JOHNSON: I thought that video was
8 excellent. It explained a lot of the issues that
9 there's confusion about. So many people believe
10 that when they file an application, registration
11 is instantaneous, or we can have notice of
12 publication, anything, they just believe it's
13 registered, and I thought that was a key point to
14 make about responding, that you need to respond to
15 applications. I thought it was well done and I
16 think it will highlight a lot of the issues and
17 clear up some of the confusion that's out there
18 about trademark rights and that sort of thing.
19 Thanks.

20 MR. FARMER: Okay. Elizabeth.

21 MS. PEARCE: Lynne, I just wondered if
22 you had other ideas in mind for future videos at

1 this point. One thing I think might be helpful,
2 because it came up a little bit here, guiding
3 people through the electronic forms, the simplest
4 ones, the office action response and change of
5 correspondence and things, just so they can find
6 it on the site.

7 MS. BERESFORD: I think we have --
8 probably Dave back there can tell us exactly, but
9 I think we have about seven in the can at this
10 point.

11 THE VIDEOGRAPHER: We have seven filmed
12 and we have about eight or nine --

13 MR. FARMER: He'll need to repeat the
14 answer.

15 MS. BERESFORD: Let me repeat this for
16 everyone, seven filmed and a couple more in
17 process, including one I have to say that I'm
18 going to be in, so they've told me I can't wear a
19 wig and a mustache, I have to look like myself,
20 but we're hoping -- I think you've seen the longer
21 ones, the ones that will be coming out in the
22 future will be probably a bit shorter and really

1 more topical, really related to more than -- more
2 related to a single topic. So we're hoping that
3 all of these will be very useful for our
4 applicants, and some of them will be linked into
5 the filing form.

6 MR. FARMER: Okay. Lynne, did you have
7 anything else you wanted to chat with us about
8 today? Before we break off the segment, any
9 questions, comments from folks on TPAC? Anything
10 from folks in the audience? Okay. Lynne, thank
11 you, you all are doing a great job in the
12 trademark operation, it's a pleasure to work with
13 you all on that. We're going to take a five
14 minute break. I see John Owens here. And we'll
15 come back with our discussion with the CIO in
16 about five minutes.

17 (Recess)

18 MR. FARMER: If everyone will take their
19 seat, please. Our next visit will be with the
20 Office of the Chief Information Officer, and I
21 think John Owens, the CIO, will be making the
22 presentation. And on TPAC, our technology folks

1 are Tim Lockhart and Bob Anderson, and also Howard
2 Friedman, who is not able to be with us today, but
3 Deborah Lee is sitting in for Howard today, and so
4 I'll turn the floor over to John, and then, Tim,
5 if you -- I'll kind of let you take the lead on
6 the interlocutory part. Thanks.

7 MR. OWENS: Good morning. All right,
8 well, my name is John Owens, I'm the Chief
9 Information Officer, I'm happy to be with you
10 again today. Go to the next -- we have a device
11 or something. Next slide, please. Okay. Let's
12 first talk about the number one topic of which I
13 know people can't wait to have, is the trademark
14 next generation program. We are working very
15 closely with trademarks on formalizing a final
16 plan. We went through some iterations early on
17 and some investigation, as you know, and we are
18 now much more prepared to actually start.

19 We are looking at the improvement of the
20 functionality and technical services, as well as
21 standing up the next generation IT platform. One
22 of the major initiatives, of course, we've always

1 talked about is the separation of trademark
2 systems from other business unit systems. But
3 recently we've come to the conclusion that it
4 would be safer and more easily managed, and we did
5 this in concert with trademarks, and Gary Cannon
6 in particular, to, instead of having like a very
7 revolutionary model where things just happen in
8 one big bang, to have more of an evolutionary one.
9 So to avoid the issues with data migration and
10 possible corruption or failure, where one day the
11 system would work and the next day the switch was
12 flipped and we'd have a brand new system with
13 unknown, you know, issues, that we're going to a
14 much more evolutionary model, and the CIO
15 certainly agreed and have been working with Gary
16 and the trademarks team on formulating a new plan
17 based on that type of strategy. Next slide,
18 please.

19 So what does it look like today? The
20 stand up of the trademark next generation IT
21 platform and the migration of the trademark
22 systems onto that new platform will be iterative

1 over the next one to three years. You will see
2 those enhancements. Some of them will be internal
3 only. Some of them will not be seen, they will be
4 infrastructure, but hopefully you will see the
5 ramifications of improved performance and quality
6 and stability.

7 The enhancements will continue to be
8 made on current trademark systems that currently
9 exist at the same time as we build the new
10 platform. Now, that might seem like redundancy,
11 but much of the work that we're going to do on the
12 current systems will be translatable onto the new
13 system, that's going to be part of it. We will
14 make decisions of do we continue to add or do we
15 rewrite or transform the current products and
16 services to new products and services on the
17 future infrastructure. And we will employ an
18 agile methodology instead of the traditional
19 waterfall methodology employed by the federal
20 government as encouraged by the -- under the
21 federal CIO to give smaller wins over shorter
22 periods of time.

1 I know one of the biggest complaints we
2 have from customers is things take so long, we
3 wait a year or years to get something. Well,
4 industry went away from the waterfall methodology
5 a number of years ago. Certainly in my last seven
6 years at AOL, I did nothing but agile development.
7 I'm happy to see that the federal government has
8 finally embraced this type of development
9 methodology and that we are going to be allowed to
10 do it and OMB is changing their regulations to
11 make sure that we can properly document on
12 progress.

13 What this does mean is that you will see
14 smaller improvements, but quicker, and that's
15 actually very powerful. No longer will you wait
16 until the end of a \$10 million project to find out
17 that you failed, you will know right away, which
18 is actually quite a good benefit, so you can make
19 course corrections and steering corrections. Many
20 programs fail when you do a whole bunch of tasks
21 and then you get to the integration step in a
22 waterfall method and then you don't properly

1 integrate. Because the development is done in
2 smaller chunks, you don't have that issue anymore.
3 Next.

4 For those of you that are wondering, the
5 particular method of agile methodology that we'll
6 be using is called scrum, s-c-r-u-m. It's readily
7 documented and available. It is a rugby term for
8 those of you that pay attention to rugby. And
9 it's a very collaborative type of agile method,
10 where the teams have on them customer
11 representatives, product managers, product
12 champions from the trademark organization in every
13 team guiding the way.

14 So this plan is going to look
15 financially a little different. Instead of
16 building a completely separate system and
17 maintaining a current system, we're going to build
18 up the next generation platform a little slowly,
19 and then over time what you will see is the
20 operations and maintenance on the old system go
21 down and the improvements to the new system go up.

22 That will more than likely be visible in

1 the third year, but in FY '11 and '12, the numbers
2 that trademarks and the CIO came up with are \$6.5
3 million on the next generation program, the
4 enhancements to the current systems, again, much
5 of which are translatable to the new platform at
6 3.5 million, and continued operations and
7 maintenance at the 8.5 million to keep things
8 going, which is what you pay today.

9 In fiscal year 2011, if you'd go to the
10 next slide, please, we're going to work together
11 to define the program down to the project level
12 including scopes and milestones.

13 There's a concept called the backlog,
14 not to be referenced to the patent backlog, which
15 is completely different and not relevant here, but
16 the backlog is a list in scrum of the requirements
17 and enhancements that need to be worked on. They
18 are prioritized by the trademark office or the
19 customer on what gets worked on first in
20 collaboration with CIO, and then iterations happen
21 that takes part of the backlog and actually do the
22 development test and release of that iteration.

1 The sequence is, again, evolutionary. I
2 can't stress that, because that is a change given
3 the original direction that we thought we were
4 going to go. We are going to develop a new
5 prototype with this architecture in the core
6 foundation of the architecture next year. We are
7 currently working the first experiment in the
8 cloud. One of the work request forms that we had
9 received last year pertained to the document
10 retrieval system, the trademark document retrieval
11 system, TDR. That contract has been --
12 requirements have been finally finalized, the
13 contract has been written, and we are currently in
14 I believe design architecture or the start of
15 development.

16 That will be based on a public cloud
17 technology because of the low threshold for
18 security when it comes to this type of data.
19 Since trademarks are openly published, it
20 qualifies as -- on the order of one, two or three
21 rating, three being high, it qualifies as a one.

22 So we felt comfortable using a fully

1 functional and deployed public cloud to do this
2 development work. And it's our first development
3 work in the cloud for the entire agency. And we
4 will continue to enhance the functionality for our
5 user community, as well, with all of the wonderful
6 feedback you gave trademarks, which they've been
7 happy to work with us to write requirements for.
8 Next.

9 So let's talk a little bit about what we
10 did in fiscal year 2010. We just released Madrid
11 1.9. We've done a first action systems for
12 trademarks FAST 1.16 also recently. The trademark
13 electronic search system test has had some issues
14 which I'll talk about separately in a minute.
15 And, of course, we've fully implemented PTO Net 3,
16 and we're now working on the -- what's called the
17 head end, the connection to the internet, with our
18 firewalls, VPN, gateways and parameter switches,
19 because next year we are going to upgrade from
20 approximately 300 kilobits per second connectivity
21 to the internet to three gigabits per second to
22 the internet, which is a ten fold increase.

1 Now, that's not just going to give us a
2 lot of space for nothing, that's also going to
3 enable a lot better quality when it comes to
4 voiceover IP, comes to home, you know, working at
5 home, the quality of the collaboration product
6 that we have, and are going to deploy, and well as
7 the performance of our systems, and the ability to
8 place many more folks on telework.

9 So let's talk a little bit about TESS.
10 TESS has had some issues lately because of some
11 activity generated from the internet. One
12 example, and I can only stress that it's one, we
13 had hundreds of these examples over a period of
14 several months where a malicious application out
15 in the web generated 70,000 application requests
16 in approximately five hours, sucking up 50 percent
17 of the utilization for TESS, thus, denying service
18 to the public and to internal users. This type of
19 denial of service attack, we've had others where a
20 single application was just opened again and again
21 and again and again, and either that's a real bad
22 program we're trying to scrape data off of our

1 system and data mine or a malicious denial of
2 service.

3 Because of this and the system
4 performance being degraded after we had worked so
5 hard to put up notifications how the systems
6 perform and when they're available and improve
7 that, we are looking with trademarks at
8 introducing a piece of technology to help protect
9 us against automated or what's known as bot
10 networks.

