

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, February 25, 2010

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A G E N D A

Welcome

JOHN B. FARMER
Chairman

USPTO's Draft Five-Year Strategic Plan

LYNNE BERESFORD
Commissioner of Trademarks

USPTO's Financial Status

MARK OLECHOWSKI
Deputy Chief Financial Officer

TTAB Matters

JUDGE GERARD ROGERS

Trademark Operations

LYNNE BERESFORD

SHARON MARSH

DEBBIE COHEN

Trademarks Next Generation

JOHN B. OWENS, II
Office of the Chief Information Officer

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

2 (9:00 a.m.)

3 MR. FARMER: Good morning everybody.
4 Welcome to TPAC. I'm glad you all are here in our
5 cozier confines this time around. Thank you for
6 coming. We're thankful that it's not snowing and
7 thankful that apparently it's not going to show so
8 we can proceed as usual.

9 This meeting is being is being webcast
10 in addition to transcribed. This transcription of
11 this meeting will later be posted on the TPAC
12 portion of the USPTO website. We welcome those
13 who are not here in person but are watching at
14 home. You can send in questions or comments for
15 those of you watching at home to the email address
16 asktpac@uspto.gov. Again that's ask, a-s-k, TPAC,
17 t-p-a-c, at USPTO dot gov. Here's how we're going
18 to handle questions today. It's the same way
19 we've done it in the past few meetings. That is,
20 we have time blocked off for various topics and
21 various speakers and generally their presentations
22 will only one about a fifth of the time that we've

1 allotted. Then we'll have questions and comments.
2 I'll first turn to members of TPAC for any
3 questions or comments they may have. After that
4 to the extent we have time I'll turn to members of
5 the audience. Since they've made the effort to
6 come here in person, we'll give them the next
7 priority in asking any questions or making any
8 comments. Then to the extent we have time
9 available still after that, I would read in any
10 good questions that come in from the folks who are
11 watching at home so that they have an opportunity
12 to participate also. It's possible sometimes that
13 questions don't actually make it to me until after
14 we've moved on to another speaker or another
15 topic, and if so, we'll handle that on a
16 case-by-case basis. We are looking to wrap up by,
17 I forget what the schedule runs as, but 12:30 or
18 1:00 today. I know some people have meetings
19 after this meeting and so we'll try to keep that
20 on time.

21 I've not checked the TPAC portion of the
22 USPTO website in the past couple of days because

1 I've been here, but all of the documents that are
2 public documents at this meeting should be on the
3 TPAC portion of the USPTO website so if those of
4 you who are watching at home want to see those
5 documents or those of you who are here want to see
6 them later, you can go to that portion of the
7 website and you can see what we see, that is, the
8 briefing we receive at TPAC members.

9 I'd like to thank everyone for
10 persevering through what's been called
11 snowmageddon to get ready for this meeting. I
12 know that threw kinks in everyone's plans and
13 still we're ready and we're here and so we're
14 thankful to everyone because of their efforts in
15 doing that. We in TPAC realize that that put some
16 people behind as far as getting their materials
17 ready. That's a way of leading into my next
18 comment, and that is one thing that we've tried to
19 work out with members between our correspondence
20 at the PTO and TPAC is that we aspire to get our
21 public meeting agenda to you all 4 weeks before a
22 TPAC meeting and we've asked and thought we'd

1 reached an agreement in the past that we would
2 then get the public meeting materials at least 2
3 weeks in advance so that we've got time to study
4 them and then also to be fair to the public so
5 that it can be put up on the PTO website and the
6 public can see what we're about to do since
7 transparency is a good thing. We've run into a
8 bit of a recurring pattern over the past few
9 meetings where some entities seem to be slow in
10 getting in their materials. I'm not going to name
11 names, but it's often the same organizations that
12 are slow, sometimes on the eve of, and so we ask
13 folks to try to redouble their efforts to get us a
14 materials a little earlier, and if you need us on
15 TPAC to do something different or earlier in order
16 to facilitate your ability to do so, please have a
17 word on the side with your correspondent on TPAC
18 and we will do everything we can to enable you to
19 in turn help us out and help the public out.
20 That's all we need to say about that topic.

21 Having covered that, we're going to go
22 ahead and jump into the meeting. I believe

1 Trademark's Commissioner Lynne Beresford is going
2 to deliver some opening comments on behalf of
3 USPTO leadership. Lynne, I give the floor to you.

4 MS. BERESFORD: Thank you very much, and
5 welcome to everyone who's here. All TPAC members,
6 we appreciate your attendance and your attention
7 to the issues that are important to the USPTO.

8 I'm speaking on behalf of Sharon Barner
9 this morning, and she welcomes you and is sorry
10 that she can't attend. She had something come up
11 that required her presence. I'm going to talk
12 briefly about the USPTO's strategic priorities and
13 the USPTO's strategic plan. As any of you know
14 who follow the news about the agency, the agency
15 has been struggling in some ways, the patent
16 pendency and the patent backlog has been an issue
17 in the press for a number of years and the funding
18 issues of the agency are also issues that we've
19 had extensive reporting about. Coming into this
20 agency it became obvious to all of us that we
21 needed a strategic plan that addressed the
22 problems that the agency had. I have PowerPoint

1 up on the screen which didn't get into our
2 materials and I have some additional copies of
3 this PowerPoint for folks who want it. I'm going
4 to go through the PowerPoint to talk about the
5 strategic plan and the important items in that
6 plan.

7 I think perhaps, and I'll say this as
8 Lynne Beresford, the most important difference
9 between this strategic plan and other ones that we
10 have is that we have Sharon Barner who is very
11 process oriented and who has internally demanded
12 that the business units come up with goals and
13 dates and milestones for the things that are in
14 the strategic plan. She wants it much more nailed
15 down than has been the practice in the past.

16 Here are the strategic priorities that
17 have been identified for the agency, most of them
18 will not be a surprise, reduce patent pendency and
19 patent backlogs; improve the quality of
20 examination; improve and enhance the patent appeal
21 and postgrant processes; demonstrate global
22 leadership in all aspects of IP policy

1 development; improve the information technology
2 infrastructure and tools at the agency; secure a
3 sustainable funding model; and improve relations
4 with stakeholders. I think most of those items
5 are self-explanatory but they are the cornerstones
6 of our strategic plan at this time. You may have
7 noted that most of those items probably related
8 mostly to patents. Yes, there is a trademark
9 portion of this strategic plan and these are the
10 parts of that strategic plan.

11 First of all, as always, trademark
12 pendency and quality, even though we have good
13 pendency and our quality is good, one must always
14 pay attention to those things. They're very, very
15 important. So part of our strategic plan is to
16 maintain our first action pendency between 2.5 and
17 3.5 months. The second part of the strategic plan
18 as far as trademarks is concerned concerns
19 trademark quality and we have two things going on.
20 One, some outreach on the accuracy of goods and
21 services in applications and registrations
22 following the Bose decision and we're planning a

1 seminar on that matter on April 26, you'll hear
2 more about that later, to establish what the bar
3 and trademark owner's position is on this
4 particular issue. Then of course improved
5 examination quality, and we establishing a new
6 external quality measure that focuses on the
7 excellence of office actions. Sharon will talk
8 about that more later too, but it's a very
9 holistic approach to quality. The quality
10 measures that we have in time in place really
11 focus on the quality of decision making. This new
12 measure will focus on the excellence of the entire
13 office action, everything from searching,
14 evidence, writing, decision making, the whole
15 office action, so this new external measure which
16 I frankly do not think we'll do very well on when
17 we put it in place I think is the kind of measure
18 however that will eventually really raise the
19 level of quality in trademark office actions and
20 raise the level of quality of the work done in the
21 trademark organization. Again let me say as the
22 Trademark Commissioner that we don't have a

1 perceived quality problem. We don't have people
2 complaining constantly about our quality. Having
3 been here many years, there was a time when that
4 was true. It hasn't been true in recent years.
5 Nevertheless, I think there is still room for
6 improvement and so this is part of our strategic
7 plan.

8 Then anticounterfeiting and antipiracy
9 initiatives. We're going to be working on an
10 educational program to develop public awareness on
11 trademark counterfeiting and we're partnering with
12 Customs and Border Patrol to develop an online
13 system so that trademark owners can easily request
14 customs recordation. So these are things that
15 we'll be doing as part of the strategic plan.

16 Sustainable funding. This has been
17 something that is incredibly important for the
18 agency because we can have the best plans in the
19 world and we can have the best intentions in the
20 world, we have to have enough funding in order to
21 put all of those things in motion and keep them in
22 motion. As you can see, our priorities here are

1 full access to our fee collections, an interim fee
2 adjustment on patent fees, fee-setting authority
3 and the ability to have an operating reserve.
4 Those of you who are familiar with the federal
5 budget process know that it's a one-year-at-a-
6 time deal and for some people, carrying money over
7 is taken as a sign that you didn't do your
8 budgeting correctly.

9 MR. FARMER: We don't look at it that
10 way on TPAC.

11 MS. BERESFORD: No. I don't think it's
12 the way most businesses would look at budgeting.
13 We all know that you need reserves to take care of
14 things that happen in your business, but this is
15 not the way the thinking is in the government
16 necessarily, so that these are the authorities
17 we're seeking. In line with that we will also be
18 reforming the USPTO fee structure. Again we're
19 going to be looking at trademark fees, but much of
20 this we'll be looking at the patent fee structure
21 now and what we could do with it both to
22 incentivize applicant behavior and also provide

1 sustainable funding.

2 Here are the patent goals, 10 months to
3 first action by 2013 and 20 months total pendency
4 by 2014 for patent applications with an inventory
5 reduction to 326,000 cases. Believe me, these are
6 very ambitious goals. And achieve a targeted
7 inventory level of 20 months per examiner. That's
8 going to be done by efficiency improvements, by
9 examination -- that is by hiring some more
10 examiners and patents has some very exciting
11 hiring options going on right now. They've made a
12 push to hire back folks who have actual patent
13 examination experience and they also are making a
14 push to hire folks, lawyers, who have IT
15 experience in patents. So those things are going
16 on right now and I think those are going to help
17 patents move their backlog. Then of course
18 develop and employ a 21st century IT system that
19 permits end-to-end electronic processing in the
20 patent side of the house. 'm happy to answer
21 questions at any time. I'm just giving these
22 comments. Fee-setting authority as it says is

1 critical to achieve this success. That concludes
2 my remarks for Sharon on the high-level strategic
3 plan. There will be opportunity as we go through
4 time of course for TPAC to comment on these items,
5 and many of the items in the trademark area you
6 have commented on already. We have talked about
7 them and we will continue of course as we always
8 do to bring our issues to TPAC and to give TPAC an
9 opportunity to talk and give us their opinions and
10 their insights into as what we should do.

11 MR. FARMER: Lynne, specifically on
12 that, I don't know if you can speak for Sharon or
13 for David, but do you have any information on
14 specifically when and how the leadership would
15 like to receive TPAC feedback on this modification
16 to the strategic plan?

17 MS. BERESFORD: I do not. I think as we
18 get closer to rolling the strategic plan out
19 publicly, I think the plan would be to give the
20 TPAC an opportunity to comment on the strategic
21 plan. I don't know when those dates will be or
22 anything of that nature. But as I said, at least

1 on the trademark portions of the plan, you've seen
2 them already and we've already talked about most
3 of them.

4 MR. FARMER: We have, but my feeling for
5 TPAC is that I'm not sure we've really appreciated
6 when we've had conversations in the past that we
7 were really feeding into what we thought should be
8 in the trademark portion of this update to the
9 strategic plan and I think that we would
10 appreciate an opportunity in the future to look at
11 it, to deliberate in order to bring back some
12 comments just in case there may be areas not
13 touched upon in the plan that we feel are really
14 important and worthy of inclusion in it. Mark, I
15 saw you raising your hand. Did you have some
16 information on that?

17 MR. OLECHOWSKI: Thanks, John. There is
18 actually a set process for issuing and developing
19 a strategic plan that's outlined in an OMB
20 circular and that does allow for first of course
21 informal comments through our relationships with
22 both of the public advisory committees, but then

1 there's a formal public comment period where we're
2 required to post the draft strategic plan on the
3 web and get input from the public, answer all
4 those questions whether they be from in your role
5 at TPAC or in your role as a private citizen and
6 then congressional members and everything else.
7 While I don't have the dates in front of me, we're
8 still trying to iron those out, there would be
9 both like I said an informal opportunity as well
10 as a formal public comment period that will come
11 up and we can provide those dates to everybody
12 once we nail those down.

13 MR. FARMER: One thing I'm wondering is
14 that we are on TPAC trying to get our next public
15 meeting scheduled and I think right now we're
16 looking at May, but we have to see how that works
17 with our colleagues here at the USPTO. What I'm
18 wondering is if that will be too late a time to
19 put this again on the agenda and at that time in
20 this public forum deliver TPAC's thoughts and
21 recommendations or if it needs to happen earlier
22 than that. Do you have any sense of that timing?

1 MR. OLECHOWSKI: When we're done with
2 the morning presentations, John, let me go back,
3 we have a draft schedule that has not been
4 approved by the front office yet because we're
5 trying to get our arms around it and I'll talk
6 about it a little bit in my presentation where we
7 have the higher-level strategic priorities set.
8 What we're trying to do is get our arms around,
9 and Lynne alluded to it, what all those
10 lower-level action items and action plans and
11 goals and objectives are and once we do that we'll
12 have a better idea of what the timeline is.
13 Certainly in the next -- I don't even want to
14 venture a guess but I'll report back to you here
15 in the next day or so what our draft schedule is.
16 Like I said, it hasn't been approved by Sharon or
17 Dave yet. That's imminent in the next couple of
18 weeks in nailing down that schedule.

19 MR. FARMER: To fill folks in, I had a
20 conversation with Sharon Barner in the run-up to
21 this meeting and asked the broad question: How
22 does the administration see TPAC providing input

1 on this? Is it something where it might be shared
2 with us as a confidential document and we provide
3 initial feedback before there's a public rollout
4 or did she envision it as being a public rollout
5 and then TPAC comes in? She said the latter. It
6 seems like there is some potential that we could
7 come back and say this is nice but we think you
8 need another high-level objective, and I don't
9 know how much that might shake things up. For
10 instance, in the trademark goals here I don't see
11 any mention of TTAB or our interaction with
12 technology. I see the potential when you
13 eventually come back to us that we could come back
14 and start at the top and not down at the granular
15 level, so just a heads up for everybody. On to
16 whatever is next.

17 We're done with opening comments. The
18 5-year strategic plan is done. Report on
19 financial status. Mark, are you doing that for us
20 today?

21 MR. OLECHOWSKI: Yes, sir.

22 MR. FARMER: Thanks.

1 MR. OLECHOWSKI: Welcome everybody. For
2 those who don't know me, I'm Olechowski. I'm the
3 Deputy Chief Financial Officer. I'll echo Lynne's
4 apologies. I know Sharon had intended to be here.
5 I'll make some comments about where I think she is
6 in my presentation because it's certainly
7 important, and Karen Strohecker who is our Acting
8 CFO is with here so we'll get some of these
9 questions answered that you have about 2010 and
10 2011. I also have some duplicate slides from what
11 Lynne has shown you and if I can go into a little
12 more detail on those, I'll be glad to do that as
13 well especially things on the sustainable funding
14 model.

15 2010. While 2009 was a tough year, 2010
16 is proving to be just as difficult a year although
17 for a slightly different reason. We started the
18 year at the PTO with an expected collection level
19 of 1887 and that as the authorized level from
20 Congress was to authorize us to spend up to 1887.
21 What we've seen since we started the year was a
22 significant increase in patent collections, well

1 above what we were authorized at the 1887. When
2 we submitted the budget a couple of weeks ago we
3 were estimating that we'd collect upwards of \$116
4 million more than we had estimated in the summer
5 which is in fact where Sharon and Dave are this
6 morning. They've been called over to OMB. We've
7 been working with OMB and the Department of
8 Commerce to try to come up with solutions for our
9 2010 issues.

10 I mentioned that it's different from
11 last year. If you remember, last year on the
12 patent side we had lots of plans but we didn't
13 have enough fees. This year what we have is we
14 still have ambitious plans, we're getting the fees
15 in but we don't have the authority to spend those
16 fees. It's a little bit different situation where
17 last year we were trying to estimate where we
18 would end up at the end of the year in terms of
19 how much fee collections we'd take in, this year
20 we know exactly how much we can spend, we can't
21 spend more than 1887, and so now the challenge is
22 to get access to more of those fees to do the

1 things that Dave and Sharon want to get done.

2 This is pie chart. Everybody likes pie
3 charts. The point of this chart is we started the
4 year with a certain operating plan in effect.
5 When we began the year we knew like I said we were
6 going to have 1887 and that 1887 in the operating
7 plans had no patent examiner or in fact no
8 attrition hires across the entire agency except
9 for trademarks. It had very, very limited
10 overtime, PCT outsourcing at a contractual minimum
11 of around \$5 million, it did not fund a
12 recruitment retention bonus for our examiners who
13 we had taken in over the past couple of years so
14 some very hard decisions were made. While we knew
15 we could only spend 1887, we started to reshuffle
16 the deck and look for additional sources of money
17 within that authority cap. So what we've been
18 able to do in the meantime by like I said some
19 very hard decisions, we've looked at some patent
20 contracts and we've decided not to get some work
21 done. As you're probably aware, we did not pay
22 performance awards to many of our employees. We

1 got a little bit of money I would say from
2 Congress. We had planned in the budget for a 3.5
3 percent raise and we only got a 2 percent raise,
4 so that was money we could recoup back into the
5 plan so those dollars were now redirected. Where
6 we are today on the patent side of the house in
7 still spending 1887 is we've turned on a limited
8 amount of overtime, probably around \$34 million.
9 We've gotten PCT funding up from the contractual
10 minimum of around \$5- up to around \$12 million.
11 We've funded the recruitment retention bonus this
12 year for our patent examiners, and we are going to
13 be able to hire about 250 patent examiners. Lynne
14 alluded to kind of a new hiring model that the
15 front office has implemented and it's to hire more
16 experienced IP professionals who may have some
17 experience in the business so that the training
18 pipeline is not as long as it has been in the
19 past, that they can come here and hit the deck
20 running.

