

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, August 19, 2011

1 PARTICIPANTS:

2 TPAC Members:

3 MAURY M. TEPPER, III, Chair

4 CHERYL BLACK

5 DEBORAH COHN

6 DANA COLARULLI

7 JAMES G. CONLEY

8 RAJ DOLAS

9 JODY HALLER DRAKE

10 BRUCE KISLIUK

11 TIMOTHY LOCKHART

12 SHARON MARSH

13 KATHRYN BARRETT PARK

14 TERESA STANEK REA

15 GERARD ROGERS

16 ANTHONY P. SCARDINO

17 KEVIN SMITH

18 Union Reps:

19 ROBERT BUDENS

20 HOWARD FRIEDMAN

21

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

(10:00 a.m.)

1  
2  
3 CHAIRMAN TEPPER: Thank you. You are a  
4 very compliant group, we certainly appreciate  
5 that. Welcome to this public meeting of the U.S.  
6 Patent and Trademark Office, Trademark Public  
7 Advisory Committee. We're certainly glad to have  
8 some participation here. And to those of you who  
9 are watching and listening online, thank you for  
10 your time and interest, as well.

11 We will be hearing a good amount of  
12 material today. We've got a lot of ground to  
13 cover. But I do want to encourage you, if you  
14 have questions, I will try to allow time for that  
15 at the end of each of the presentations, and if  
16 you are online and have questions, please do send  
17 them in to us. You can e-mail those in and we'll  
18 try to address as many of those questions as  
19 possible.

20 I'm going to defer introductions for a  
21 couple of minutes because we are starting a little  
22 bit behind schedule. But I would just like to let

1       you know, I'm Maury Tepper. I have a day job with  
2       Tepper and Eyster in Raleigh, North Carolina. And  
3       I am a rookie now, this is my first effort at  
4       chairing a meeting like this, so it will be an  
5       adventure for all of us today. I'm looking  
6       forward to catching up with a lot of issues going  
7       on this time of year. And you'll be hearing about  
8       some very significant changes involving budget and  
9       funding and finance, and so I think, as you'll see  
10      by the end, we have a very active, a very capable  
11      group working here. We're fortunate to be here  
12      supporting the efforts of Trademark operations.

13                 And I'd like to start off by thanking  
14      Terrie Rea, our deputy director, and I'm going to  
15      ask her just to give us an overview. And we want  
16      to thank you for taking the time to be here with  
17      us this morning.

18                 MS. REA: Thank you. Good morning,  
19      everybody, and welcome to those of you on your  
20      computers right now. Thank you for taking the  
21      time, everyone here today, to join us for our  
22      August TPAC meeting, and, as always, your input

1 and feedback as practitioners and thought leaders  
2 has been critical to ensuring an efficient and  
3 robust U.S. trademark system. That's why it gives  
4 me great pleasure to introduce a few new additions  
5 today.

6 I would first like to welcome, as Maury  
7 indicated, Maury Tepper as the new TPAC chair. He  
8 has a great deal of work ahead of him. To those  
9 of you in the audience and on the Internet, TPAC  
10 is actually a very busy organization, they spend a  
11 lot of time assisting us on the Trademark side,  
12 and we really appreciate all of their efforts.  
13 Maury, as he indicated, is a partner in the law  
14 firm of Tepper & Eyster in North Carolina.  
15 Maury's legal practice includes all aspects of the  
16 creation, registration, maintenance and  
17 enforcement of trademarks, copyrights and domain  
18 names.

19 Maury has been appointed three separate  
20 times to serve a term on the Trademark Public  
21 Advisory Committee. He has devoted over six years  
22 so far to TPAC, and we hope it will be many more,

1 and we are very grateful for his extensive  
2 knowledge and commitment to the USPTO.

3 He is an active participant, I should  
4 also mention, in the International Trademark  
5 Association, where he serves as chair of INTA's  
6 U.S. Legislation Subcommittee. Maury also serves,  
7 because he has so much free time, on the Board of  
8 Directors from Marksmen, Inc., and for New Century  
9 Musical Arts Society. Thank you so much, Maury,  
10 for leading TPAC.

11 I would also like to welcome a new  
12 member, Jody Drake. Jody is currently a partner  
13 with Sughrue Mion in Washington, D.C., and her  
14 practice concentrates in all aspects of U.S. and  
15 international trademark law, including trademark  
16 prosecution, counseling, opinions, licensing,  
17 litigation support and Internet-related rights.  
18 I'm also especially pleased to report that she was  
19 with the USPTO at one time as an examining  
20 attorney and as a senior attorney from 1983 until  
21 1990, so she has many talents to contribute to  
22 TPAC. She was named among the top 15 IP lawyers

1 in Washington by Legal Times in its 2003 Leading  
2 Lawyer series, and she's been selected by  
3 Euromoney magazine as one of the leading trademark  
4 experts in the United States.

5 Jody is also -- has a lot of free time,  
6 so she's a frequent speaker for the International  
7 Trademark Association. And most recently, she has  
8 been serving as the AIPPLA chair of the Trademark  
9 Relations with the USPTO Committee in 2010. So  
10 thank you so much for joining us, Jody.

11 And last, but not least, a good friend  
12 of mine I'd also like to welcome as a new member,  
13 Cheryl Black. Cheryl is a partner at Goodman  
14 Allen & Filetti in Richmond, Virginia. Her law  
15 practice includes trademark counseling, searching,  
16 prosecution, licensing and maintenance, as well as  
17 domain name registration and enforcement, and  
18 copyright counseling, registration and licensing.  
19 Now, once again, prior to her entry into private  
20 practice, I am pleased to report that Cheryl was  
21 also with the USPTO. For six years she was an  
22 examining attorney, and for nine years she was a

1 staff attorney in the Office of the Commissioner  
2 for Trademarks, and she also, as Jody, knows  
3 Debbie Cohn extremely well.

4 So during Cheryl's tenure at the PTO,  
5 she actually helped revise the TMEP, the Trademark  
6 Manual of Examining Procedure, and she was  
7 actually actively involved in the implementation  
8 of the Madrid Protocol. Cheryl is also a frequent  
9 lecturer on trademark and copyright issues, as  
10 well as in the area of social media law. So thank  
11 you so much, Cheryl, also, for being with us today  
12 and adding further talent and depth to this team.

13 I would also right now, on the Patent  
14 side of the house, like to give you a just  
15 superficial overview of the status of patent  
16 reform. The patent reform legislation passed the  
17 House on June 24, 2011, and it is now anticipated  
18 to be taken up by the Senate for full passage  
19 shortly after Congress returns in the fall.

20 As you know, this legislation is a top  
21 priority of the administration. It will do many  
22 important things, including giving the USPTO the



1 authority to set fees in consultation with you  
2 all. And the bill will create ideally a strong  
3 presumption in favor of our being able to keep all  
4 of the user fees that we collect. And by helping  
5 us more efficiently process applications, it will  
6 hopefully also create new businesses and new jobs  
7 sooner and help fuel our economic recovery.

8 Now, Dana Colarulli will actually have  
9 more to say on patent reform during his  
10 presentation, but Director Kappos and I are eager  
11 for the challenge of implementing a broad range of  
12 initiatives and rules that will make this agency  
13 more efficient, more modern and more agile in  
14 bringing cutting edge innovation to the  
15 marketplace.

16 And not only does this legislation  
17 further empower the USPTO as the nation's premier  
18 innovation agency, but it also equips the country  
19 with the tools it needs to accelerate down the  
20 road of economic recovery by strengthening  
21 intellectual property rights and promoting job  
22 creation.

1           Turning next to Debbie Cohn, Debbie, I  
2           continue to be impressed with Trademark's ability  
3           to meet and, frankly, exceed all of its goals in  
4           all areas of pendency, quality and e-government.  
5           Trademark has met or exceeded all of its goals to  
6           date. So they have done a fantastic job and they  
7           reflect very favorably on the USPTO. Now, we do  
8           continue to see a slow but steady increase in  
9           filings, which is good news; that means the  
10          economy is getting more vibrant. And we  
11          anticipate a 4 percent increase in filings over  
12          the last fiscal year.

13                 Now, in terms of our customer and  
14          shareholder outreach, we are also consistently  
15          proud of the Trademark team's dedication to the  
16          customer and stakeholder outreach. On June 21st,  
17          a roundtable discussion was held on disclaimer,  
18          policy and practice with a number of key  
19          stakeholders, and on June 23rd, a focus group was  
20          held on authorizing e-mail communications. Now,  
21          the purpose of this focus group was to look for  
22          possible reasons why some users would prefer not

1 to authorize the USPTO to use e-mail, and we  
2 wanted to see what changes the PTO may be able to  
3 institute to make e-mail communications more  
4 attractive.

5 Frankly, e-mail authorization is a key  
6 component of our ability to process applications  
7 completely electronically, so we would like to  
8 collaborate with the stakeholder community in  
9 trying to achieve that goal. And with your  
10 ongoing input, we have plans for more outreach  
11 efforts in the near future. I would also like to  
12 tell you one last point, and that's that we have  
13 successfully completed agency negotiations for the  
14 implementation of the pilot program of the  
15 Telework Enhancement Act. The program called  
16 TEAPP, T-E-A-P-P, the Telework Enhancement Act  
17 Pilot Program, is currently at OMB for its  
18 approval before implementation.

19 I know that both Dana and Debbie are  
20 going to give you additional details about the new  
21 program and how it will benefit and make the  
22 agency more efficient. But again, thank you for

1 your continual support, insight and guidance in  
2 making sure that we're able to provide the best  
3 support and resources to our stakeholder  
4 community. Thank you so much, and thank you  
5 especially to our TPAC members here today.

6 MR. TEPPER: Thank you very much,  
7 Terrie. And I think -- I almost wanted to have a  
8 standing ovation when we heard exactly how  
9 Trademarks is doing compared to performance  
10 measures. I think it's a good way to start the  
11 day. Before we hear about legislation, I want to  
12 just take a brief detour. I'll stick to this as a  
13 general roadmap, but I do want to go ahead and  
14 introduce for you the rest of our TPAC members.

15 A special note for two who are not here  
16 with us today, Deborah Hampton, who is with  
17 Limited Brands in Ohio, justifiably is celebrating  
18 her 25th wedding anniversary, and I have to say I  
19 think she has her priorities correct. So we knew  
20 when we tried to come up with a date that this  
21 simply was not going to be a possible meeting to  
22 have her presence, and I hope that she is not on

1 the telephone this morning.

2 I'd also like to send out sort of our  
3 special good wishes to Anne Chasser. Anne is vice  
4 president for intellectual property with the  
5 University of Cincinnati and a former  
6 commissioner. And Anne was planning to be here,  
7 she was going to actually take a red-eye flight  
8 all the way from the West Coast to make this  
9 meeting until, as I understand it, a mischievous  
10 and errant, I'm going to describe it as a boulder  
11 threw itself into her path, and Anne,  
12 unfortunately, fractured her wrist in two places.  
13 She had surgery to set everything last night. I  
14 think it was successful, but we certainly want to  
15 wish her a speedy recovery and all well wishes.  
16 And I do understand Anne is on the telephone  
17 listening in, so I hope you all keep that in mind  
18 and behave very well throughout the day.

19 We also have Kathryn Barrett Park with  
20 us today. Kathryn is with General Electric. She  
21 has been with us on the committee for two years  
22 and certainly very well known to you all.

1                   Howard Friedman is our NTEU  
2 representative. And today Robert Budens is  
3 filling in for Randy Myers, as you'll see on the  
4 Patent side.

5                   James Conley, James is a professor at  
6 Northwestern. He is our numbers guy. He helps us  
7 to understand what lawyers are terrible at  
8 understanding and he's done a great job in  
9 interpreting a lot of that data for us.

10                  And last, certainly not least, I needed  
11 to do this in order, I do want to recognize our  
12 veteran in the group. This will be the last  
13 chance we will have to meet in person with Tim  
14 Lockhart. Time goes fast. Tim has been on the  
15 committee since 2008, and his term is going to  
16 expire in October. When that occurs, I fear not  
17 only are we going to lose a lot of dedication and  
18 drive and experience, we are going to lose most of  
19 our knowledge of pop culture, movies, humor, and  
20 our storytelling quotient is definitely going to  
21 go down by about 80 percent at these meetings, so  
22 I'm going to miss that.

1           I've had the chance to work with him in  
2 just a few meetings, but he has been a wonderful  
3 addition to this committee. He's given an awful  
4 lot to the office. And, Tim, if we can embarrass  
5 you for a second, if you wouldn't mind coming up  
6 here, we have a certificate. Not only is it  
7 suitable for framing, it is framed.

8           MR. LOCKHART: Great, thank you.  
9 (Applause) Thank you, I appreciate it. Thank you  
10 very much.

11           CHAIRMAN TEPPER: And a great risk,  
12 knowing Tim. I'd just like to offer, if any other  
13 members of the committee would like to say a word  
14 for a second. I'm going to let you speak.

15           MR. CONLEY: Thank you, Maury. I would  
16 like to just add a couple comments about Tim that  
17 will I think pick up on what Director Rea  
18 mentioned and what you mentioned about this  
19 committee. You know, we are serving the interests  
20 of the trademark user community. We're trying to  
21 represent these views on this committee, and Tim  
22 has done a terrific job of reminding us of that

1 from time to time. And that constant attention to  
2 these details has bubbled up in curious ways, his  
3 storytelling capability, as you mentioned. In  
4 some of our deliberations, sometimes these things  
5 get difficult, but Tim has very gently and  
6 carefully kept us on focus, you know, reminding us  
7 of such simple things as answering the phone. And  
8 I'm very grateful for his service in that capacity  
9 and to help us be a collegial group. Thank you,  
10 Tim.

11 CHAIRMAN TEPPER: Thank you. Tim, I do  
12 want to remind you, October is still a little ways  
13 away, we have the annual report to work on, so  
14 we're going to put a little string on that  
15 certificate. But thank you for the commitment and  
16 the time you've donated to this effort. We deeply  
17 appreciate your service.

18 MR. FRIEDMAN: I would like to add  
19 before Tim jumps in that I would echo the prior  
20 comments. Tim's very methodical, but very  
21 successful approach to helping out the office was  
22 always very available to both TPAC and to the



1 office. I think also it will be hard for TPAC to  
2 forget the very comprehensive binders Tim's office  
3 always brought to TPAC, which is right over there,  
4 though, as we saw yesterday, it looks like Cheryl  
5 Black is going to ably take over that role for  
6 Tim.

7 And then finally, in his methodical role  
8 and in his role in helping out the office and  
9 TPAC, he always did it with great humor, and that  
10 made our day that much better. So we wish him  
11 well and all the best.

12 MR. LOCKHART: Well, just very quickly  
13 I'd like to thank all of you very much. Serving  
14 on TPAC I regard as an honor and a privilege. I  
15 was very pleased to be asked to serve and I've  
16 enjoyed my service very much. I've enjoyed  
17 serving with all of my TPAC colleagues, both those  
18 on the committee now and those who were with us  
19 formerly. I enjoyed serving with Lynn and Debbie  
20 and the rest of the very fine USPTO staff.