11 These automated applications or bot
12 networks can generate this type of denial of
13 service attack. They also generate spam and a
14 bunch of other malicious type of internet
15 activity.

16 The technology that we are going to
17 implement, we've also implemented for patents, and
18 it's called Recaptcha. I'm sure many of you are
19 familiar with it on banking sites and so on. It
20 does allow us to determine whether or not there is
21 a human being making the request or whether or not
22 it's an automated application, and thus, denying

1 the request if it's an automated application.

2 I have been avoiding doing this as much
3 as possible because, of course, the Recaptcha
4 experience is annoying. However, when looked at
5 the other side of the coin, which is 50 percent of
6 the agency's resources taken and a denial of
7 service to both the constituency and internal
8 users, there's really not a lot of choices other
9 than to implement a security measure such as this.

10 Let's talk for a minute about what else
11 we've done or are going to do in fiscal year 2011.
12 TDR 2, again, this is the first foray into the
13 public cloud that we are going to have or cloud
14 technology we are going to have using a much more
15 modern environment.

16 It's planned for final release in the
17 third quarter FY '11. This was using the
18 waterfall methodology, not agile; we're still
19 finalizing the agile method of development and how
20 to be compliant with it here.

21 We have Madrid 2.0, which we've
22 separated into two releases. Because of the

1 importance of the release of Madrid 2.0, when it
2 comes to support of the WIPO, International Bureau
3 of Automated Treaty, I think it was a treaty,
4 Lynne, correct me if I'm wrong. And then, of
5 course, the planned first -- this was just planned
6 in the first quarter release.

7 Now, the trademark quality review system
8 which is aimed toward providing data to management
9 on the improvement of the efficiency and quality
10 of reviews done in trademarks, it's actually -- we
11 used as a basis for that a current patent system
12 that works very well, but this is totally
13 independent of that.

14 Many of you have heard about the TMEP
15 work that we're doing. Next slide, please.
16 Version seven is going to be available in the
17 current format that is available today, but it
18 will also be available in a beta format. The
19 content will be reengineered to be managed in xml,
20 and it will be published in pdf and html, and
21 hopefully in the future other formats such as the
22 E book formats and so on.

1 Trademarks will get to manage this data
2 directly. Today, trademarks does work in concert
3 with OCIO to put the TMEP in a system that is hard
4 to maintain and manipulate and takes the direct
5 intervention of a developer to actually import and
6 then export in the appropriate format. This is
7 less than desirable.

8 I have been working hard both with our
9 internet publications, as well as the TMEP, and
10 even the MPEP, the patent's manual, to get OCIO
11 out of the publication game. I don't feel a need
12 to do that, and I want to give the power directly
13 in the hands of trademark. So that will be a big
14 win. We're also exploring a tool together, public
15 comments and feedback on the TMEP through a
16 product called Ideascale, which has been used by
17 the White House. And we are looking at adding the
18 new public search capability using a product
19 called Marklogic in a later release later in 2011.
20 The beta for this product is planned for the first
21 quarter of FY '11. And this is a big win. This
22 was one of the WRF's we received last year as a

1 request.

2 The Trademark Trial and Appeal Board
3 Information System, of course, is being integrated
4 into our overall plans for next generation. And
5 we are also working to improve the current system
6 by modifying the interface and integration with
7 the trademark systems to better coordinate the two
8 organizations. And that is what I have for you.

9 MR. LOCKHART: John, as always, I want
10 to thank you and Scott and the rest of your team
11 for coming in today and briefing us on what's
12 going on. I thought we had a very productive
13 Sub-Committee meeting. Obviously, you've got
14 quite a few headlines, if you will, in this
15 briefing, most notably the decision to shift from
16 the revolutionary approach, you know, one system
17 one day, the new system the next day, to where
18 it'll be a more transitional process, and I think
19 that's good news, I think that approach makes
20 sense, and as you say, it's more likely to result
21 in success, which is what we're all interested in.
22 And I'm very pleased to see, as I'm sure everyone

1 is, all these points about deployment of systems.
2 So you're starting to move from a -- it seems to
3 me from a situation where you're focused primarily
4 on planning to one where you're in the development
5 mode, you're rolling out a lot of new
6 functionality, you've done that this year, you're
7 going to do more next year, so we're all pleased
8 to see that those things are starting to come
9 online and will continue to come online.

10 I know everybody is probably familiar
11 with that Recaptcha technology, but maybe not by
12 that name, so just for anybody at home that might
13 be a little uncertain, can you just briefly
14 describe what that is so we're all on the same
15 page?

16 MR. OWENS: Sure; Captcha or Recaptcha,
17 which is a particular brand of Captcha, I believe
18 by Carnegie Mellon, I may be wrong, gives you a
19 little window with a group of words or letters
20 that are kind of skewed. Now, the reason they're
21 skewed is because programmatically, if they were
22 just typed there, and this is just an anecdote,

1 because I get asked this a lot, if they were just
2 typed there, there are programs called optical
3 character recognition that could just read it and
4 it could be automated. So it's skewed on purpose.
5 It may have multiple colors, it may be skewed.
6 There's also usually a button for 508 compliance
7 to read you the letters, and then you are to type
8 them in to match what is shown, and hit enter, and
9 then we know that a human being took it.

10 Optical character recognition, which can
11 be used to get around simple Captcha, has much
12 more difficulty getting around Recaptcha because
13 of the way they skew the words, or the letters,
14 shifting them up and down or changing the size or
15 manipulating them in some way.

16 So if you've ever seen that, many people
17 have seen that on -- when you have applied for a
18 Facebook account or something like that, you'll
19 see the little pop-up that says please just make
20 -- we want to prove that you're not a robot, would
21 you enter this information so that we can grant
22 you the account, we know at least that you're a

1 human being.

2 MR. LOCKHART: So you're looking at
3 implementing this for folks from the outside who
4 want to come in and access trademark records, but
5 has a decision been made, and if so, when are you
6 going to implement it, or it's still something
7 you're studying?

8 MR. OWENS: I think that the CIO is
9 ready to implement. I think we have been -- well,
10 we have been talking to Marilyn and Lynne and
11 others in trademarks. I also was waiting kind of
12 for the feedback of this group before we were
13 going to make a final call, I believe. But the
14 final decision is not quite made, but it is very
15 close. It is one of the limiting -- there are not
16 a lot of technologies out there to prove that
17 you're a human being and not a bot. That's why
18 everyone here should be at least familiar with the
19 product, because it is the industry standard to
20 make that determination.

21 With receiving the constant attacks that
22 we've been receiving, I have a team of people that

1 have been working diligently, almost 24 by seven
2 during the periods, to fight the attacks as they
3 happen. But bot nets and hackers are very
4 adaptable. They change IP addresses, they move,
5 they change the way they're doing something, and
6 that's a game of chess that we're always on the
7 defensive for. I need to get out of the defensive
8 mode. Just as quickly as I can rectify those,
9 they still have impact on the performance of the
10 system.

11 MS. PEARCE: John, isn't that Recaptcha
12 system what they're already using on the PAR
13 system for patents? Isn't that the same sort of
14 thing?

15 MR. OWENS: PAR, yes, it is.

16 MS. PEARCE: Yeah, okay.

17 MR. OWENS: It is used on PAR, it's been
18 used there for two years.

19 MS. PEARCE: Right, and I use that
20 extensively also in tracking our patent portfolio,
21 and it's really not a problem, you just use a
22 similar system for TESS then?

1 MR. OWENS: It would be the same system.

2 MS. PEARCE: I don't -- I've never had a
3 problem with it. Every now and then I get words
4 that I can't quite decipher, sometimes they juggle
5 them so much, you can't quite figure out what to
6 type, but I find that I just exit out, go back in,
7 and they give me something that I can, you know,
8 recognize and type in.

9 And you can do a number of records that
10 way. You don't have to do that each time you do
11 one record. It's just once you're in, you're in.
12 And I found that it works very well on the patent
13 side. So I don't -- I've not had any problem with
14 it and I certainly would vote for extending that
15 to the trademark side if it's going to help with
16 these hackers. I don't know if anybody else has
17 got experience, they'd like to speak to it.

18 MR. LOCKHART: Well, this is a pretty
19 new development, certainly new to the TPAC, and we
20 might want to take some time later to discuss it
21 among ourselves and then give you a sense of the
22 Committee, John. You know, if you do implement

1 this, I think it would just be good to maybe have
2 some explanation on the PTO web site about why
3 you're implementing it on the trademark side.

4 And, obviously, you've got a very
5 significant problem, and I understand why you
6 might want to go in this direction, but just -- it
7 would be good to educate the public so they don't
8 think it's just some, you know, barrier thrown up
9 for no good reason. But we'll get back to you
10 with that after we've had a chance to discuss it.

11 Given that you're now pursuing this
12 evolutionary road, and so it's not going to be a
13 situation where one day we're under the current
14 system and one day we're under trademark's next
15 generation; is there some milestone or event that
16 will signal when we are officially transitioned to
17 trademark's next generation? What would be the
18 date or the triggering event on that? How will we
19 know when we're there?

20 MR. OWENS: Well, Mr. Kappos still would
21 like us to get to the final evolution with
22 everything transferred by 2013. We are still with

1 trademarks working out the schedule of what will
2 be developed where. I know one of the first
3 things that both CIO and trademarks agrees upon
4 completely is standing up the new core virtualized
5 infrastructure which would have an electronic
6 service, you know, enterprise service bus, it
7 would -- we would start building things based on
8 more of a service oriented architecture, which I
9 will translate for you means that the new work
10 would become scalable and redundant much more
11 easily than the current system, which is
12 important, because as load and demand grows today,
13 we are capped by the hardware and software that we
14 have in place today, whereas a virtualized
15 environment, much like the cloud, you can
16 instantiate or start, literally just start other
17 applications to increase the capacity of one
18 application or the other and they just work
19 seamlessly together.

20 It is a major reengineering effort. It
21 is a technology and a bunch of series of concepts
22 that came about since about 1998 on. It's been

1 wide use in industry for a while, but the
2 government is just now starting to accept those.
3 So what parts get built when other than I can tell
4 you we're going to start with that core piece of
5 infrastructure, much like we originally -- I told
6 you before we were doing. Other than trademarks
7 and OCIO agreeing on exactly what those initial
8 pieces are, we don't have the fully flushed out
9 schedule yet. But the goal that I was given by
10 Mr. Kappos, and I know Lynne was, too, is to shoot
11 for trying to get that done in 2013. And as we,
12 you know, develop the schedule together, we'll get
13 a much clear picture to tell you that.