21 There are three categories of those
22 folks. First are retired annuitants. We've sent

1 back letters to a bunch of our recently retired
2 examiners and asked them if they want to come back
3 and work and we're getting some response from
4 that. We've sent letters and advertisements out
5 to our IP community in general, that if there are
6 folks out there who have the experience whether
7 they worked in a law firm to come on and work for
8 us. And then we've also sent letters to a lot of
9 previous examiners who've left the agency in the
10 last couple of years for various reasons, and so
11 we're getting quite a healthy response back from
12 all of those groups of people and we expect to
13 hire with the money we have around at least 250
14 people by the end of the year. We'd like to hire
15 more. We'd like to hire up to 600 but that would
16 be dependent on getting access to our fees.

17 The 2001 president's budget. The
18 president submitted his budget in the first week
19 of February and this is new territory for the PTO.
20 There are some different things in the budget.
21 Lynne alluded to a couple of them and I'll be glad
22 to expand on those. In general terms, we have a

1 new set of strategic priorities. This was an
2 exciting budget formulation time with Dave and
3 Sharon showing up I won't say late, but in terms
4 of the budget process they showed up late into the
5 process and so them trying to get their arms
6 around the PTO and establish some new priorities,
7 working on the new strategic plan, those
8 priorities, and Lynne showed you the slide, I
9 actually have it next as well, are in the budget
10 and there are initiatives in the budget to support
11 those strategic priorities. In the budget also
12 we're asking for authority for an interim fee
13 adjustment and that is part of the sustainable
14 funding model that we're talking about -- that has
15 in certain pieces and I have a slide specifically
16 on that. We're asking for an interim fee
17 adjustment of 15 percent of our patent statutory
18 fees as well as fee-setting authority, and Lynne
19 mentioned it as well, we believe fee- setting
20 authority is the cornerstone to having a
21 sustainable funding model.

22 We talk about in the budget multiyear

1 planning. While the PTO has the dollars or know
2 your dollars and we can carry them over from year
3 to year, we've made a much more I'll say
4 transparent-in-public effort in the budget to
5 explain to our stakeholders on the Hill and in the
6 public that we really do need to think about the
7 funding at the PTO in a multiyear manner where
8 just because we have something in the 2001 budget,
9 it's not a 1-year effort as Lynne had mentioned
10 that many other federal agencies operate under.
11 We do have know your dollars and so the budget is
12 formulated to do things in 2011, 2012 and 2013 and
13 manage those dollars from year to year and the big
14 part of the management of those dollars is the
15 establishment of an operating reserve. We've
16 always had an operating reserve at the PTO. When
17 we do carry over money that's where the money is.
18 But some people think that if you carry over money
19 from year to year that means that you didn't need
20 it and it's available for us. That's something
21 we're trying to educate people on, that the
22 operating reserve is a needed tool for an agency

1 like the PTO so that they can manage across multi
2 years and not having to worry about spending all
3 its money in 1 year when we know we have plans for
4 the out years.

5 Strategic priorities. Lynne went over
6 these. These are in fact explained a little bit
7 more in the budget and we are in the CFO's office
8 working with the front office to take these
9 strategic priorities, not just these but the ones
10 from trademarks and the objectives for the CIO and
11 the CFO and all the other business units and craft
12 that into a strategic plan. While these are the
13 high-level priorities, underneath all of those
14 priorities are initiatives and goals and
15 objectives and targets that need to be rolled into
16 a strategic plan so that not only the business
17 units as Lynne talked about the PTO in general can
18 be held accountable for a plan that it puts out
19 there. That's what we're doing now and, John,
20 I'll get you the draft schedule as soon as we wrap
21 up so that you can have an idea of when that's all
22 going to leave the PTO.

1 bit of time on. It is one of our strategic
2 priorities. It's to establish and maintain and
3 really cement a sustainable funding model. For
4 those of you who have been on TPAC for the past
5 year or two, you know that we struggled greatly
6 last year on the patent side in terms of our fee
7 revenues and our ability to get the things done.
8 I think certainly the tough economic times at not
9 only the PTO but the American and world economies
10 in general experienced exposed some
11 vulnerabilities in our funding model, that while
12 it was certainly adequate for the past 20 or some
13 odd years to work this way, what we found out was
14 in a dynamic economic environment that it's
15 probably not the model that we need to have for
16 the future. We're tackling that with our OMB and
17 our DOC and congressional stakeholders to have a
18 model that will more adequately take care of the
19 PTO and its needs for the long term.

20 A few things that we're doing. We've
21 broken it up into short-term and long-term goals
22 that we're trying to accomplish. Of course, in

1 the short-term we want to make sure we get access
2 to all. Our customers pay the USPTO fees to
3 provide a service and we want to make sure that we
4 not only provide the service, but we're making the
5 best use of all those funds. I talked a little
6 bit about an interim fee adjustment. Certainly in
7 our budget you can see the numbers. We've asked
8 for an interim fee adjustment and that is really
9 some bridge funding to take us from where we are
10 today to the sustainable funding model and
11 fee-setting authority where we're a well-oiled
12 machine and we're up and running. That interim
13 fee adjustment in the budget we estimated to bring
14 in over \$200 million and that's to give us time to
15 determine what the fee structure should be not
16 only on the patent side but on the trademark side
17 as well so that we'll be working hard to get that
18 fee structure set.

19 Fee-setting authority we believe to be
20 the cornerstone of sustainable funding to give the
21 director with proper safeguards and everything
22 else the ability to set, maintain, increase,

1 decrease, eliminate the fees as necessary to
2 operate the agency. Then we talked about a little
3 bit about operating reserve. I mentioned that we
4 have the operating reserve now and we're really
5 trying to formalize it and educate people that
6 it's a tool that we need and not just a place that
7 we park money so that somebody could come take and
8 use it for something else.

9 In the long-term, the first bullet I
10 mentioned there a little bit about establishing
11 fees that better reflect the costs of services.
12 We're doing two very detailed fee studies on both
13 the patent and trademark side to determine exactly
14 what our costs are for all of our services and for
15 each of our fee codes. Between the CFO, patents
16 and trademarks we're looking at what the fee
17 structure should be in terms of covering our
18 costs, incentivizing the right behavior, planning
19 for the future, those are all things that are
20 underway right now. Then once again, the
21 maintenance and establishment of an operating
22 reserve we believe is critical to manage the

1 finances of the Patent and Trademark Office.

2 A quick diversion back to trademarks.

3 These are the numbers that are in the budget.

4 It's the performance measures for the trademark
5 organization through the budget period and into
6 the out years. I see around the room we have our
7 economists so if there are questions on what we
8 believe or what you might think is happening to
9 applications and workload, we'd be glad to try to
10 answer those questions for you. You can see in
11 2009 there was certainly a dip in applications in
12 the Trademark Office as there was in Patents and
13 we're anticipating a little bit more slower growth
14 in 2011 before it starts to pick up again. Then
15 you can see as the workload begins to pick up that
16 we plan on hiring more examiners in 2013 but not
17 before then.

18 Some numbers. Everybody likes to see
19 numbers from the CFO. This is the budget years
20 from 2011 to 2013. There are two things I want to
21 bring to your attention on this page. With the
22 interim funding adjustment you can see that there

1 are \$224 million that we estimate we'll bring in
2 because of the interim funding adjustment, and
3 that's all patent fees of course. The other thing
4 I want to bring your attention to is the couple
5 lines on reserve activity. This is where we're
6 trying to make a more transparent public
7 budget-wise identification of the operating
8 reserve, so in our budget we actually talk about
9 what money is in the operating reserve and how
10 much money will go into the reserve or go out of
11 the reserve as we implement these multiyear plans.
12 In 2013, the reserve balance does shrink down to
13 its lowest amount and that really is because on
14 the patent side in the budget we're trying to hire
15 1,000 people in 2011 and 1,000 people in 2012 and
16 while our fees and our interim funding will cover
17 those patent examiner hires in 2011 and 2012, they
18 really become a burden in terms of the finances on
19 the agency in 2013 because they're now here for
20 the entire year and this is the one reason we
21 really need to formalize the concept of the
22 operating reserve. We don't need that money in

1 2011 and 2012, but we will need it in 2013 to make
2 sure that we pay all our bills in 2013 so we don't
3 need anybody raiding our operating reserve because
4 we're trying to look out into the out years and
5 make sure that we can manage the agency across
6 multi years.

7 The last side is the previous slide
8 broken out by the patent and trademark business
9 line. If there are any questions on any of the
10 numbers or any of my presentation, I'll be glad to
11 try to answer those questions that you may have.

12 MR. FARMER: I have a few, but before I
13 do I wanted to turn to our folks at TPAC to look
14 after money issues, and those are Elizabeth Pearce
15 and James Conley. Elizabeth and James, is there
16 anything you first?

17 MS. PEARCE: I don't think so. We went
18 over this pretty thoroughly yesterday in
19 subcommittee and I feel that as much as we can
20 predict that we seem to be in a pretty good place.
21 I think it's reasonable to expect that trademark
22 filings are going to go back up again. I think

1 the plan for hiring new examiners when that
2 happens in 2013 is a good one. I really don't
3 have too many concerns. It's probably the overall
4 economy more than the Trademark Office that I'm
5 worried about at this point.

6 MR. CONLEY: I have one question for
7 Lynne, specifically the bullet on the strategic
8 priorities about demonstrating global leadership
9 in all aspects of IT policy development. How does
10 that work for the trademark side?

11 MS. BERESFORD: IP policy development is
12 something that goes on internally between the
13 OIPPE, the Office of Intellectual Property
14 Protection and Enforcement, the director's office
15 and trademarks. Various policies, depending on
16 what policy is under discussion, each organization
17 has more or less weight in the discussion.
18 Counterfeiting and other issues mostly come out of
19 OIPPE and they're the ones who are the lead on
20 making policy decisions there. When you talk
21 about policy decisions, for instance, goods and
22 services identifications, the issue that we're

1 dealing with after Bose, that would be mostly
2 handled within the trademark organization in
3 conjunction with OIPPE and the director's office.
4 I don't know that I'm answering your question.

5 MR. CONLEY: No. I was specifically
6 interested in actually the leadership operative
7 there. We're going to do something on the global
8 scale?

9 MS. BERESFORD: Again that's the
10 director's office and that will be rolled out in
11 what we do and say in such organizations as APAC,
12 WIPO at the WTO and other organizations of that
13 nature when the U.S. weighs in or tries to lead on
14 the various issues that are before those bodies.
15 There will be some leadership of course coming out
16 of trademark trilateral. We'll be having a heads
17 of offices meeting this upcoming year where the
18 U.S. will attempt to move people in the direction
19 that we think things should be going. We're an
20 acknowledged global leader in trademark IT and
21 also in trademark performance measures and
22 trademark quality. We're recognized as the office

1 that's figured this out and gotten it right. So
2 in those areas we have a lot of clout. In other
3 areas we have to weigh in with what we think is
4 the right position and try to persuade others.

5 MR. FARMER: I have a comment before I
6 ask a few questions, and that is I think I'm safe
7 in saying that I express the sense of TPAC when I
8 say that we fully support the office getting
9 access to all of its fees. We don't understand
10 why that would not be the case because those fees
11 are paid for services to be performed at the USPTO
12 and to trip away fees but to still require that
13 the services be performed makes absolutely no
14 sense to us. We've called for the end to fee
15 diversion in our last annual report and that's a
16 rock-solid position of TPAC and we applaud your
17 efforts in trying to bring that about. Also we
18 realize on the trademark side that we need a
19 healthy patent side of the office too in order for
20 us to be healthy. So we fully support the
21 tremendous and good efforts of the current
22 administration to heal the patent side and we see

1 a lot of progress and we've happy with the
2 initiatives that they're undertaken, and keep up
3 the good work on that. So keep going there.

4 A couple of questions. Right now we
5 still have the 1.887 billion-dollar budget for
6 this year and I wanted to know if we don't get any
7 relief, if you don't keep the money -- because
8 your money is coming in better, now you just need
9 to be able to keep it, if nothing changes there,
10 what does that mean for finances and particularly
11 for whether you may need to borrow some trademark
12 funds this year?

13 MR. OLECHOWSKI: I think Dave has been
14 pretty clear, the undersecretary, that we have no
15 intention of using the authority to bar trademark
16 dollars. I mentioned a little bit, John, that I
17 think the situation while just as grave in 2010 is
18 a little bit different than it was in 2009. In
19 2009 we didn't know where fees were going to end
20 up so we were trying to estimate where we would
21 end the end of the year and try to have a safety
22 net of some options in case we didn't collect

1 those fees. In 2010 it's a little bit different.
2 We know exactly where we need to end up. We need
3 to end up at 1887 and that's what we're shooting
4 for. We're on a trajectory to spend, obviously we
5 won't spend more than 1887, that's not allowed in
6 the federal government, so that's where we're
7 shooting for. We're managing within the authority
8 we have and we're only going to spend to the
9 authority we have and not borrow money unless, not
10 unless, if we get access to our fees then we'll
11 spend more money but not until then.

12 MR. FARMER: So that means though if all
13 you have is the 1887, and we hope that's not the
14 case, that under that scenario you wouldn't
15 anticipate borrowing from the trademark side?

16 MR. OLECHOWSKI: We will not borrow from
17 trademarks.

18 MR. FARMER: By the way, for those of
19 you not in on everything, the administration has
20 been very clear through Mark and through David
21 Kappos that borrowing would be the absolutely last
22 resort and we hear that and we greatly appreciate

1 that message, so thank you for that.

2 Looking further down the road, you are
3 asking for a surcharge. No one likes that, but if
4 it makes the patent system, that's wonderful. We
5 realize that's not our turf, that's PPAC's turf,
6 but again we're all in favor of the patent side
7 being healed. If that doesn't come about, what do
8 you see the consequences of that being for what
9 you all need to do down the road financially?

10 MR. OLECHOWSKI: This is a purely
11 financial statement, it's not a comment on the
12 policy, and we're support to call it, John, an
13 interim funding adjustment and not a surcharge.

14 MR. FARMER: You can always count on me
15 to say the wrong thing.

16 MR. OLECHOWSKI: I guess surcharge has a
17 particular connotation in the financial world. So
18 if we do not get the interim funding adjustment, I
19 don't want to say we'll be back to square zero,
20 but our fees are coming in at a pretty healthy
21 clip on the patent side. We're seeing great
22 growth in the fees of our maintenance dollars are

1 bringing in. Our allowance rate is up. We're
2 issuing more patents for a variety of reasons.
3 While the interim fee adjustment is critically
4 important to getting us healthy again on the
5 patent side, if we were not to be authorized that
6 we'd really be taking a big step backwards and
7 we'd be back to essentially where we are now where
8 we'd be doing probably just attrition replacements
9 of our patent examiners, a limited amount of
10 overtime and PCT funding back down to a minimal
11 level so that we certainly wouldn't be meeting any
12 of the goals. I think it's a critical part and I
13 think the fact that it's in the budget and it's
14 got the full weight of the administration behind
15 it that that's a very strong position to go in to
16 negotiation with Congress, that we're saying that
17 the Patent and Trademark Office is putting these
18 goals on the table saying I can achieve these and
19 here are the tools I need in order to achieve
20 them, I think that's a good place to start the
21 discussions.

22 MR. FARMER: If there is anything we on

1 TPAC can do to add our voice in support of that
2 outside of me just saying so here at the meeting,
3 I hope that you will come back to us and let us
4 know.

5 MR. OLECHOWSKI: Yes, sir.

6 MR. FARMER: Because we certainly care
7 about that outcome.

8 A couple of questions on the trademark
9 financial side that you or Lynne can field or
10 whoever. I realize that James and Elizabeth
11 probably know the answer really well and some
12 others may not, but since we need to do our
13 business publicly I wanted to make certain that I
14 asked them. On one of the charts you showed, the
15 bar graph that shows total trademark employment,
16 and it also tracked I think our surplus. Yes,
17 that one right there. It's slide number 9. It
18 shows as you go from 2010 to 2011 to 2012 volume
19 picking up in terms of trademark applications, but
20 a slow I'm going to guess attrition-level decline
21 in employment of trademark examiners and then it
22 picks up. I was curious as to why that red line

1 doesn't more early track the blue line. Is it
2 because of finances that you want to wait until
3 you get a nice healthy inventory and then start
4 hiring? I'm curious about that.

5 MS. BERESFORD: The answer is we're
6 hiring and doing everything to maintain our
7 pendency levels and this is the hiring level that
8 we think we need to maintain our pendency levels.
9 There are lots of tools that we have to maintain
10 pendency. Among them are overtime and awards, and
11 those have both been cut as Howard I'm sure has
12 mentioned before in our efforts to maintain our
13 application pendency at a certain rate and our
14 core at a certain level. So as we go through time
15 there isn't the need to start hiring up
16 immediately. We have other tools that we can put
17 in place to make sure our pendency stays between
18 2.5 and 3.5 months.