21 I have been continually most impressed  
22 by the dedication and the hard work and the zeal

1 with which the USPTO staff tries to do its job,  
2 and, of course, it does it very well and serves  
3 the trademark community very effectively, I think.

4           So I'm sure all of you on the TPAC would  
5 agree with me that it's a real honor to be asked  
6 to come in and contribute in, you know, whatever  
7 way we can to the work of the office. So it's  
8 been certainly a great pleasure for me, as well as  
9 a privilege, and I've enjoyed it, and I will look  
10 forward to seeing great things from the office and  
11 the TPAC in years to come. And I'll certainly be  
12 watching the webcast in November when you have the  
13 next meeting. So thank you all very much. I've  
14 enjoyed it. (Applause)

15           CHAIRMAN TEPPER: Thank you. With that,  
16 we're going to turn to a legislative update.  
17 We're pleased to have Dana Colarulli with us  
18 today. You know, I always think if a weatherman  
19 has the easiest job in the world, because, let's  
20 face it, you can be wrong and you still keep your  
21 job, Dana probably has the toughest. He needs to  
22 try to explain for us the inexplicable and try to

1 predict the unpredictable workings on Capitol  
2 Hill. But this is a very important time I think  
3 for the interests of the office on a number of  
4 pieces of legislation. Terrie has already touched  
5 on our moving along.

6 So with that, Dana, thank you for your  
7 time today.

8 MR. COLARULLI: Thanks, Maury, I  
9 appreciate it. When you were describing Anne  
10 Chasser avoiding boulders, I was thinking of my  
11 job actually. And I think the good news  
12 is, there's a number of things that we've been  
13 able to do to move the boulders out of the way so  
14 we're more effective. Oftentimes I feel like  
15 we're running to catch up with some of the  
16 boulders and redirect them, so I think we're doing  
17 all of those.

18 What I thought I'd do this morning was  
19 give a little update on the patent reform bill,  
20 and, in fact, the implementation as it relates to  
21 the funding. And Tony is going to talk  
22 even more about that and then

1 highlight some of the other issues that are coming  
2 up that you all might be interested in.

3 Certainly, I think over the last two years, a lot  
4 of the oxygen in my office has been  
5 taken up with following patent reform, following  
6 the patent issues, but there's a number of other  
7 issues coming up that we're keeping an eye on.

8           Now that it looks like  
9 patent reform is headed in the right direction,  
10 Congress will start taking up  
11 other litigation such as the Protect IP Act,  
12 and I'll highlight those, too.

13           My role at PTO is I'm the  
14 chief liaison with Capitol Hill and trying to keep  
15 up with the boulders. But my goal is also to be a  
16 resource for you, not just at this meeting, but at  
17 future meetings, as well. So as there are issues  
18 that I see that I think that will be interesting to  
19 you all, I'll be glad to brief you. If there's other issues  
20 that, Maury, you or the committee members would  
21 like me to come and brief you on, I'm happy to do  
22 that, as well.

1  
2           Let me start with continuing Terry's  
3 comments on the American Invents Act patent  
4 reform. I couldn't help but include a  
5 screenshot of the website that we've already  
6 posted up for implementation. Now, before they  
7 left for recess, Senator Reid scheduled to vote  
8 for cloture on this bill, so on September 6th at  
9 5:30, this will be the second vote that the Senate  
10 takes up when they return. That's a procedural  
11 vote. It's an indication that the Senate is going  
12 to move forward on final action on this bill.  
13 Final action could happen within days, or  
14 it could be pushed out as far as a week.  
15 But I think staff is confident that this is going  
16 to move forward at this point.

17           There's still questions about funding in  
18 particular. I think there's at least a few  
19 Senators who have placed holds on the bill  
20 contingent on understanding the provisions that  
21 came back from the House, and their desire to have  
22 some conversation, frankly, before the bill

1 passes. So Senator Coburn and certainly Senator  
2 DeMint are two of the Senators who are watching that  
3 closely. I think we'll see some additional  
4 discussion on the floor of the Senate before  
5 they cast their vote for this bill.

6 But from my perspective, it's  
7 unlikely we'll see amendments adopted to this bill  
8 at this point. These have been a set of provisions  
9 that have been discussed for about 10 years, with the  
10 funding provisions in particular, having  
11 a lot of discussion. The House leadership  
12 brokered a deal that they were comfortable with  
13 that I think leaves the door open for us in terms  
14 of our funding, and we think it's a good step  
15 forward. A lot of the discussion on the Senate  
16 floor and the discussion we've had since the House  
17 passed their bill is allowing us to get a sense of  
18 how this will work in practice, and that's going  
19 to be our burden.

20 There was verbalized a commitment that  
21 the agency retain all of its fees that it collects  
22 to support operations. I think there's been good

1        comments by various Members of Congress and  
2        leadership that, for the very first time, the  
3        agency has been given the authority to set its fees and  
4        to set fees to recover the cost of its operations.

5                The argument has never been stronger,  
6        that if we're setting those fees to recover the  
7        cost of our operations, then really all the fees  
8        that are collected by the agency need to stay at the  
9        agency going towards improvements and operations  
10       both on the Patent and the Trademark side.

11                So that is the active discussion. It's  
12        a very timely discussion because it's in the  
13        context of discussions of the debt ceiling and  
14        looking at expenditures by the government overall.  
15        We think there's a good argument that PTO should  
16        be treated separately and is more efficient if it  
17        is. So with that overview, I think we'll all be  
18        looking at September 6th for the next vote. There  
19        may be some amendments that are offered, but, as I  
20        said, at this point, I think it's unlikely they'll  
21        be adopted. If they are, that means the bill will  
22        go back to the House in all likelihood and it may

1 push this out to even another Congress. So we're  
2 looking to September 6th with some hope and  
3 optimism at this point.

4 In the meantime, we've already started,  
5 as I mentioned, discussions about implementation.  
6 There's a lot of things we're going to have to get  
7 done within the first year and beyond. There's a  
8 a number of studies in addition that we  
9 need to do even before a year is done, so we've  
10 posted information up on the website. We've had a  
11 couple of discussions with the patent stakeholders  
12 on those provisions, and we've started to think  
13 about how we might begin the process of fee  
14 setting once the bill is enacted.

15 So with that, I'm going to move on to  
16 other issues. I'm going to let Tony speak to the  
17 financial parts, the status of where we are, at  
18 least in FY '11, in terms of how many fees before  
19 this new fund in the bill is enacted we may be  
20 collecting that are inaccessible. So let me go to  
21 the substantive legislation. Go to the next  
22 slide, please.



1           So two things I'll highlight in terms of  
2 pending legislation. One that we're actively  
3 watching and discussing within the Department of  
4 Commerce is the Protect IP Act. This is  
5 online counterfeiting. It's a targeted measure I  
6 think the Senate has been discussing now for over  
7 approximately three Congresses or two and a half Congresses,  
8 to crack down on what was called at one point  
9 rogue websites or websites that are set up  
10 predominantly for the purpose of selling  
11 infringing copyrighted works. The bill creates a  
12 mechanism for the Attorney General at DOJ to play  
13 a more active role in enforcing online  
14 counterfeiting. It also creates a private right  
15 of action. The Senate reported this bill out of  
16 the Senate Judiciary Committee. It now could move  
17 to the floor. It has a hold on it from Senator  
18 Wyden, who is concerned about the actual  
19 implementation of the legislation and its effect  
20 on Internet protocols.

21           That's a discussion that's going to  
22 continue. It's going to continue even as the

1 House is looking at introducing their own  
2 counterfeiting legislation, which they've said to  
3 us they're going to try to do in September, as  
4 well. And I think that they'll have a provision  
5 that's somewhat similar to this in addition to  
6 other things addressing counterfeiting. So that's  
7 one bill that we're watching very, very closely  
8 and determining what the appropriate DOC position  
9 views would be. Certainly this is a good step  
10 towards enabling IP owners, copyright owners, and  
11 trademark owners, to enforce their rights online, and  
12 we're looking at the mechanism right now.

13 Moving over to the House, I'll highlight  
14 the fashion design bill, another piece of  
15 legislation that's been under discussion over a  
16 number of Congresses particularly targeted at the  
17 fashion industry. And the discussion is whether  
18 this industry faces significant  
19 challenges that other industries don't, and  
20 whether a sui generis design right in the fashion  
21 industry is appropriate.

22 So this is another one where the House

1 has held hearings this year. It's likely they'll  
2 continue discussion on this bill, but it's unclear  
3 how fast it might move forward before the end of  
4 this year. I think concerns were raised on both  
5 sides on the ability of fashion designers to  
6 use the existing IP tools available to them to  
7 protect their works. And concerns were raised  
8 that by creating a new right  
9 essentially, are you opening up opportunities for  
10 additional litigation in this area? So I think  
11 that's the balancing that the House Judiciary  
12 Committee is facing. Go to the next slide.

13 The last issue I'll raise briefly is  
14 another issue that we're following. It's not  
15 active legislation, but it's an issue that I think  
16 both the House and the Senate have monitored  
17 because of its significant effect on U.S.  
18 industry, and that's developments at ICANN, and  
19 particularly the introduction of new top level  
20 domain names. ICANN has moved forward with this  
21 proposal to accept new applications for domain  
22 names. We understand at this point applications

1 will be accepted as soon as January 2012.

2           The House Judiciary Committee held a  
3 hearing on this in May. There's continued  
4 discussion and concern, I think, from a number of  
5 folks from the U.S. side, both industry and  
6 government, on how these provisions will be  
7 implemented; the costs it might impose on  
8 companies looking to protect their brands; and,  
9 frankly, the trademark protections that need to be  
10 part of the process of accepting new applications  
11 and establishing new top level domain names. So I  
12 think it's still an active discussion. The  
13 process, certainly from ICANN's perspective, is  
14 now in place and they're moving towards that  
15 January 2012 deadline to begin accepting  
16 applications. We'll continue to watch the  
17 discussion to see how trademarks will be protected  
18 as they move forward on this. You can go to the  
19 last slide, if you would.

20           The last issue I'll mention briefly  
21 -- which Terry mentioned in her opening, as well  
22 -- is the telework bill that was passed last year

1 and I'll give you a quick update on our implementation of it.  
2 We've given a couple updates to this group on this in the  
3 past. An Oversight Committee was created pursuant  
4 to the legislation. A number of folks both around  
5 this table and at the agency developed very good  
6 procedures to guide the pilot here at the USPTO to  
7 use the flexibilities under the new law and expand  
8 our telework program.

9           The next steps legislatively that the  
10 legislation requires are for us to submit our  
11 procedures and a cost- benefits analysis to GSA,  
12 the General Services Administration. GSA will  
13 transmit their approval of our program to Congress  
14 and then we can implement 30 days after. I've  
15 been on the outside watching this process go  
16 forward, but it has appeared to me to be a  
17 Herculean effort -- again, references to boulders  
18 -- and moving those boulders out of the way so we  
19 can actually efficiently implement this  
20 legislation. Certainly this one has been a large  
21 boulder that a large team has pushed uphill and,  
22 hopefully, will keep it uphill to expand our

1 telework flexibility.

2 We're, I think within the next few days  
3 here, of transmitting our report to GSA. That's the  
4 next step, and then we look forward to implementing  
5 the legislation later this year.

6 With that, that's my prepared report,  
7 Maury. I'm happy to answer any questions the  
8 group has.

9 CHAIRMAN TEPPER: Thank you, Dana. I  
10 would like to encourage everyone, I think you've  
11 heard many things going on. We are proud that the  
12 office has been a leader in the government really  
13 in the area of telework. A number of the  
14 provisions in this act are intended specifically  
15 with the PTO in mind. We're proud of those  
16 accomplishments.

17 In the areas of funding, I think it's no  
18 accident hardly any remarks made by the President,  
19 in the last several weeks at least, do not include  
20 the words "innovation," "protection," or  
21 "intellectual property." In a lot of ways, we're  
22 making some very significant strides in the

1 ability of the office to control and set its fees  
2 and collect funds. In some ways, we're bumping  
3 into the same walls we've bumped into in dealing  
4 with, you know, accessing and being able to use  
5 those funds. But I just encourage you all to  
6 remain engaged in this, to be ready to support the  
7 efforts of this office. This is vital business.

8 Are there any questions from the  
9 committee members for Dana? Any questions from  
10 the public?

11 Well, with that, thank you, and we will  
12 lead into I think a very closely related topic.  
13 Tony Scardino is with us from the CFO's Office and  
14 we want to talk a little bit about the CFO's  
15 update, budget, how we're doing, what's going to  
16 be happening.

17 MR. SCARDINO: Good morning, thank you.  
18 It's a pleasure to be here, as always. In fact,  
19 since we've met last, Mark Olechowski, our deputy  
20 CFO, has departed, and we are fortunate enough to  
21 have Bruce Kisliuk to my left serving as the  
22 acting deputy CFO. Bruce is in the leadership

1 team with the Patents Office and a wealth of  
2 knowledge for all things USPTO, thankfully, so  
3 it's been great to have him around. And he is  
4 going to actually run us through the prepared  
5 slides that we have today, but I've got several  
6 things to say before that actually.

7 Fiscal Year 2011 is still six weeks  
8 until the end, and we are proceeding cautiously.  
9 As Dana mentioned, there's a lot of things up in  
10 the air in terms of what will change, what may  
11 change. Everyone knows how challenging the fiscal  
12 environment is right now with the federal  
13 government. We are in the midst of that, of  
14 course. Depending on what happens, if the AIA --  
15 the American Invents Act -- passes, we will remain  
16 part of the appropriations process. However,  
17 there will be some changes to how that flows or  
18 operates for us, and I'll walk you through a  
19 little bit of that.

20 But Fiscal Year 2012, as I mentioned, is  
21 six weeks away, and we don't know what's going to  
22 happen. It's most likely that we're not going to



1 have an appropriations bill passed in the  
2 Commerce, Justice and Sciences Subcommittee, which  
3 means we'll be on a continuing resolution. How  
4 long will that be? That's anybody's guess.

5 Right now, everyone is preparing in the  
6 Executive Branch for a CR that will last until  
7 November 18th, but truly, that's a guess. We  
8 could have a CR for the entire year. We had one  
9 as recent as 2007. So we're taking steps now, and  
10 Bruce will run us through some of that, to ensure  
11 that we can continue to operate under a full-year  
12 CR or a six-week CR, whatever it may be next year.  
13 Having said that, we could also -- several things  
14 could happen, we could have what's called an  
15 anomaly, where Congress decides to give us a  
16 different rate. A continuing resolution means  
17 that an agency operates at the last -- previous  
18 year's funding level. For the USPTO, that's \$2.09  
19 billion. However, the President's budget request  
20 for USPTO is \$2.7 billion Fiscal Year 2012.  
21 That's a \$600 million swing, let's call it.

22 We project to collect closer to \$2.7

1 billion than we do to \$2.09 billion, but, again,  
2 that incorporates a 15 percent surcharge for the  
3 entire year. Track 1 is implemented, so there's  
4 still a lot of things that we don't know what's  
5 going to happen, but we have to prepare for the  
6 best- and the worst-case scenarios.