14 MR. LOCKHART: Okay, I appreciate that.
15 And I just had one final question. I want to
16 credit my colleague, Jim Johnson, for this one, I
17 think it is a good question. What do you see as
18 your major challenge or challenges over the next
19 year or two and what would be your plan to address
20 those?

21 MR. OWENS: Well, I've said it before,
22 training and hiring. I was just given permission

1 to hire a bunch of dedicated folks for trademarks,
2 approximately nine to ten people next year.
3 Hiring in the federal government is not an easy
4 task, it takes a lot of time, so I believe that is
5 one of the challenges. Getting acceptance of
6 agile when the rest of the government is so
7 familiar with waterfall, it is a much different
8 philosophy. Agile embraces change and failure.
9 They expect failure to happen. It also means that
10 you plan much smaller projects and see -- you see
11 the product evolve much slower over time. Instead
12 of a big waiting game, you get little bits in
13 drabs. It's like watching a television show with
14 a lot of commercials, you know, you get a little
15 piece and then you've got to wait, and then you
16 get a little piece instead of waiting and hoping
17 and then it not happening.

18 So that'll be interesting, as well, as
19 well as the training. Don't forget that the
20 organization both in trademarks and patents needs
21 a lot of training on the new technologies and new
22 methodologies, everything from documenting

1 requirements into what's known as UML, which is a
2 mark-up language for documenting requirements,
3 business requirements, and then translating them
4 to technical requirements, but also the
5 development tools and methodologies, as well as
6 what is service oriented architecture.

7 So though we've been working on some of
8 those things, bringing in experts for training
9 and, you know, starting to bring in training for
10 agile and following an agile system development
11 lifecycle, that will be a big change for this
12 organization on both sides, both trademarks and
13 CIO. And I think some of those initial steps that
14 we take doing agile scrum, what's known as
15 sprints, those iterations, will be a learning
16 experience on both sides, and that we have to
17 continue to improve those and not give up on them,
18 I think that's the largest challenge that I have.

19 MR. LOCKHART: You know, your comment
20 just sparked one final question that I have. Do
21 you anticipate that the transition to trademark's
22 next generation would require any retraining of

1 the examining core, or will it be so transparent
2 that that would not be necessary?

3 MR. OWENS: That depends directly on the
4 user interface design and development effort and
5 any reengineering that is done on the interfaces
6 themselves. Certainly we could keep the exact
7 same interface as we have today, but this is an
8 opportunity, if trademark decides to take it, to
9 invest in some expertise.

10 I know we're doing this for patents by
11 hiring experts in the field of user interface
12 design and finding ways to optimize. So it's not
13 necessarily going to require a lot of retraining.
14 Trademark systems are in a much better place
15 electronically automated than patents are, but
16 it's certainly an option if we redesign the user
17 interface for efficiency.

18 MS. DENISON: John.

19 MR. FARMER: Kathryn, then Mary.

20 MS. PARK: Thank you, John. I had a few
21 questions about the developments on the Trademark
22 Manual of Examining Procedure. And, first of all,

1 you say it's going to be available in a beta
2 format, and is that going to be available to the
3 public, the public will be able to see the new
4 version?

5 MR. OWENS: Yes.

6 MS. PARK: And then secondly, it says
7 here you're exploring the tool to gather public
8 comments in your referencing ID scale, that's
9 essentially creating -- would be to allow the
10 creation of a Wiki version?

11 MR. OWENS: Wiki means different things
12 to different people. There's also discussion
13 forums, blogs and so on. And I don't know what
14 you exactly mean by Wiki. But what it does mean
15 is that we are looking at the ability for us to
16 take the document, cut it into sections, I
17 shouldn't say us, trademarks, and ask for
18 comments, and have a discussion on particular
19 sections using the product called Ideascale, which
20 is what the White House uses, that product, to do
21 the same thing on policy and, you know, law.

22 MS. PARK: And my last question on the

1 TMEP is, it says the new search capability will be
2 available in a later release, and can you
3 elaborate a little bit on what you anticipate
4 there?

5 MR. OWENS: Yes; Marklogic provides a
6 fairly sophisticated, open standard core language
7 with all types of near operators and, you know,
8 what you would expect when you're actually doing,
9 you know, a patent or trademark search.

10 Making that available to the public
11 won't be for the original -- the initial release
12 in the very first beta, but we do have it on the
13 books planned in the next release. This is one of
14 those types of efforts that we are trying to take
15 a more agile approach or iterative approach to
16 development. We want to put it out there, gather
17 feedback, use that feedback, develop something
18 new, put it out there, gather feedback, and so on
19 and so forth. And that was one of the longer,
20 more complicated, costly features that we thought,
21 well, why would we wait an extra couple of months,
22 why don't we get the functionality we think we

1 need out there first, which is the ability to
2 manipulate the document in xml, and the ability to
3 give the publication responsibility directly to
4 trademarks without the CIO, and the ability to
5 comment first, and then we go for the rest.

6 MS. DENISON: John, I wanted to have a
7 little bit more information on two areas, one was
8 on the TDR, and the other was on assignments.
9 With regard to assignments, I understand that they
10 are currently under the CIO, and the current
11 procedure is, you file an assignment
12 electronically and then you get faxed back your
13 confirmation, and it's rather archaic in today's
14 world to get a fax back, and I just wondered if
15 that's going to be handled in trademark's next
16 gen, and why it isn't under the trademark section.
17 As I understand it, it's under CIO instead of
18 trademark operations, so that's my first area.

19 MR. OWENS: I have to be completely
20 honest, I know that the assignment branch is under
21 my organization. I am not fully up to speed on
22 the trademark process for that area.

1 MS. DENISON: If you could just --

2 MR. OWENS: I can look into it and be
3 happy to get back to you.

4 MS. DENISON: Yeah, that's all I'm
5 asking, I don't have to have an answer, but it
6 seems to me to be lagging behind, the fact that
7 they're using a fax system, and that's the sole
8 system, you don't get a paper thing, but you get a
9 fax back indicating recordation, so it seems to me
10 that that should move into the 21st century when
11 you're updating everything else.

12 MR. OWENS: I'd be happy to look into
13 that a little bit.

14 MS. DENISON: Thank you.

15 MR. OWENS: And I'll report back. The
16 second area?

17 MS. DENISON: Yeah, the second area, you
18 said that you were putting TDR on the cloud first
19 because you had lower security concerns about the
20 TDR data since it was public, but I'm assuming --
21 I just wanted your assurance that people still,
22 even though it's lower security, people would

1 still not be able to manipulate the data because
2 it is important that the data remain accurate.

3 MR. OWENS: Yes.

4 MS. DENISON: And I just wanted to make
5 sure that that was clear.

6 MR. OWENS: Yes; the store of the data
7 and its integrity will still be here. The front
8 end that hosts and would retrieve and deliver the
9 data to you in the format that is specified, we
10 want to give more flexibility in the formats that
11 we deliver you data in, would be through this
12 front end system. It is not part of the store as
13 it currently is.

14 MR. FARMER: Any other -- Bob, do you
15 have anything?

16 MR. ANDERSON: Yeah, one quick question.
17 You mentioned using Marklogic for the new TMEP
18 version. Are you looking at Marklogic for
19 searching across the board?

20 MR. OWENS: Not at this time.

21 MR. FARMER: I'll get to you in a
22 second. Anything else from other TPAC members?

1 Deborah, you're standing in for Howard today,
2 anything from him since he sits on the Tech
3 Committee?

4 MS. LEE: No questions.

5 MR. FARMER: Okay. I have one and then
6 we'll go to the audience questions, and we will
7 get to you, and that is, we've gotten some reports
8 recently from folks trying to contact trademark
9 examining attorneys that they can't get through,
10 calls get dropped, and we've also heard some from
11 the examining attorneys, they just don't get
12 voicemail messages left for them, and we've even
13 heard reports that some examining attorneys have
14 started using their personal cell phones or other
15 phones just because they don't have confidence
16 that the call is not going to be dropped on the
17 VOIP systems. And so I was going to see, John, if
18 you could give us any information on that. It
19 sort of bridges into trademark operations, since
20 we're talking about examining attorneys, and so,
21 Lynne, if you want to jump in with any comments
22 also, we'll be glad to hear them. So, John, we'll

1 start with you, then we'll go to Lynne.

2 MR. OWENS: So I think yesterday in the
3 Sub- Committee meeting, Meryl was there, and we
4 had a conversation about this. There are
5 intermittent problems with voiceover IP, and I
6 will speak about those in a minute. But first I'd
7 like to address an issue that we had with our
8 Nortel voiceover IP system when it came to
9 voicemail several months ago, and it was actually
10 like a quarter ago.

11 For approximately two quarters, we
12 received complaints of an intermittent problem
13 that we could not identify, which was, people
14 claimed to have been -- left voicemail and not
15 gotten it. And it was actually one of my own
16 staff on a fluke that caught the problem
17 happening. We then did an investigation with
18 Nortel, who, up to this point, had worked with us
19 and could not find the problem. And once we saw
20 it happen, we figured out that it was a
21 misconfiguration by the contractor of several
22 profiles, what's known as a profile for each

1 individual person.

2 We rectified that by changing all the
3 profiles, and we have not received a report that
4 we could substantiate since that there is still a
5 problem. In fact, the calls diminished
6 significantly.

7 As for voiceover IP quality, it is
8 variable. One of the limitations, of course, of
9 the system is actually the band width that's
10 available between the user's home, the hotelier's
11 home, and our environment.

12 I already told you next year, now that I
13 have the money and the supplemental, we are going
14 to be increasing by ten fold the band width
15 outside the building and much of that is related
16 to the voiceover IP system usage.

17 We are also looking at a new
18 collaboration tool in concert with trademarks as
19 one of the evaluators and customers to replace
20 what's known as MCS, a product offered by Nortel
21 and long since defunct. That product is currently
22 under evaluation and we hope to roll it out Q2

1 with the new laptops and all the rest of the new
2 environment, and that will help fix some of the
3 problems. Lastly, we are looking at replacing
4 that legacy voiceover IP system from Nortel all
5 together, which is also part of the supplemental.
6 That voiceover IP system and the associated
7 voicemail system, the PBX, provided by Nortel,
8 which is now a defunct company, the remnants of it
9 were sold to a company known as ABIA, and we are
10 looking at the plan that we are developing right
11 now to replace the entire system and end, because,
12 in part, of the failures that we have sustained
13 with the product that I inherited.