19 MR. FARMER: That's perfect. For those
20 who may be new to the discussion, TPAC has long
21 ago fully endorsed the initial pendency of 2.5 to
22 3.5 months. We think that makes sense for a whole

1 lot of reasons I won't try to repeat here. So if
2 that's what achieves it then we fully support
3 that.

4 The other one was a slide or two later
5 where it showed I think some dipping into the
6 trademark reserve in 2011 and 2012 and if that's
7 what needs to happen in that time, I was curious
8 why you see dipping into the reserve in fiscal
9 years 2011 and 2012.

10 MR. OLECHOWSKI: I think, John, it's
11 just a balancing act, the estimates that the CFO
12 and the trademark organization has made on what we
13 think revenues would be relative to what the
14 requirements are, and you can see in 2011 that the
15 requirements are higher than the revenues that
16 will be generated. So for programs that are
17 underway such as trademark next generation there's
18 a need to dip into the reserve to make sure those
19 things get underway. Then you can see that we
20 believe there's a steadying-out of the trademark
21 surplus or carryover, let's call it the operating
22 reserve, for trademarks.

1 MR. FARMER: Trademark next generation
2 for those listening at home is the new computing
3 system for trademarks. That's something that
4 David Kappos directed to happen and we are really
5 happy with that. Is that one of the primary
6 drivers of eating down the surplus, funding
7 trademark next generation?

8 MR. OLECHOWSKI: From the funding side
9 it is, but then again the other side of the
10 equation is revenues in 2011 are a little bit
11 down.

12 MR. FARMER: I'm going to guess through
13 if we weren't getting a new computer system or
14 spending an unusual amount on it that that number
15 wouldn't be dropping nearly as much.

16 MR. OLECHOWSKI: Absolutely.

17 MR. FARMER: Those are all the questions
18 I have based on mine. Are there any others from
19 other members of TPAC? Any questions or comments
20 from anyone in the audience who would like to ask
21 a question? I'm sorry, Howard. I didn't see your
22 hand.

1 MR. FRIEDMAN: I didn't raise it high
2 enough. It's actually related to John's last
3 question I guess on slide 7. It notes that 122
4 million and change is allocated to next generation
5 as well as patent end-to-end processing. Do you
6 have a breakout of how much of the 122 goes to the
7 next generation and the other goes to the other
8 side of the house or is it a better question for
9 John? Even if it's a question for you, would you
10 like to ignore it?

11 MR. OLECHOWSKI: I'm sorry. I couldn't
12 hear you.

13 MR. FRIEDMAN: Should I repeat it?

14 MR. OLECHOWSKI: The trademark portion
15 of that is around \$35- to \$33 million so part of
16 that is next generation and part of that is the
17 infrastructure. We can certainly get the
18 breakdown to you. I just don't have it right in
19 front of me.

20 MR. FRIEDMAN: Then that's an adjunct to
21 the question that John asked where obviously some
22 money is being funded in here and other money is

1 being taken from the reserve? And as far as the
2 35 million, is that in 2011?

3 MR. OLECHOWSKI: Yes.

4 MR. FRIEDMAN: With other monies to be
5 allocated in the future?

6 MR. OLECHOWSKI: Right, because this is
7 the 2011 budget, so that would begin in 2011.

8 Correct.

9 MR. FARMER: Are there any questions
10 from the audience on this topic? Yes, sir, over
11 there. Do you want to stand up and identify
12 yourself?

13 MR. TRAMPOSCH: Al Tramosch from AITOA.
14 Our organization is fully in support of adequate
15 funding for the USPTO and our members of course
16 are interested and concerned about fee increases,
17 and I think it's fair to say that they would be
18 willing to support fee increases but that they
19 would need to see, I want to use the right words,
20 that the access to USPTO fee collections goes
21 along with that for the reasons that have already
22 been stated.

1 I have two questions, Mark. The first
2 one has to do with the interim fee adjustments,
3 and the question is whether the USPTO is still
4 trying to pursue those for the 2010 fiscal year or
5 are you simply looking to get the full fees back
6 for 2010? The second question has to do with the
7 fee-setting authority in the budget for 2011.
8 We'd like to know what kind of obligations there
9 would be on the part of the office to have public
10 input and public comments before fees are raised
11 under the fee-setting authority.

12 MR. OLECHOWSKI: Let me go backwards
13 because I remembered the second question first.
14 The fee-setting authority should it be granted to
15 the PTO does in fact have safeguards in statute,
16 the statute that establishes the PAX (?) and
17 everything else requires the director to engage
18 with the stakeholders before adjusting fees or
19 anything else. We believe there are adequate
20 safeguards to that effect, and I know the director
21 is certainly committed to making sure he has
22 consulted everybody possible before adjusting

1 those fees. There are still public comment
2 periods, there are still Federal Register notices,
3 all of those items by the laws of rulemaking that
4 still need to be followed so we're confident that
5 those processes are in place to provide assurances
6 to our stakeholders that adequate and complete
7 visibility is given to all of those things. If
8 you could repeat your first question because I'm
9 not so sure that it was on 2010 or 2011 and I just
10 wanted to be clear about the interim fee
11 adjustment.

12 MR. TRAMPOSCH: I think at one point we
13 had heard that the interim fee adjustment was
14 going to be sought for the 2010 fiscal year in
15 order to help with the budget and the question is
16 whether that's still the case or whether you're
17 simply relying on trying to get the full amount of
18 the fees during 2010.

19 MR. OLECHOWSKI: Certainly the interim
20 fee adjustment is part of the president's budget.
21 It's on the Hill that way and it will be discussed
22 in that manner. I can't tell you exactly

1 minute-by-minute what's going on with other
2 mechanisms that are going through Congress. I
3 know that there has been talk of interim fee
4 adjustment in the patent reform bill. Obviously
5 that has not gone to the floor. But I would say
6 from the administration's perspective that it's in
7 the president's budget and we'll be fighting for
8 it in the president's budget and if there is some
9 other mechanism that's in place before that, I
10 just can't comment on that. I would say that
11 there are two parts to that. If the interim fee
12 adjustment is authorized, that's one thing. We
13 still need access to the fees. We still would
14 need some sort of authority to spend the money
15 once it was granted to us. There are more than
16 two parts, but there are two significant parts
17 that need to be overcome.

18 MS. BERESFORD: To add to the comment
19 about the ability to adjust fees, for many years
20 trademarks had the authority to adjust all of its
21 fees by regulation and in fact amazingly enough we
22 actually have lowered our application fee in the

1 past through our regulatory fee- setting
2 authority. So it isn't always used in the way
3 that folks think it will be used, it can be used
4 very wisely to put the fees where they need to be
5 for the agency. Again it's regulatory so that
6 means notice and comment by the public and it's
7 worked very well for the trademark side of the
8 house.

9 MR. FARMER: Are there any other
10 questions or comments from the public on this
11 topic before we go on to the fee study? Not
12 seeing any, then I think it's back to you again
13 Mark or is going to be someone else for the fee
14 study?

15 MR. OLECHOWSKI: It's the other Mark.

16 MR. KRIEGER: Good morning. My name is
17 Mark Krieger. I'm the Director of Finance and my
18 organization and my office in conjunction with the
19 trademarks organization has performed a fee
20 analysis or cost analysis.

21 We started this project about a year ago
22 and I've given about four briefings on those

1 topic. The good news is that we are essentially
2 done with our fee study. The even better news is
3 that going forward we have what started off as a
4 project now will be baseline work so that we'll
5 have this information quarterly. We plan to share
6 this with the budget subcommittee. We had a
7 really good discussion yesterday and we'll provide
8 that quarterly, and we can open it up to a wider
9 audience if the case calls for that.

10 This was a joint effort like I said
11 between the CFO organization and trademark
12 organization and wanted to do a study on the
13 actual cost of the work performed, so that we
14 wanted to have what we charge, what the cost was
15 and the variance. I'll get into more details of
16 what we're going to do with that information a
17 little later.

18 We do have a requirement. OMB Circular
19 825 requires that we ensure that our costs are
20 recovered. We do have some flexibility, the
21 trademark organization, has the flexibility that
22 will cover that in the aggregate, so they are not

1 required if we have a particular fee to recover
2 costs for that particular fee, we can do it in the
3 aggregate which gives us some flexibility and
4 ability to influence behavior if that's the case.
5 Some of our objectives. We wanted to revise the
6 trademark and TTAB models to better have cost
7 information compared to our fees, what we're
8 charging again to what it actually costs us. Also
9 we've got some very detailed information on what
10 comprises that cost. We are able to break it down
11 to direct and indirect costs, what the support
12 organizations are contributing to that overall
13 factor. Lynne and Mark both had alluded to our
14 strategic priority sustainable funding model and
15 this is a piece of it. This is the baseline of it
16 I would say that gives us a very good historical
17 perspective of our costs.

18 Some of our accomplishments since the
19 November meeting. We essentially have finished
20 the 2008-2009 models. 2008 is still a little bit
21 under review. We are working with TTAB and we
22 don't expect any updates, but there may be some

1 minor modifications. We have developed all the
2 displays for 2008 and 2009 that we gave to the
3 TPAC subcommittee the results of and they were
4 very pleased with our results. What I alluded to
5 at the beginning was that going forward we're
6 going to be able to present this on a quarterly
7 basis, that now this is our baseline work and
8 we're very excited about that.

9 As we conclude the fee study and the
10 cost analysis, we were able to come up with some
11 preliminary observations. I have to credit Nabil
12 with the trademark organization. Nabil, if you'd
13 like to raise your hand, please. He is the one
14 who came up with a lot of these observations and
15 he may be better in speaking to them, but I'll go
16 over them in summary. Our electronic filings are
17 cheaper to process than paper ones, and he
18 adequately points out that the efiles allow for
19 faster processing and better tracking and some of
20 that is not captured in the cost data but does
21 show you the efficiency of the efiles. The
22 processing costs of most paper filings exceed the

1 fees and we did have some talk about that with the
2 subcommittee on what to do about that. There may
3 be some flexibility influencing behavior there;
4 renewals in SOU extensions, subsidized examination
5 petition and TTAB fees. The next bullet is kind
6 of confusing and I want to break it down for you
7 in layman's terms. In 2008 and 2009, the largest
8 cost variations affect small-volume filings or
9 paper files. What happened is we have fixed costs
10 into the paper applications. Our inventory or the
11 work process actually went down substantially.
12 Essentially your denominator changed but your
13 numerator stayed the same so you saw a large
14 increase in paper filings in the cost of that to
15 process that. The historical unit cost shown did
16 not account for dissemination which are our 41D or
17 service fees and we did exclude a multiyear
18 investment for scanning. That was a large sum of
19 money that we decided to exclude jointly, that we
20 thought it would be better to account for that
21 separately. We did have some conversation about
22 that in the subcommittee in how to address that

1 and we are working on that.

2 Next steps. We're going to incorporate
3 TTAB updates into 2008 and 2009 if we have any.
4 We're going to complete final review. My
5 understanding is we're going to open this up to a
6 wider group of trademark managers for review. We
7 are preparing briefing packages for senior
8 executives to look at. The final comment I want
9 to make is in conjunction with what Mark and Lynne
10 referred to as our sustainable funding model, one
11 of our strategic priorities. This is a piece of
12 that. There are a lot of decisions that have to
13 be made going forward. We need to talk about the
14 optimal trademark operating reserve, and if there
15 is a baseline that we want to achieve, we have to
16 incorporate that into our fee structure to make
17 sure we achieve that. This gives us a good
18 historical perspective on fees but does not
19 include any budget initiatives going forward. We
20 would have to include that and adjust our fees
21 accordingly.

22 That's the end of my presentation. Are

1 there any questions?

2 MR. FARMER: Elizabeth Pearce has been
3 TPAC's efforts on the fee study so I'll turn the
4 mike over to her.

5 MS. PEARCE: I just hope it doesn't
6 short out after I spilled all my water. I was so
7 excited.

8 I am excited actually. The study has
9 been a pet project of mine since I came onto TPAC
10 and I think that the CFO's office has done a
11 marvelous job and really exceeded our expectations
12 on how thorough and how easily understandable the
13 results are. I would like to emphasize that at
14 this time we discussed yesterday about actually
15 making any fee adjustments, we don't think that
16 with the current uncertainty in the economy that
17 now is the time to be attempting to do that. We
18 want things to stabilize a little bit. We need to
19 of course take any adjustment possibilities into
20 account when doing overall funding and revenue
21 projections and that sort of thing. So I think
22 it's premature to be making any definite plans

1 yet, but we've got all the material ready and
2 we'll be tracking it going forward on a quarterly
3 basis so that when the time comes that we can sit
4 down and decide how we're going to revise the fee
5 structure if we want to then we've got that
6 information and we'll be able to move fairly
7 quickly which is great. I think also that this
8 has been a boon to Dave Kappos and the people who
9 come in with him to have a Trademark Office that
10 was so on top of all this information. I think
11 our timing was excellent on that. And I think the
12 fee study has answered a lot of other questions
13 that we've had over the years about fee allocation
14 and what the cost of services were, things that
15 have always been hard to pin down and get answers
16 about, this study has really helped with that
17 tremendously. And I think the cooperative effort
18 between the trademarks group and the CFO's office
19 on this just can't be commended too highly. We're
20 very pleased and we think that trademark community
21 itself is going to benefit enormously from this in
22 the future. So stay tuned.

1 MR. FARMER: Thank you, Elizabeth. Are
2 there any questions or comments from other members
3 of TPAC on the fee study issue? Is there anything
4 from folks here in the audience? Let's take
5 literally a 5-minute break. Those of you who know
6 me know that I mean 5 minutes. Then we'll come
7 back and we'll visit with Judge Rogers of the
8 TTAB.

9 (Recess)

10 MR. FARMER: Our next segment is going
11 to be a visit with TTAB Judge Rogers. Judge
12 Rogers, thanks for coming to visit with us today.

13 JUDGE ROGERS: Thanks, John. We're of
14 course happy to be here and participate in the
15 meeting and feel we had a very productive
16 subcommittee yesterday and hopefully we can bring
17 the rest of the committee up to date on what we
18 discussed yesterday. I did want to make a brief
19 mention about and follow-up on the director's
20 comments that are posted on his blog about working
21 through the storm and publicly take a moment to
22 note that the board's judges and the board's

1 attorneys all worked very well through the storm.
2 Like trademarks, we have a particularly high
3 percentage of teleworkers and for the most part
4 people were able to work very well during the
5 storm with some adjustments on a case-by-case
6 basis as necessary, but otherwise work was done.
7 We also wanted to note that Judges Dave Bucher,
8 Charles Grendel and Karen Kuhlke all came in on a
9 day the government was closed because we had
10 attorneys in from Colorado and California,
11 respectively, and we didn't want to send them home
12 without their hearing, so we had them come in.
13 They shoveled out of their neighborhoods, they
14 came in and we had the hearing even though the
15 government was officially closed that day.
16 Unfortunately we couldn't have a hearing for the
17 patent attorney who came down from Philadelphia
18 and showed up and didn't have any patent judges
19 here so we had to send him home. But otherwise we
20 did pretty well.

21 On the trademark fee study I did want to
22 follow- up and note that we've had a few meetings

1 with the group working on the fee study.
2 Trademarks has been much more involved than TTAB
3 has. We'd like to certainly drill down more and
4 be involved more in future efforts there but at
5 the present time we don't have the labor, the
6 resources, to allocate somebody to work on the fee
7 study and to drill down and massage the numbers
8 the way that trademarks had. So while we have
9 suggested some changes that we know they're going
10 to make to the TTAB portions of the study, and
11 we're going to continue to work with them, we hope
12 that we can work with them even more in the
13 future.

14 Briefly, before we get into the items
15 listed on the agenda, I wanted to bring everybody
16 up to date on some personnel issues at the board.
17 Since the last meeting we had one of our judges
18 retire, Judge Al Drost. We've also got a couple
19 of judges who have some elder-care issues within
20 the family, and so these have adversely impacted a
21 little bit our final decision pendency, which is
22 something we get to when we go through the

1 numbers. But we had a vacancy announcement out to
2 replace that retired judge, it closed earlier this
3 week and we hope that we'll be getting to the
4 certification, review of the applications and
5 replace that judge as soon as possible.

6 Otherwise, personnel issues are doing pretty well
7 and we think that our staffing levels are about
8 right, and because we're funded through trademark
9 money and not patent money, we can replace people
10 as they leave, and there may be other departures
11 during the coming year because we've got a number
12 of judges who are at retirement age and who are
13 retirement eligible. Hopefully we'll replace them
14 as those attritions occur and keep our staffing
15 levels up.

16 The statistics which you see here, we do
17 have downturns in new filings. As you can see,
18 appeals down 11 percent, oppositions 25 percent,
19 cancellations about the same. Those are new
20 filings coming in the front door compared to the
21 first quarter last year, so the economy is
22 definitely having a little bit of an impact on

1 some of our filings there. Cases maturing to
2 final decision on the merits also are down and
3 that probably reflects the fact that there are
4 people who were actively involved in inter partes
5 proceedings or possibly appeals and decided not to
6 fund the continued litigation of those cases when
7 the economy turned down. Even though the final
8 decisions that are maturing and ready to go to
9 judges for decision writing are down, we still
10 have a healthy amount of work for our judges to
11 do. Pendency, we're still under goal at 9.1 weeks
12 for the first quarter but it is showing bracket
13 creep because of a number of things, those
14 personnel issues I talked to you about, the fact
15 that we have quite a few judges, almost half of
16 the judges working in some way or another on the
17 revision of the Board's Manual of Procedure, which
18 it's unfortunate that we have to expend this much
19 staff time on that project but it's a long-overdue
20 project so in the short-run we're essentially
21 tolerating a little bit of bracket creep in the
22 final decision pendency to get the manual revision

1 done. The interlocutory attorneys and Cindy
2 Greenbaum are doing a great job on the contested
3 motions. They're holding steady. We don't really
4 have a big backlog of contested motions and
5 they're staying on top of those motions and we
6 don't envision that there would be any bracket
7 creep in the pendency on contested motions.