7 Another thing that could happen is, we  
8 live at \$2.090 billion, which is the CR rate, but the AIA  
9 passes. With passage of the American Invents Act,  
10 we automatically 10 days later get to implement a  
11 15 percent surcharge for 80 percent roughly of our  
12 statutory fees in the Patent side of the House, as  
13 well as Track 1 implementation. So that could be  
14 as much as \$250- to \$300 million additional money  
15 that would come in on top of the \$2.09 billion.  
16 So we're trying to prepare for the different  
17 funding scenarios that really have obviously a  
18 great amount of, I guess, flexibility of sorts.  
19 The more funding we have, the more hiring we can  
20 do. The more hiring we do, the more our backlog  
21 goes down, the more of our goals we meet. So lots  
22 of challenges for us to kind of make our way

1 through.

2           In the meantime, the President's budget  
3 office, otherwise known as the Office of  
4 Management and Budget, just put out guidance  
5 yesterday for all agencies to develop their 2013  
  
6 budget. That's something that we have been  
7 working very hard on all summer long, including the  
8 spring, to already do, and we hope to get it to  
9 TPAC later today actually. So you'll have a couple of weeks to  
10 review it and we'd like your comments. If you  
11 want to have more discussions on it, we're happy  
12 at any point in time, but that is due to the  
13 Office of Management and Budget on September 12th.  
14 And then all fall we'll work with OMB to finalize  
15 a budget that will go to Congress early in  
16 February. So that's kind of where we are in an  
17 overview perspective, picking up a little bit on  
18 what Dana said.

19 And we're working with the House and  
20 Senate to, how would you say, work something out  
21 that everyone can live with. I mean, full access  
22

1 to fees is something that everyone I think in this  
2 room, as well as in the entire community and our  
3 entire organization, wants. But what exactly does  
4 full access to fees mean? And the Senate passed a  
5 bill that would have made us a revolving fund;  
6 that certainly would have been full access to  
7 fees.

8 The House, the AIA keeps us in the  
9 appropriations process, with every intent,  
10 however, to give us full access to our fees. So  
11 the challenge is then, well, you know, what are  
12 the mechanisms to actually get those fees into the  
13 USPTO. As Dana mentioned, you know, this year  
14 we're going to collect between \$65- and \$70 million  
15 more than we're authorized to spend. That's  
16 today's estimate. If AIA passes in three weeks,  
17 things could change a little bit depending on, you  
18 know, surcharge, when it's enacted and such, but  
19 right now that's our estimate.

20 The hope is, once this act passes we'll  
21 never have to worry about such diversion again.

22 So, you know, that's kind of on our radar screen

1 first and foremost, to ensure that we have a new  
2 mechanism from a funding perspective that works  
3 for everybody. So in the meantime, we're living  
4 under the current constraints, and Bruce is going  
5 to walk us through that.

6 MR. KISLIUK: Thank you, good morning.  
7 It's great to be here. Like Tony mentioned, I am  
8 the acting deputy CFO. I've only been in this  
9 position for about two months. And I am a Patents  
10 employee, so I apologize in advance for anything I  
11 may say that may be misinterpreted.

12 Okay. Let's just go over kind of a  
13 status for FY11, where we are. And I'm going to  
14 try to speak at the agency level, but I'll point  
15 out where I can specifically address trademark-related fee  
16 issues.

17 So in terms of projected fee  
18 collections, you see we had at the beginning of  
19 the year a range, and the reason we have a range  
20 is because we have certain variables. Some of the  
21 variables that we have are whether the filing  
22 rates are going to be relatively high or low. And

1 for the Patent side at least, we had a question as  
2 to whether we would have this bill enacted and we  
3 would have a 15 percent surcharge.

4 So the reason that the agency range  
5 looked so wide is we did not know when we would  
6 have the 15 percent surcharge. And that was also  
7 why the Patent's range is wide in the other  
8 bullet. The actual current rate right now are  
9 estimated collections if we do a straight-line  
10 projection. So for the agency, we would be at  
11 \$2.15 billion, which is kind of the low end of the agency  
12 range. The Patent's, the projection right now is  
13 like \$1.92 billion, again, on the low end, because we did  
14 not get the 15 percent surcharge. The Trademark's  
15 straight-line projection right now is \$2.31 million, so  
16 we're kind of on the high end of the Patent -- of  
17 the Trademark range.

18 In terms of the surplus, the projected  
19 end of the year, again, we had a range, but the  
20 way it looks right now is Trademarks will likely  
21 have a carryover. I mean surplus is one time,  
22 carryover of roughly a million, which is about

1       what they had carried into last year, \$100 million  
2       -- I'm sorry, \$100 million.

3               Okay. In terms of projected  
4       obligations, the total obligations at least  
5       projected this year is looking at like a \$2.19 billion  
6       for the agency, and there is the ratio of patents  
7       to trademarks on the bottom.

8               So as we close out '11, we are moving  
9       into FY12, and like Tony mentioned and Dana  
10       mentioned, there are many question marks as to  
11       what our status will be, whether we will get our  
12       appropriations passed, whether we'll be in a CR,  
13       the status of the reform bill... So what we are  
14       looking at is, from a financial point of view,  
15       preparing for the worst, kind of hoping for the  
16       best. So at least from Patent's point of view, we  
17       will be in pretty tight straights if we go into a  
18       CR. Because Trademarks is anticipating about  
19       100 million carryover, there is much less concern on the  
20       Trademark side in that situation.

21               So, on the bullet that mentions  
22       implementing significant cuts to avoid a budget

1 deficit, while that was an agency exercise, it was  
2 mostly focused on the Patent side and the Patent's  
3 money.

4 And again, the next bullet points out to  
5 securing a carryover. Again, we anticipate almost  
6 100 million carryover in Trademarks, and significantly  
7 less carryover on the Patent side.

8 And Tony mentioned we have a number of  
9 scenarios that we're running, both, you know, good  
10 case and bad case, focusing more on the bad case,  
11 of what potential CR could be, either with or  
12 without an anomaly. And some of the key variables  
13 are whether there is or is not an anomaly, and also  
14 how long a CR is, because that makes a significant  
15 difference between how much you have in any given  
16 period of time.

17 And then Tony mentioned again, we're  
18 moving into preparing for our FY13 budget.  
19 We'll be sending out today, before the end of the  
20 day, we'll be sending out to the TPAC our FY13.  
21 And our timeline, we are expecting to get feedback  
22 from both of the Public Advisory Committees --TPAC and



1 PPAC-- and DOC before we do our submission to OMB in  
2 September.

3           And this was a slide that was requested  
4 by Maury, and what we did was, just to explain  
5 what is on the slide, it's a breakdown of the  
6 current obligations by business line, and this was  
7 as of the end of July. So the rows show the  
8 different business units. You have patents,  
9 trademarks, the miscellaneous general expense, or  
10 we call MGE, the appeals boards, OGC is our  
11 general counsel, CIO is our information technology  
12 area, CFO is our financial shop, CAO is our  
13 administrative, EA is External Affairs, then we  
14 group together some other areas under the  
15 Director's Office or the Under Secretary's Office.

16           The columns are the Patent's obligations  
17 on that side and the Trademark's. And so this is  
18 just a way to see comparably how some of these  
19 business units have their expenses by Patents and  
20 Trademarks. And I think that's the end of the  
21 slide.

22           CHAIRMAN TEPPER: Thank you, gentlemen.

1     Are there any questions? I think, you know, on  
2     the best of days, we're required to sort of  
3     operate in three separate years: Always working  
4     on the current budget, looking at where the next  
5     year's budget stands in passage, and planning for  
6     the third year out budget. And so, you know,  
7     today's presentation sort of shows you very nicely  
8     the degree of -- sort of the discreet thinking  
9     that's required on any given day to keep track of  
10    where we are and where we're going.

11                 I hope that the information was helpful  
12    for you to understand where the fees go and how  
13    difficult it is. I think it's really truly  
14    amazing that the PTO manages to accomplish what it  
15    does while not being able sometimes to know what  
16    it can spend, how much of that money can be spent  
17    and when it can be spent.

18                 So we certainly, if nothing else, gain a  
19    deeper appreciation and sympathy for what -- it's  
20    a very unique sort of type of planning. I don't  
21    think that many executives in the business world  
22    would tolerate that, but we do it here every day,

1 and that is the reality of how we operate.

2 Are there questions about the budget or  
3 about the numbers?

4 MR. BUDENS: Yeah, if I can, telling  
5 Bruce I appreciate the information. From a more  
6 immediate point of view, if we end up with a CR  
7 without the anomaly, I mean we've already done an  
8 awful lot of cutting, you know, of activities and  
9 stuff here already. What do you foresee in the  
10 additional -- your language of significant cuts,  
11 what else would we -- may be facing as we enter  
12 2012 if we end up on a CR? Let's say it's a  
13 three-month or six-month CR without the anomaly.

14 MR. SCARDINO: The challenge, of course,  
15 with any CR is unless they decide to do a year  
16 long CR, and you know it October 1st, you don't  
17 know how long you're planning for, so you've  
18 always got to keep a reserve to get you through.  
19 I mean, right now, like I said, it could be a  
20 seven-week CR; it's very possible that it could be  
21 extended. Last year I think we had seven CRs,  
22 went all the way through April 15th. So you

1 really don't know what you're working with, no one  
2 does.

3           So, you know, again, the exact cuts,  
4 Director Kappos would still have to make some  
5 decisions working with, you know, Commissioner  
6 Cohn and others, but right now we would do the  
7 usual suspects, which is no more hiring, no  
8 overtime, limited PCT possibly. I mean, these are  
9 all things that, you know, again, none of these  
10 should be taken as a decision. Director Kappos  
11 would have to make that decision, but those are  
12 the things that are controllable. Things like  
13 salaries are not, so nobody would be RIF-ed, and  
14 we've got enough money to keep the lights on and  
15 keep everyone paid. It's all the things that  
16 would get us towards more production-based things  
17 such as overtime that would be challenged.

18           MR. KISLIUK: And one other thing that's  
19 worth mentioning is that, and this is something  
20 we've done in past CRs, is that a lot of our  
21 contracts, we pay large money at the beginning of  
22 the year. So one of the exercises we are going to

1 do, we are doing it already, is to go to those  
2 contracts and try to fund them in a more limited  
3 term. So we --

4 MR. SCARDINO: Incrementally.

5 MR. KISLIUK: More incrementally. Now,  
6 it does -- just to let you know, and a nod to our  
7 procurement job, it is a huge effort due to the  
8 number and volume of contracts when we have to go  
9 through that exercise, but it's one that can put  
10 off those expenditures in those increments, and it  
11 is a pretty significant amount.

12 CHAIRMAN TEPPER: Thank you, gentlemen.  
13 We appreciate the explanation. Understand that  
14 we're not asking you to predict or identify  
15 specific cuts. And further, this is the TPAC and  
16 not the PPAC, so we're focusing on the Trademark  
17 operations. I do want to make sure that I  
18 understood I think what was implicit, Bruce, in  
19 your address, and that is, regardless of an  
20 anomaly operating under a CR, the carryover, those  
21 funds can be utilized by Trademark operations --

22 MR. KISLIUK: Absolutely, yeah.

1 Carryover is basically fees that have come in and  
2 they remain available until it's spent, so they  
3 can be spent any fiscal year, right. I usually  
4 see the obligations. We aren't going to spend all  
5 of -- coming into the year, we had roughly \$100  
6 million in carryover on the Trademark side, and  
7 then we've brought in enough fees to basically  
8 cover all of our expenses this year, so the  
9 carryover more or less remains the same amount  
10 going into next year.

11 CHAIRMAN TEPPER: Okay, thank you. Do  
12 we have other questions? Any public questions?

13 Gentlemen, thank you, we appreciate  
14 that. And again, I will challenge any CEO in the  
15 private sector to try to run a business in this  
16 fashion, so we do appreciate the difficulties  
17 here.

18 We're going to kind of turn to my  
19 favorite part of the day. We're going to have an  
20 update on Trademark operations. Commissioner  
21 Debbie Cohn I think is very well known to all of  
22 you. She is currently running the little engine

1       that can, and so this is, you know, a nice  
2       opportunity to -- it is a pleasure to get to come  
3       to a meeting where things are going so well, and,  
4       you know, thanks to Debbie's leadership and her  
5       very capable team. I'm going to give her a chance  
6       to just go over recent operations with you all,  
7       and we'll talk about a few things sort of coming  
8       down the pike.

9                 MS. COHN: Great, thank you so much,  
10       Maury. Good morning, everyone. And I was  
11       wondering if I can get the little slide clicker,  
12       yeah. Let me echo my grateful thanks for a job  
13       extremely well done. And we very much enjoyed  
14       working with you. I know I can speak for everyone  
15       on the Trademark staff when I say that.

16                Well, this is rather small. Those of  
17       you at the table have probably more readable  
18       copies in your handouts, but let me -- I was going  
19       to go through some of our statistics, the usual  
20       performance measures that we discuss at these  
21       meetings and highlight some of it for you. But  
22       before I do that, I want to mention the Trademark

1 Dashboard, which is a great visual for looking at  
2 Trademark data and actually being able to compare  
3 it and getting more information than you might  
4 normally get from charts and graphs. And we  
5 launched the Trademark Dashboard in May. We asked  
6 our users to give us feedback. We have a mailbox  
7 up there. And we got quite a bit of feedback.  
8 And I wanted to mention that we have made some  
9 changes as a result of that input and feedback,  
10 and so the Dashboard that you see now when you  
11 click on the data visualization link on the USPTO  
12 website is new and improved and contains some of  
13 the information that you have asked for after the  
14 first launch.

15 We added another measure for disposal  
16 pendency on the Dashboard that includes  
17 applications that have been suspended or were  
18 involved in interparties cases, and we changed the  
19 presentation a little bit so that we combined some  
20 measures into a single chart so that they can be  
21 compared with one another. And we've also tried  
22 to make the chart itself and the colors a little



1 easier to read so that you can look at the data in  
2 an even easier fashion.

3 So I hope you continue to give us  
4 feedback on the Dashboard. And I appreciate  
5 TPAC's initial help in all of this. It was really  
6 a great resource for us to figure out how to put  
7 it together.

8 And so with that, I'll start talking  
9 about the data itself. And the first item I'd  
10 like to address is quality, and this is quality of  
11 examination, the compliance rate for the legal  
12 decision-making. And we are doing quite well on  
13 that. As Terry Rea mentioned, we're exceeding  
14 our goals. I'm really happy and proud of the work  
15 that's being done in the Trademark operation.  
16 We're ahead, as you can see, on first actions and  
17 on final compliance.

18 And our new measure, the Excellent  
19 Office Action, is also doing quite well, we're  
20 ahead on that. And, you know, we've done some  
21 training, we plan to do more on the Excellent  
22 Office Action for our examining attorneys. And we

1 have also offered an incentive to examining  
2 attorneys to try to reach above and beyond what's  
3 required in their performance plan for an  
4 acceptable office action and inspire them to do  
5 excellent work, and they are really rising to the  
6 occasion. As you can see from the quality  
7 results, we're at 21.9 percent as opposed to our  
8 prediction, which was 15 percent for the first  
9 year under the standard.