14 So there are issues. But there is one
15 set of issues that I will not be able to ever fix,
16 and that's known in the industry as the last mile.
17 And somewhere around 30 or 40 percent of the
18 issues that we field are because of what's known
19 as the last mile.

20 Now, I put quotes around the last mile,
21 it's an industry term, and it's the term that's
22 used to define the connectivity between the end

1 user, your hotelier, and their local central
2 office, either for cable or for fiber or whatever
3 they have providing band width to them.

4 Now, granted, it can be over a mile, so
5 it gets confusing for some folks. But that last
6 mile problem, if there is an issue, is generally
7 beyond the control of the CIO or this agency.
8 What I have done is, set up very close cooperation
9 with the local ISP's, Comcast, Cox, Verizon and so
10 on to work with us and report into our network
11 operations center, our command center, the issues
12 that they are seeing and the band width
13 limitations by neighborhood so we know at least,
14 the company knows that there are issues.

15 But you're correct. I would say and I
16 would describe this, and I know this is what was
17 said by Meryl yesterday, so if I'm wrong, Meryl,
18 please step up and correct me, that the problems
19 do exist, they are intermittent. The ones that we
20 know about that happen all the time we take action
21 on. There are three tiers of service, including
22 tier three, which shows up at your door to help

1 you. So most of them are readily rectified or
2 temporary.

3 The voicemail problem did happen. It
4 was a configuration issue that the company could
5 not find that we found by accident. Even though
6 it had been reported for quite some time by
7 trademarks, we could just not see it happen.
8 Unfortunately, when the voicemail wasn't recorded,
9 there was no record of it in the system. But we
10 did rectify that situation, as well, and have not
11 been able to substantiate that from happening
12 again. So it is a complicated set of -- it's a
13 complicated environment we hope to simplify and
14 it's a complicated question, but I hope I covered
15 it.

16 MR. FARMER: Lynne, did you have
17 anything on this?

18 MS. BERESFORD: Meryl, do you have
19 anything you want to add here?

20 MR. FARMER: If so, just please step on
21 up to a mic, thanks.

22 MS. HERSHKOWITZ: Hi, I'm Meryl

1 Hershkowitz, I'm a Group Director in Trademarks,
2 and I've been working on the work at home program
3 now for 13 years in various capacities. When you
4 work at home, we do substantial training, and one
5 of the things we try to emphasize is patience.
6 And I know no attorney is really good, I think
7 it's a trait we don't have, and maybe there's good
8 reasons why we're not particularly patient.

9 But in the work at home system itself,
10 as John says, there's multiple points where you
11 can have failure, including modems and the wiring
12 in your house, and then, of course, anything that
13 could happen on this end. So we do train our work
14 at homers to call in problems and be persistent
15 with the help desk, and we do have a special
16 mailbox for them, and we pay extra money for
17 advanced problem resolution, and we have, in
18 addition, contracted with a company that helps us
19 with ISP provisioning, that's the internet service
20 provider, and they also have a help desk.

21 Trademarks has gone out of its way to
22 insist that our work at homers have the highest

1 possible internet connections available to them.
2 We pay for that, and as a result, they either have
3 Fios or high speed cable, and that helps a lot.

4 But if people don't report the problems,
5 obviously, John's group can't fix them. We do
6 encourage people not to use their cell phones, but
7 to get their problem fixed. And we send messages
8 out constantly to the examining attorneys
9 reminding them to do that.

10 I understand their frustration. There
11 has been, for example, they had been reporting the
12 voicemail problem for months before the problem
13 resolution was discovered, and so it is
14 frustrating for them.

15 We also, any time we get a complaint
16 from the outside that they can't reach an
17 examiner, and again, we don't know if it's because
18 it's a technical reason or because they're working
19 different hours or whatever, it, unfortunately, is
20 not an easy, simple problem to resolve because we
21 have to investigate what the problem is. We have
22 done that. I know there has been some chatter on

1 the inter server -- list serve about problems, we
2 have addressed those specific problems, and I will
3 say that the most recent ones have been very
4 specific to the two examining attorneys that the
5 person complained about.

6 One had a substantial hardware problem
7 that they were addressing at the time. It only
8 took a few days, but, you know, when you have to
9 replace your laptop and all your associated
10 hardware, it takes a while. They have to
11 rebaseline a computer for you and all that, it
12 takes a while.

13 We do encourage our work at home
14 examining attorneys to come and use the hotels in
15 the office when they have problems at home. But
16 again, you know, even if they come in, if they're
17 having a profile problem, that's not going to
18 correct that.

19 So I would just, you know, in the days
20 that we're used to a land line for a telephone,
21 always working and never going down, we're not in
22 that environment anymore. And phones are just not

1 as reliable on the internet as they are in a land
2 mine, and that's what John is talking about. But
3 the good news is, we are active partners with the
4 CIO in picking out these systems. And what our
5 first line of defense is for testing these systems
6 is with our managers. We are going to be testing
7 possible new systems in the next quarter, and
8 we're excited about that.

9 We have seen demonstrations of the
10 capability of the newer model, voiceover IP
11 systems and collaboration systems, we're very
12 excited about that. We're excited about the
13 technical advances that have been made that will
14 allow us to have unified systems so that once you
15 go into outlook, you can make a call from outlook,
16 you can set up a video or audio conference, you
17 can share documents, we can even see presence,
18 meaning if someone is available and working.

19 So we're very excited about the new
20 possibilities of the future and we are looking
21 into them. So I know it's hard for everybody to
22 be patient as we work out these problems, but we

1 are working on them. And in the meantime, if you
2 do have a problem, we do want to hear about it,
3 because they're individual problems that can be
4 corrected.

5 MR. OWENS: Yes, just to reiterate, we
6 produce regular reports out of the call center
7 that lists each one of these issues, we share
8 those with our customers, Meryl and so on, and we
9 do track the trends of these issues to make sure
10 that they are resolved, that we don't have any
11 large spikes or growth with these type of
12 problems, and then if we do, we focus on fixing
13 them.

14 MS. BERESFORD: Is there any thought
15 from going away from VOIP if it's not working? I
16 mean ---

17 MR. OWENS: The initial release of the
18 voiceover IP system was pretty cutting edge for
19 its time. We are many versions away from where we
20 are now, if any of you use it at home, provided by
21 your cable company or Fios. We are looking at
22 upgrading the entire plant to a much more robust,

1 and that was part of the supplemental money that
2 we just received, the complete replacement of the
3 voiceover IP system and the current PBX system
4 that we have today, and hand lines, not only on
5 campus, but for the folks outside.

6 MS. HERSHKOWITZ: The future is that
7 we're all going to be on voiceover IP, and it is a
8 decision that I think we might want to think
9 about, but my understanding from John is that that
10 decision has -- is in the works.

11 MR. OWENS: The entire -- I mean I'm
12 sure many of you realize this, but the entire
13 industry, the telephone industry, is moving away
14 from dedicated lines to your home to either
15 cellular access or voiceover IP, where your phone
16 calls will be transmitted over your internet
17 connection. So even if you don't have that today
18 and you have a dedicated line from your central
19 office to the network that handles phone calls,
20 it's more than likely already voiceover IP.

21 MR. FARMER: Let's move things along a
22 little bit. Lynne, you had another comment?

1 MS. BERESFORD: Well, yes; it may be
2 where the world is moving, but we have to deal in
3 the present, of course, and the question is, is
4 this the best thing for us at the present? Does
5 the new VOIP solve that last mile problem or is
6 that only going to be solved in the future? And
7 so, for me, you always have to ask the question.
8 Yes, it's very nice that we have this, and I
9 understand it saves us some money, but if it's not
10 giving good customer service, then basically it's
11 not the right thing, so it's something we have to
12 look at.

13 MR. FARMER: And TPAC will certainly
14 keep an eye on that. I think what I'd like to do
15 now, John, is -- Deborah, did you have any comment
16 on behalf of the examining attorneys?

17 MS. LEE: Yeah, I lied, I don't have a
18 question. Do you know -- you know the
19 intermittent call dropping problem that everybody
20 reports, I think the general perception among the
21 examining attorneys is that that is an inherent
22 problem with the MCS product, and so I think that

1 that is part of the reason why those issues are
2 under reported, admittedly; is that perception
3 accurate?

4 And then my second question is, what is
5 your timeline for having these issues resolved? I
6 know you said you've got a band width thing going
7 on and then you've got the upgrade of the product,
8 when the next generation laptops role.

9 MR. OWENS: So the bulk of the
10 changeover for voiceover IP, the PBX and
11 everything else happens between the second quarter
12 and fourth quarter of next year, so that's -- and
13 there's a bunch of different selections there.
14 The first quarter will select the new MCS
15 replacement, and then we'd go to deployment.
16 Second quarter, we have the PBX replacement on or
17 about the second quarter that moves into the third
18 quarter; we have -- et cetera, et cetera. There's
19 just a large schedule that's, you know, constantly
20 being worked on and refined.

21 Is it the MCS replacement tool alone?
22 We do know that that tool, which had not been

1 really upgraded in recent years by the company, it
2 was really a defunct product that we had purchased
3 and then not supported after a while, did have
4 issues, and it did have issues with that, that's
5 true, but it wasn't the only cause. That last
6 mile problem, which is a problem for anyone even
7 that uses voiceover IP in their home today, is
8 going to be there.

9 So the answer is, yes, it was part of
10 it, but I can't tell you how much, in large part
11 because the system wasn't complicated enough to
12 track which problem it had when it lost the call.

13 It certainly is under the purview of
14 trademarks to determine whether or not they want
15 to continue to use voiceover IP or they want to
16 purchase everyone and a separate land line. CIO
17 is not involved in that decision, that's certainly
18 up to your business unit.

19 As far as the voiceover IP for the rest
20 of the environment, I would say that we are
21 definitely moving toward that. We have shown an
22 incredible amount of success with the work out of

1 Randolph Square, which is one of our buildings
2 detached from us where we do have a large
3 contingent of people using the new voiceover IP
4 system as part of the deployment of our PTO Net 3
5 network based on the Cisco technology, and it
6 works very well. So all I can tell you is what
7 our experiences have been. And certainly we are
8 here as a service organization to support you
9 going forward. If we continue to use voiceover
10 IP, it is our aim to continue to improve its
11 quality and performance, and I would say that
12 since the initial delivery of voiceover IP, you
13 know, five -- six years ago, there have been
14 strides made in the industry that we just -- like
15 the rest of our infrastructure, not kept up with.