8 Final decisions on the merits. As with
9 pendency, the final decisions are all written by
10 the judges and because so many judges are working
11 on the manual and we have the retirement of one of
12 our highest-producing judges, unfortunately, the
13 overall number of final decisions is down for the
14 first quarter. Contested-motion decisions are
15 down too. That again may be a reflection of the
16 economy and people being less willing to fight
17 about things during the pendency of their
18 proceedings or to fund discovery motions and
19 motions for summary judgment and things like that.
20 But again, the workload and the staffing levels
21 are about right for us to stay on top of that.
22 The interlocutory attorneys continue to do a great

1 job resolving a lot of contested matters by
2 telephone which is something that the office and
3 the board certainly encourages and we think that
4 the parties have been very happy to have this
5 increase in the number of motions decided by
6 telephone.

7 These total pendency figures which are
8 on the next slide vary and they're improved on
9 this slide, total pendency figures and average
10 pendency, but I wouldn't put too much stock into
11 that because they can vary depending on whether a
12 particularly long-pending case just happens to be
13 captured in a particular quarter or not, so
14 they're good. We're not increasing pendency, but
15 I don't know that you would want to say that this
16 is a trend and that overall pendency from start to
17 finish is necessarily going to continue to go down
18 in the absence of any particular efforts taken to
19 achieve that result.

20 Precedential decisions are right on
21 target. There's an error here. There were
22 actually 14 in the first quarter. We should be up

1 to around 21 by, I hope, the end of this week.
2 There are a few that are under review which might
3 get cleared, there are some that are under review
4 which are going to take a little longer to get
5 cleared, and I think by midyear we will certainly
6 be at the halfway point of our goal which is about
7 50 precedential decisions, about one a week during
8 the course of the year.

9 Accelerated case resolutions we
10 discussed to some extent at the last meeting and
11 that involves any number of a variety of
12 approaches that would result in more efficient
13 inter partes proceedings at the board. We've
14 tried to promote accelerated case resolution by
15 getting an article out in the ABA's "Landslide"
16 magazine. It's now posted on the website. I made
17 a presentation, the first time I'd had a public
18 speaking opportunity, in a bar and grill at the
19 Westin Hotel near here. They have the Trademark
20 Bar and the Bar Association of the District of
21 Columbia wanted a presentation on ACR and
22 increasing efficiencies in board proceedings so we

1 went to the bar and we talked to about two-dozen
2 attorneys over there and made our pitch for
3 accelerated case resolution, and we will be doing
4 more of that. We are scheduled in that Ellen
5 Seeherman and I are going to be on a panel at the
6 INTA annual meeting and we'll be promoting ACR and
7 other efficiencies there too and any other
8 opportunities that come our way to talk up ACR and
9 these other options.

10 The manual of course. This slide really
11 doesn't reflect what we discussed at the
12 subcommittee yesterday. The subcommittee saw an
13 internal document that we have which reflects the
14 actual revision being made on a chapter-
15 by-chapter basis and where we stand with the
16 revision of each chapter, of the various levels of
17 internal review that go on and editing, the
18 down-the-line external reviews that will go on in
19 the Solicitor's Office, and even
20 outside-the-agency reviews by OMB. One question
21 that came up in the subcommittee yesterday and
22 which I had a chance to follow-up on with our

1 Office of General Law relates to the
2 outside-the-agency reviews. There have been a lot
3 of executive orders from the White House and a lot
4 of discussions with OMB over the last few years
5 about government-wide agency guidance documents
6 and how they're reviewed, how they're cleared,
7 what opportunities the public has to comment on
8 guidance documents and under the current view of
9 OMB, the PTO's manuals, the MPEP, the TMEP and the
10 Trademark Trial and Appeal Board's Manual of
11 Procedure are all considered significant guidance
12 documents and require an extra level of review
13 outside the agency before they're approved for
14 posting. There have to be comment periods on
15 revisions and that sort of thing. How extensive
16 that process has to be is a subject of continuing
17 discussion between people in the office and people
18 at OMB and so the actual review process may change
19 over time but we know that at least currently it
20 exists and it's going to be a significant part of
21 the manual revision process.

22 That's it for where we stand on those

1 activities. I think the next item on the agenda,
2 and John, I don't know if you want to have
3 questions on some of these subjects as we work
4 through them or whatever you want.

5 MR. FARMER: What I was thinking we
6 might do is you've touched on some of these issues
7 and some you say I've already addressed that, but
8 just go down the agenda. What I wanted to also do
9 is loop in Mary Boney Denison. She is the person
10 on TPAC who takes the lead on TTAB matters and she
11 works closely with Judge Rogers and Cindy
12 Greenbaum, and thus maybe will go to the topic,
13 any additional comments you have, I may then flip
14 to Mary, I may have some or other TPAC members,
15 and go down one at a time if that's okay. If
16 there are any topics that we don't hit as a
17 result, we'll hit those at the end if that's okay
18 with you.

19 JUDGE ROGERS: That's fine.

20 MR. FARMER: On current speed
21 statistics, my guess is that you'd say you've
22 already checked that box.

1 JUDGE ROGERS: Pretty much. If there
2 are any comments or questions about those and the
3 significance of those statistics I'll try and
4 respond to them or explain them as best I can.

5 MS. DENISON: I joined the TPAC back in
6 October 2008 prior to your becoming Acting Chief
7 Judge and during that time I have primarily spent
8 most of my time working on the TTAB. First I
9 enjoyed working with Judge Sams and then there has
10 been really a seamless, from my perspective,
11 transition to you as Chief Judge which has been a
12 real pleasure for me. I've also appreciated Cindy
13 Greenbaum's help throughout all of this.

14 The number-one complaint about the TTAB
15 when I came onto the TPAC was the speed with which
16 decisions were being made. I know this both from
17 my personal experience where I had some cases
18 which were taking a year or two to be decided and
19 also because I was serving as the Chair of the
20 USPTO Subcommittee for INTA and so I heard about
21 it from a number of other people. Judge Sams,
22 Judge Rogers, Cindy, the entire TTAB team has

1 worked very hard to change it from years to weeks.
2 When we have his report up there talking about
3 whether it's 6 weeks or 8 weeks or even 12 weeks,
4 this is a dramatic, dramatic improvement which is
5 greatly appreciated by the users of the TTAB
6 system. So I wanted to applaud the TTAB on the
7 progress. Some may say the filings are down, but
8 the truth be told, the filings are down but now
9 some of that extra time for decreases in filing is
10 being used to work on a very important project
11 which is now the number-one issue with the private
12 bar which is the TBMP improvement.

13 JUDGE ROGERS: Thank you, Mary. We
14 appreciate any measure of satisfaction that is
15 expressed and may come our way.

16 We'll get back into the manual again
17 momentarily in a little more detail, but on the
18 agenda I think the next item is the request for
19 comments and the possibility of the board issuing
20 a request for comments on certain subjects which
21 we have discussed with the TPAC in the past.
22 However, in the subcommittee discussions

1 yesterday, when a draft of this request for
2 comments was presented to the subcommittee members
3 and we had an opportunity to discuss it for the
4 first time, there was some additional discussion
5 about whether the request for comments should be
6 broadened or whether other subjects might be
7 suitable for any public request for comments,
8 whether we might want to fine-tune some of the
9 subjects that are presented in the draft request
10 for comments, and we had I think a very productive
11 discussion about how we might get broader public
12 input not just on the ultimate questions that we
13 want people to comment on, but on what the
14 questions should be. So I did also talk with
15 General Law yesterday because there are certain
16 requirements for how you take public comments and
17 how you survey the outside bar and individuals.
18 One of the ideas that we had discussed yesterday
19 which I ran by General Law, they are now looking
20 into it, I don't have a final opinion, but it
21 looks like it's certainly something we're going to
22 look into and we may be able to pursue, and that

1 is the TPAC coming up with a memorandum or letter
2 to the office, to the board, regarding the
3 anticipated request for comments and how broad it
4 should be and setting the agenda for the request
5 for comments and then possibly floating that or
6 posting that in advance of the next TPAC meeting
7 so that the bar and AIPLA or INTA or other
8 organizations would have an opportunity to say,
9 yes, we think the request for comments is a great
10 idea but we'd like another subject included in
11 that and that kind of thing. So we are certainly
12 looking into that, following-up with General Law
13 to see if that will be a way that we can go and
14 we're happy to work with the subcommittee or
15 anybody on TPAC about what we should present in
16 that request and how we should present those
17 issues for discussion.

18 MR. FARMER: We're thankful for that.
19 When you're looking into that one of the questions
20 we also wanted to look at is whether the draft
21 request for comments itself could be something
22 that's public and subject of comment at a TPAC

1 meeting before it's actually published as a
2 request for comments or whether the law doesn't
3 permit that and whether instead we just have to
4 give you feedback on the topic generally but that
5 when it goes, it's got to go to the Federal
6 Register as a request for comment. So we'll stand
7 by for word on that also. Mary, I didn't mean to
8 run over you there if you had comments on that.

9 I have a few questions related to speed
10 but they really don't come up until when the tie
11 into other topics later down the list and so I'll
12 hold those. I take it that was your coverage of
13 B. Did you have anything else on the RFC, the
14 request for comments, Mary?

15 MS. DENISON: No.

16 MR. FARMER: I think that takes us down
17 to a fuller discussion of getting the TBMP up to
18 date and you've been some. Is there anything else
19 on that, Judge?

20 JUDGE ROGERS: Yes. Unfortunately the
21 judge who was coordinating the revision of the
22 manual has had to take some medical leave for some

1 surgery and there may be some follow-up treatment
2 involved, so we've had to arrange a transfer of
3 responsibility for the revision of the manual from
4 the judge to one of our interlocutory attorneys
5 who had been part of the revision effort already
6 and so she just this week has taken over
7 coordination of the revision of the manual. The
8 timing was unfortunate in terms of public notice
9 and we weren't able to get out the lengthy
10 document that we were talking about yesterday in
11 subcommittee which shows the revision status of
12 each of the chapters and what reviews have gone on
13 and what reviews are still to come because we
14 didn't get that finalized until just earlier this
15 week as part of this transition, but fortunately
16 we were able to get it to the subcommittee in
17 advance of the meeting and were able to go over it
18 yesterday.

19 We hope that the transition will work
20 very smoothly. We think that it will. We think
21 we'll be able to continue to pursue our goal of
22 getting the manual up and posted on the web by the

1 end of this fiscal year. Part of that may be
2 impacted by external agency reviews and how much
3 OMB has to go on and that sort of thing. I did
4 hear just anecdotally yesterday when I was
5 discussing this with General Law that there was a
6 certain chapter of the Patent Manual of Procedure
7 which had gone through a lot of lengthy revisions
8 and was floated to OMB after a long period of time
9 and then OMB said you've got to hold off on it.
10 You've got to have a longer comment period. And
11 so they do have some sway over how the material
12 proceeds even when we've finished our work on it
13 in-house.

14 Traditionally I don't think OMB has been
15 as concerned with the Trademark Manual of
16 Examining Procedure and probably is not going to
17 be as concerned with the Board's Manual of
18 Procedure as they may be with the patent manual,
19 but a lot of that is uncertain territory. That's
20 why we will continue to progress and get our work
21 done on that manual. The document that we shared
22 yesterday with the subcommittee showed that, for

1 the most part, all of the chapters, the writing is
2 done. I would say 95 or more percent of the
3 manual has been rewritten. We then have certain
4 people who are assigned to do reviews of the work
5 of the person who was primarily responsible for
6 doing the writing of the revision and so those
7 reviews have also been largely completed or are in
8 process. Some chapters have moved faster than
9 others. Some have already gone to the solicitor's
10 office and have gone through all of the internal
11 reviews, the revisions have been presented to the
12 solicitor's office, and some have even been
13 cleared. Others are still working their way
14 through internal TTAB reviews, but we expect that
15 this process is just going to continue in the
16 coming months in the fiscal year.

17 MS. DENISON: We had talked yesterday of
18 the possibility of putting up a brief article on
19 the PTO website which would talk about the status
20 of the TBMP because there are a lot of people,
21 users of the TTAB system, who are very interested
22 in this topic and I don't think that the average

1 person, at least I certainly did not, have an
2 understanding of how complicated the process is.
3 I think it would also be helpful in addition to
4 putting it up that you've got nine judges, three
5 interlocutories and four paralegals working on
6 this to also say how many thousands of hours, I
7 can't remember what the figure is, but it is a
8 significant project and I don't think that the
9 people who aren't involved in it really have a
10 full understanding. So I think if you can put
11 something up on the website at the PTO that that
12 would be helpful to people. Thank you.

13 JUDGE ROGERS: Yes. Yesterday after the
14 subcommittee meeting I went back and I asked one
15 of our IT people if we could look into having a
16 kind of two-step link to the manual on our webpage
17 because right now we have a link on the TTAB
18 webpage that takes you right to the manual, but it
19 occurred to me after our discussions on this point
20 yesterday that perhaps it would be good to have
21 that link take you to a page that described or
22 disclaimed the condition of the manual and

1 explained to people this is out of date, if you're
2 going to use it, read it in conjunction with
3 subsequent rule amendments, and also noted the
4 revision process that's going on so that people
5 would have to look at that first and then there
6 would be a sentence that would say if you want to
7 continue and use the manual as last revised in
8 March 2005, click here and then you would go on to
9 the manual. So hopefully that will be something
10 that we can do relatively easily. It will be a
11 couple-page document or so which will warn people
12 who sometimes use the manual and don't look at
13 subsequent rule revisions, even though the manual
14 says on its first page when you get there last
15 revised in 2005, some people don't pay attention
16 to that and they get caught up in out-of-date
17 sections of the manual. So we're looking into
18 that and we may be able to do that as early as
19 next week or so if it's not a significant IT
20 hurdle to have that kind of double- link on the
21 page, but that's something we're looking into.

22 MS. DENISON: Sounds great. Thank you.

1 MR. FARMER: Some things on that. I
2 think that's a good idea to have that separate
3 page because I'll bet some folks, the same thing
4 with the TMEP, you tend to think this is it and
5 that's where I'm going to find everything. To
6 make one thing clear for those listening at home,
7 one thing that Judge Rogers talked with us
8 yesterday is once this new manual is posted in
9 HTML, you'll be able to search the whole thing in
10 one search. You won't just have to search chapter
11 by chapter. That's a wonderful functionality that
12 the TMEP has because sometimes you're not quite
13 certain where a particular topic is going to be
14 addressed and we're really looking forward to that
15 functionality. We realize you have put in a lot
16 of work on that and we appreciate that too.

17 I have a comment in this area and that
18 is not for the benefit of anyone here because it's
19 a paradigm example of preaching to the choir, but
20 I think the sense of TPAC is that for the
21 bureaucracy outside of the PTO that there really
22 isn't a need for a lot of review, review, review

1 of this. I know I'm speaking to people not in the
2 room, but it's the sense of TPAC that this manual
3 is not a policymaking as much as a restatement of
4 what policy already is. It's incorporating rules
5 changes that have been made and they're not just
6 incorporated into the TBMP and incorporating
7 decisions of the TTAB and perhaps higher courts
8 that are already established law and it's just a
9 matter of putting it into the TBMP. So if there
10 is any change that bureaucrats out there beyond
11 the PTO are listening, we on TPAC think that maybe
12 you don't need to hold it up a good bit. I've got
13 a question we'll come back to later.

14 Then on another topic, one thing that we
15 learned in chatting with Judge Rogers, and Judge
16 Rogers, if I misstate this please tell me, is that
17 the judges themselves have been doing and the
18 interlocutory attorneys the heavy lifting on
19 getting the TBMP revised. I think you told us
20 that you wanted to make sure you get it just right
21 because the manual is so determinative. We on
22 TPAC understand that. I think the sense of TPAC

1 though is, and I've misstated and TPACers please
2 correct me, that that's a lot to ask for you to do
3 in addition to doing your other job which is
4 keeping up the good pendency improvements that
5 you've achieved. As a matter of fact, as Mary
6 said earlier, compared to where you used to be a
7 few years ago, pendency has improved greatly, but
8 if you look at the stats I think you see a sliding
9 up of a couple or 3 weeks because you've had folks
10 working on the TBMP which in the grand scheme of
11 things historically is fine, but we I think feel
12 that if there's a way that other resources could
13 be provided to the TTAB that can do that heavy
14 lifting initial drafting for you so that you can
15 still exercise control through review and through
16 comment so that it comes out right but you save
17 your precious people hours in order to keep up
18 your good pendency and make whatever further
19 improvements you may desire to achieve, that that
20 would be a mutual-win situation. And if the PTO
21 ever finds within itself the way to give you all
22 those resources under your authority or elsewhere

1 in the office that we would fully support that.
2 If you have any comment on that, that's fine, but
3 I just wanted to throw that out there as the TPAC
4 view on the issue.