10 For e-government, we are at 72 percent,  
11 and this refers to the percentage of cases that  
12 are processed electronically from beginning to  
13 end. We ended fiscal year 2008 at 68 percent, and  
14 we're now at 72 percent. And we're trying very  
15 hard in different ways, and you'll hear about  
16 these ways primarily through public outreach to  
17 try to figure out what people really need and want  
18 in order to increase their use of our electronic  
19 systems. And obviously I'm not talking about  
20 initial filing. We're really -- we've really  
21 achieved great goals in that. We're in the 98  
22 percent range for initial application filing. Now

1       our challenge is to get people to use electronic  
2       systems throughout the process and to, as Terry  
3       alluded to, authorize e-mail so that we can  
4       communicate with them electronically. So you can  
5       look for more in that area, and I'll mention more  
6       as I continue on.

7               Application filings are, of course, of  
8       great interest to everyone, especially this week,  
9       because, as we know, trademark filings do relate  
10      to the economy in real time. And so you're  
11      looking at third quarter results, which, of  
12      course, is the end of June, and the cumulative  
13      increase over Fiscal Year 2010 or where we were in  
14      June in '10 is 6.1 percent.

15             I do have some more updated information  
16      for everyone, and that is as of the end of July,  
17      our cumulative increase was 6.5 percent, so we  
18      went in the right direction. And although August  
19      -- you know, we're still in August, I do have some  
20      dates as of August 13th, and filings continued to  
21      go up the first few weeks in August, and the  
22      cumulative result is 7.8 percent increase. So

1 obviously, you know, no one can predict the  
2 future, or at least I can't, but we're hoping that  
3 this is a good sign and that things continue to  
4 improve in filings as we move forward in time.  
5 You know, that remains to be seen, of course, but  
6 -- and then, of course, in Fiscal Year 2010, we  
7 saw a total increase of 4.8 percent over the prior  
8 year, when many of you probably remember we did  
9 see a pretty drastic dip in filings. So we're  
10 still making up for that dip and we're headed in  
11 the right direction.

12           Which brings me to the examiner  
13 full-time equivalent positions, and I'd like to  
14 talk a minute about -- talk for a minute about our  
15 hiring, which we currently just completed offering  
16 positions to 13 new examining attorneys, and that  
17 will help make up for the fact that we haven't  
18 hired in a few years now. Our full-time  
19 equivalent for examining attorneys has dropped  
20 down, and we're planning for the future and  
21 building up. Thirteen is not a huge number, but  
22 we want to do what's safe and what we can. We're

1 going to revisit the issue later on in the year,  
2 and we do have plans to hire more, but those plans  
3 are really dependent on filings and production and  
4 inventory and all of the things that we should be  
5 looking at and are looking at, so those plans will  
6 be subject to change if we need to change them.

7 A word about the attorneys that are  
8 coming on board. They are new examining  
9 attorneys, but -- all but one was a prior  
10 examining attorney in years past, and all of them  
11 are very experienced trademark attorneys. We made  
12 that a requirement in our job announcement. They  
13 all have a lot of trademark prosecution  
14 experience.

15 We will provide training. We don't  
16 expect them to hit the ground running, but we're  
17 going to be able to tailor our training program to  
18 the specific needs of the group. This is the  
19 first time we've actually done something like  
20 this, where we've really just focused on getting  
21 experienced trademark attorneys.

22 There was quite a bit of interest in the

1 position, and we got some really wonderful people,  
2 and we're very excited. They're coming on board  
3 at the end of August -- at the end of September,  
4 excuse me.

5 Turning now to pendency, and I'm trying  
6 to see whether I need to flip the slide. Okay,  
7 great, thank you. So as of the end of June, we're  
8 on target for pendency. We're within our range of  
9 2.5 to 3.5 months for first action. We're at 2.7  
10 and we're very happy about that. For disposal  
11 pendency, also doing quite well. As you know,  
12 disposal pendency is dependent quite a bit on  
13 first action pendency, so we're very pleased that  
14 we're doing well in all three of our measures.

15 We have two disposal pendency measures.  
16 One, of course, includes the suspended and  
17 inter partes proceedings; and the other, where  
18 it's 10.2 months, excludes the suspended and  
19 inter partes proceedings. So you can see what the  
20 Trademark operation is doing for those cases that  
21 don't go to the board or get suspended, and you  
22 can also see sort of the overall PTO pendency for

1 the cases that -- all cases, no matter what their  
2 status.

3           And then I think I'm going to -- yes,  
4 I'm going to skip over that and just talk a little  
5 bit about our non- examining but still very  
6 important processes in the office, and that's our  
7 review and amendment processing, our legal  
8 instrument examiners, our quality of the non-legal  
9 work with the very important work of entering data  
10 into the files and reviewing and making sure the  
11 file is in the right condition for publication.  
12 And, as you can see, the pendency and the quality  
13 for both of those areas is doing quite well. Our  
14 Trademark Assistance Center is performing at  
15 optimal levels. They are answering 80 percent of  
16 their calls -- well, excuse me, they're answering  
17 92 percent of their calls within 20 seconds of  
18 receipt, so that's doing quite well, and they're  
19 way ahead of their target, which is 80 percent of  
20 calls within 20 seconds of receipt. And then I'll  
21 just move through the rest. Intent to use, our  
22 Madrid processing, our pre-exam units all really

1 optimal pendency and quality. We had a little bit  
2 of a backlog in post-registration; we're moving  
3 through that. The post-registration numbers have  
4 come down since the end of the third quarter, so  
5 we'll be seeing quite an improvement at the end of  
6 the fiscal year from them. And our Petitions  
7 Office is right around their target of one- week  
8 processing, the Section 2.66 petitions to revive,  
9 so we're very happy about that.

10 Moving now away from the statistics, I  
11 don't know whether anybody would like to ask any  
12 questions about the statistics before I move off  
13 of them. Okay.

14 So now Terry Rea mentioned that we had  
15 a roundtable on disclaimer practice, which we did  
16 on June 21st, and I guess that's the end of my  
17 slides. So we had a roundtable on disclaimer  
18 practice on June 21st, and the reason we did that  
19 was basically twofold. Internationally, a number  
20 of countries have made drastic changes to their  
21 disclaimer practice. In particular the UK and  
22 Canada actually did away with their disclaimer



1 practice. Disclaimers constitute a lot of work  
2 and time for our examining attorneys and for you,  
3 our users. They make up about 30 percent of our  
4 office actions, 30 percent contain a requirement  
5 for disclaimer. And, you know, we've had some  
6 issues where it's often a difficult area to  
7 administer, because we do have some nuances in how  
8 we apply the disclaimer policy.

9           So we thought it was a good topic to  
10 bring up for discussions at a roundtable, which we  
11 did. And the bottom line, the sense of the  
12 participants was that they actually like the  
13 disclaimer policy as it is today in the United  
14 States and don't want to see any significant  
15 changes to it, so we're not going to be making any  
16 significant changes to it.

17           The purpose of the roundtable was to  
18 really get a sense of the user community. We felt  
19 that we did get a sense. And so what we're doing  
20 in response is issuing some further guidance,  
21 giving examples and clarifications on our current  
22 policy so that people will be better able to

1 understand it and better able to apply it. So  
2 we're hoping that that will be a benefit to both  
3 internal and external users, and that should be  
4 out over the next few months I anticipate. The  
5 other --

6 MR. LOCKHART: Debbie, excuse me, and  
7 how do you plan to put that out? Will that be in  
8 the TMEP, will there be a separate document posted  
9 on the website, or how will that be done?

10 MS. COHN: That will be an examination  
11 guide and then will be incorporated into the next  
12 revision of the TMEP that follows the issuance of  
13 the guide. The other focus group or the other  
14 outreach effort that Terry mentioned was the  
15 focus group on authorizing e-mail correspondence,  
16 and we had that on June 23rd, and that was  
17 actually targeted. It was an invitation -- only  
18 focus group targeted to people in the area, to  
19 users in the area who don't currently authorize  
20 e-mail -- or didn't at the time; maybe they are  
21 doing it right now.

22 So they may file electronically and they

1       may send us submissions electronically, but they  
2       didn't authorize us to communicate with them  
3       electronically, and we wanted to find out why.  
4       And it was a very good focus group. And as a  
5       result of that focus group, we're making a few  
6       changes. One of those changes was actually  
7       discussed previous to the group, but they sort of  
8       reaffirmed that this was a very good change, and  
9       that is that we're going to be adding multiple  
10      correspondence addresses on the TEAS application  
11      form. So when you fill out your TEAS form, you'll  
12      be able to add up to four additional  
13      correspondence addresses as courtesy copy. So  
14      there will still only be one official  
15      correspondence address, but up to four additional  
16      recipients will be able to get a copy of whatever  
17      is sent to the official of correspondence address.

18                So we're hoping that that alleviates  
19      some of the concerns that have been expressed  
20      about missing correspondence, things getting lost  
21      in e-mail and all of the concerns that might  
22      prevent somebody from authorizing e-mail from us.

1           The other change that was a direct  
2 result of this focus group is that we are going to  
3 now be sending -- and this is all effective in  
4 October some time -- electronic notices of  
5 publication earlier than we do now. So one of the  
6 complaints in the focus group was, well, you know,  
7 if you authorize e-mail, you don't get your notice  
8 of publication until it actually publishes and  
9 it's in the official Gazette; if you don't  
10 authorize e-mail, you get a paper notice several  
11 weeks prior to publication, and that was a  
12 concern. So we are going to start issuing an  
13 additional notice of publication earlier in the  
14 process, several weeks before actual publication.

15           Another change that you should already  
16 have seen, and I'm moving away from the e-mail  
17 correspondence now and into a topic that is near  
18 and dear to everybody's hearts, and that is  
19 assignment. Another change that you're going to  
20 see that was effective on August 12th is that the  
21 assignment documents are actually available now on  
22 the web. So that's something that we -- you and

1 we have been asking for for quite a while, and so  
2 they are available. It's pretty easy to do. You  
3 can look at our news and notices, trademark news  
4 and notices if you want to see the official notice  
5 that was sent out. And some of you may have  
6 already received an official notice from us if  
7 you're a subscriber.

8 A couple of other changes in the  
9 assignment area, we are going to require that  
10 entity type and citizenship are now mandatory in  
11 entering the assignment and the receiver of the  
12 assignment, and that will shorten the time frame  
13 for recordation. So we won't have to go out and  
14 ask for this information, it'll be a mandatory  
15 field. And we're also going to be able to now  
16 have ownership information received from the IB  
17 for Madrid. Request for extension of protection  
18 will be entered into the databases viewable on the  
19 web. So these are all great changes.

20 And then there's another change coming  
21 up in October, and that will be that the notices  
22 of recordation and non-recordation for assignments

1 will be sent by e-mail rather than fax where  
2 e-mail has been authorized. So I know we've been  
3 asking and you've been asking for those things for  
4 quite a while, and we're really happy to report  
5 that they're in place or getting in place.

6 I do want to mention for a moment, both  
7 Terry and Dana talked about the Telework  
8 Enhancement Act Pilot Project, the work-at-home  
9 new developments, and the agreement that was  
10 reached. And, you know, people around this table,  
11 in particular Robert Budens and Howard Friedman  
12 and Judy Grundy in the audience, a number of PTO  
13 employees, worked very, very hard to come to this  
14 agreement between management and all three unions,  
15 and I really congratulate everybody.

16 This was a big task and it was done and  
17 it was done really well, and we're very happy that  
18 we're going to be able to do something that  
19 benefits the office, will benefit employees, and  
20 will move us forward, and we will continue to be a  
21 leader in telework. The pilot program that we  
22 have developed is a seven-year pilot program. And

1 we think that seven years will be a good amount of  
2 time to be able to test and move forward and see  
3 where we end up, but we see these as all really  
4 positive changes.

5           So we expect that around 25 percent of  
6 the trademark-examining corps who currently  
7 telework will have the opportunity to be part of  
8 this pilot program, which means they'll be able to  
9 move away from Alexandria, or far away, more than  
10 50 miles, and have their official duty station  
11 change, and only have to report back to the office  
12 on an as-needed basis.

13           The great thing about the pilot is it  
14 allows us, or allows these employees, to waive  
15 their travel expense requirements, which is  
16 normally required by law, so that they would be  
17 obligated to pay for the first few trips. And  
18 we've established a minimum number of trips and  
19 that gives us the opportunity to have this program  
20 and to -- without having the office have to foot  
21 the bill for an, you know, undetermined amount of  
22 money that may or may not be successful in the

1 future. So we think this is really a win-win for  
2 everybody, and again, thank you all who have  
3 participated in making it happen.

4 Moving on to the TMEP, we are expecting  
5 to complete our next revision sometime in October  
6 or soon thereafter. October is our target. I  
7 know that we've talked in the past about a new  
8 system that allows us to control the content and  
9 control the updates and we're working very hard on  
10 that. It will not be ready in time to allow us to  
11 do that for the next update, but we thought it was  
12 more important to actually have the update on time  
13 and we'll continue to work on making the system  
14 what we need it to be for the future.

15 We do have our sort of "Wiki," Wiki-type  
16 tool that is called IdeaScale, and we are going to  
17 incorporate the suggestions and comments made in  
18 IdeaScale as we do the next update; we're doing  
19 that right now. So thank you for using IdeaScale.  
20 I want to encourage people to use it more.

21 We're also talking about changing the  
22 sections that are up there in IdeaScale, although



1 people have felt free and they should feel free to  
2 just say anything, to comment on any section.  
3 They've been doing that. We're going to actually  
4 change the sections to target it in a different  
5 area, and we're talking about the idea of possibly  
6 opening up just the whole thing.

7           And then the ID manual, I wanted to just  
8 mention the ID manual. And we're working on  
9 improving our ID listings, making the manual more  
10 user friendly. Somebody mentioned recently that  
11 they noticed that a previous entry appeared to be  
12 deleted. What we're doing is trying to eliminate  
13 the really redundant entries. We have our folks  
14 working on a project right now. We think that  
15 it's just gotten a little bit too voluminous and  
16 it makes it difficult to use and we're trying to  
17 figure out a way to structure it so that it's  
18 easier to use for everybody, both inside and  
19 outside the office, so you'll be hearing more  
20 about that in the future.

21           I'd like to mention an upcoming meeting  
22 that we're having for the Trademark Trilateral in

1 December. It's December 5th through 7th, here at  
2 the USPTO; we are hosting it.

3 Right now the Trilateral consists of us,  
4 the European Union's Trademark Office, and the  
5 Japanese Trademark Office. We have invited this  
6 year -- and this is historic -- we've invited  
7 Korea and China to join us as members. Korea has  
8 accepted. We have not gotten a definitive answer  
9 from China yet, but we expect that they will be at  
10 the meeting in December.

11 So the offices get together on a yearly  
12 basis to -- and then have other contacts  
13 throughout the year to work on collaboration  
14 projects and things of common interest, and it's  
15 really great to hear the different practices in  
16 the office and to benefit from everybody's  
17 experiences and knowledge, so we're very much  
18 looking forward to hosting that here in the United  
19 States December 5th through the 7th.