16 MR. FARMER: I'm going to move things
17 along, if we can, and that is, it's an important
18 issue, but while we still have a little bit of a
19 time cushion, just in case you need a little extra
20 time for the other folks, I wanted to preserve
21 some of that cushion. Any other questions or
22 comments from TPAC members? There was someone in

1 the audience that was waiting very patiently who
2 had a question or a comment, so I'm going to turn
3 them over to him.

4 MR. DONAHEY: Good morning, Mark Donahey
5 from Erik Pelton and Associates. Regarding the
6 need to move to a Recaptcha system, is there any
7 insight about what these bots are trying to
8 access? I know you have the trademark data base
9 available in bulk in an xml file that's updated,
10 and now do your people not know that's available
11 or are they accessing information that isn't
12 included in that? Could the problem be resolved
13 by making some other information also available in
14 bulk download?

15 MR. OWENS: Well, there are some people
16 that are accessing the same object or the same
17 file over and over again 100,000 times. That's
18 normally what we call a denial of service attack.
19 There's no real purpose of doing that other than
20 clogging the system. That's like people who just
21 want to send massive amounts of mail to your email
22 system in order to clog it up and deny service to

1 those others used, and we've seen that.

2 We also see people coming in and
3 scraping data. What particular parts of the data
4 they want, I have no idea because they just take
5 it all. We have informed as many of those folks
6 as we can contact where the data is, where is
7 housed, how it's available, even available for
8 free, you know, it doesn't seem to dissuade them
9 at all. Why that is, I have no idea.

10 And then there are those that we can't
11 contact. They use these bot nets and proxy
12 services, they could be anywhere in the world and
13 attack us in this manner, and we could never hope
14 to find out who they are. Just, you know, remote
15 controlled networks of computers on the internet
16 throughout the globe remote controlled by someone
17 in the middle of no where in another country that
18 then goes and takes the data from those computers
19 and cyphens them to other computers and et cetera,
20 et cetera, hiding their trail.

21 So the issue is really, there is a
22 problem, and as much as we like to advertise the

1 fact that we provide all the data we possibly can,
2 without knowing whether or not it's a human being
3 on the other end to give service to, we either
4 have an infinite scaling problem, and trust me,
5 these bot nets can get very powerful and very
6 large, or we have to take some action to identify
7 you as a human being and thus protect the
8 resources of the agency.

9 MR. FARMER: Okay. Anything else?

10 MS. BERESFORD: I have a question for
11 John. Is there any relationship -- we gave a lot
12 of our data to Google, but we didn't give it all
13 to Google, as far as I know. For instance, I'm
14 not sure they got our cropped images. Is there
15 any relationship to what's going on with the data
16 mining on our web site and what went to Google, do
17 you know?

18 MR. OWENS: I don't but we've pointed
19 out the fact that what data we have given to
20 Google, which is the data that we sell, if there
21 is something missing from that data that we
22 collectively trademarks and -- think would be

1 useful to give them, certainly they're willing to
2 host it for us. We are also developing a site to
3 be hosted internally here at the USPTO which will
4 point to the Google data store which tells people
5 what's there in a much more plain English fashion
6 and how to use it, because some of the use of the
7 data, particularly when it comes to patents, is a
8 little more technical, it's stored in blobs of
9 binary tag data that you really need a little bit
10 more savvy in some computer systems to know how to
11 import, extract and operate on.

12 So we are under development of that site
13 I believe in the first quarter of next year, and
14 we hope to get that done relatively quickly. But
15 again, the press has been all over the fact that
16 we have released data and that there is data
17 available. Most of the hackers, in fact, all of
18 the hackers don't really tell us what they want,
19 so it's hard to meet their demand. But I'm
20 certainly willing to entertain any thoughts that
21 trademarks has of what data is not available in
22 bulk and we can look at what it will take to make

1 that happen and host that data, but, to date, I
2 haven't had that conversation.

3 MR. FARMER: Okay, thank you, John.
4 Anything else? Okay. John, thank you very much
5 for your time. I'm going to change up the break
6 schedule just because we went a bit long there.
7 I'm going to take a five minute break now, and I
8 mean five, and then we're going to come back and
9 do the rest of our agenda in the last segment.

10 (Recess)

11 MR. FARMER: Our next visit will be with
12 the financial folks and the OCFO. And, Mark, are
13 you presenting today?

14 MR. OLECHOWSKI: Yes, sir.

15 MR. FARMER: Great; Mark Olechowski,
16 great to have you with us, and the floor is all
17 yours.

18 MR. OLECHOWSKI: Thank you, John. Well,
19 thank you, thanks for having the CFO back. But
20 really before I start, we do, in fact, have a new
21 CFO, and I apologize, he is on board, but he had
22 some previously scheduled leave, his name is Tony

1 Scardino, I'll be glad to introduce him the next
2 time that TPAC gets together, but I'd also like to
3 take the opportunity to thank Karen Strohecker
4 from the trademarks organization who is glad
5 enough to volunteer to be our Acting CFO since
6 January, bringing over a lot of experience and
7 insight to a time that was exciting for the entire
8 PTO, strategic plan, the 2012 budget, a
9 supplemental, and all our various execution
10 issues, so thanks, Karen, I just want to make a
11 public thank you for the time and guidance you
12 gave us during the last several months.

13 MR. FARMER: And I'm going to jump in
14 there for a quick second. I want to second that,
15 in that we on TPAC know that Karen had to work
16 really hard recently and pull some incredible
17 hours, and we know it's not been the best time in
18 her life to have to do that, and we recognize
19 that, and we really appreciate your service,
20 thanks.

21 MR. OLECHOWSKI: So the CFO briefing.
22 2010, it's actually a little bit easier to talk to

1 you about 2010 since the last time we met, thanks,
2 Karen. So a lot of things have happened, and let
3 me just try to get into it so we can get to any of
4 your questions.

5 Recently, in the past couple of weeks,
6 as you know, Congress passed and the President
7 signed a supplemental appropriation bill for the
8 United States Patent and Trademark Office which
9 gave us access to an additional \$129 million worth
10 of collections. Those are all patent fee
11 collections, and I'll talk in a little bit about
12 what our plans are for spending that money and
13 advancing the mission of the PTO.

14 Fee collections to date, I know this is
15 a little bit dated because it says July 31st,
16 tomorrow will be three days after the end of
17 August, and we'll close out the month, but we are,
18 in fact -- Monday we surpass the 1887 mark. 1887
19 is the number everybody remembers, which was our
20 original appropriation, so we have exceeded those
21 estimates of 1887, and probably sometime in the
22 second or third week of September, we do

1 anticipate exceeding even the additional 129
2 million, which will leave us by the end of the
3 year probably \$60 to \$70 million above our 2016,
4 which is our new appropriated level.

5 There will be carryover on both the
6 patents and trademark side. Down at the bottom of
7 slide two, we estimate that patents is going to
8 carryover approximately \$108 million and
9 trademarks 93 million.

10 The next slide talked a little bit about
11 the 2010 supplemental appropriation that did
12 increase our authorized spending to \$2 billion \$16
13 million. That bill was the culmination of efforts
14 on many people's parts, not just the PTO, but our
15 counterparts at Commerce, OMB, our stakeholders,
16 and certainly our congressional supporters, so we
17 appreciate everybody's effort to allow the PTO
18 access to more of the fees that it does collect.

19 The supplemental bill, and we've sent a
20 spend plan to the Hill about what we plan on
21 spending that on, and as you can see, it really
22 centers on the patent organization. We plan on

1 hiring an additional 200 examiners during
2 September, and then even some additional patent
3 examiners with that money into 2011, in addition
4 to the thousand we're already planning on hiring
5 in 2011.

6 John Owens, our CIO, mentioned some of
7 the programs that he has underway, a laptop
8 replacement program, as well as the PBX
9 replacement, those efforts are now underway with
10 the supplemental funding.

11 And, as well, we were running out of
12 money for the patent organization to fund PCT
13 outsourcing and patent examiner overtime, and
14 we've been able to fully fund those two programs
15 through the rest of the year.

16 The next slide is certainly a little bit
17 busy. I don't want to go into great detail, but
18 this is the reason that we were collecting more
19 fees than we had estimated at the beginning of the
20 year. Our filings on the patent side and
21 trademark sides are up a little bit more than we
22 thought they would be when we began the year. We

1 thought we'd probably have around -- a flat filing
2 rate, and we're seeing upwards of two or three
3 percent on the patent side and a similar increase
4 on the trademark side in a number of filings.

5 On patent side, RCE filings are up,
6 which is certainly a concern of the Commissioner
7 of Patents and the Director, but the rate of RCE
8 filings has slowed, and so that's encouraging
9 based on some of the new initiatives Director
10 Kappos and Commissioner Stohl have put into place.

11 Patent issues are up for a couple of
12 reasons, one is that we have been able to retain
13 many more of our patent examiners than we had
14 anticipated. We've had some attrition rates in
15 the eight to ten percent range in previous years
16 and they are sticking around working for us
17 instead of going elsewhere, so that's helped.

18 Our allowance rate is also up by a
19 couple percentage points from what we estimated to
20 be 42 or 43 percent to around 45 percent.

21 Our maintenance fee renewals are also
22 up, which I think is encouraging, as well. The

1 people I think are realizing the value of a patent
2 portfolio. We're seeing historic highs in the
3 renewal rates of all three stages, first, second
4 and third stage renewals on the patent side. The
5 next slide, 2011, President's budget, as we
6 reported last time, has been submitted to
7 Congress. It represents a significant increase in
8 our request, well over \$2.3 billion. Included in
9 the President's budget is a 15 percent patent
10 interim fee adjustment on most patent statutory
11 fees. We anticipate that the surcharge itself
12 will bring in between \$220 and \$300 million
13 additional than we are receiving this year.

14 Some of the bigger ticket items we plan
15 on funding in 2011, another 1,000 patent
16 examiners, complete outsourcing of the PCT
17 operations. John talked about the trademark next
18 generation project, as well as the patent end to
19 end. A lot more programs on the enforcement and
20 IP policy side.