5 JUDGE ROGERS: As we discussed
6 yesterday, I do think it's important for the
7 judges and particularly the interlocutory
8 attorneys to be involved in the revision effort
9 and the review because the manual is largely
10 procedural in nature rather than substantive and
11 so the interlocutory attorneys are clearly the
12 ones who are well versed in what our current
13 practice is procedurally speaking. I'm not sure
14 that we would get the nuanced understanding of
15 what needs to go in the manual from people outside
16 the board, but we're certainly open to dealing
17 with or working with for example examining
18 attorneys who have worked with the board on
19 training details or people in the solicitor's
20 office who review our decisions and therefore are
21 also aware of our procedures. So there are
22 certain options there depending on workloads in

1 other parts of the office where we might be able
2 to put together a team that can work on future
3 revision efforts. One of the things we also
4 discussed yesterday was the possibility of an
5 additional senior-level position being deployed at
6 the TTAB that would essentially be the equivalent
7 of what trademarks has where they have a full-time
8 manual editor. The board's person would not be
9 responsible just for the manual but would be
10 responsible for potentially other substantive
11 issues such as reviewing decisions for possible
12 issuance as a precedent, perhaps preparing weekly
13 summaries of decisions, some of the things that I
14 do or other people are doing now at the board.
15 This was first floated a year and a half or so ago
16 and has been discussed in-house with the General
17 Counsel's Office and OGC has a certain number of
18 senior-level positions. It's not exactly clear
19 how they can be deployed, but we're certainly
20 lobbying that if we can get one of those positions
21 and the position description exists we will be
22 able to have somebody who's really devoted to the

1 manual and wouldn't be taking time away from other
2 things that they have to do and would also be able
3 to, as we move forward, keep the manual updated on
4 a more regular basis and therefore not require a
5 gargantuan effort to do a revision less
6 frequently.

7 MS. DENISON: Given the level of concern
8 that currently exists in the private bar about the
9 outdated TBMP, I think that anything you can do to
10 avoid being in this situation in the future would
11 be welcomed and TPAC fully supports the idea of
12 having somebody come over and be in charge of this
13 project in the future. I hope I'm not speaking
14 out of line. I think everyone here does agree
15 with that. I know that the private bar would be
16 delighted to know that there is somebody who would
17 focus on it full time so that we don't find
18 ourselves in this situation in 5 years.

19 JUDGE ROGERS: Something which we didn't
20 discuss as much yesterday but has been discussed
21 in the past, and I don't know if Lynne would be
22 able to comment on how this stands on the

1 trademark side, of course there have been
2 discussions about or there's been talk about
3 possibly wiki versions of the TMEP and we're
4 certainly amenable to having some kind of a
5 companion version to the official TBMP that might
6 be a wiki version and would take comments and
7 suggestions from the bar. But I think if we were
8 going to do that, it's probably going to be
9 something we would want to coordinate with
10 trademarks because we'd have largely the same
11 group of practitioners who would be making
12 suggestions for each of the manuals and we would
13 probably want to have a similar structure. So
14 it's something additional to think about as
15 feeding into future revisions.

16 MS. BERESFORD: I think more than 2
17 years ago trademarks started trying to get a wiki
18 version of the TMEP. I think we put a WRF in a
19 couple of years ago on this matter. We haven't
20 been successful there, but Director Kappos is
21 very, very interested in having a wiki available
22 for manuals and a way for the public to comment on

1 the manuals. Certainly in trademarks we have a
2 manual editor, the job is open right at the
3 moment, but we do have a manual editor and our
4 finding has been that the editor needs a staff of
5 a couple of attorneys to help. I think if we go
6 to a situation where I would like to see where we
7 at least have the capability of updating and
8 issuing if necessary a revised manual maybe on a
9 monthly basis, that I think to some extent will
10 solve the OMB problem because the revisions will
11 be quite discrete. I agree that we want a manual
12 that's up to date enough that we don't have to do
13 the massive effort and throw the new manual over
14 the transom and let everybody read the thousands
15 of pages that are there. All of this I think can
16 be a model for both TTAB and the trademark
17 examining operation should go. People shouldn't
18 have to wait for important updates to come into
19 the manual and they shouldn't have to be warned to
20 watch out, this may not be up to date. It should
21 be pretty up to date all the time and I think
22 that's really where all of us want to go with

1 this, and I think Director Kappos fully supports
2 that.

3 MR. FARMER: I agree with everything
4 that's just been said. I think the sense of TPAC
5 is we would fully support a parallel wiki that
6 would help folks understand and provide comments
7 that may be useful to the TTAB and it may be
8 useful to the practicing community. There's music
9 to my ears when we talk about a possible monthly
10 update of manuals in the future because in the bar
11 there's a tendency to go to the manual and you can
12 throw up all the stop signs you want, but people
13 are still going to go to the manual. A little bit
14 of history. One thing I learned yesterday, and I
15 think this was handled right but just for the
16 benefit of folks listening at home, is that one of
17 the reasons we were told, and again if I get it
18 wrong please correct me, I certainly get things
19 wrong, is that one reason why the TTAB made the
20 strategic decision to hold off on the TBMP
21 revision was to get pendency under control first.
22 That's a fine order of priorities that we saluted

1 that it had to be gotten under control, but we all
2 hope that the economy recovers and that there are
3 busier times ahead for all involved. So you're
4 going to face that pressure down the road as the
5 economy picks up and we wouldn't want the TBMP to
6 potentially get pressed to the back burner there.
7 And that to reiterate is one of the reasons why
8 we're so supportive of you having resources where
9 you can delegate and review and comment as opposed
10 of having to be original drafters so that you
11 don't find yourself having to make that tough
12 choice between two unattractive options in the
13 future. Thanks for working with on it. We really
14 appreciate it. Unless there's anything else on
15 TBMP, we'll move over to another initialism, ACR.

16 JUDGE ROGERS: I don't know that there's
17 that much more to say on it other than what I said
18 earlier and that is that we are certainly trying
19 to promote ACR. It's certainly something that we
20 have noted even in precedential decisions that
21 parties are required to discuss in their initial
22 settlement-and-discovery planning conference and

1 it's something that we are promoting whenever we
2 have the opportunity to do so.

3 Something we haven't talked about yet
4 and which we've talked about in subcommittee and
5 that is the possibility of coming up with various
6 menu options if you will where we might present
7 four different ways that parties could move
8 through discovery or four different options for
9 moving through the trial phase of a proceeding and
10 where parties could discuss and possibly agree on
11 a particular plan for discovery or a particular
12 plan for trial and we would post those options and
13 make them available for individual parties to
14 consider. That's something one of our judges has
15 been tasked with working on and has engaged in
16 some preliminary discussions with the
17 interlocutory attorneys who discuss these options
18 with parties in discovery conferences. Of course
19 he's still writing decisions and he's also on the
20 manual revision so it's kind of the third thing on
21 his list and we probably won't get to those menu
22 options until a little bit later in the year when

1 he's finished with his work on the manual and he
2 can move into that and work with some of the
3 interlocutory attorneys to come up with those menu
4 options, but it's certainly something we'd like to
5 get done and made a part of our practice this
6 year.

7 MS. DENISON: We fully support the
8 development of the options because we believe it
9 will make it easier for people to use it, because
10 if you see that this is an expedited process but
11 you have to make it up yourself, I think people
12 are much less likely to be creative enough to use
13 it and so we think it will receive greater
14 utilization if you set up concrete examples and
15 then they can modify them to suit their needs.

16 MR. FARMER: That would be great if
17 you're having your initial conference and you can
18 say why don't we consider option A for discovery
19 and menu option C for the ultimate resolution, I
20 think that sort of plug-and-play solution is much
21 more likely to be adopted. One idea I just had
22 now so I apologize for not revealing earlier is

1 that I wonder if that would be a good thing to
2 require express discussion of by the parties when
3 they have that initial conference after the answer
4 is filed to say one thing you must talk about is
5 look at the ACR options once you have your menu
6 and talk about do you want to elect option A, B, C
7 or D for discovery or option 1, 2 or 3 for the
8 resolution once discovery is concluded. A, that
9 might break the ice because when you're in
10 litigation you want to look big and strong and not
11 weak and you want to look like you can go the
12 distance, and also if you expressly point them to
13 that and they know they got to read that before
14 they get on the phone, then your uptake level
15 might really increase. We fully support this
16 effort and go for it.

17 JUDGE ROGERS: We certainly will.

18 MR. FARMER: I think that takes us next
19 to discussion regarding how TTAB deals with cases
20 that linger for quite a while. There was a case
21 recently that got a little publicity that
22 triggered that, so I'll turn the floor over to you

1 to discuss what you are looking at in that area.

2 JUDGE ROGERS: That case is one of the
3 cases that is on our docket and is technically a
4 proceeding, to the extent that it's proceeding
5 under the old rules that were in place for cases
6 commenced prior to November 1, 2007. One of the
7 things we've done is even though a lot of these
8 cases that are suspended for various reasons that
9 were commenced long ago but aren't actively being
10 moved forward are not having any adverse impact on
11 motion pendency, they're not having any adverse
12 impact on final action pendency and they don't
13 even have any adverse impact on pendency from
14 start to finish of a case at least not until they
15 get decided and if they never get decided they'll
16 never have any adverse impact on it. But
17 nonetheless it's thousands of cases that are still
18 sitting there and churning and require extensions
19 or suspensions every few months and requires us to
20 maintain a separate set of options in our ESTTA
21 filing system for particular cases that need
22 different schedules than cases proceeding under

1 the current rules, so what we're trying to figure
2 out is, to get a handle on what percentage of
3 cases on our total docket were commenced prior to
4 November 1, 2007. We have that number. Then
5 we're working on further subdividing that list of
6 cases and figuring out how many don't have an
7 answer, what are the reasons they are suspended,
8 should we check on the status of those bankruptcy
9 proceedings or those civil actions. We should be
10 sending inquiries about settlement talks that may
11 be going on and that sort of thing. So we're
12 going to try and break that large group of older
13 cases where they don't seem to be moving into
14 smaller groups that we can work with and figure
15 out what's going on with them. The goal would be
16 over time to just weed them all out of the system
17 and to be able to progress only with a docket of
18 cases that are progressing under the current
19 rules, so that's an initiative that we're working
20 on now.

21 MR. FARMER: Thank you for that. I
22 think one thing that you said that you will be

1 getting to us, and if you just said it and I
2 didn't quite grasp it I apologize, that you are
3 going to be providing to TPAC some statistics on
4 cases that have been around for more than 5 years
5 or something along that line. For the folks
6 listening at home, we'll be taking a look at that,
7 because from the TPAC perspective it may not
8 impact the pendency statistics, and actually I
9 didn't realize that until yesterday that when you
10 look at the mean, median, first quartile, third
11 quartile average pendency of contested or inter
12 partes cases that that doesn't factor these in,
13 then I realized it's hard to factor in infinity
14 because the case hasn't ended yet, that would
15 throw the averages off, and so that was a
16 revelation to me.

17 One thing that we look after at TPAC is
18 the integrity of the overall register and the
19 register is helped when these old cases get off
20 because there may be an opposition or a
21 cancellation that is causing someone else who may
22 be in a branding position to think I'm not so

1 certain this is resolved, I'm not certain if that
2 will be a blocking event or not and so just for
3 the sake of keeping the register clean and keeping
4 the pool of available marks as wide open as it
5 should be, it's a service to that in order to
6 clean these old cases off, and we are glad to see
7 you are undertaking that initiative to go through
8 to find them, to categorize them and to weed them
9 out.

10 JUDGE ROGERS: We'll be breaking down
11 those categories of cases into further
12 subdivisions as we discussed yesterday so we'll
13 certainly get back to you on that.

14 MR. FARMER: We're pleased you're doing
15 it and go after it. The number of precedential
16 decisions TPAC has had on its champion's list, the
17 list of issues we look after possibly increasing
18 the number of precedential decisions, you told us
19 some information yesterday about how you decide
20 when to issue precedential decisions, and while
21 we've heard it, it may be beneficial for others
22 for you to lay out how the board goes about

1 deciding when cases will be precedential.

2 JUDGE ROGERS: Unlike the patent board
3 which mails decisions, panels come to a final
4 decision in a particular case and they mail it and
5 so it's only that particular panel that has input
6 into what's said in the decision. I may not have
7 this exactly right, but I think this is the way it
8 works for the most part on the patent board. If
9 they then want to float a particular decision
10 that's been issued for designation as a precedent,
11 then it gets circulated around among the patent
12 judges and they vote on it, but it's simply an
13 up-or-down vote. It's not a process whereby other
14 judges can offer input into what the decision
15 would say or should say because it's already
16 issued.

17 We do it a little differently at the
18 TTAB. When we have something, and this is true
19 whether it's an interlocutory attorney's decision
20 on a motion or whether it's a judge's final
21 decision on an ex parte appeal or an inter partes
22 case, if we think it's a good candidate for

1 issuance as a precedent, the panel can suggest
2 that right from the start or the interlocutory and
3 Cindy Greenbaum can suggest that right from the
4 start. Even if a panel or an interlocutory
5 doesn't suggest a decision, we have a review
6 process in place where decisions ready for mailing
7 get reviewed by somebody before they go out and
8 then if that person thinks maybe we should
9 consider this as a possible precedent, then
10 they'll kick it up to the chief judge and we'll
11 think about circulating it around. So a certain
12 number of decisions then get circulated among all
13 the judges if they're final decisions on the
14 merits or all the judges and all the attorneys if
15 they are procedural decisions on motions and we
16 take comments and we get as much input as we can
17 to make sure that the decision is as fine as it
18 can be and reflects a majority view before we
19 issue it as a precedent. Then we are required to
20 and do send those decisions which we decide should
21 be issued as a precedent to the Office of General
22 Counsel and the solicitor's office for further

1 review and then they have an opportunity for
2 input. Sometimes depending on the nature of the
3 decision we may bring in trademarks or external
4 affairs if they are international issues that are
5 presented. So we have I think a more extensive
6 review process and I think it makes for some
7 really good precedential decisions when they
8 finally go out the door, but it is a little
9 involved. That's why we think it's about right
10 for us to be issuing maybe 50 precedential
11 decisions a year, about one a week. If we tried
12 to increase that number, it would be a lot more
13 staff time and a lot more review time by everybody
14 at the board because we do circulate them in the
15 way that we do.

16 If eventually we change to a different
17 model we might be able to increase the number if
18 we sacrificed some of that review, but at this
19 point in time the system works well and we are
20 able to get out 50 or so precedential decisions a
21 year without it adversely impacting other
22 functions of the board, so I think that's pretty

1 much where we want to stand.

2 MS. DENISON: I appreciate the many
3 different directions the judges are pulled in at
4 the TTAB, but I do hope that you will not use the
5 one-a-week figure as a hard- and-fast rule and
6 will always be open to adding more if you think
7 there are important issues that are being
8 addressed.

9 JUDGE ROGERS: Absolutely. Even on the
10 breakdown this year I think we had eight
11 precedential decisions go out in October and two
12 in December, so it's an average figure and it
13 really depends on the nature of the decisions that
14 are presenting themselves to us. We're certainly
15 not a traffic cop trying to meet a quota of
16 tickets, we're certainly trying to pick the right
17 decisions and get them out as precedents.

18 MR. FARMER: As to what Mary said, I
19 think it's the sense of TPAC unanimously that we
20 would like for you to be able to say if an opinion
21 says something important we'll find a way to make
22 it precedential even if that doesn't necessarily

1 produce an even flow. And to give an offer on top
2 of that, if there's anything we on TPAC can do to
3 help you out to be able to do that as far as
4 advocating to whoever for whatever resource or for
5 a change in how you get to where you're doing
6 precedential decisions, certainly let us know and
7 we'll be glad to because those precedential
8 decisions sure are helpful when you're trying to
9 work on it and sometimes when you're getting ready
10 for a TTAB case you'll find an older case and
11 you'll say gosh darn it if only this were
12 precedential because really does go to the heart
13 of what I'm looking at here, and so again any way
14 we can help you reach that goal we'll be glad to
15 do so.

16 JUDGE ROGERS: Of course, anybody can
17 cite any TTAB decision now whether its
18 precedential or not and we'll certainly allow
19 parties to do it, but we'll I think obviously
20 place greater weight on prior precedential rather
21 than nonprecedential decisions.

22 MS. PARK: I wanted to say, Judge

1 Rogers, that on the precedential decision front
2 that I've been very impressed recently with the
3 number of decisions that have been designated
4 precedential that have addressed a lot of issues
5 of critical importance. One that I read recently
6 was the Capital Citibank case against Citibank
7 which talked a lot about dilution, and it was a
8 68-page opinion I believe. So I think the quality
9 of the precedential opinions that have been coming
10 out has really been very helpful to the trademark
11 bar and I wanted to acknowledge that.

12 JUDGE ROGERS: Thank you. That case in
13 particular does involve a dilution claim. As a
14 little background, when David Sams met with
15 representatives from the various organizations
16 concerned with trademarks and TTAB proceedings and
17 we struck an agreement to issue more precedential
18 decisions, we also had suggestions from various
19 bar groups and others and even from trademarks
20 about what issues people would like to see
21 decisions on and certainly dilution is on that
22 list. So we actively try to look for decisions

1 that will help develop those areas of the law that
2 we know people are concerned with. And if the
3 TPAC ever wants to look at or revise that list and
4 make suggestions we're certainly willing to take
5 it under consideration.