20 Maury, I'm just going to go on to the  
21 additional outreach efforts. I know it appears  
22 later in the program, but if it's okay with you.

1 We're also, you know -- I know everybody is  
2 familiar -- is probably familiar with the  
3 Trademark Litigation Study that was done and sent  
4 to Congress in April. And at the last TPAC  
5 meeting, when asked, I said that we had not heard  
6 back from Congress yet on that, and we still have  
7 not heard anything official back from Congress,  
8 but we are taking some actions right now to try to  
9 do some outreach based on the recommendations that  
10 were made.

11           So we're going to be trying to engage  
12 the private sector on some of those  
13 recommendations, which were providing free or  
14 low-cost advice to small businesses, offering  
15 legal education, helping to look at trademark  
16 policing and educate on trademark policing tactics  
17 so that small businesses and non-attorneys have a  
18 better understanding of the issues involved in  
19 cease-and-desist letters and other tactics. So  
20 we're reaching out. We're beginning to do some  
21 outreach right now to bar groups through the  
22 country and other user groups on that.

1           We have completed our trademark pro se  
2 videos. We've talked a lot about them in the  
3 past. They are -- all are available on the web,  
4 and they are really -- they're so informative and  
5 they're very entertaining, and I really encourage  
6 all of you, even you experienced trademark  
7 practitioners, to take a look, because they  
8 highlight the really important areas that people  
9 need to know about. And even though they're  
10 geared towards pro se applicants, it never hurts  
11 to get an entertaining reminder of things we  
12 should know. The other --

13           MR. LOCKHART: One question.

14           MS. COHN: Yeah.

15           MR. LOCKHART: Do you have any sense of  
16 how many folks are watching those? Is there a way  
17 to track that or --

18           MS. COHN: Yeah, we do. Sharon, do you  
19 have any numbers? I know that we do have -- it's  
20 a lot.

21           MR. LOCKHART: Is it thousands?

22           MS. COHN: I'm going to ask Sharon to

1       come up. I think she has some more information on  
2       that.

3                   MS. MARSH: Sharon Marsh, USPTO. I  
4       don't have the statistics in my head, but we can  
5       count people who viewed it on Facebook. It's  
6       posted on Facebook and the USPTO website. We are  
7       not able at this time to count the number of hits  
8       on the USPTO site. But on Facebook, a large  
9       number, it's thousands of people have looked at  
10      the videos.

11                   MS. COHN: Yeah. Thank you, Sharon.  
12      Another outreach effort on our part is the  
13      Trademark -- the annual Trademark Expo, which this  
14      year is October 14th and 15th. And for those of  
15      you who are not familiar with it, we have it here  
16      on campus, and it's really a public education  
17      program, where we have exhibitors and lectures,  
18      and, you know, there's a big education component  
19      to try to educate the people about the value of  
20      trademarks in the marketplace, how to apply for a  
21      trademark, and, you know, we have a large segment  
22      on counterfeiting. It's really a great program.

1           In the past we've had, you know, maybe  
2   16 or 17 exhibitors in the Madison area upstairs.  
3   This year we've got something like 30 exhibitors.  
4   We've had a huge response. We've got some great  
5   exhibitors coming, and it's going to be a terrific  
6   event, so please come, bring your families. Last  
7   year we had around 13,000 people walk through,  
8   give or take 1 or 2, and so this year we expect a  
9   big crowd, as well. We're really doing some  
10   outreach efforts on that.

11           MS. PARK: Debbie, I have a question  
12   about that. As part of the Expo, will you have  
13   some of the things that might help fulfill the  
14   obligations to education, small business and pro  
15   se about the importance of policing trademarks?

16           MS. COHN: Yeah, we are planning on  
17   having some lectures for small businesses and it  
18   will definitely include that, absolutely.

19           And then I wanted to mention our --  
20   swinging back to IT for a moment -- and I know  
21   John Owens and Raj Dolas are going to be with us  
22   later and give us a really comprehensive view on

1       what's going on with IT, but I wanted to mention  
2       that we have a team of trademark experts from all  
3       over the office, all over the Trademark operation  
4       rather, who are working right now on what we call  
5       our Business Architecture Project. They're almost  
6       completed, and working using the comments that  
7       have been submitted over the past year and a half  
8       I guess now from the public and from our internal  
9       users to try to come up with a list of what our  
10      new system is going to look like and in what  
11      order, what are the priorities. So that's  
12      currently underway, and we're actually in review  
13      mode on that right now, and we really expect that  
14      that's moving along very well. And I just want to  
15      say, they have done such a fantastic job. They've  
16      really -- we've had a consultant working with us  
17      who is really expert in this area of developing,  
18      and, you know, transformation of systems, and he  
19      has commented more than once that this team of  
20      people is probably the best he's ever worked with,  
21      so I really have to mention that publicly, but  
22      you'll be hearing more about that later.

1                   And I think that's it for my  
2 presentation. You're going to hear some more from  
3 Sharon about our notice of proposed rulemaking and  
4 some other legal issues, but I think that's it for  
5 me. But I'd be happy to take any questions if  
6 there are any.

7                   CHAIRMAN TEPPER: Thank you. Are there  
8 any questions for Debbie? Questions from the  
9 public?

10                  MS. PARK: I have one question, Maury,  
11 and this is just for my own information. But when  
12 you talk about the Trademark Trilateral, what is  
13 the role, if any, of the public to attend or take  
14 part in sessions, or are there official observers  
15 that will be part of that couple of days of  
16 discussion and best practice sharing?

17                  MS. COHN: Normally the public is not  
18 present at most of the meetings. This year we're  
19 talking about having a user group session. We've  
20 sent out letters to AIPLA, INTA and a few other of  
21 our user groups to ask if they would like to have  
22 a representative speak. We expect that we'll



1 devote a few hours at least to that, but that's  
2 just in the very beginning stages of planning.

3 CHAIRMAN TEPPER: Thank you. Well, I  
4 think I'll get back to Deputy Director Rea's  
5 observations about what some of us do in our free  
6 time. You're probably by now aware that in the  
7 Commissioner's office they have no free time. It  
8 is remarkable what they manage to accomplish, all  
9 of the things going on at once here.

10 One of the things that jumped out at me,  
11 I hope you noticed this, you know, as the Advisory  
12 Committee, we have the chance to be here and try  
13 to bring to the office some feedback from the user  
14 community. They are actively seeking that out on  
15 an ongoing basis. Not only that, they are  
16 responding to it. I think before we can even have  
17 the chance to get together and talk about things  
18 that ought to be changed, the office seems to be  
19 aware of them, has made changes, and it's always  
20 about improving their processes, so we applaud you  
21 for that and thank you for that report. We're  
22 moving right along actually. I'm very pleased

1 that we are pretty close to on time.

2 We're going to hear just a little bit --  
3 and I knew this was going to happen. We're very  
4 pleased to have Sharon Marsh. And is Amy here,  
5 too, or are you solo today, Sharon?

6 MS. MARSH: We decided it made sense to  
7 save Amy for the next meeting.

8 CHAIRMAN TEPPER: Thank you, okay. I  
9 knew that we would not get to Sharon's formal  
10 presentation before Sharon had to come up and  
11 answer questions because Sharon is a vast  
12 repository of knowledge and is on top of all of  
13 our policy and developing issues. And we got  
14 pretty close, but that did happen, so thank you  
15 for always being here to keep us on track and to  
16 give us the answers. We're going to talk about  
17 just a couple of -- you heard the mention of the  
18 proposed rulemaking and a couple of other issues  
19 that are developing in the policy area. Thank  
20 you.

21 MS. MARSH: Yes. To start with the  
22 rulemaking, if you recall, about a year and a half

1 ago we held a roundtable here at the PTO on the  
2 implications of the Bose decision and the future  
3 of the use-based register, and I think two  
4 important points came out of that discussion.  
5 First of all, the importance of an accurate  
6 register. People who are selecting trademarks and  
7 doing clearance searches for trademarks search the  
8 USPTO register. And it's important that the marks  
9 that are shown on the register are actually in  
10 use, because if they're not, the person who's  
11 interested in that mark has to incur expenses to  
12 investigate and decide whether or not the mark is  
13 a blocking mark or not.

14 Secondly, I think the thing that came  
15 out of the roundtable was it highlighted that we  
16 have a different set of rules in place currently  
17 for initial exam and post- registration  
18 maintenance document examination. In initial  
19 examination, the examiner is allowed to, under  
20 Rule 2.61(b), in appropriate cases, when necessary  
21 for examination, to ask for additional information  
22 and affidavits and exhibits, and there was not a

1 similar rule in the post-registration area.

2           So on July 12th, there is -- we issued a  
3 Notice of Proposed Rulemaking. It's in the  
4 Federal Register and on the USPTO website. And  
5 the proposed rule harmonizes the rules so that an  
6 initial exam, in review of intent to use  
7 documents, in review of Section 8 affidavits and  
8 Section 7 amendments, a request to amend the  
9 registration, the examiner can ask for any  
10 information, exhibits, affidavits or declarations  
11 that are reasonably necessary for proper  
12 examination or to assess the accuracy and  
13 integrity of the register. We have not yet  
14 received any comments for this rule. The comment  
15 period closes September 12. Anything we receive  
16 will be posted on our website.

17           And the rule also permits the office to  
18 ask for additional specimens in appropriate cases.  
19 So I think we are just waiting to hear public  
20 reaction, and we will consider whatever comments  
21 are received and then make a decision about how to  
22 proceed.

1           The other things in the policy area I  
2 wanted to mention, as Commissioner Cohn explained,  
3 we are on track to issue the next edition of the  
4 TMEP this fall. Before then, probably within the  
5 next few days, I'm told, we will be issuing an  
6 exam guide on grade and model numbers. Kind of an  
7 esoteric topic, but one that has very little  
8 coverage in the current TMEP. I think applicants  
9 and their attorneys will really appreciate this  
10 one. It is extremely detailed. It covers all the  
11 case law and has many, many examples that I think  
12 will be useful when you're trying to decide what  
13 the office will do with a designation that might  
14 be considered a model number. In addition, coming  
15 up this fall, the next edition of the Nice  
16 Classification, the 10th edition, takes effect on  
17 January 1, 2012. And so in the first quarter of  
18 2012, we will be doing some training for the staff  
19 on the upcoming changes.

20           Also in the works we have -- our  
21 training office is working on some training on  
22 certification marks and procedure in ex parte

1 appeals at the TTAB, and that will be for the  
2 examining attorneys.

3 And lastly, we also -- I hope in the  
4 first quarter of 2012 -- will be doing some more  
5 training on the excellent office action issues.  
6 This time we're looking at office actions where  
7 there is a refusal under Section 2D, likelihood of  
8 confusion issues.

9 I think that's the highlights, and  
10 unless there are questions, we might be able to  
11 take a break. Thanks.

12 CHAIRMAN TEPPER: Now, how do you top a  
13 comment like that, recognizing I'm the only thing  
14 standing between you and a break? Do we have  
15 questions for Sharon? Thank you.

16 MS. PARK: My question, Sharon, is, is  
17 there any update with respect to what's happening  
18 or proposed to be happening with the Madrid  
19 Protocol or any future plans for further  
20 discussions on some of those issues?

21 MS. MARSH: It's interesting that you  
22 mention that. We are meeting this fall, in

1       October, with a group from WIPO, the Madrid -- the  
2       IB staff, and they are very interested in, number  
3       one, hearing any problems we're having in Madrid  
4       administration. And that's always very useful  
5       because there are day-to-day issues that it's  
6       helpful to talk to the staff about.

7                 But in addition, WIPO is very interested  
8       in trying to increase the level of participation  
9       of the Madrid system by U.S. trademark owners.  
10      And so to prepare for that, we may be trying to  
11      gather some information from various user groups  
12      about ways that Madrid could be made more  
13      appealing to U.S. trademark owners.

14                CHAIRMAN TEPPER: Thank you, Sharon.  
15      Are there any other questions?

16                Well, I do want to remind and encourage  
17      everyone, if you have not read the proposed  
18      rulemaking notice, it is very clear. I think it  
19      provides a good explanation, and Sharon mentioned  
20      September 12th is the deadline for submission of  
21      comments. I know the office appreciates and looks  
22      forward to the feedback from the associations and

1 from practitioners and users, so I encourage you  
2 to take a look at that and to participate in the  
3 process.

4 With that, we are going to take a 10 --  
5 actually I'll give you a 15-minute break because  
6 we have been so efficient this morning. We'll  
7 reconvene at 10:45.

8 (Recess)

9 CHAIRMAN TEPPER: All right. Welcome  
10 back to everyone. Well, we went from being five  
11 minutes ahead to being five minutes behind, so  
12 we'll see what we can do to make up for that. I  
13 think it shows you that we enjoy our breaks just  
14 as much as anyone. We'd like to continue on.

15 We're pleased to have with us today  
16 Chief Judge Jerry Rogers from the Trademark Trial  
17 and Appeal Board. We have, I think, a lot of --  
18 several issues to update you on and some new  
19 developments to announce. So Jerry, I'll turn to  
20 this to you.

21 MR. ROGERS: Thanks, Maury. I do want  
22 to start. We started the morning with new



1 personnel on TPAC, and I guess I'll start my part  
2 of the presentation with an announcement for those  
3 who may not have heard that Secretary of Commerce  
4 Locke, before he left to become ambassador of  
5 China and to -- I think he was even there trying  
6 to sort out the basketball wars with Georgetown  
7 and the Chinese team the other day -- before he  
8 left he did sign appointments for two new judges  
9 at the Trademark Trial and Appeal Board. And  
10 we're pleased to have on board now Tom Shaw, who  
11 was an associate solicitor here for the PTO and  
12 for 10 years was a managing attorney. So he's got  
13 great ex parte appeal experience that we will be  
14 able to use in our ex parte appeal operations.  
15 And we worked very closely with Tom, the board  
16 did, in developing the revised TBMP, and, of  
17 course, we worked very closely with the  
18 Solicitor's Office as they prepared to defend our  
19 decisions at the Federal Circuit. So we're  
20 looking forward to a very fruitful relationship,  
21 having Tom on board as a judge.

22 And we also announced recently the

1 second selection that had been signed off on by  
2 Secretary Locke, and that was the appointment of  
3 Linda Kuczma, who's a partner for at least about  
4 six more weeks with Banner & Witcoff in Chicago.  
5 And Linda is also a former president of the IP  
6 firm of Wallenstein & Wagner, where she was a  
7 partner for 20 years before she went to Banner &  
8 Witcoff. And she's a frequent author and  
9 lecturer, and she's also been intimately involved  
10 in the Lefkowitz Court Competition, which is near  
11 and dear to us being named after a former chairman  
12 of the board; and an Illinois super lawyer for the  
13 last five years running in intellectual property,  
14 so we're looking forward to having Linda join the  
15 board, too. And at that point, we will then be  
16 back up to 18 judges, which is where we were when  
17 David Sam retired almost 2 years ago. So we're  
18 looking forward to having a full staff of judges,  
19 a full complement of judges to work on our cases.