21 We did just yesterday provide to the
22 Hill our revised fee estimates for 2011, and we do

1 anticipate collecting more fees than we had
2 anticipated when we submitted the President's
3 budget, so more to follow on that probably at the
4 next TPAC meeting.

5 And I mention once again the 2010
6 supplemental appropriation. As you can imagine,
7 if we're getting money to do work in '10 and the
8 beginning of '11, it's going to effect the work we
9 get done in 2011. And then the last line just
10 indicates that both the House and Senate have
11 completed their mark-up of the bill, and at least
12 from the information we have, the bill has
13 remained intact, but as you all know, there's
14 still lots of work to be done on the Hill before
15 the appropriation, not only for the PTO and
16 Commerce, but the rest of the government gets
17 passed, so we'll continue to keep you updated on
18 that.

19 The 2012 budget process is well
20 underway. We have now, as of just yesterday,
21 completed our initial draft of the OMB budget
22 submission. That submission is due to our friends

1 at the Office of Management and Budget on the 13th of
2 September. The draft budget is out to the
3 business units and our front office for their
4 comments. As soon as we receive their comments,
5 there's our schedule to submit to the Public
6 Advisory Committees and DOC that draft for your
7 review.

8 We're working hard to get you a draft.
9 As of Friday, I know our schedule had changed a
10 little bit because of some last minute changes in
11 the templates, but we are trying to get you at
12 least the trademark portion of the budget for the
13 Public Advisory Committee's review by Friday. The
14 strategic plan is in its final process of being
15 approved. That was out for public comment. We've
16 received all those incorporated changes, it is now
17 at OMB for their final review. We do anticipate
18 making that effective and having it posted and
19 implemented by the end of this fiscal year.

20 After we submit the OMB budget in
21 September, we'll continue to work with OMB and our
22 DOC budget folks to finalize the President's

1 budget. That budget goes get submitted by the
2 President, as you know, the first Monday in
3 February, so still lots of work to be done on the
4 2012, especially given the fact that we have a '10
5 supplemental, '11 plans are kind of changing
6 because of that, so it kind of just all ripples
7 downhill. So, Mr. Farmer, subject to any
8 questions, that concludes the brief.

9 MR. FARMER: Thanks, Mark. And please
10 call me John.

11 MR. OLECHOWSKI: Yes, sir.

12 MR. FARMER: Our money folks on TPAC are
13 James Connelly and Elizabeth Pearce. I'll turn
14 the floor over to them for any questions,
15 comments, other stuff.

16 MS. PEARCE: I have one thing that I
17 wanted to highlight that was on the last page of
18 Mark's presentation. We are continuing to keep an
19 eye on trademark fee costs just to get an idea
20 about how well the electronic system is working.
21 And Lynne discussed earlier this morning the
22 possibility of a paper surcharge, this is

1 something we really support because we want to
2 continue to drive people into working
3 electronically as much as possible.

4 We've seen the numbers, Michelle Picard
5 has been very helpful in tracking all of that for
6 us. We've seen how much of a difference it makes
7 when work is handled electronically. The costs
8 are continuing to drop per unit. For anything
9 that could be handled end to end electronically,
10 this provides absolutely greater service for the
11 customers, as well as cost savings for the
12 Trademark Office, so that's part of the reason
13 that the paper surcharge is being discussed. We
14 just want to continue to drive people in the
15 electronic direction because it makes a big
16 difference.

17 MR. FARMER: Okay. Before we go on to
18 the fee study element, any questions, comments on
19 this issue from TPAC or members in the audience?
20 If it's okay, we'll go straight into the fee study
21 aspect.

22 MR. OLECHOWSKI: Well, I do want to

1 apologize, and Elizabeth, thanks for passing the
2 test about finding the last slide. As you know,
3 we reported out on the last several TPAC public
4 meetings and the Sub-Committee meetings that James
5 and Elizabeth attend that we had a very large and
6 collaborative effort to review all of the
7 trademark activities and fees and inputs to costs
8 across the trademark organization, as well as all
9 of the support units across the PTO, and we've
10 completed that effort and reported out to the
11 Sub-Committee, and I think, as was mentioned a
12 little bit here, there's no intention right now of
13 having a proposal for new fees except what we are
14 committed to do within the PTO and with the TPAC,
15 is continue to monitor those costs and find areas
16 where we can use the data that we've collected and
17 spent so much time analyzing in an attempt to make
18 not only the trademark organization more
19 efficient, but also the support organizations that
20 deal day in and day out with the trademark
21 organizations, so those efforts are going to
22 continue underway, and as we find opportunities to

1 present to you the results of those continued
2 efforts, we'll do so both in the public and
3 Sub-Committee meetings.

4 MR. FARMER: So is that it for all
5 financial aspects of the report?

6 MR. OLECHOWSKI: Yes, sir, unless
7 there's any other questions.

8 MS. PEARCE: Well, I thought one thing,
9 Mark, if you'd -- the last item on your list,
10 which is such particularly good news, if you would
11 -- from a trademark perspective, if you'd just
12 highlight that.

13 MR. OLECHOWSKI: The last bullet, it's
14 -- I think, you know, there's a lot of things
15 going on inside the PTO with reviewing the Patent
16 and Trademark allocation. And certainly it's, you
17 know, the shift is a little bit more to -- because
18 you can look at it two different ways, the shift
19 is more to the patent side because we are doing so
20 much more patent work.

21 The patents organization is growing,
22 we're hiring more people, we're spending more

1 money on that side, and I think we're seeing, you
2 know, the shift of those services, you know,
3 supporting the patents organization.

4 So, once again, we will continue to
5 monitor that. We have monthly, as well as
6 quarterly reports that we send out to all of the
7 business units. We have an ABI Steering Committee
8 which is made up of members from all of our
9 business units. The topics are germane, they're
10 open for discussion, all the information is
11 presented to the ABI Steering Committee, so I
12 think there's a great forum for people to have
13 those discussions, bring up topics that they may
14 not particularly think are right, and we look into
15 them and everything else, I think we have a very
16 nice robust system for addressing those kind of
17 issues.

18 MS. PEARCE: I think the comfort level
19 with this information is greater than it's been in
20 a long time, certainly since I've been on the
21 Sub-Committee, so I'd like to thank everybody in
22 the CFO's office and in trademarks for their hard

1 work on this.

2 We are able to have very productive
3 meetings now because we've got the information we
4 need, and we've made, you know, a great deal of
5 progress I think in being able to streamline
6 matters. So thank everybody for their hard work,
7 and I'm just glad there's so much good news.

8 MR. FARMER: Okay, great. Mark, thank
9 you very much for your report. I know that I
10 perhaps have more latitude or whatever to say this
11 than those of you who work here at the office, but
12 we on TPAC just continue to wait for the messianic
13 age when Congress will just say the USPTO is
14 entitled to keep all of its fees instead of having
15 to ask for an appropriation, because, after all,
16 those folks do pay you that money to do something,
17 it's not just money that falls on you for no
18 particular purpose, and to the extent we can ever
19 support that message in the future, we just stand
20 ready to do so. So again, thanks for your report
21 and for your time, we appreciate it. And we're
22 now, unless I see any hands go up, going to

1 transition right over to our visit with Judge
2 Gerry Rogers and the TTAB. And so, Mr. Rogers,
3 the floor is yours.

4 MR. ROGERS: Thank you, John. I'll try
5 not to stand in the way of your timely conclusion
6 and transition to lunch. I'll try and get through
7 everything as quickly as I can. The first item on
8 your agenda today are hiring and appointment
9 issues.

10 Apart from the judge issues which are
11 mentioned on the agenda, I did want to point out
12 that the board has hired a replacement for Jean
13 Brown, who retired shortly after David Sams, so we
14 have a new Technical Program Manager to translate
15 that title.

16 Essentially, Denise Delgizzi, who has
17 been hired for that position, is in charge of all
18 of the support staff, the paralegals, the customer
19 service representatives and others at the Board,
20 so that's going to be a great help for us moving
21 forward, because Cindy Greenbaum, our managing
22 interlocutory attorney, has had to kind of step in

1 and fill a lot of Jean Brown's role while we were
2 waiting on that hiring, so that's one thing that's
3 been taken care of. In terms of judge hiring, we
4 had hoped to be able to give you names at the
5 meeting today, but we can assure you, as we
6 discussed in the Sub-Committee yesterday, that
7 we're in the last stages of having offers extended
8 to candidates for the ATJ position, and so they
9 may very well, those two individuals, enjoy their
10 Labor Day holiday as ATJ's.

11 And if we have an announcement, we'll
12 certainly provide that information to you today or
13 tomorrow before you've even left town perhaps.

14 And then the front office is going to be
15 interviewing candidates for the Chief Judge
16 position next week, and so my best guess would be
17 that they'll have that wrapped up within the next
18 few weeks and we'll start the new fiscal year with
19 a permanent judge in place, and that's about all
20 we can say on hiring at this point.

21 The manual, the TTAB's Manual of
22 Procedure, the TBMP, we've made great progress

1 recently, as we discussed at the Sub-Committee
2 meeting yesterday. Just within the last few weeks
3 we've received back from the Solicitor's Office
4 quite a few chapters that the Board had revised in
5 which we had forwarded to the Solicitor's Office
6 for their review. So they've completed their
7 review on all the chapters that we've sent to
8 them. We also plan to have three more chapters of
9 the Board's manual sent to the Solicitor's Office
10 next week, which will leave us with only two more
11 to go. And we will essentially have all of the
12 manual revised in-house this month and over to the
13 Solicitor's Office, and they've assured us that
14 they will continue their current pace of turning
15 around their review very rapidly.

16 And we expect to have the Solicitor's
17 Office review of the manual completed by the end
18 of the current fiscal year or no later than the
19 first few weeks of the next fiscal year, which
20 will then lead us into the part of the process
21 where we deal with general law and OMB and getting
22 approval, and also dealing with the CIO's office.

1 And just before he left, I chatted for a
2 moment with John Owens and made sure that we can
3 have one of our representatives piggyback on the
4 work that they've already been doing with the TMEP
5 and not reinvent any of that part of the process,
6 and so he gave me the name of the developer that
7 they have working on the TMEP, and so we'll be
8 contacting him and moving into that portion of the
9 process, the external OMB review and CIO work
10 early in the new fiscal year. Any questions on
11 the manual before we move on to other topics?