6 MR. FARMER: Absolutely we'd love to do
7 that. Adding on to what Kathryn just said, your
8 Daimler-Chrysler opinion was also very helpful as
9 we all were trying to figure how where to go in
10 the wake of Bose, and so that was a good one. I'm
11 sure we all wait with great anticipation as the
12 Bose fallout continues to see what you all do with
13 whether reckless disregard will be satisfactory.
14 A lot of trademark bloggers have been asking
15 whether even though they should have known
16 standard with Medinol has gone whether evidence
17 that someone must have known that they had been
18 using the mark whether that will cut it. And
19 we're not asking for an advisory opinion today,
20 it's just you can imagine that there are a lot of
21 folks out there waiting to see how those come down
22 when the appropriate case presents itself.

1 MR. JOHNSON: Judge Rogers, you
2 mentioned that there's a list of issues.

3 JUDGE ROGERS: Not one list, but I think
4 we got a list from AIPLA and this is a number of
5 years ago at this point because we've been issuing
6 now 50 or so decisions a year for a few years. I
7 can try and find those older lists, but I don't
8 recall exactly which organizations, IP
9 organizations or bar associations provided them to
10 us. We did get a few and I know we asked Sharon
11 Marsh at that time also what trademarks would be
12 interested in seeing primarily in ex parte cases.

13 MR. JOHNSON: Whatever list you could
14 compile, we'd like to see that. Would it help you
15 if TPAC compiled a list for things we think would
16 be of interest for precedential decisions?

17 JUDGE ROGERS: Yes. We can take the
18 lists that we've received in the past and
19 synthesize them into one so that we're not placing
20 the blame on any one organization for stacking the
21 deck on the issues and send it to the TPAC and if
22 you want to add to it then that's certainly fine

1 with us.

2 MR. FARMER: Please do. We think that
3 would be great. James?

4 MR. CONLEY: Judge, from the point of
5 view of these decisions that come down, is there
6 equal time allocated for the judges to write
7 dissenting opinions if they're so interested in
8 these precedential decisions?

9 JUDGE ROGERS: Yes. In fact, there's
10 one decision which we haven't yet decided whether
11 we will actually circulate it around the board for
12 issuance as a precedent but it is a decision that
13 is probably going to go out on a 2-to-1 basis with
14 a dissent and the question is whether to make it
15 precedential or not. Just because there's a
16 dissent doesn't mean it wouldn't be made
17 precedential. In fact, I was the dissenting judge
18 on an opinion that went out as precedential a few
19 years ago, so the fact that there's a dissent
20 doesn't keep us from issuing something as a
21 precedent. We don't require unanimity before
22 something will go out as a precedent.

1 MR. CONLEY: I think my question was
2 more about the time that it takes.

3 JUDGE ROGERS: A judge who writes a
4 dissenting opinion can always request production
5 credit and judges are on a production system like
6 examining attorneys and like interlocutory
7 attorneys and pretty much everybody else at the
8 PTO and so they shouldn't feel that they don't
9 have the time to write a dissent if it's necessary
10 because they're not going to get productive credit
11 for it, they will, and they just have to put in a
12 request for it and generally it's granted.

13 MR. CONLEY: Thank you.

14 MR. FARMER: You anticipated and
15 answered all my questions.

16 JUDGE ROGERS: I'd like to try and keep
17 you on schedule.

18 MR. FARMER: I think that puts us down
19 to G and that's more of a report because there
20 have been some decisions recently we wanted to get
21 the word out about some changes in the rules of
22 evidence.

1 JUDGE ROGERS: We did issue back in the
2 Fall 2009 Research in Motion versus NBOR which
3 actually takes care of one point which we've been
4 thinking about doing through a rules change and
5 that is when we amended our rules to say that you
6 could submit PTO records or use PTO records to
7 establish status and title of your pleaded
8 registration and you wouldn't have to get a
9 certified copy. The rules said you could do it
10 with your pleading but it was silent about whether
11 you could do it with a notice of reliance during
12 trial, but in Research in Motion we went ahead and
13 said clearly that was the intent of these
14 amendments of the rules and you can do it at trial
15 through notice of reliance just as you can do it
16 by attaching these materials to your pleading. So
17 that was a point that needed clarification and
18 we've taken care of that. Then earlier this week
19 we issued a decision in Safer Inc. versus OMS
20 Investments and that's opposition 91176445. Who
21 knows? It might be on the TTAB blog or some place
22 else by now. I know some blogs will get these

1 decisions up and reviewed within a few days of
2 their being mailed and this was mailed on the 23rd
3 a couple of days ago. But this includes a lengthy
4 discussion of internet evidence policies and what
5 we will accept and how it has to be offered and
6 how it can be challenged and that sort of thing,
7 and it's clearly a broadening of the types of
8 internet evidence that we will accept into board
9 proceedings. We're taking care of some of these
10 evidentiary issues trying to make it easier for
11 parties to our proceedings to get evidence into
12 the record. Of course, preserving for ourselves
13 the right to figure out how much value that
14 evidence should be accorded later on, but we're
15 trying to make it easier through these decisions.
16 We also know that we're going to have to do a rule
17 making at some point during the year, but again I
18 think the manual, the request for comments and
19 other things are a priority to get done first and
20 then when we can transition into working on a rule
21 making we will certainly do so as quickly as
22 possible. That will be to take care of some

1 vagaries that exist in the 2007 amendments but
2 also to address subsequent activities such as the
3 federal circuit's issuance of the Cold War Museum
4 case. I don't know that we actually have to
5 address anything in rule making through the Sones
6 decision that came down recently on specimens, but
7 if there is anything that comes down from the
8 federal circuit which deals with PTO rules, then
9 if we have to do rule making we'll certainly look
10 at that.

11 MR. FARMER: That sounds great. Mary,
12 do you have anything?

13 MS. DENISON: One thing is we didn't
14 really talk about the request for comments today
15 because it's a little bit early, but I wanted to
16 applaud the TTAB for considering the possible
17 involvement of judges, which has not traditionally
18 been the case, in settlements and I think that the
19 private bar would welcome that because many times
20 people are anxious to settle a case particularly
21 in this economy but don't want to be seen as the
22 person initiating the settlement discussions,

1 whereas if it were built into the schedule and a
2 requirement, people would be more likely to settle
3 earlier which would of course help you out
4 ultimately. I also want to again reiterate how
5 pleased we are at the improvement in
6 decision-making time and encourage you to keep
7 your eye on the ball and keep the number in weeks
8 so that the outside bar and the users of the TTAB
9 will be happy.

10 JUDGE ROGERS: Yes.

11 MS. DENISON: Thank you for your good
12 work and keep it up.

13 MR. FARMER: Absolutely. To close out
14 this topic, the TPAC is staying in a different
15 hotel this week and it causes me to walk a
16 different route to the USPTO and it had me walk
17 right under the entrance to the Eastern District
18 Courthouse which reminded me of how old I am
19 because back when I was a clerk for Judge Cacheris
20 he was the judge working on designing the
21 courthouse and the architect used to come in all
22 the time with the plans and now it's a building.

1 I noticed when I was walking under the entrance of
2 the building there was a statue and it says on the
3 inscription below the statute, "Justice Delayed,
4 Justice Denied," and that certainly is the mindset
5 of the Eastern District. That made me think of
6 this because I think it's very exciting time with
7 the TTAB when I look at the requests for comments
8 on ways to provide speed when it's appropriate,
9 when I look at getting some plug-and-play options
10 in place for ACR, when I look at getting the TBMP
11 up to date and all these other things I see a lot
12 of excitement and a lot of good coming
13 developments that will build on the already strong
14 improvements you have made in getting pendency
15 down so that I really look forward to seeing those
16 things unfold over the coming years and I think
17 it's again exciting. With that said, let's take a
18 5- minute break and then we'll come back and chat
19 with the trademark operations folks.

20 (Recess)

21 MR. FARMER: There was a question that
22 came in during the last segment and I forgot to

1 ask it. Someone wrote in to ask, To whom has
2 responsibility for the TBMP been transferred? The
3 answer is Angela Lykos. Judge Rogers gave that to
4 me. With that I'm going to turn things over to
5 Lynne Beresford for our trademarks operations
6 segment.

7 MS. BERESFORD: Before we start talking
8 about our statistics and things of that nature, I
9 always like to showcase something that we're doing
10 in trademarks that I think is exciting. We have a
11 committee within trademarks for pro ses. We're
12 looking at ways to better inform people who are
13 pro ses using our website and using our services.
14 So what I'd like to spend 5 minutes doing is we
15 are developing videos to be posted on the website
16 eventually that will explain the various parts of
17 the application process to applicants. So instead
18 of reading the five paragraphs on what owner
19 means, they can watch a minute-a- half video about
20 what owner is. We're going to see half, 5
21 minutes, of the first video we've created which is
22 the basic video on filing trademark applications

1 and using our website. Here is the first 5
2 minutes. Take it away.

3 (Video played.)

4 MS. BERESFORD: There's the first 5
5 minutes of our basic video to talk about the
6 trademark registration process which we hope will
7 hope will help pro se filers what they're getting
8 themselves into. I will say that at the end we
9 give a little tip that if you're confused or if
10 you think you need help here, we suggest hiring a
11 trademark attorney. We have always a very
12 generous percentage of pro se applicants and we're
13 always interested in doing the right thing. Thank
14 you very much for doing this. Now on to the
15 agenda. Thank you, John, for indulging us.

16 MR. FARMER: Is that already up or is it
17 going up?

18 MS. BERESFORD: It will go up in the
19 future. It's not up yet. It's still in draft
20 form. We're still going through the clearance
21 process.

22 We'll start off with the list that's in

1 the agenda. I'm going to let Debbie Cohen and
2 Sharon Marsh handle most of these issues since I
3 talked a bit earlier, starting out with how to
4 encourage the electronic filing of postapplication
5 documents such as responses to office actions.

6 MS. MARSH: Thanks, Lynne. The slide up
7 there is related to a different topic so we're not
8 working from the slide on the screen right now.

9 This is an ongoing topic at the PTO. As
10 you know, we want to have a system that is pretty
11 much 100- percent electronic both on the side of
12 the office and the users so we continue to look at
13 ways to encourage efilings of trademark documents.
14 As you know, for the initial application we're
15 almost to 100 percent. It's a very high number,
16 98 percent perhaps. But we're also considering
17 some other steps to encourage users to use the
18 electronic forms. The first one on the list is
19 eliminating the certificate of mailing procedure.
20 If you recall, 2 years ago, almost exactly 2 years
21 ago in February, we issued a notice of proposed
22 rulemaking to suggest that users would no longer

1 have the ability to use certificate of mailing or
2 express mail for any document for which a TEAS
3 form exists. We got feedback from most of our
4 major user groups including AIPLA, INTA and IPO,
5 and the comments were fairly similar. They
6 certainly support our egovernment efforts but they
7 felt that this was a bit premature, pointing to
8 problems with filing large documents and technical
9 issues that still remained with the systems. So 2
10 years have gone by and I think we've addressed at
11 least some if not all of the issues so we're
12 considering again proposing that we eliminate the
13 certificate of mailing or express mail options for
14 people if there is a TEAS form that could be used.

15 Second on the list is improving eforms.
16 As you know, we on an ongoing basis look for
17 feedback from users both internal and external
18 about how to make the TEAS forms better. Our TEAS
19 manager Craig Morris reminded me this morning that
20 we actually have an enhancement coming up in June
21 as part of a series of changes to the forms to
22 make them better, so that's another way that we

1 will continue to encourage efilings.

2 The third one on the list is charging a
3 fee for filing paper responses to office actions.
4 This way those who prefer to file paper could
5 still do so, but there would be a separate
6 additional fee filed to reflect the extra labor
7 required to both scan and enter data into USPTO
8 systems on paper filings.

9 The next one is efilings, a required
10 efilings for postpub amendments. This would be the
11 first step toward making use of our electronic
12 forms mandatory. We added a postpublication
13 amendment form about a year ago, Craig? And also
14 restructured the system for processing
15 postapplication amendments. We now have a team of
16 paralegals in the policy petitions area that
17 processes those and it works very well so we are
18 considering whether we should make use of that
19 form mandatory, that if you want to file a change
20 to the application after publication and before
21 notice of allowance or registration you would have
22 to use the electronic TEAS form.

1 The last item on the list is a good one.
2 I like it because it's more of a carrot than a
3 stick. A few months ago our staff in the policy
4 and petitions area was looking at notices of
5 cancellation and what they discovered was that we
6 have situations where in some cases if a
7 registration is cancelled or expired, cancelled,
8 Lynne Beresford as the Commissioner sends out a
9 formal notice that the registration has been
10 cancelled for things like if there has been a TTAB
11 decision or a court decision, if the office
12 accidentally issues a registration that it
13 shouldn't have and has to cancel it, in those
14 types of situation a formal notice of cancellation
15 is issued by the Trademark Commissioner. Other
16 situations, for example if you fail to file your
17 Section 8, we do not issue any formal cancellation
18 notice. So one thing we're considering is perhaps
19 having a different kind of system where we would
20 every time a registration is cancelled issue a
21 notification that the mark has been cancelled but
22 it would not be a formal notice with signature of

1 the Commissioner. Instead, a standard notice
2 would issue and be posted into the application
3 file in the trademark document retrieval system
4 and the egovernment aspect to it would be that if
5 the registrant has on file with us an electronic
6 address and has agreed to electronic communication
7 with the office, in those cases the registrant
8 would receive an email from us with a link to the
9 notification. In addition, registrants who agree
10 to email communication would also receive reminder
11 notices when registration maintenance documents
12 are due, the Sections 8 and 9 filings. These are
13 the ideas that we are considering. We of course
14 are interested in TPAC's feedback on these and we
15 will at some point make a decision about whether
16 to proceed with rulemaking notices.

17 MS. BERESFORD: The use of the
18 electronic form for postpublication amendments, we
19 thought this absolutely the perfect place for
20 requiring the use of the electronic form because
21 there is such a short time period here in order to
22 get things done and have your registration issue

1 with the correct information in it, so that was
2 the reason this was picked. We think it's a
3 win-win for the bar here because they will get
4 things done in a manner that's timely. Other than
5 that, I think the other things, Sharon, are well
6 explained.

7 MR. FARMER: By way of introduction, we
8 have various champions on TPAC and Kathryn Barrett
9 Park is our champion for general trademark
10 operations and so for this segment I'm going to
11 mainly let Kathryn take the lead and then others
12 of us on TPAC if we have other stuff will sweep in
13 behind her. Kathryn, the floor is yours.

14 MS. PARK: I wanted to say, Sharon, on
15 the last issue that you addressed, the proposal to
16 modify the procedures for notices of cancellation,
17 we did discuss that briefly yesterday afternoon.
18 You answered the question that I think some of us
19 had which was what if there wasn't an email on
20 file and this will apply when the registrant to
21 indicated, so I think that we would support that
22 change.

1 MS. DENISON: On the elimination of the
2 certificate mailing procedure, you said that that
3 would be not available for anytime when there was
4 an electronic form that you could use, but it's my
5 understanding that there is now a universal form
6 which covers essentially everything. Does that
7 mean that this is in effect elimination of the
8 certificate of mailing in toto?

9 MS. MARSH: Perhaps, yes, because we do
10 offer that option now.

11 MS. PEARCE: I only have one concern on
12 this. If we're going to still allow paper filings
13 even though we may wind up with a different fee
14 structure for them or something along those lines
15 in order to steer people toward electronic, for as
16 long as we've got paper filings isn't it
17 reasonable though to keep the certificate of mail?

18 MS. MARSH: I think the point is we want
19 to encourage use of the electronic forms and so
20 the extreme option is to just stop, to make really
21 harsh measures so that you can use the paper
22 system if you want to but you're going to give up

1 the certainty of express mail or certificate of
2 mailing. The other option is what I mentioned
3 about you can file paper but there's an extra fee
4 for the extra labor.

5 MS. PEARCE: That I have to admit I'm
6 more in favor of. I'm all for revenue generation
7 anyway. I think that there are members of the
8 trademark public that might take offense. There
9 are some contrary people out there. I would
10 rather see us charge them more for the privilege
11 than eliminate the privilege altogether at least
12 for the time being.

13 MR. LOCKHART: As a practical matter,
14 how many certificates are you getting now a year?
15 Do you have a feel for that? How many people are
16 still using that paper procedure?

17 MS. MARSH: We don't have good data on
18 that. We actually have a group now that is
19 starting to look into that. For some technical
20 reasons it's a bit difficult to count the paper
21 coming in but we are going to try, and if we get
22 data we certainly will report it to TPAC.

1 MR. FARMER: As far as where we go from
2 here, I want to make sure that we're on the same
3 page. Would you like TPAC then to come back to
4 you and say yea to one, nay to two, so forth and
5 so on? Are you looking for that sort of response
6 from us?

7 MS. MARSH: Yes, I think that would be
8 good and perhaps if you could list your
9 preferences in the order of what you think would
10 work the best and if there are any that you think
11 are just simply unacceptable that the bar and
12 users will not accept, that would be good
13 information as well.

14 MR. FARMER: Some of these may not be
15 mutually exclusive in that some you could do more
16 than one. What I'm thinking, Kathryn, is that
17 maybe one thing we'd put on your champion list is
18 to gather this feedback and funnel it back just
19 like we did with the automation list, and so we'll
20 do that. Before I leave that topic, I saw a
21 question from Al Tramosch.

22 MR. TRAMOSCH: I can wait.

1 MS. PARK: I have a question, Sharon, on
2 the third one, charging a fee for filing paper
3 responses which I agree with Elizabeth is
4 generally a good idea. Is there a cost basis that
5 that would be based upon?