20 So let me tell you next where we stand  
21 on incoming filings and the work that the judges  
22 and the attorneys are processing. In terms of

1 incoming filings, we're seeing some of what  
2 Trademarks is seeing in terms of some increases,  
3 some decreases. It's a little uneven, I guess  
4 like the stock market this past week and these  
5 past few months, so we see some increases and some  
6 decreases, but I think some of the increases are  
7 being derived from those increases that Trademarks  
8 is seeing.

9           So through the third quarter, we've seen  
10 appeals down from the third quarter last year, so  
11 appeals are down slightly, but July was the  
12 highest month during the year. So maybe we're  
13 starting to see work coming out of that increase  
14 in trademark filings.

15           Extensions of time to oppose were up  
16 significant in the third quarter compared to the  
17 first and second quarter. Oppositions were up  
18 just slightly over the second quarter. But again,  
19 these are slight increases and maybe they're a  
20 harbinger of more things to come based on those  
21 trademark filings.

22           Cancellations were down a little bit,

1 incoming cancellations, but only very slightly.  
2 And so I think we're kind of getting a leveling  
3 off from the drops that we had seen in the last  
4 few years in most of these categories.

5 In terms of oppositions, though, which  
6 is always a significant category, I expect that we  
7 will finish the year up slightly over last year,  
8 but it will still be below the very strong numbers  
9 that we had from 2006 through 2009. We'll still  
10 be below those real high-water mark years, but on  
11 the increase.

12 As for final decisions on the merits,  
13 the things that Tom and Linda will be helping us  
14 write as they both get fully engrossed in the job,  
15 we had pendency improved in the third quarter  
16 compared to the second quarter. It went back up a  
17 little bit in the month of July, so the time to  
18 issuance of final decisions was back up over that  
19 third quarter figure of 15.8 weeks for the month  
20 of July. But some of that is attributable to the  
21 fact that we are working off some older cases, and  
22 as we work off older cases and try and reduce the

1 backlog, pendency may take some bumps up from time  
2 to time. The significant thing, as we discussed  
3 in the subcommittee yesterday, was we ended the  
4 month of July with 207 cases waiting to be decided  
5 on the merits, both appeals and trial cases, and  
6 that was the first month in a number of months  
7 where we ended with no more cases than we had  
8 started with.

9 For a number of months prior to July,  
10 our backlog was continuing to grow, which meant  
11 that pendency was going to continue to grow until  
12 you could stem the rise in the backlog. So that's  
13 a hopeful sign, that we were able to get out as  
14 many decisions as cases maturing to ready for  
15 decision in a month. So hopefully, that's a sign  
16 that with the full complement of judges, that  
17 we'll be able to keep working down that backlog  
18 and that pendency will eventually follow.

19 Commencement to completion times, this  
20 is something that we posted up on the website  
21 before the last TPAC meeting for the first time,  
22 and the third quarter figures are now up on the

1 website with comparisons to last year. And they  
2 are -- pendency was down in the third quarter  
3 average, total pendency for appeal, so that's,  
4 again, a good sign, but up some for the year. The  
5 same with the median pendency on appeals, down in  
6 the quarter, but up some for the year. You'll see  
7 a very high figure there, average total pendency  
8 for trial cases for the third quarter, 270 weeks.  
9 That's a pretty high figure. But while that  
10 quarter was up, we're actually down a little bit  
11 through the third quarter this year compared to  
12 last year in terms of overall total pendency.

13           And I think the ACR figure is the one  
14 that often illustrates the fact that some cases  
15 can skew the average. It's more noticeable in the  
16 cases that are decided under ACR, because the  
17 numbers are fewer. And so if you look at this  
18 figure, you can see that we were taking from  
19 commencement to completion 76 weeks or so to get  
20 rid of 2 ACR cases. In the first quarter we did  
21 three, in the third quarter, but they were almost  
22 twice as long on average.

1           But when you have small numbers of ACR  
2 cases, one lagger can really skew the average.  
3 And we also are at the kind of point in the  
4 adoption of ACR where people are not necessarily  
5 adopting it very early in the process, and  
6 sometimes people will go through pleading and go  
7 through discovery, have a lot of motion practice,  
8 and it's only after they've done that that they  
9 will then decide we'd like to go through an ACR  
10 process for trial. And so some of those late  
11 adopters don't necessarily help bring down the  
12 overall average. But over time, we hope that more  
13 people will adopt ACR as an alternative to  
14 traditional discovery and trial earlier in the  
15 proceeding, and we will then see some of the  
16 benefits of that.

17           On contested motions, our next slide,  
18 that's a great sign. We are just where we need to  
19 be, we're under goal. We're under goal for the  
20 third quarter. We had seen a slight uptick in the  
21 second quarter, but we made progress in the third  
22 quarter. And for the year pendency, the third row

1 down in this chart, we're at 9.1 weeks. And the  
2 goal is 10 weeks on average to get contested  
3 motions decided, so we're doing pretty well there.

4 And we have more contested motions being  
5 decided following a phone conference than we had  
6 at this point last year, so that's good, too, that  
7 the attorneys are still making great use of the  
8 phone to help resolve some of these matters.

9 And the backlog of decisions -- motions  
10 awaiting decision is manageable, we think, for the  
11 group that we have now. But as Debbie alluded to  
12 earlier, we're going to have to keep an eye on  
13 filings, and if filings go up, then we'll have to  
14 think about amending or altering the size of the  
15 interlocutory staff if those small increases that  
16 we're seeing now and extensions of time to oppose  
17 and then oppositions become larger increases. But  
18 at this point, we just don't have enough  
19 information to know whether there are going to be  
20 larger increases and sustained increases. And the  
21 way the stock market has been going the last few  
22 weeks, if that's any indication of what the future



1 holds, maybe it'll be just a blip in the increase.

2 I don't know, we'll see.

3 Another thing not on the charts, but  
4 which I know everyone is always very interested in  
5 as a statistic, is the number of precedential  
6 decisions that we issued. And we're running  
7 slightly behind last year, and I expect that we  
8 will finish the year behind where we ended up last  
9 year in terms of the total number of precedents.

10 We issued 10 in the first quarter; 10  
11 again in the second quarter, which is about  
12 average; maybe it's 10 to 12 average for a  
13 quarter. The third quarter slipped down to four,  
14 but we've already had four go out in July, and  
15 another three in August. So we're going to be in  
16 the fourth quarter right back up to our average of  
17 10 to 12, and the third quarter just appears to  
18 have been an aberration for potentially a number  
19 of reasons, one of which might be that I was away  
20 in training for the whole month of June and I  
21 wasn't here to push as many precedents out as I  
22 might otherwise have done.

1           The other decision I made, and this has  
2 occasionally been made in the past, was I decided  
3 to suspend the process by which judges -- one  
4 assigned judge reviews all decisions readied for  
5 mailing to see if they should be precedents, and  
6 that usually results in some additional  
7 precedents. But because of the increase in final  
8 decision pendency, we wanted to get that extra  
9 judge time just on issuing decisions and not  
10 reviewing other peoples' decisions, so that was a  
11 price we were willing to pay to keep pendency from  
12 creeping up too much.

13           So that kind of leaves me the -- well, I  
14 guess I should ask if there's any questions about  
15 the statistics first before I move into the next  
16 subject.

17           MS. PARK: I have one question, or maybe  
18 it's a suggestion.

19           MR. ROGERS: Sure.

20           MS. PARK: I know on the ACR statistics  
21 that 159 weeks looks like a real -- it doesn't  
22 look like ACR is effective when you see that, and

1 I'm wondering if it's possible to track ACR or  
2 have a statistic which isn't maybe as meaningful,  
3 but from the time the parties elect ACR, what the  
4 time frames are. Because I actually think we  
5 don't want to discourage people from opting for  
6 ACR by making it look like it takes a long time  
7 when that length of time, like I understand it,  
8 may be because things happened before the parties  
9 got to that point. So just a suggestion.

10 MR. ROGERS: That's a great suggestion.  
11 And we also don't want to deter or dissuade  
12 anybody from choosing ACR at any time. And we had  
13 those cases where the parties are on the eve of  
14 trial and they elect ACR. And we said that's  
15 fine, at any time if you can be more cooperative  
16 and realize any efficiencies, you know, we're here  
17 to help you do that. But that's I think a great  
18 way to see what kind of progress the parties are  
19 making in electing ACR.

20 And I will get into ACR -- well, I might  
21 as well get into it now. I'll just skip ahead on  
22 my list here. We mentioned the last time that,

1 just before the last meeting, we had posted on the  
2 website the suggestions that AIPLA had presented  
3 to the office. We had hoped that we might get  
4 some additional suggestions from other groups, but  
5 we have not at this point in time. We're still  
6 left with the AIPLA suggestions. But we have  
7 developed -- we're in the process of developing  
8 and very nearly have completed developing some  
9 options of our own that we will post on the  
10 website. We're taking a slightly different tact  
11 then the AIPLA did. They took an approach where  
12 they were talking about different kinds of cases  
13 where you would retain or give up certain options  
14 that are otherwise available to you in an  
15 inter partes proceeding.

16 We're focusing on it from the  
17 perspective of, well, how much time do you want to  
18 spend at the board? Do you want to get in and out  
19 in 10 months? Do you want to get in and out in 14  
20 months? Do you want to get in and out in 18  
21 months? Our traditional trial schedule, if you  
22 just follow it without extensions or suspensions,

1 would get you out in just under two years. And so  
2 we're focusing our attention on some ACR options  
3 that would get you in and out of the board in less  
4 time than that on the theory that if you want to  
5 just get in and out in two years, then you can  
6 simply agree to follow the existing schedule  
7 without any extensions and perhaps without  
8 suspensions for motion practice, and the parties  
9 can do more on the phone with interlocutory  
10 attorneys and that sort of thing.

11           So there's the possibility of just  
12 agreeing to comply with the existing trial  
  
13 schedule or elect some shorter options, and then  
14 we would, of course, explain in our proposals --  
15 which we'll eventually post on the website -- what  
16 you're going to have to give up to get in and out  
17 in that time frame. But we're hoping that that  
18 approach will allow attorneys to discuss with  
19 their clients with more certainty how much time  
20 they can expect to be at the board.

21           Now, of course, this all depends on both  
22 sides agreeing to the ACR procedure. But if both

1 sides know that they can get in and out of a board  
2 proceeding in a certain amount of time, then maybe  
3 that's something that will influence their  
4 discussions about whether to adopt ACR or not.

5 So I expect that we'll have those  
6 options developed pretty quickly. I've worked on  
7 the drafts with Judge Cataldo, and I have a  
8 meeting scheduled next week with all of the judges  
9 where I hope to discuss them with the judges as a  
10 group and get some additional input, but we hope  
11 to get them posted on the website in the very near  
12 future.

13 And they're not necessarily things that  
14 provide all answers for all people, but they are  
15 suggestions, and then they are options that people  
16 can use in their discussions about how they might  
17 like to structure their own ACR procedure. We had  
18 a question yesterday in our subcommittee  
19 discussion about whether anyone has actually  
20 adopted any of the AIPLA suggestions, but if they  
21 have, no one is doing it by saying I'm adopting  
22 AIPLA option A or option B and identifying it for

1 us in that way. So it may be that we actually  
2 have some people who have agreed to one of those  
3 options, but we just haven't been apprised of  
4 that.

5 Questions on ACR?

6 CHAIRMAN TEPPER: Any questions or  
7 comments? I think obviously this is an area where  
8 we all think we know what we want: We want faster  
9 resolution until we actually have to go through  
10 it. So I am -- I do encourage those listening in,  
11 members of the public, do provide your feedback  
12 and suggestions. We're grateful to the board for  
13 the time they're investing in developing these  
14 options, we look forward to seeing them. But as  
15 you know, their time is a valuable resource, as  
16 well, so the more input and feedback we can  
17 provide, I think the better it will be for all  
18 involved.

19 MS. PARK: I did want to add that I  
20 think it's a good idea to approach it in a  
21 slightly different way from the AIPLA way, which  
22 is to think about, you know, time frames versus

1 steps that people would elect or not elect,  
2 because that can help focus thinking, too, if  
3 you're thinking about by when you need something,  
4 you know, to be decided finally. So I think  
5 that's a good approach.

6 MR. ROGERS: Thank you. I'll also  
7 mention now, harking back to the precedents, of  
8 course, our sustained issuance of a lot of  
9 precedents over the last few years fueled the, in  
10 large part, the revision of the TBMP, and it's out  
11 there. We've been receiving some comments, not  
12 many, but we have a mailbox. And I want to  
13 reiterate to the public that we have a mailbox for  
14 TBMP comments, and so we're certainly willing to  
15 take into account any comments on the manual and  
16 suggestions for improvement in the future.

17 We will soon be following, I hope, the  
18 lead of Trademarks and put out at least a portion  
19 of the manual through IdeaScale for comment. I  
20 think a logical first step would be to do perhaps  
21 Chapter 1200. And I'm just thinking out loud  
22 here, but Chapter 1200 is our chapter on appeals,



1 and so it's a focused, single chapter, and it  
2 might be a good starting point for us, especially  
3 for trademark practitioners who are more likely to  
4 be involved in an appeal than an opposition, to  
5 get that out there and get some suggestions on it.  
6 And our hope is that we will be able to get  
7 someone in place in the near future who will be  
8 primarily in charge of keeping the manual revised.  
9 And I would expect our first revision of the  
10 current edition of the manual to come out sometime  
11 later in the spring. So that would basically be  
12 about one year from when we issued it, and by  
13 then, I think the RDMS system will be firmly in  
14 place, and hopefully we will be able to use it for  
15 future revisions. And then we'll follow an every  
16 six month revision practice and be able to get in  
17 any editorial changes that need to be made based  
18 on comments received or any updating that needs to  
19 be made based on the issuance of presidential  
20 decisions.

21 CHAIRMAN TEPPER: Thank you, Jerry.  
22 Just to clarify, I think -- I want to make sure

1 everyone is understanding. The RDMS system is the  
2 same system that we heard about that will be  
3 coming for updating the TMEP on an ongoing basis,  
4 and basically you'll be using the very same  
5 technology at the board.

6 MR. ROGERS: Yes. And we have told the  
7 CIO, and I think I've told this group before, that  
8 since our stakeholders tend to be the same  
9 stakeholders that are trademark stakeholders, we  
10 will follow the Trademarks lead. They have been  
11 much more involved. They and Patents have been  
12 much more involved than we have been in the  
13 development of the system, and we're very thankful  
14 to Trademarks and to Patents for doing a lot of  
15 the heavy lifting and working with the CIO's  
16 Office to get that system up and running.

17 But then we don't want to have a system  
18 or put in place any requirements for the revision  
19 of our manual that will be any different than what  
20 Trademarks is doing. We want it to work  
21 harmoniously. And then, again, that's why we'll  
22 follow the lead of Trademarks on the IdeaScale.

1 And whatever Trademarks wants to do in terms of  
2 soliciting and receiving public comment on the  
3 TMEP in the future, we will likely follow the same  
4 route in terms of receiving public comment on the  
5 TBMP, make it easy for people to work with the  
6 office on both manuals.