12 MS. DENISON: I just wanted to --

13 MR. FARMER: I'd just say Mary Denison
14 is our champion for the TTAB, so I'm going to
15 pretty much let her run things, and we may jump in
16 as we need, but maybe we'll do it issue by issue
17 before we go on to the next one.

18 MS. DENISON: Okay. We're delighted to
19 hear that so much progress has been made and this
20 major project is almost done. I know the private
21 bar will be thrilled to hear that this is almost
22 done and is going to OMB by October 15th it sounds

1 like for approval, so I'm hoping that it will
2 actually be up on the web site by the end of the
3 calendar year, and that is very good news.

4 So I hope that you will make some sort
5 of an announcement with all the relevant bar
6 groups so that people will know that there is the
7 new manual up. And also to avoid any confusion,
8 since the old one will stay up, given the fact
9 that there are many cases still operating under
10 the pre November 1, 2007 rules. But at any rate,
11 we are pleased that this mammoth undertaking has
12 almost been finished, and so congratulations on
13 your progress.

14 And also, I'd like to -- we were
15 disappointed to hear that there is no money being
16 allocated in fiscal year '11 or '12 for a person
17 dedicated to future updates, and we think that you
18 have a good plan for addressing that, which is to
19 sign out the chapters to various personnel within
20 the TTAB, and we would be happy to help you
21 however we can with that, and hope that that will
22 work out, and if not, we want to know, if it does

1 not, if you need more resources, we would be very
2 interested in hearing about that. So if you could
3 talk about html and Wiki and future updates, that
4 would be great.

5 MR. ROGERS: The only thing I can really
6 say on that is, we've been focusing more on
7 getting the substance of the manual revised, and
8 so I was very pleased to see that John Owens and
9 trademarks has done so much work on the beta
10 version for the TMEP.

11 And as I said, we just want to piggyback
12 on that, we don't want to reinvent the wheel, and
13 so whatever assistance the CIO can provide us in
14 getting the manual out, we've always planned to
15 have the revised manual out in html and in pdf,
16 and to have it searchable and more easily
17 updatable, and it seems like the CIO has a plan
18 that they're deploying with the TMEP, that if we
19 follow that, we'll be able to do the same thing
20 with the TBMP. In terms of updates going forward,
21 as we discussed in the Sub- Committee yesterday, I
22 think there's a great idea to have quarterly

1 meetings at least among the champions that we'll
2 assign, to borrow the TPAC term, for each of the
3 chapters of the revised manual, to make sure that
4 we stay on top of revisions that need to be made
5 and get that kind of cross pollination of the
6 champions and having them talk about when we
7 should roll out revisions and how soon we'll be
8 able to do that.

9 So we don't have a particular schedule,
10 but echoing Lynne's earlier comments, we certainly
11 don't want to be putting out revisions every time
12 we issue a presidential case.

13 And as you know, we've made great
14 strides in getting lots of precedential decisions
15 out in recent years, but we will want to make
16 revisions as necessary when there are significant
17 rule changes, or we've got a body of cases that we
18 want to get in there. So we'll have to work that
19 out, but we'll happy to continue to discuss with
20 the TPAC what the TPAC thinks is an appropriate
21 schedule for revisions.

22 MS. DENISON: Thank you.

1 MR. FARMER: Thanks. Because the TBMP
2 has been such a hot issue with the bar, I do have
3 a hope generally, just going forward, that maybe
4 some baseline minimum period of time for updating

5 the TBMP may be established, just because my fear
6 will be that case volume picks up, you find
7 yourself in a hole, it's easy to kick down the
8 road just because there won't be -- we committed
9 to put up an update at least every year or
10 something, and I think sometimes just the pressure
11 of those sorts of deadlines tends to be useful so
12 that it doesn't become convenient for the next
13 Chief Judge to allow that to slide, because you've
14 got to meet your case volume concerns.

15 And also, I realize this was beyond your
16 power, but I personally do have a concern about
17 leaving first line working responsibility with the
18 TTAB judges for keeping the TBMP up to date. You
19 all have been able to do it now without tremendous
20 slippage in your turnaround times because your
21 volumes are so low, but I just have a concern as
22 volume returns about having you all have to do

1 that work yourself, and while I don't have perfect
2 knowledge, my base understanding is that for the
3 other major public manuals, that it's not done
4 this way, that there's a dedicated person who has
5 primary responsibility, and that, of course, the
6 relevant stakeholders follow and make sure
7 everything is done right. But I just -- it seems
8 to me that that will be the way to go, and so I'd
9 hope that the administration, the PTO, reconsiders
10 that as they go forward. Any comments from other
11 TPAC members or a response based upon that? Okay.
12 Let's go on to the next issue then, thanks.

13 MR. ROGERS: Current speed statistics
14 and case volume statistics is in the booklet. I
15 don't know if there's a slide for it, but the --
16 I'll just read the statistics for you. The third
17 quarter of the current fiscal year compared to the
18 third quarter of last fiscal year, we've seen
19 decreases, again, year over year in new incoming
20 work, so new appeals are down 20 percent in the
21 third quarter compared to the previous third
22 quarter, new oppositions are down 16 percent, new

1 cancellations are down 15 percent, again, in the
2 third quarter. We've even seen a decrease in the
3 number of cases. Those are all front end figures,
4 things coming in the front door, but we've also
5 seen a bit of a decrease, about 17 percent, for
6 cases maturing to -- ready for final decision on
7 the merits.

8 So some of the case work -- there may be
9 fewer cases that parties are pursuing to ultimate
10 resolution, too, perhaps because of the economy or
11 other decisions that they're making, but except
12 for the increase in the pendency on final
13 decisions, which we've already alluded to because
14 of all the work that judges are doing on the
15 manual, we generally kept pace on the motion
16 practice end of things. So our pendency
17 statistics are about 13 weeks, just a week or so
18 over the goal from last year. We had hoped to
19 realize a lower goal this year and take advantage
20 of the tremendous start we had to the year, but,
21 you know, the manual has been a commitment we've
22 made to the bar and to stakeholders to get that

1 done, and we think that the slight bracket creep
2 on final action pendency in the long run is not
3 going to be much of a problem to overcome as those
4 judges come off the manual revision project and
5 are back working in the first quarter of the
6 fiscal year on decisions.

7 We think that, you know, that can come
8 down rather quickly, because they'll be producing
9 more decisions and they'll be producing them, you
10 know, more quickly, so hopefully that figure will
11 quickly come down to under ten weeks in the coming
12 year.

13 Contested motions, we're holding steady
14 at about eight weeks to a decision from the time
15 motions are ready for a decision, and that's well
16 under goal. The number of final decisions and the
17 number of motions decisions are down, they're both
18 down because people are working on the manual, but
19 also because we are just not getting as many
20 motions, and as I alluded to earlier, we're not
21 getting quite as many decisions or cases maturing
22 to -- ready for a final decision.

1 I did neglect to include one number in
2 the handout that I provided, and that is the
3 number of cases awaiting decision at the end of
4 the third quarter, it was 45 in the third quarter
5 last year, it's actually 132 this year, so that's
6 the kind of slightly growing backlog that judges
7 will be working off as we transition into the
8 first quarter of the new fiscal year and get them
9 off the manual revision project.

10 And let me see, the interlocutory
11 attorneys are still doing a great job encouraging
12 resolution of contested motions by phone
13 conference, handling about 21 and a half percent
14 of those contested motions through phone
15 conferences, which is actually a much higher
16 percentage if you just look at the motions that
17 are not potentially dispositive and which require
18 a panel's consideration.

19 So for motions to compel and motions for
20 protective order and other motions that the
21 interlocutory attorneys can handle on their own,
22 we're probably looking at 35 -- 40 percent or more

1 of those being handled by telephone. So we hope
2 that that's a great aid to stakeholders in getting
3 those potential log jams to progress and
4 proceedings broken and to keep those cases on
5 track and moving.

6 I did want to talk also about
7 precedential decisions. As of the end of the
8 third quarter, we had 43 that we issued for the
9 year; currently we're at 49, and I expect that
10 we'll be at, because of others that are in the
11 pipeline, at 53 or higher by the end of the fiscal
12 year, so that will be a number of precedential
13 decisions in excess of each of the previous two
14 years, so that's been successful.

15 And I might add, a number of those cases
16 have been we think pretty noteworthy and pretty
17 helpful for stakeholders. We've had the safer
18 decision and others that have made it easier to
19 get evidence into the record. And we think the
20 importance of some -- we're not just pushing out
21 precedential decisions for the sake of reaching
22 this number, we're trying to get precedential

1 decisions out there that really address the needs
2 of stakeholders and cover the substantive issues
3 that they want to see discussed in precedential
4 decisions and cover the procedural issues that
5 will help them build records in board proceedings.
6 And accelerated case resolution --

7 MS. DENISON: Before we go to that --

8 MR. ROGERS: Oh, I'm sorry.

9 MS. DENISON: -- I just had a couple
10 things. One is, I think everybody is pleased that
11 there are more precedential decisions, because the
12 bar continues to want more precedential decisions,
13 so we do applaud your work on that and thank you
14 very much for making an effort to get more of
15 those out there.

16 And I also just wanted to reiterate that
17 we would expect that there would be catch up after
18 the first quarter, or at a minimum, the second
19 quarter of fiscal year 2011, given that you've got
20 two new judges coming on board and the TBMP will
21 be completed, so I think that we all expect that
22 the numbers will look a lot better pretty soon.

1 Thank you.

2 MR. ROGERS: We would hope so, yes. I
3 was going to say, on accelerated case resolution,
4 we only had -- as we've discussed yesterday, we're
5 kind of broadening the notion of what constitutes
6 accelerated case resolution. Anything that
7 increases the efficiency and the speed of board
8 proceedings should be considered under the ACR
9 umbrella, at least in my view. In terms of the
10 classic, if you will, ACR case, where there are
11 cross motions for summary judgment and a
12 stipulation that the board can resolve any
13 lingering issues of material fact, we had one
14 quarter for each of the first three quarters, but
15 we will have three, and this is something I didn't
16 check until after the Sub-Committee meeting
17 yesterday, but we'll have three classic ACR
18 decisions out in the fourth quarter alone.

19 So I don't know whether that's a sign that
20 parties are beginning to embrace ACR a little bit
21 more, but hopefully they are, so that's three
22 classic ACR's cross motions for summary judgment

1 decisions that will be out in the last quarter.