6 MS. MARSH: Yes, that's a question that
7 would have to be sorted out, does it have to be
8 based on cost and if so what would that be. If we
9 think that's the way to proceed, those issues
10 would be developed.

11 MR. LOCKHART: You've been allowing
12 efilings of applications for quite a while now but
13 there is still the dual track for paper
14 applications with a higher fee. How much pushback
15 if any have you gotten from the trademark
16 community about the higher fee for a paper
17 application?

18 MS. MARSH: I don't believe we've gotten
19 a lot.

20 MR. LOCKHART: So there seems to be a
21 recognition by paper filers that there is an
22 increased cost of processing that so that it's

1 appropriate to pay a higher fee? Then I suspect
2 as Elizabeth and Kathryn have said, if you were to
3 continue to allow the dual track, then if you just
4 charge a higher fee for any paper filings assuming
5 you have a cost basis for knowing what the fee
6 ought to be, that might be a reasonable way to
7 proceed at least for the foreseeable future. I'm
8 sure eventually you're going to go to all
9 electronic filings, but maybe we're not quite
10 there yet. If you're still getting some paper
11 applications, there are some people who prefer to
12 do things in paper.

13 MS. PEARCE: As a member of the budget
14 committee, this is one thing that came up in the
15 fee study. All of these fees were studied for
16 paper filings and electronic filings, so I think
17 the costs of all of that have been run and the
18 CFO's office has got all that information. They
19 are substantially higher for every aspect of paper
20 filing versus electronic filing. So how much
21 would be the appropriate extra fee I don't know,
22 but I think all of that work has been done,

1 Sharon, and the CFO's office should have that for
2 you.

3 MS. COHEN: The only thing I'd like to
4 add to Tim's comment is that this will be the
5 first time we're charging any kind of a fee for a
6 response to an office action so I think that's
7 where the kickback will come, not just simply
8 paying a little more for paper, but actually have
9 to pay for something you've never paid for before.

10 MR. LOCKHART: But the fee would only be
11 charged to people who file in paper.

12 MS. COHEN: Right.

13 MR. LOCKHART: I would think people
14 would understand that. Actions have consequences.
15 If you choose to file in paper, you're going to
16 pay a little more money.

17 MS. DENISON: There could also be some
18 sort of disclaimer or something. I'm not sure
19 where the appropriate place to put it is, but when
20 you pay the 375 up front, you've got to look
21 somewhere to find the fee and then when you find
22 the fee to know that you're mailing in 375, you

1 need to be told that actually it's going to cost
2 you more than \$50 or \$100 extra, it's going to
3 cost you more to go through the whole process
4 because there are going to be extra fees for paper
5 filing all the way along.

6 MR. LOCKHART: That would be true if the
7 paper applicant chose to respond to the office
8 action in paper, but the paper applicant could
9 respond to the office electronically.

10 MS. DENISON: That's true.

11 MS. BERESFORD: Let me say first of all,
12 charging a fee for paper responses makes sense
13 from an accounting standpoint because it does in
14 fact cost us more to process paper and I think we
15 have the information in the fee study for that.
16 Just looking historically however at the rule for
17 certificates of mailing, the historical reason for
18 this was slowness of the U.S. mail and the concern
19 about whether or not things would get here. The
20 landscape has changed dramatically since then. If
21 you're at the last minute filing you can fire up
22 your computer and file something at the last

1 minute here at the USPTO. You don't really need a
2 certificate of mailing anymore. Further, I think
3 our study will show us that certificates of
4 mailing are not something that pro ses use because
5 they don't know about it. This is something that
6 attorneys and experienced practitioners know about
7 and use. They are also probably pretty much aware
8 of our electronic systems too. There may be a
9 reason that they're responding in paper. I think
10 no one likes to give up an alternative way of
11 doing things, but looking historically at the
12 reasons for the certificate of mailing, I those
13 reasons have disappeared. Nevertheless, of course
14 we're going to look at all the feedback we get
15 from TPAC and again I think we've been successful
16 by offering carrots for electronic filing, way
17 more success than we would have been by trying to
18 force people to use it. So perhaps adding the fee
19 will be the choice here and if it's like changing
20 the fees for filing paper applications, it's been
21 very successful at lowering the number of paper
22 applications that have been filed.

1 MR. LOCKHART: Yet a third option might
2 be to say during the coming year we're going to
3 charge a fee if you choose to do these
4 certificates of mailing and maybe keep some
5 statistics on how many you get in paper. If it's
6 a miniscule amount, at the end of the year
7 eliminate the option.

8 MR. TRAMPOSCH: Do you feel like you
9 have adequate safeguards in place for the times
10 when the computers are not working? I know it's a
11 bigger problem on the patent side than on the
12 trademark side, but it's not necessarily the
13 office's computers. It may be the attorneys'
14 computers, it may be circumstances in the office.
15 People get used to last-minute filing with
16 computers and when things aren't working they need
17 to have a way to get on file immediately.

18 MS. MARSH: I think the answer is that
19 if you're waiting until 11:59 to file on the last
20 day, you're taking a risk. I think if there were
21 widespread PTO problem the office would certainly
22 look to some way of giving filers a way to have

1 the filing be considered timely if possible, but
2 there are limits on what we can do especially when
3 the statutory deadline is in place.

4 MR. FARMER: I think Lynne may have
5 insight there also.

6 MS. BERESFORD: Depending on which part
7 of the process you're in, you have a petition to
8 revive and our standard for petitions to revive is
9 pretty much the I forgot standard, I didn't mean
10 to do it, I didn't do it intentionally. At least
11 in the application process if you want until the
12 last minute and your computer system is down or
13 our computer system is down, you aren't kicked out
14 of the process completely. You have a routinely
15 granted petition to get yourself back into the
16 process. It's not the end of the world. As we go
17 through the process there are other parts where
18 you do have a statutory deadline that can't be
19 waived. In those areas, but that's not in the
20 application process, you might have an issue.

21 MR. FARMER: Mainly you were talking
22 about the application process?

1 MS. BERESFORD: Yes.

2 MR. TRAMPOSCH: I think though if you do
3 away with the certificate of mailing you're not
4 talking about last-minute filing anymore, you're
5 extending the time that there's a danger that the
6 computer systems are not working or electronic
7 filing cannot be done for one reason or another.
8 So I think that there is a danger there and we
9 should factor that in to consideration.

10 MS. MARSH: Thanks.

11 MR. FARMER: Let's go on to registration
12 certificate issues. I don't want to rush anyone,
13 but we do need to pick up the pace a little bit in
14 order to try to keep the trains running on time.

15 MS. COHEN: No problem.

16 MR. FARMER: Registration certificate
17 issues?

18 MS. COHEN: I'm going to handle that
19 one. I'm going to take the second point first
20 while Sharon is handing out some show-and-tell
21 materials. The second point is the progress of
22 our having the electronic certificates of

1 registration with an option to obtaining a paper
2 certificate. I have to report that we really
3 haven't done anything on that, that we had some
4 automation issues and given the priorities of our
5 near and what's coming up in the future, we have
6 veered away from focusing on that. So I don't
7 have anything new to report on that issue. We
8 recognize that it is something that we want to
9 have in the future and we will try to build that
10 in of course to our next generation.

11 Moving to the first item, as you all
12 know, we had changed the size of the paper and the
13 registration certificates that we're issuing and
14 we're about to make another very minor change that
15 has to do with the typeface and the readability of
16 the registration certificate and I wanted to pass
17 out both the current certificate and the new
18 proposed certificate so you could take a look and
19 see what we're planning on doing. I'll highlight
20 the differences if they're not obvious to you.
21 The old certificate had a date in very small print
22 that some people complained was hard to see so

1 we've increased the size of the date and the
2 typeface and put it in bold. We've also justified
3 the left margins because we think that
4 presentation is also easier to read. Then we've
5 changed the size of the word "trademark" and the
6 type of register. You can comment now if you'd
7 like or send us some comments. As I said, we're
8 not looking to make major changes in this area but
9 we did see some obvious changes that we thought
10 were good to make and we wanted to let you know
11 what those were and give you an opportunity to
12 tell us if for some reason you don't like them.

13 MS. BERESFORD: A point of
14 clarification. We're only looking at the front of
15 the certificate. Nothing on the back of the
16 certificate has changed.

17 MS. COHEN: You won't see anything on
18 the back of the new proposed certificate simply
19 because we just made a one-sided copy.

20 MS. PARK: I think judging from the
21 quick colloquy with my colleagues, we all think
22 that it looks good, Debbie.

1 MS. COHEN: Thank you.

2 MR. FARMER: Then there's a report on
3 the progress of moving toward the eventual
4 issuance of electronic certificates of
5 registration with the option to obtain a paper
6 certificate if you need one. I'm sorry. I just
7 blew right past you then.

8 MS. COHEN: That's okay.

9 MR. FARMER: The Bose fallout?

10 MS. BERESFORD: I mentioned this
11 earlier. We're planning on having a seminar here
12 or discussion that we're jointly sponsoring with
13 the George Washington Law School April 26. We'll
14 be sending out letters soon. We'll be sending out
15 a paper in advance to talk about the issue of
16 definite IDs, accurate descriptions of goods and
17 services in light in the Bose case to try to
18 figure out should we have next steps and if so
19 what should they be.

20 MR. FARMER: We on our committee have
21 Kathryn Barrett Park leading TPAC in thinking
22 about the issue also and if we come up with any

1 thoughts we'll make certain to pass them along.
2 The next one is a brief report on current
3 trademark operations speed and quality performance
4 metrics. So I think we're now to the chart.

5 MS. COHEN: Yes. I'm trying to get this
6 on the previous page if I can. This is a report
7 that you're used to seeing. I'm not going to go
8 through every item except to point out that we
9 seem to be on track for pendency, for quality and
10 for all of the other measures that we have in
11 there and I'd be happy to take specific questions
12 about anything if you'd like to give them.

13 I wanted to mention because Gerry Rogers
14 earlier talked about the productivity of the TTAB
15 and working through the snowstorm and as you all
16 know we were closed for four consecutive ways.
17 Our production statistics have told us that for
18 those 4 days we actually did 85 percent of the
19 work that we did for the same 4 days in the
20 previous week which is a significant number
21 because 85 percent of our examining attorneys work
22 from home. Those people who come in to the office

1 obviously didn't come in, the office was closed,
2 so we were very happy about that. And our
3 Trademark Assistance Center was fully operational
4 and answered 91 percent of their incoming calls
5 within 20 seconds. They didn't miss a beat. So
6 we were pretty much unaffected by the snow except
7 for the shoveling, but we did very well.

8 Also to highlight the filings, you'll
9 see on the chart, and this is of course as of the
10 end of December, the first quarter, that we were
11 about .2 percent behind where we were last year.
12 We've actually increased a bit since then. And as
13 of the end of February we expect that we're going
14 to be about 3 percent ahead of where we were last
15 year. So that's good news. Our inventory of
16 unexamined cases, we're at about 78,000 classes in
17 inventory which is about where we want to be. So
18 we're trying to manage to that 2.5 to 3.5 pendency
19 and we think we're really on track to do that with
20 the current measures that we have in place which
21 is to continue a number of the details that we
22 have going on which have resulted in some really

1 good projects and results in both Sharon's area in
2 policy and some other areas throughout the agency
3 where we've been able to help out. We do have a
4 modified award in place for the examining
5 attorneys for production and our calculations tell
6 us that it will get us exactly where we need to
7 be. We of course don't have overtime at the
8 present time, but as Lynne mentioned earlier, as
9 filings go up we'll put that back in place.

10 The next page talks about more of our
11 internal service. The Intent to Use unit needs to
12 improve in their pendency and they're on track to
13 do that. All of the other areas are really within
14 their targets for the year.

15 MS. BERESFORD: Let me say I think this
16 may be the first time we've shared this internal
17 document with TPAC or made it public, but this is
18 really the tracking of all the segments within
19 trademarks that support examination. With this
20 you can see the quality goals and the pendency
21 goals that we track in every part of trademarks.
22 Examination gets the flashy part and gets all the

1 attention, but we really pay attention to all the
2 other areas of trademarks to make sure they are,
3 and they are, more than a little, they're doing a
4 great job.

5 MS. PARK: John, let me ask one
6 question. This second page, is this going to be
7 what you mentioned about going up on the website
8 so that somebody could see that currently it's
9 going to take 2 weeks to get your statement of use
10 reviewed?

11 MS. BERESFORD: No, this is just a
12 report. We keep statistics on how every unit
13 under trademarks is meeting its goals and this
14 reflects the staffing organizations within
15 trademarks and how they're doing. What we're
16 talking about is putting a timeline up on the
17 website. Initially it will be a timeline that
18 shows how long on the average it takes in each
19 part of the process. We hope that one of the
20 things that will happen with Trademarks Next
21 Generation is we'll have an interactive timeline
22 so that you can put your serial number in there

1 and it will tell you where you are in the process,
2 what the average wait is in that part of the
3 process and what the next steps are after that
4 part of the process. It will be a living timeline
5 that gives you up-to-date information on what's
6 happening in each part of the Trademark
7 Organization. This kind of information will be
8 gathered obviously more rapidly when we have the
9 timeline in place, but this is the kind of
10 information we will need so that you know if
11 something is in preexam how long it's going to be
12 there or if it's in ITU how long you can expect it
13 to be there.

14 MR. FARMER: Off to Excellent First
15 Office Action Initiative.

16 MS. MARSH: I can do that one. This is
17 a quick one. We wanted to make two points this
18 morning with you. One, we are adding this year a
19 new external measure to use existing data that's
20 already collected by our Quality Office and
21 identify the percentage of cases that are
22 excellent in all areas, we made the right

1 decision, we explained any refusals or
2 requirements well, we attached evidence that was
3 on point and persuasive, we did a good search on
4 all issues. This was a baseline year. We see
5 what the statistics show and then the plan I
6 believe is next year to make it an official
7 external measure.

8 Secondly, we've also started last fall
9 an outreach effort. We took data that we had
10 collected on quality, real cases, and gave a
11 couple of our user groups, INTA and AIPLA, the
12 cases to review themselves. They have committees
13 that specialize in PTO matters and those committee
14 members volunteered to review cases. We've gotten
15 the data back from like I said INTA and AIPLA.
16 They are very close to each other and very close
17 to our own results. That was very reassuring that
18 within a percentage point on all issues about
19 correct decision, good explanation, good evidence
20 there seems to be consensus about what's a good
21 action and what's not and the percentages that are
22 good. We are going to continue this with a couple

1 of other groups, perhaps IPO and also ACC, the
2 Association of Corporate Counsel, so we will
3 report on that data when we get it.

4 MS. PEARCE: I had one quick question.
5 I was noticing going through all of your data that
6 you've got here that you are on target or ahead of
7 target in some cases for everything, except the
8 ITU unit seems to be having a problem, they've got
9 a particular backlog and I've noticed this with a
10 lot of my cases and Howard and I had discussed
11 this. Is there a reason why they're so badly
12 backlogged?

13 MS. COHEN: I'm not sure there is a
14 particular reason. We have worked on the backlog.
15 We assigned some overtime to those folks and
16 they've gotten the backlog down so that you will
17 see a much different number next time.

18 MR. FARMER: There you have it. Is
19 there anything else on the Excellent First Office
20 Action Initiative? Discussion of progress toward
21 the TPAC goal of having an electronic complaint
22 and praise procedure and I think there is some

1 news there. Who wants to give it to us?

2 MS. BERESFORD: Debbie?

3 MS. COHEN: We're going to have to cross
4 it off the list because it is up and running.
5 It's on the front page of the website. If you
6 scroll down on the trademark in the trademark
7 section you'll see the link to the, I'm trying to
8 think of exactly what it's called, TM Feedback.
9 If you click on it there's an instruction on how
10 to use it and what it's supposed to be used for
11 and you can get into the mailbox and send us
12 feedback on any issue that you want to complain or
13 praise us about, only trademark matters, please.
14 If it's an issue about a particular case we're
15 hoping that people will continue to work with
16 examining attorneys and when necessary contact
17 managing or senior attorneys if there are issues
18 to discuss. But any other general type issues we
19 are going to be monitoring it. We have folks in
20 the policy area who will be monitoring and
21 reporting on it and so we will always know exactly
22 what's going on through that mailbox.

1 MR. FARMER: We on TPAC have a to-do
2 item to take a look at. It just came up so many
3 of us have not had a chance to see it, but we'll
4 do that and we'll provide feedback back to you.
5 Tim?

6 MR. LOCKHART: Assuming that you're
7 getting a fair number of input pro or con through
8 that link, I would be interested to hear at the
9 next TPAC meeting what the thrust of it is, what
10 the typical comments are, is it more thumbs up,
11 thumbs down, whatever, just to see how that's
12 working.

13 MS. COHEN: I think that's a great idea
14 and we'll be happy to do that.

15 MS. PARK: I want to say, Debbie, Lynne
16 and Sharon, I've looked at it and I think it's a
17 very nice added feature and I think it addresses
18 the concerns that we had had, and I also think
19 it's very clear in the direction it gives that
20 it's not a mechanism to circumvent the official
21 processes for responding to office actions and the
22 like. My person opinion is it's very helpful and

1 good.

2 MR. FARMER: We will definitely study
3 it. As a matter of fact, it's something we'd
4 certainly like to get the word out on. I know for
5 instance we have representatives here from INTA
6 and AIPLA amongst others. To the extent that you
7 can let your folks know that this now exists, we
8 think it would be beneficial to the communities
9 that you represent.