7 MS. PARK: Yeah, I just wanted to make  
8 one comment on the revision of the TBMP. We all  
9 know that it was -- the version that's out there,  
10 the 3rd edition, was a long time in coming, and  
11 it's been well received and something that the  
12 user community really needed. So just to clarify,  
13 the next -- you're going to revise it, so an  
14 update will be out probably at around the one-year  
15 anniversary point. But that is not dependent on  
16 whether or not RDMS is available, is that correct?

17 MR. ROGERS: That's correct.

18 MS. PARK: Okay, I just wanted to  
19 clarify.

20 MR. ROGERS: We will do what is  
21 necessary to get the next revision out. And one  
22 of the things that we did in putting out the

1 current edition was transition from a format that  
2 was not easily revised to a format that is much  
3 more easily revised. And so even if we have to do  
4 it in the current format and without RDMS, we will  
5 be able to do it and we will stick to that  
6 schedule.

7           And we did -- on the public outreach  
8 front, we had the Request for Comments, the Notice  
9 of Inquiry, Request for Comments on settlement  
10 talks and whether the board should be more  
11 involved more frequently, or whether judges should  
12 be involved or attorneys, or even if the board was  
13 not involved, whether the parties should be  
14 required to discuss settlement more often. So we  
15 received comments from that. All of those  
16 comments are posted at the board's website and can  
17 be read there.

18           We received comments from three firms,  
19 three law firms, four individuals, and four  
20 organizations, IPO, AIPLA, the ABA IP Section, and  
21 INTA, and so all of their comments are up on the  
22 website and accessible for anyone to view. I'm

1 not going to stress any particular comment, but I  
2 do think that there's a couple of general  
3 observations that can be drawn.

4           We have the existing requirement for a  
5 settlement discovery planning conference. It  
6 seems that most people view that as an improvement  
7 over previous practice, and so that's something  
8 they value in the process. However, many seem to  
9 view discovery as something which is necessary in  
10 many cases before settlement can be seriously  
11 discussed and, therefore, there are a number of  
12 comments that argue against any requirement for  
13 detailed settlement discussions with anybody from  
14 the board before discovery can begin. That's  
15 pretty clear that that's the point of view of many  
16 commenters.

17           Any involvement by the board, any board  
18 personnel or mediator should be on consent of the  
19 parties. That seems to be a predominant theme as  
20 opposed to the board injecting itself into  
21 settlement discussions or requiring the parties to  
22 attend settlement discussions.

1           And as we heard when we amended our  
2 rules in 2007 and implemented the settlement  
3 discovery planning conference for the first time,  
4 recusal and maintenance of confidentiality is not  
5 surprisingly still a major concern of a party  
6 should anybody from the board become more involved  
7 in settlement talks. There's some support,  
8 because many commenters, whenever you and I think  
9 Debbie alluded to this earlier, whenever the  
10 office puts out a Request for Comments or a Notice  
11 of Proposed Rulemaking, we often get a lot of  
12 suggestions that are not necessarily on point with  
13 the issue, but they're often very useful anyway  
14 because they reveal some of stakeholder thinking  
15 for us. And so we -- not quite on the point of  
16 settlement, we received a number of comments in  
17 these comments on the Request for Comments that  
18 suggested other ways for improving processing time  
19 at the board. And so, interestingly, a number of  
20 the comments kind of diverge from settlement  
21 discussions and said maybe it would be useful for  
22 the board to think about limitations on the number

1 of extensions and suspensions that are granted to  
2 accommodate settlement talks. So that's something  
3 that we can certainly consider, having more of a  
4 discussion with stakeholders about whether we're  
5 too liberal in granting extensions and  
6 suspensions.

7           It was something that we heard in the  
8 2007 rulemaking, and we understand that many  
9 practitioners value the liberality with which the  
10 board grants these extensions and suspensions as  
11 opposed to a district court. But, you know, maybe  
12 there's some opportunity for savings there, that  
13 was another one. And there was some support for  
14 perhaps a second conference of the parties after  
15 discovery closed, but before trial was to start.

16           So I think that these are suggestions  
17 that we're going to consider and we're going to  
18 have discussions in- house about any process  
19 improvements that we might be able to design that  
20 would result either from these comments or from  
21 any other stakeholder suggestions.

22           And one of the things that we've been

1 talking about in-house is more outreach, more  
2 opportunity for outreach to stakeholders. I've  
3 secured a couple of dates in November for  
4 auditorium space here, and so we're thinking about  
5 possible outreach to stakeholders sometime in  
6 November that would involve discussion of  
7 processing times and opportunities for improvement  
8 at the board.

9           So I'm not prepared to really discuss  
10 whether it would be a roundtable or a stakeholder  
11 conference or something like that, but we're  
12 working on that and we're looking forward to doing  
13 that after we wrap up the end of the year and the  
14 performance appraisal month in October and then  
15 maybe in November. Before we get into the holiday  
16 season, we can take the opportunity to have that  
17 kind of discussion with stakeholders on processing  
18 times and improvement.

19           So that's -- oh, one other thing. We  
20 have, of course, talked about putting up more  
21 information on the website about processing times  
22 and the slides we've gone through today and the



1 ACR options and things like that, but we will also  
2 be developing a Dashboard. We'll follow -- again,  
3 we seem to be following the lead of Patents and  
4 Trademarks and others, but we will try and move  
5 from just posting some charts and information on  
6 the website into having a full-fledged Dashboard  
7 up on the website sometime in the near future.

8 So that's all I have, thanks.

9 CHAIRMAN TEPPER: Thank you, Jerry.  
10 That's certainly a comprehensive view. Are there  
11 any questions for Jerry? Questions from the  
12 public? You guys are quiet today.

13 All right. Yes, please, Kathryn.

14 MS. PARK: Just one comment. I think it  
15 was a great improvement to be able to see some of  
16 these performance measures on the website. And I  
17 would think that a Dashboard would be very helpful  
18 to the user community and probably, you know,  
19 building on what's already been done in other  
20 operations, not that difficult probably to do, and  
21 some easy ways, even if it's not perfect, because  
22 I do think those kinds of tools are very helpful.

1       So I -- you know, if there's anything TPAC can do  
2       to help in terms of, you know, commenting or  
3       anything on a Dashboard, I think that is something  
4       that would be great for the user community. I  
5       just wanted to put that out there.

6                 MR. ROGERS: Well, and I think you've  
7       already helped. I'll have to think about putting  
8       in as one measure on that Dashboard the time to  
9       completion of a trial case after adoption of ACR.  
10      I mean, that might be useful to have out there and  
11      encourage people to adopt ACR.

12                CHAIRMAN TEPPER: We would like to  
13      request that measure be in pink for Kathryn so she  
14      can find it.

15                MR. ROGERS: Okay. Well, I think maybe  
16      I've shied away from the Dashboard, because I have  
17      color- deficient vision, so the Dashboards always  
18      don't mean much to me. I look at all those color  
19      charts and I have difficulty discerning weather  
20      maps and Dashboards and knowing what all the  
21      colors mean. But nonetheless, I know the rest of  
22      you have good color vision and so we'll get

1 something out there for you.

2 CHAIRMAN TEPPER: We appreciate all of  
3 the updates, Jerry. It's good to see that you've  
4 got a close eye on the numbers. We'll look  
5 forward to continuing to watch those decline for  
6 you. And also, once again, to encourage everyone,  
7 do provide your feedback to the board when they  
8 are asking for it. I know it's a little bit like  
9 asking my kids where they want to go to dinner: I  
10 will get many different answers; ultimately a  
11 decision must be made. So, you know, this is your  
12 chance to speak up and have input. Recognize that  
13 that will all go into making a final decision so  
14 that we can get on with these approaches.

15 That being said, we need to also thank  
16 Jerry for getting us right back on time. We're  
17 going to have -- do we have John Dunay? Okay,  
18 thank you. We're going to have a presentation  
19 from the Office of the Chief Information Officer.  
20 Kevin Smith, our deputy CIO, will be filling in  
21 for John Owens.

22 And Raj Dolas is also back. I'll go

1 ahead and mention, I think we had the chance to  
2 meet Raj at our June meeting. Raj is in charge of  
3 planning for the Trademarks Next Generation  
4 Project.

5 So, gentlemen, thank you for your time  
6 today.

7 MR. SMITH: Yes, thank you very much.  
8 John actually fell ill last night, so he was  
9 totally planning on being here, so things happen.  
10 So I'm glad to be able to come to present to the  
11 board, to the Public Advisory Committee again.

12 So within the first slide, the first  
13 update from the OCIO standpoint, it's from the  
14 universal laptop. We're actually at 3,400 laptops  
15 being deployed as of the beginning of this month.  
16 This program started on the last day of March of  
17 2011. It's about 4 months, 4-1/2 months into that  
18 program, and we're about a third of the way there,  
19 maybe about 40 percent of the way there for the  
20 role out. The entire rollout of this program  
21 across the agency is expected within March/May  
22 time frame. The target is for May of 2012, and

1 we should be able to make that, and actually we're  
2 going ahead of those time frames right now. We're  
3 actually doing more per night than we suspected.

4           Within that from the completion status,  
5 the Under Secretary's Office, the CFO's Office,  
6 the BPAI and OCCO Office have all been done,  
7 completed 100 percent. And the Chief  
8 Administrative Office, as well as the OCIO are  
9 partially complete, nearing the end of that.

10           The ULP update within the Patent Office,  
11 we've actually done 2 major tech centers, 1600 and  
12 2900. These are the designs, as well as the  
13 organic chemistry areas for Patents. The next  
14 section is 2100 and 2600, the computer  
15 architecture, software, and the communications  
16 groups within the Patent's organizations. The  
17 rollouts are going very smoothly; still going  
18 through getting things out of their office. 2010  
19 is a little new for people, so there are still  
20 questions on that, but overall the rollouts are  
21 going pretty smoothly.

22           From the Trademark's perspective, we

1 always had Trademarks a little bit later in the  
2 schedule to make sure we worked out the process,  
3 the physical logistics of getting laptops out to  
4 the people, making sure all those things were  
5 worked out appropriately. So going through that,  
6 we went from -- we initially thought we'd do 50  
7 laptops a night. We're actually up to 65 a night,  
8 and our production schedule is rolling them out  
9 logistically. So we want to make sure we put  
10 Trademarks further back in the schedule to make  
11 sure that it was accommodated first, to make sure  
12 we smoothly rolled it out.

13           The second thing that we had been  
14 concentrating on within the completion of the  
15 trademark applications is to make sure they're  
16 working the most effectively they can over the  
17 laptop, especially for home users. So we actually  
18 have been making some changes to the applications  
19 to benefit the home users for use with the UL.  
20 And some of those testing phases are going through  
21 right now, where we're going to be working with  
22 the Trademarks organization, testing a few of the

1 changes with the -- some of their employees to make  
2 sure that they're appropriate for home users and  
3 make sure it's going to adequately fit the  
4 business needs for the rollout of the laptop.

5 So all of those things falling into  
6 place, we're looking to have a deployment out  
7 there within the next few months for Trademarks.  
8 So we're looking to be able to meet that schedule.  
9 This is based on the testing of things we're doing  
10 right now, today, to move the laptops off of the  
11 Trademarks organization.

12 MR. LOCKHART: I'll go ahead and ask  
13 this question now before you turn things over to  
14 Raj and we get into Trademarks Next Generation,  
15 but can you describe for me a little bit, please,  
16 what the approval mechanism is going to look like?  
17 I know you've started testing, you're going to be  
18 continuing your testing, and at some point  
19 presumably OCIO is going to be happy with the  
20 Trademark configuration. How is Trademarks going  
21 to give you the green light and say, yes, we're  
22 happy, too, so that both offices are in agreement

1 that, okay, now deployment is appropriate?

2 MR. SMITH: This is going to go out from  
3 the standpoint of the OCIO has been doing  
4 different configurations to help make sure that  
5 anything we're doing, first off technically is  
6 sound, but more focused primarily on does it meet  
7 the business needs. We have not come up with a  
8 formal process more than we're going through with  
9 the Trademarks beta users; there's about 30 of  
10 them now. We're going to give this to a handful  
11 of them, and we're going to have a conversation.  
12 We're going to go through the demonstrations of  
13 it. We're going to have beta users use it for a  
14 while, and if the business doesn't like the  
15 performance of it, the OCIO is the delivery engine  
16 for Trademarks, we have to come up with something  
17 that's going to be appropriate.

18 So the signoff has to come from the  
19 business. We cannot give something to Trademarks  
20 that is not going to be usable for them at the end  
21 of the day. And we're going to do our best to  
22 work to whatever solution we have to get to



1 make sure that it's effective for both the OCIO as  
2 well as Trademarks.

3 MR. LOCKHART: And, Debbie, I just want  
4 to make sure your office is comfortable with that.  
5 And you've got, I know, several people probably  
6 looking at this process, and at some point you're  
7 going to say yes or no before they begin the  
8 deployment.

9 MS. COHN: Yes, just to clarify, we're  
10 working closely in the testing environment and  
11 elsewhere with OCIO on this, and nothing will be  
12 deployed until it's working properly, and it has  
13 to be working properly from the Trademark's  
14 perspective in order to be deployed.

15 CHAIRMAN TEPPER: Thank you, and I  
16 appreciate the clarification. Understand, too,  
17 the timeline. I know you mentioned planning  
18 rollout within the next several months. I think  
19 as someone who does lots of work on the other  
20 side, I want to know that the examiners have a  
21 system that works first. So we'll take the  
22 whenever, sooner is better, we understand that,

1 but reassure that we're going to hold on until  
2 everything is working and acceptable and we'll  
3 proceed at that pace.

4 MR. SMITH: No, I absolutely agree.  
5 We're just working to make sure it's effective and  
6 then put Trademarks into the rollout schedule as  
7 soon as possible after that go has been given from  
8 the business.

9 So I'm going to now pass it to Raj  
10 Dolas, who's the portfolio manager for the  
11 Trademarks Next Gen portfolio, and I'll have him  
12 go through the logic.

13 MR. DOLAS: Thank you, Kevin. Good  
14 morning, all. Glad to be here again a second  
15 time.

16 So the update for Trademark Next  
17 Generation portfolio is Fiscal Year '11 is  
18 primarily a planning year. We have fast forwarded  
19 some of the work that we're planning on doing in  
20 Fiscal Year '12 by planning to do some prototypes  
21 this year. We will be executing some prototypes  
22 starting hopefully next month, so we'll have at

1 least one month under our belt for prototypes.

2 But the portfolio primarily focuses on  
3 two tracks: One is modernizing the platform  
4 infrastructure, and the second is modernizing the  
5 application and improving the functionality of  
6 trademark applications.

7 Like I said, the planning is going on.  
8 It is on track, things are going as we had  
9 planned, and we're fast forwarding some work and  
10 doing some prototypes this year. The platform  
11 infrastructure improvement work has three major  
12 programs: Separation and virtualization, which is  
13 separating trademark applications and make sure  
14 that they run on their own piece of hardware so  
15 that they're not interfered or impacting by other  
16 pieces of -- other applications that run in our  
17 data center; cloud computing, as well as  
18 infrastructure improvement, where we are going to  
19 evaluate some business tools which will lay a  
20 foundation for the next generation application.  
21 All the three programs -- the project is in three  
22 programs -- have been kicked off. They are doing

1 somewhat -- we're doing some work from project  
2 planning perspective, making sure that there's  
3 funding available, making sure the people are  
4 allocated to that, and these programs are expected  
5 to kick start in Fiscal Year '11.