2 And, of course, as we discussed
3 yesterday, we also see, although we don't have an
4 easy mechanism for tracking it, but we see a lot
5 more cases where parties are stipulating to facts
6 or are stipulating to more efficient procedures
7 for entering evidence into the record, such as
8 putting in testimony by affidavit or declaration
9 and reserving the right to do cross examination in
10 person only if necessary, that's something that we
11 see a lot more of, too. So I think we're getting
12 a little bit of a snowball effect on ACR.

13 MS. DENISON: We had asked AIPLA to look
14 at some plug and play options for ACR, and we
15 understand they are working on that and expect to
16 have some drafts for the TTAB to consider by the
17 end of September, and we hope that the posting of
18 AIPLA's suggestions will, in fact, lead to further
19 discussion and make it easier for people to use
20 ACR, because anything that sort of streamlines the
21 process and costs the parties less I think would
22 be welcomed.

1 MR. ROGERS: And I think if we see what
2 we've seen on the web site in terms of our
3 information, when we post information on ACR and
4 list cases in which parties have agreed to more
5 efficient procedures or they've agreed to the
6 classic ACR method and make that information
7 available, practitioners and stakeholders realize
8 that it's something that they should be
9 considering for their cases, too, and I think that
10 they are.

11 And so perhaps when we have these AIPLA
12 plug and play options, maybe we will have that
13 prompt other organizations, too, to come forward
14 with other suggestions. And, you know, we're, of
15 course, very happy without any need for us to
16 endorse any particular suggestions, just put them
17 out there for everyone to see and to consider for
18 whatever they may be worth.

19 MR. FARMER: That's great, and it's my
20 hope that we will reach the day where there will
21 be on the USPTO web site a catalog of available
22 plug and play options that people can select just

1 because, and I know I've been a broken record on
2 this, but that I just feel that you're never going
3 to see a significant uptake in ACR until it's
4 easy, because right now the path of least
5 resistance that's so easy for TTAB litigants,
6 including me, is just to say it's hard to work
7 through with opposing counsel, can we change this,
8 can we change that, it's so easy just to go with
9 the flow of what the rules presently allow.

10 And building on that, I know that the
11 TTAB has put a lot of effort into getting the word
12 out about ACR in the past with talks to bar groups
13 and articles. My slight suggestion would be,
14 everyone has got limited time, that going forward,
15 I would allocate as much of that percentage of
16 time available to developing those plug and plays
17 and getting them on your web site so folks can use
18 them as opposed to spending a lot of time talking
19 about what theoretically ACR may be, because
20 again, it's a heavy lift for litigants because
21 they still at the end of the day have to fashion
22 and sign off on the rule that they want in their

1 particular case themselves, and again, I just
2 don't think you're going to get the uptake until
3 you make it easy for them. So I hope you all, as
4 you go forward, will think towards let's put stuff
5 out there that people can just readily grasp onto
6 and say, yeah, that looks good, let's do item 3B,
7 and then I think you'll see ACR take off.

8 MR. ROGERS: Something we're certainly
9 willing to devote the time to as we complete the
10 manual revision. I think that's --

11 MR. FARMER: The manual absolutely comes
12 first. I didn't mean to imply you should slow
13 that down.

14 MR. ROGERS: Yeah.

15 MR. FARMER: Thanks. I think we're on
16 to the next topic.

17 MR. ROGERS: Okay. Oh, and then I guess
18 we've kind of covered ACR. We've got older cases,
19 and the status report on the request for comments.
20 On the older cases initiative, Denise Delgizzi,
21 who I mentioned earlier who's been hired as the
22 Technical Program Manager, has thoroughly

1 investigated the older cases that are on the
2 docket, and we're talking essentially about -- and
3 we're talking about cases that were commenced
4 under our old rules, the pre November, 2007 rules,
5 in which we would like to move on and get resolved
6 one way or another, because then we'll only have
7 one set of rules for all of our cases moving
8 forward. We may not have any need to maintain an
9 older version of the manual on the web site, that
10 sort of thing.

11 And so we're talking about approximately
12 ten percent of inter parties cases, so I think
13 about 11 percent of cancellations and a little bit
14 under ten percent of oppositions. We're talking
15 about slightly over 800 proceedings. There are
16 actually slightly over 1,000 cases, but because of
17 consolidations, we're really talking about 800 or
18 so proceedings.

19 And so we've identified the cases by
20 number, we know which ones they are, and we know
21 which ones are suspended for settlement talks, we
22 know which ones are suspended for civil action or

1 bankruptcy, we know which ones are theoretically
2 on track because they're engaged in motion
3 practice or in discovery or in trial, and we've
4 developed some strategies that we were able to
5 discuss in the Sub-Committee meeting yesterday and
6 to get some valuable TPAC input on our possible
7 strategies for dealing with those suspended cases
8 and those on track cases, to make sure that they
9 all progress either to settlement very quickly or
10 into trial and ultimately resolution. So we thank
11 the Sub-Committee for the suggestions received
12 yesterday in that meeting, and we're going to, you
13 know, move forward in the first quarter now that
14 we've identified these cases and see if we can
15 pursue some of these strategies with the
16 assistance of our paralegals and our attorneys and
17 our judges, everybody is going to have a role
18 depending on the particular strategy employed and
19 the particular kind of case that we're talking
20 about, whether it's a suspended for settlement
21 case or an on track case, and we'll try and deploy
22 everybody in some way in that effort to work off

1 this backlog of old cases.

2 MS. DENISON: Over half the 800 cases
3 are suspended for settlement in civil action, so I
4 don't want to go into all the details at this
5 point, but I just wanted to say that that will be
6 the area that's going to receive the most
7 attention because that's the largest chunk of
8 these old cases. And so all these cases are at
9 least three years old and some are significantly
10 older, and so I think it's in everyone's interest
11 for these cases to move forward.

12 MR. ROGERS: Yeah, and one example of
13 one of the things that we're talking about or
14 thinking about doing, I'm going to be talking to
15 the judges about pursuing as kind of a pilot
16 project on a body of cases something that we've
17 talked about in the strategic plan, which is the
18 possibility of having judges more involved in
19 settlement talks.

20 So for some of these cases that have
21 been suspended for settlement talks, but not
22 progressing towards settlement fast enough, we may

1 take a group of these cases and get judges
2 involved in settlement talks, and that can both
3 help us work off this older body of cases and also
4 serve as kind of a pilot project, if you will, for
5 that element of the strategic plan which involves
6 having judges involved in settlement talks more.
7 So hopefully that will be successful, and then we
8 can roll that out into other cases, other older
9 cases. And the request for comments, the -- I'm
10 sorry --

11 MS. DENISON: Let me just say, you had
12 prepared requests for comments some months back
13 for us to consider, and it had four elements, a
14 possible fast track alternative for the opposition
15 and cancellation cases, number two was encouraging
16 settlement for TTAB cases, number three was
17 possible limits of consented extensions, and
18 number four was a catch all, and, you know,
19 seeking comments from the bar or the public on
20 whatever ideas they might have for improving
21 things at the TTAB. The sense of the TPAC is
22 to focus on encouraging settlement at the TTAB.

1 And so -- and we are requesting that you issue a
2 request for -- that you consider issuing a request
3 for comments that focuses solely on the settlement
4 aspect and the catch all.

5 And we are still very interested in
6 these other two issues, but we would like you to
7 put all your efforts into the settlement focus for
8 now. And we will then, you know, try to help you
9 get whatever we can do to help support that, and
10 then we'll revisit these others in a few months.

11 MR. ROGERS: Well, I think you can be
12 completely assured that we'll be doing that,
13 because it's in the strategic plan that we'll be
14 pursuing the possible use of judges in settlement
15 talks. So now that the front office has blessed
16 that part of the strategic plan, we can certainly
17 move forward with a request for comments on that
18 subject.

19 MR. FARMER: Any -- Judge Rogers, I
20 didn't mean to cut you off. Did you have any
21 other comments you wanted to make?

22 MR. ROGERS: No, that's fine.

1 MR. FARMER: Okay. Any questions or
2 comments from TPAC members on TTAB matters?
3 Anything from folks in the audience? Okay, Gerry,
4 thank you very much.

5 MR. ROGERS: It's nice to have the last
6 slot before lunch.

7 MR. FARMER: There you go, always a
8 fearsome place to be. We're now off to open mic
9 night, thank you very much. Lynne Beresford has
10 some late breaking news to report, so over to you,
11 Lynne.

12 MS. BERESFORD: Well, I wish I had Jason
13 Lock here to give the trademark news here, but I
14 don't, so I'll have to do it myself. We had a
15 request from TPAC to put up a more robust warning
16 on the web site and more explanation that only
17 licensed attorneys, attorneys licensed to practice
18 in the highest bar of the state of U.S. and
19 certain Canadian practitioners can represent you
20 before the USPTO. That request came in recently.
21 We have posted this morning a revised warning on
22 the web site, so hopefully you can -- you can go

1 to the web site and see it. Here is a paper copy
2 in which I'm happy to make more of if people want
3 paper copies. But that's something that we can
4 check the box on at this point.

5 MR. JOHNSON: Thank you, Lynne.

6 MR. FARMER: Any other issues that
7 members of TPAC want to bring up? Any other
8 issues that other folks here from the USPTO wanted
9 to bring up, or from anyone who's just kind enough
10 to come visit with us today? If not, then we are
11 adjourned. We plan on having another set of
12 public meetings here at the PTO in the last
13 December, excuse me, late November/early December
14 timeframe. We don't have the date precisely
15 pinned down, we're checking some calendars, and we
16 hope to have that up on the USPTO web site very
17 soon. And thanks to everyone for being here, we
18 appreciate it.

19 (Whereupon, at 12:06 p.m., the
20 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
3 certify that the witness whose testimony appears
4 in the foregoing hearing was duly sworn by me;
5 that the testimony of said witness was taken by me
6 and thereafter reduced to print under my
7 direction; that said deposition is a true record
8 of the testimony given by said witness; that I am
9 neither counsel for, related to, nor employed by
10 any of the parties to the action in which these
11 proceedings were taken; and, furthermore, that I
12 am neither a relative or employee of any attorney
13 or counsel employed by the parties hereto, nor
14 financially or otherwise interested in the outcome
15 of this action.

16 /s/Carleton J. Anderson, III

17

18

19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012