6 The application and function improvement  
7 track is based on the business architect's work.  
8 A few of them are here right now. A lot of the  
9 work that they have done is very -- it's driving  
10 the architectural decisions for all the Next  
11 Generation applications. We are following --  
12 we're basing the data architecture and application  
13 architecture on top of the business architecture  
14 to make sure that all the business things will be  
15 met when we start developing the applications for  
16 Next Generation. There are two applications that  
17 we have started working on, and we'll also  
18 continue -- we'll also kick off some prototypes  
19 later this year.

20 That's all I have for update. Do you  
21 guys have any questions for me?

22 MR. LOCKHART: I'll ask this question,

1 and I'll understand if this is not something that  
2 you can answer at this point, because I know that  
3 you're still developing a system architecture, but  
4 do you have any sense of when you will have  
5 something that you can make available to the  
6 public in the form of a document or maybe, I don't  
7 know, PowerPoint slides or whatever, but something  
8 that says to the public, this is how we think  
9 Trademarks Next Generation is going to look, how  
10 it's going to work, these are some aspects of how  
11 the user interface will look and operate? Because  
12 obviously there's a lot of curiosity out there  
13 among trademark practitioners in the trademark  
14 community about how it's going to look. So do you  
15 have any idea, at what point could you start to  
16 make some of that available, or maybe is that  
17 question premature at this point? Perhaps it is.

18 MR. DOLAS: Well, a lot of the work that  
19 we do is based on the business architect's work,  
20 and the priorities of what we're going to do will  
21 depend on the priorities that business asks us to  
22 work on. So a roadmap is a valid question, when

1 will we have a roadmap? We'll know what we're  
2 doing, I mean, which pieces of the puzzle we're  
3 starting to develop, in the next few months  
4 probably. And we're using agile methodology to  
5 develop this, so we're not going to plan three,  
6 four, five years out into the future, but we're  
7 going to plan on shorter time frames so that we  
8 know what we're doing. We'll know what we're  
9 doing in shorter time frames and we'll be able to  
10 adjust our direction, you know, if need be, using  
11 the agile methodology. So our plans will be out  
12 there probably for 1 year, at the most 18 months,  
13 but we want to go further than that.

14 MR. LOCKHART: And so do you anticipate  
15 then, by the end of Fiscal '12 perhaps, being able  
16 to publish something that the public could look at  
17 and get a sense of what -- how you think the new  
18 system is going to read, or would it be after  
19 that?

20 MR. DOLAS: It may be after that. My  
21 gut feeling is that, but we may have a document  
22 that may lay out a roadmap for us.

1 MS. COHN: Raj, if I could just jump in  
2 just for the sake of clarification. I think what  
3 Tim is asking is really, will the public be able  
4 to have an idea of what the priorities are and,  
5 you know, sort of the order of things and how  
6 we're proceeding? And we are working on that  
7 right now with the business architecture team, and  
8 that is very near completion within the  
9 Trademark's area. Then the next step is to work  
10 with the OCIO folks to tell them what -- this is  
11 how we see it and this is what we want based on  
12 our needs and our, you know, compilation of  
13 comments submitted by our external users, based on  
14 what you all need. And so we're working on that  
15 now.

16 Once we sit down with OCIO and sort of  
17 have them tell us, well, you know, this particular  
18 requirement can be done in conjunction with that,  
19 so there may be a reordering of things based on  
20 expediency and cost and all of that, but the basic  
21 priorities will be set by us, and we're in the  
22 process of completing that now.

1                   So I'm just -- I'm not sure what the end  
2 of Fiscal Year '12 that you just referred to, what  
3 you're talking about having completed at that  
4 time, but my thinking -- and correct me if I'm  
5 wrong -- is that we will have the direction to  
6 show you way before that.

7                   MR. DOLAS: Yeah, thank you for  
8 clarifying. What I meant, Fiscal Year '12 is we  
9 may have a document of the roadmap, but we may or  
10 may not have applications for you to show. You  
11 know, there may not be any public facing  
12 applications that may be available in Fiscal Year  
13 '12. Does that answer your question?

14                   MR. LOCKHART: Yes, it does. I mean, I  
15 understand that the Trademark operation is putting  
16 together sort of the wish list based upon internal  
17 input, external input. They're going to give that  
18 document to you at some point. You're going to  
19 figure out what's doable and how it's doable. And  
20 then I guess what my original question went to,  
21 because I was aware that the Trademark operation  
22 was putting together the wish list, but at some



1 point I would hope that you're going to be able to  
2 post on the website or release to the public in  
3 some way a very high- level description of the  
4 functionality and the user interface of the new  
5 system. And I'm talking about, you know, before  
6 you start writing the code and before you have  
7 something to, you know, demonstrate or beta test,  
8 but you'll have a document that just says, okay,  
9 we think when we're done it's going to look like  
10 this, it's going to work like this, and it will do  
11 the following things.

12 MR. SMITH: And I was just going to  
13 answer really quick to say part of this, and I  
14 understand the question is that we are, as a  
15 collective group from Trademarks and OCIO, working  
16 together to come up with that. The publication  
17 and what's released is the decision between  
18 Trademarks and the OCIO when we're ready to do  
19 that. And we actually haven't had the  
20 conversation when to publish it. We will have  
21 things being developed as plans, but the actual  
22 answer to publication, I'd like to see if we could

1 answer that at a different time when we have more  
2 idea of when we could do it.

3 MR. LOCKHART: Yeah, well, I do -- as I  
4 said, I realize my question is somewhat premature,  
5 but this is my last meeting, so I wanted to go  
6 ahead and ask it, because, you know, I, for one,  
7 am very eager to see, at the appropriate time,  
8 when your office and the Trademark operation are  
9 in full agreement. It'll be great to have  
10 something out on the street that people can read  
11 and say, okay, I've been hearing about this for a  
12 long time; now I have a sense of how it's going to  
13 look and what it's going to do.

14 MS. COHN: Just to further clarify, it  
15 is our desire to make that information available  
16 to the public as soon as we possibly can, and so  
17 we're going to be moving with good speed with OCIO  
18 to come to these decisions and to get a document  
19 together to be able to do just that. We realize  
20 how important it is. We've talked about it  
21 publicly. I know I personally have talked about  
22 it publicly for, you know, quite a while now, and

1       it's very important that we actually get things  
2       done in a timely manner.

3                   CHAIRMAN TEPPER:  Thank you.  I do hope  
4       -- I want you all to be prepared at our next  
5       meeting to receive an e-mail question from T.L. in  
6       Norfolk that we will all be answering, so.

7                   MR. SMITH:  Thank you.

8                   MR. CONLEY:  I have one additional  
9       question, if you don't mind, Maury.  Kevin and  
10      Raj, I just want to make sure that our listeners  
11      understand that the resources that are made  
12      available for TMNG are not subject to the vagaries  
13      of funding in Washington.  I mean, you all have  
14      the resources to complete this from the reserve,  
15      and that's my understanding.  Is that yours, as  
16      well?

17                   MR. SMITH:  We're going through a hiring  
18      plan.  We have resources now working on it, and  
19      we're going through a hiring plan to add resources  
20      to the mix.

21                   MR. CONLEY:  Okay.

22                   MR. SMITH:  And as far as the agency

1 decisions of how those happen, if that's what the  
2 agency is moving forward to make sure this  
3 happens, we're putting the ads out to get more  
4 skilled people in. So if that's the position of  
5 the agency, then that's where we'll go with it  
6 from the hiring aspect. But I can't speak on the  
7 position of the agency from the Trademark  
8 standpoint; Debbie could.

9 MS. COHN: I think I can answer, James.  
10 The money that's being used for this development  
11 is Trademark money. And if you'll think back to  
12 the recent past, when we've had some financial  
13 issues in the agency over the past year or so, and  
14 we have not stopped work on this effort, we don't  
15 plan to stop work on this effort. We plan to use  
16 Trademark funds to continue.

17 MR. CONLEY: Thank you.

18 CHAIRMAN TEPPER: I'm going to throw one  
19 additional question. And, Kevin, this is probably  
20 more on your side of things, but I did want to at  
21 least touch base or hear a little bit. We've had  
22 the chance to kind of look at what's coming down

1 the road, and I know that the rollout of the ULPs  
2 has been an ambitious and time-consuming project,  
3 and, of course, Trademark's Next Generation  
4 looking forward. One of the lessons I was  
5 personally reminded about, I'll share the anecdote  
6 that I came home from vacation a couple of weeks  
7 ago on a Saturday afternoon and noticed my e-mails  
8 had stopped. And since I am at a small firm, I  
9 went in and discovered my server was down, and  
10 that immediately became an issue of top priority  
11 for me, you might expect. Now, I had my IT person  
12 out there on a Sunday, and we were back up and  
13 running, but, of course, you know, disruptions to  
14 the existing system, although we may take them for  
15 granted, when they don't work, it becomes a very  
16 significant problem to the business.

17 Can you speak a little bit about support  
18 of existing resource and the legacy systems and  
19 how we're doing in terms of just sort of  
20 supporting the ongoing system while all of these  
21 changes are sort of taking place kind of above and  
22 out there in front of everything else?

1                   MR. SMITH: Absolutely, I can speak  
2                   about that. I mean, we are actually looking  
3                   through a balance of the legacy support, as well  
4                   as moving into the future and every decision we  
5                   make within the OCIO. Within the legacy  
6                   applications, some of the things that are  
7                   happening to the legacy applications is, every  
8                   time we go in to add some enhancements to them,  
9                   they're fragile, so to speak, from the development  
10                  aspect. And this is something that's been  
11                  addressed before, that this is the reason we're  
12                  going through Next Gen, the reason we're going  
13                  through to update things. So we go through and  
14                  add some enhancements. Sometimes things have gone  
15                  from an outage standpoint, where the OCIO has to  
16                  go through, recover them, bring them back online.  
17                  And these are at the forefront of what we do every  
18                  day, every day to improve the business, to enhance  
19                  some of these applications. There is some risk in  
20                  doing that moving forward, and lately there have  
21                  been a few incidents that have been unplanned as  
22                  far as things, would-be outages and things we've

1 had to recover from as quickly as possible. And  
2 it's absolutely a focus of our organization going  
3 forward, because we're a service provider for the  
4 production units here at the agency, and our job  
5 is to make sure things are online and available  
6 and online as quickly as possible.

7           And so we realize there's been some risk  
8 in some of the changes that have happened. This  
9 is partially why when we go through some of the  
10 future developments, we're looking to make things  
11 able to be more resilient going through with some  
12 of the enhancements. So every time we make an  
13 enhancement to an application, it doesn't actually  
14 make it a little fragile, more fragile than we'd  
15 like. So we're working through that process, but  
16 it's definitely a focus.

17           We haven't ignored it. It's just lately  
18 a few things happened where it came back to the  
19 forefront, just like you said. The system works  
20 all the time. It's on 99 percent of the time,  
21 but, you know, the one time it's off for an  
22 extended amount of time, that's the first thing

1       that's on your bucket list: Oh, my gosh, I've got  
2       to hit that right now; I have to fix that  
3       immediately. And we've -- we're aware of it, and  
4       it's not a -- it's a priority in the OCIO. It's  
5       not something we're not addressing.

6                   CHAIRMAN TEPPER: I appreciate that, and  
7       I recognize we're asking for everything at once.  
8       I will -- and I'll try to remember to make this  
9       request to John for sort of future presentations.  
10      As you probably have seen from the material, you  
11      know, when we review Trademark operations and when  
12      we review the TTAB, we're sort of getting some  
13      statistics about, you know, pendency, timing, how  
14      we're measuring.

15                   I think it would be helpful for us,  
16      along with the timelines and sort of future  
17      projects, if we could maybe start seeing some  
18      information on, you know, how's the support line  
19      working, response times, operational, just  
20      day-to-day operation issues that will help us have  
21      a sense of how we're doing minding the shop day to  
22      day?



1           MR. SMITH: Absolutely taken. Sometimes  
2 the OCIO is blamed for throwing too much data at  
3 people, so we don't bring it to some of these.  
4 But point taken, and we'll look at the next time  
5 bringing some of those things here.

6           CHAIRMAN TEPPER: Much appreciated. Are  
7 there other questions for the CIO's Office?

8           All right. Well, thank you, gentlemen,  
9 we do appreciate that. And I believe that I have  
10 the happy task of letting everyone know we are  
11 once again slightly ahead of schedule.

12           My next agenda item was a discussion of  
13 PTO outreach events and upcoming events, and I  
14 believe you have already heard about those.  
15 Commissioner Cohn, are there any others we need to  
16 cover? I think you've talked about the meetings  
17 and the --

18           MS. COHN: Yeah, I think I've covered  
19 everything, so no need.

20           CHAIRMAN TEPPER: Thank you. In that  
21 case, I would like to announce our next public  
22 meeting will be on Friday, November the 18th. And

1 from what I've understood, we may need to check  
2 with Chief Judge Rogers for a conference room and  
3 auditorium space. But assuming that that's not --

4 MR. ROGERS: (inaudible) days.

5 CHAIRMAN TEPPER: Excellent. All right,  
6 Friday, November the 18th, I would invite you all  
7 again to participate. In the meantime, I think  
8 many of you know that we have an annual obligation  
9 to issue a report to the President. We have been  
10 very much engaged recently in preparing those  
11 materials. When they are complete, you will see  
12 TPAC's report available on the PTO website. I  
13 hope you will find it as fascinating to read it as  
14 we have found to write it. But that report should  
15 be available before our next meeting, so I  
16 encourage everyone to keep an eye out for that.

17 You also heard a mention, it is sort of  
18 budget time. The TPAC will be receiving and  
19 discussing the budget, and we will be undertaking  
20 those activities in an upcoming meeting. That  
21 will not be a public meeting, and that is simply a  
22 requirement we operate under. But just be aware,

1       this will be a busy time for this committee, so  
2       stay tuned, and we will look forward to seeing  
3       everyone again on November the 18th.

4               Are there any final public comments or  
5       questions? All right. With that, I will adjourn  
6       the public session of our meeting. We will, TPAC  
7       members, be meeting briefly just to review a  
8       couple of personnel and budget issues in Executive  
9       Session. Thank you all.

10                       (Whereupon, at 11:45 a.m., the  
11                       PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Stephen K. Garland, notary public in  
and for the Commonwealth of Virginia, do hereby  
certify that the forgoing PROCEEDING was duly  
recorded and thereafter reduced to print under my  
direction; that the witnesses were sworn to tell  
the truth under penalty of perjury; that said  
transcript is a true record of the testimony given  
by witnesses; that I am neither counsel for,  
related to, nor employed by any of the parties to  
the action in which this proceeding was called;  
and, furthermore, that I am not a relative or  
employee of any attorney or counsel employed by the  
parties hereto, nor financially or otherwise  
interested in the outcome of this action.

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Notary Public, in and for the Commonwealth of  
Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192