10 MR. JOHNSON: As a follow-up to what Tim
11 said, I'd also like to know not only what was
12 reported but what actions were taken in response
13 to those comments such as why something wasn't
14 done or if it was a silly comment, no response
15 necessary.

16 MS. COHEN: Okay. Got it.

17 MR. FARMER: The next one is discussion
18 of progress on the TPAC goal of having the TMEP
19 continuously up to date. I think we kind of got
20 that earlier. Is there anything additional or did
21 we check that box? I'll presume we checked that
22 box unless someone says otherwise.

1 MS. MARSH: I don't think we have a lot
2 to add. We are looking for ways to update TPAC
3 more frequently, and as Lynne mentioned, we're
4 also moving toward a wiki-style TMEP. The patent
5 manual staff is also moving in this direction so
6 we're going to be working with them. I noticed
7 Mr. Kappos in his blog post earlier in the week on
8 the patent manual made the comment that, "Good
9 commercial authoring environments for large
10 monolithic documents having multiple contributors
11 are readily available." So if he's right, there's
12 got to be software and systems out there that can
13 get us where we want to go.

14 MR. FARMER: That's wonderful. We look
15 forward to the journey into reaching the
16 destination. The next item is discussion of
17 progress toward the TPAC goal of if a statement of
18 use is denied approval and an intent to use the
19 application should become eligible for extensions
20 as if no improper SOU had been filed. I think
21 there is some news from TPAC on that end and that
22 is we ourselves are going to deliberate on that

1 more also since there may or may not be unanimity,
2 that's a hard word, of opinion, so we'll have more
3 coming from us and Kathryn is going to lead that.

4 MS. PARK: I wanted to say that Lynne
5 gave me some statistics earlier today which I'll
6 share with TPAC, but I think while it's an issue
7 we want to consider may not be of the order of
8 magnitude that it requires being bumped up to
9 front of the list and may well be something that
10 can be accomplished as part of the Patent
11 Automation of the Future project, so I think that
12 may be a way we would look at it.

13 MR. FARMER: So that one's on us and we
14 will come back to you. Discussion of trademark
15 operation initiative to access the
16 user-friendliness of the trademark portions of the
17 USPTO website.

18 MS. BERESFORD: This is something that I
19 would love to do and I think I've asked TPAC if
20 they have ideas about how to do this to let me
21 know. In inquiring around about at the PTO, no
22 one has come up with really good suggestions.

1 Everybody says survey your users. I'm not sure.
2 We're willing to do that. There's a whole process
3 for survey because it invokes the Paperwork
4 Reduction Act problems that you have to get a
5 survey approved and you're collecting more
6 paperwork, and I'm not sure that will get us
7 exactly the kind of information we want because we
8 don't want just a general idea of how useful or
9 not useful it is, we really want to know about the
10 particular parts of the website, how useful is
11 each one, how useful is TEAS and how useful is the
12 search system and get comments on that. I haven't
13 been able to figure out a way to do this as yet or
14 a way to benchmark this and I look for suggestions
15 from members of TPAC or anybody else who has
16 suggestions on this.

17 MR. LOCKHART: One thought that occurs
18 to me although maybe this would be feedback that's
19 more general than what you're looking for, would
20 it be possible when somebody electronically files
21 an information and you get your electronic filing
22 receipt that pops up, could there be a link in

1 that probably up near the top and say click here
2 if you wish to provide feedback about how useful
3 or user friendly you found the website? People
4 look at that and if they could just click and go
5 in and give you comments, again it might be of a
6 general nature.

7 MS. BERESFORD: That's something we can
8 consider.

9 MS. PARK: You may get something
10 feedback in your new user feedback.

11 MS. BERESFORD: I think so.

12 MS. PARK: So that might be a good
13 place.

14 MR. TRAMPOSCH: AIPLA is right now
15 preparing a survey at the initiative of the patent
16 side of the house requesting feedback on the USPTO
17 website. Our board also asked us to cover
18 trademarks. So perhaps you could help us with
19 crafting our questions to give you good feedback.

20 MR. FARMER: Sounds good. Let's go on
21 to J, the Trademark Automation of the Future
22 project including what steps are being made to

1 move it forward and how community input will be
2 obtained.

3 MS. COHEN: I will take that one. As
4 you know, TPAC has submitted a list to us of
5 various priorities actually in priority order and
6 it was a really helpful list for us to look at and
7 to use as a starting point for seeking user input
8 from our other external users, and that's exactly
9 what we're planning to do. In fact, we're
10 finalizing a letter today that will go out to
11 INTA, AIPLA, IPO and various other organizations
12 that is going to forward the TPAC list and use
13 that as a starting point for seeking their input.
14 At the same time we're going to put a notice on
15 our website to seek input from individuals and
16 anybody who might be interested. We're in the
17 process of setting up a mailbox and that will be
18 in the letter so that all of the input can be
19 funneled into one place and we can have a way to
20 coordinate it and look at it.

21 At the same time, we're seeking input
22 from our internal users which we think is every

1 bit as important as getting input from our
2 external users. NTEU 245 has recently submitted
3 their very well-organized list of priorities and
4 we're going through that and we're going to
5 further discuss it with them. We are working with
6 managers to try to coordinate input from NTEU 243
7 which is a bit more difficult since their jobs are
8 so much more varied. We need to coordinate that a
9 little bit differently but we're in the process of
10 doing that.

11 Lynne had sent out a message in
12 mid-January to everyone in trademarks asking for
13 their input and describing the best we could the
14 project, the upcoming Next Generation of
15 Trademarks and we want your ideas and so people
16 are aware and encouraged to send in their ideas to
17 a mailbox that was set up for that.

18 We're trying to cover as wide an
19 audience as possible both internally and
20 externally. We expected to have the input
21 completed by the end of March but it looks like
22 that's going to move a couple of weeks back. I

1 can blame the snow. I think that's one of the
2 reasons at least. But it's quite a task gathering
3 the input and so we're thinking by mid-April we
4 should have a really good idea and we can start
5 analyzing it. From there we're going to be
6 working with OCIO and all of the tasks that
7 they're involved with and I think sometime in
8 October they're going to be able to develop start
9 the requirements development or finish the
10 requirements development, I'm not sure. I'll let
11 John address that in his presentation. I know
12 he's got a slide on that. I think that's it for
13 now. I don't know if anyone has any questions
14 about the project and where we are. We're still
15 in the gathering-the-input phase, we're in the
16 midst of that, and we think that based on NTEU
17 245's input and TPAC's input that it's been going
18 very, very well.

19 MR. FARMER: I think that's great.
20 Kathryn Park led our efforts on TPAC to go through
21 that and it was a fair amount of work, so Kathryn,
22 thank you for leading us on that. Also I want to

1 say that I think the way that this issue was
2 handled was just wonderful and it's the paradigm
3 for how TPAC and the office can interact. You
4 came to us, you gave us something to react to, you
5 gave us time to react, we were able to formulate,
6 able to kick back and I think it's just the model
7 for how TPAC can and should operate. Overall
8 since I think we're at the close of our segment
9 here I'd say that you in the Trademark Operation
10 are doing a fantastic job and keep up the good
11 work.

12 MS. DENISON: I just had an inquiry
13 about the video. I realized that I didn't see the
14 whole video, but I had a slight concern which
15 maybe would be allayed if I watched it again, at
16 any rate, about the search reference. I think
17 it's a good idea that you're telling people they
18 have to search, but I didn't get the sense that
19 somebody who didn't know anything would understand
20 that if you typed in P-i-n-t-e-r it might get a
21 refusal for P-i-n-t-a-r. So I thought there
22 should be a little bit more of a disclaimer about

1 the search process because it really makes the
2 search process sound earlier than it is in
3 reality. I don't know if it's possible to change
4 it, but I would at least if you can look at that.

5 MS. BERESFORD: Thank you for that
6 suggestion. We'll definitely look at it.

7 MR. JOHNSON: And it's the same issue
8 that we raised with the disclaimer on the website,
9 that searching PTO records is not all you need to
10 do.

11 MS. BERESFORD: I haven't looked at all
12 the videos. It's possible that we'll have a
13 separate video just on searching and that would go
14 into this more generically and give more
15 information. This was really to be an overview of
16 the system. Again we think our pro se -- we can't
17 tell them everything. We are not producing the
18 "Lawrence of Arabia" for trademark filings. We
19 want to give them something that people will
20 actually listen to and maybe not make mistakes.
21 But I understand your concerns about the
22 searching.

1 MR. FARMER: It sounds like that might
2 be a good opportunity to reference in one video
3 that there's another one.

4 MS. BERESFORD: Yes, that's possible
5 too.

6 MR. LOCKHART: In the video that tells
7 them even the quick overview of searching, they're
8 going to go that website and they're going to see
9 the disclaimer because that's where it is.

10 MS. BERESFORD: Yes.

11 MR. FARMER: We're about 3 minutes
12 behind which is fine. Let's take a 5-minute break
13 and we'll come back and chat with the CIO.

14 (Recess)

15 MR. FARMER: We're now going to our
16 discussion with the OCIO, so John Owens, we'll
17 turn the floor over to you.

18 MR. OWENS: Thank you very much and good
19 afternoon.

20 To let folks know, 2009 was a very good
21 year for us. We initiated over 62 infrastructure
22 modernization projects. I won't read them all of

1 here. Several of them were core to the system
2 development process and procedures developing here
3 in OCIO as well as core to the infrastructure of
4 the agency. On the first page I'll point out a
5 couple, establishing a system development
6 lifecycle by which we unilaterally manage our
7 projects. Of course, I have spoken before on how
8 important that was. Right down to the federal
9 desktop core configuration which we were several
10 years behind on. We completely rolled out FDCC
11 1.0; 3.0 is currently in formulation but we rolled
12 out 1.0 and I hope to catch up to version 3 before
13 they release a version 4 and we're on a good track
14 to do that.

15 We've also released FDCC 1.1 which
16 allows us to deploy a tool called the SCAP tool
17 which allows us to monitor our desktop environment
18 for deviations from that baseline as well as any
19 changes to the controls to allow us to lock down
20 the environment even further. We've employed
21 enterprise configuration management so that we
22 have tighter control over what we have and what

1 we've deployed. We're completed our
2 service-oriented architecture. The one on the
3 very bottom of the page is quite honestly one of
4 our largest successes. We have gotten to the
5 sixth phase of PTONet III deployment. This is the
6 complete redo of our internal network to be fiber
7 back channeled and that deployment only has two
8 phases left and we are ahead of schedule, so that
9 has been a very strong effort for my organization
10 which certainly affects all employees including
11 trademarks because it brings gigabit Ethernet to
12 the desktop, we're a little bit behind, but we're
13 very proud to see that continue.

14 Let's talk a little bit about trademark
15 next gen because that seems to be what people are
16 focused on. At a very high level we have eight
17 major tasks undergoing. I'll go through them one
18 at a time. The first is requesting public and
19 examiner employee input and this is being managed
20 by trademarks and we have been kept very closely
21 involved. I have really appreciated Lynne's
22 efforts in this area. I certainly would like to

1 thank Howard and his union for bringing us
2 employee feedback. And of course the public for
3 giving us what you all want because the product
4 that we build at the end of the day needs those
5 business requirements as the foundation so we
6 build what you want. I'm sure we will never be
7 able to make everyone happy and certain choices
8 will have to be made, but having all of that
9 information up front is critical to the success of
10 the program.

11 The trademark next gen task order was
12 issued as you both know. The receipt of that
13 study did take a small hit of about a week due to
14 snowmageddon you may have all heard about here in
15 Washington, D.C. It was received last Friday. I
16 have been spending my evenings reading through the
17 results of those two studies. They are to compare
18 and contrast our own knowledge and plans so that
19 we can properly formulate an adequate business
20 case with enough different points of view so that
21 we know the course that we're going on is the best
22 for not only the agency but for the public. This

1 is intimately part of what's called the Capital
2 Investment Decision process that the federal
3 government employs which is defined under the
4 Clinger-Cohen Act which just so happens to set up
5 the Office of the CIO. I am intimately involved
6 in that process due to my position, and that
7 Capital Investment Decision process of course has
8 a series of steps which are accommodated in a
9 document called the "Capital Investment Decision
10 Paper." It is the CIDP that you saw once upon a
11 time for the roadmap and you will again see for
12 Trademarks Next Generation which will give you the
13 overall guidelines of how much things are going to
14 cost, how long is it going to take, what are the
15 major moving pieces, what are the major
16 initiatives, and later we will flesh out the
17 details and the requirements.

18 That brings us down to the ITRB. The
19 senior leadership here at the USPTO will approve
20 that document, the "Capital Investment Decision
21 Paper" for moving forward. We will then use those
22 initiatives to work in parallel as we gather

1 requirements not only from our constituency
2 internally but also translating the business
3 requirements because trademarks had over the years
4 very well-documented their process. In fact, out
5 of all the processes that I've seen here at the
6 USPTO, theirs is the most completely documented in
7 very exacting detail. I believe taking that
8 detail along with the requirements generated by
9 the public and internally we can come up with a
10 good architecture and design as defined in the
11 CIDP so that we are ready to let a major contract
12 or series of task orders on a contract loose in
13 the beginning of the next fiscal year which is the
14 current point in plan. I'll stop here if anyone
15 has any questions. That was kind of a mouthful.

16 MR. LOCKHART: I take it then that you
17 anticipate having the requirements fully
18 documented and the system design and architecture
19 pretty well done by the end of this fiscal year
20 and you'll actually start constructing Trademarks
21 Next Generation in the next fiscal year, fiscal
22 2011. Correct?

1 MR. OWENS: With this plan of course I'm
2 always looking for ways to pull it in and we may
3 hit something that may delay some part of it.
4 It's not one big moving entity though. Breaking
5 it up into parts using methodologies to work on
6 parallel parts at the same time is certainly
7 something we're going to be looking at. The first
8 phase of any development effort is concept design,
9 architecture, requirements and prototyping so that
10 we may actually develop some prototypes this year.
11 We also have to get our clouded architecture and
12 hardware developed in- house so that we have a
13 place to actually do development. You have to
14 build a prototype system to build development on
15 here. That may all get done this year. In fact,
16 according to this we should get most of that done
17 this year.

18 MR. LOCKHART: I appreciate that.

19 MR. OWENS: We're not waiting. We all
20 wait until the end of the year and then a big bang
21 happens. This is lots of iterative. This is just
22 a 500,000 view of all of that.

1 MR. LOCKHART: I understand and I
2 appreciate that clarification. That's helpful.
3 Assuming that you do start building the system in
4 simple terms this fall, are you still on track you
5 think for about an 18-month timeline from there to
6 have it done or what's your projection?

7 MR. OWENS: Until we get the
8 requirements, I couldn't say. I know that Mr.
9 Kappos would like it done in 18 months. Lynne and
10 I have talked about this. But it's easy to say
11 something and sometimes much harder to actually
12 build it. Will something be done? Undoubtedly
13 something will be done. We hope to show some
14 positive results this year and progressing down
15 the path to the process we have defined before us.
16 But I am not willing to comment to a particular
17 date when I haven't read all of the requirements
18 yet. It's like build me a Space Shuttle. What
19 kind of Space Shuttle do you want?

20 MR. LOCKHART: I understand. I know
21 there are a lot of moving parts and you're still
22 gathering a lot of information that you'll need to

1 make more precise decisions. Realistically we're
2 probably looking at at least about 18 months from
3 this fall before you could roll it out? And it
4 could be longer?

5 MR. OWENS: I think that you will see
6 parts of it being developed as we go along and
7 parts of it employed and you will see smaller
8 improvements. In fact in my conversations with
9 Lynne and Lynne correct me if I'm wrong was to
10 show iterative progress moving forward so that
11 people can see things are getting done. I
12 wouldn't say you're going to wait to 18 months to
13 see something. How much of the project is done in
14 18 months I cannot tell you. The SIPIC document
15 that we're formulating now will certainly bring
16 like the roadmap did and all of you saw the
17 roadmap here which was a SIPIC document and saw
18 that it had stages. In the year we executed on
19 that very well. We hit all of our major
20 milestones. Even a couple of projects that were
21 slightly behind we caught up with at the beginning
22 part of this year. That will be the tool we use

1 to manage this program at a very high level and
2 you will see the same thing and that will bring
3 some depth and clarity. Also in each individual
4 segment, we had nine major initiatives in the
5 roadmap, let's say we have four or five in this
6 one, each one those four or five will have a set
7 of requirements, a complete set of documentation
8 and you will see them evolving over time and
9 integrate.

10 Let me tell you about the importance of
11 requirements. There are lots of studies that show
12 that requirements are the basis by which we will
13 succeed or fail right up front and we have
14 actually taken some steps to bring in requirements
15 experts from industry to train not only my
16 organization but trademarks and patents alike. I
17 know in our session before this one it was asked
18 how long was that training and it was about 5
19 days, but we have those folks on contract to come
20 back to help us at various stages along the way to
21 evaluate how we're progressing in gathering
22 requirements and translating them from business

1 requirements to technical requirements, so we're
2 very happy with the success of that effort.

3 Again I thank the folks both externally
4 that are providing us their input but also
5 internally our business unit and our employees who
6 Howard represents of course are providing us
7 feedback as well. That's being handled by
8 trademarks. So if you follow, we're gathering
9 external requirements, internal requirements, and
10 then of course we have the business processes
11 documentation that I talked about earlier which
12 feeds into trademarks and trademarks is going to
13 work to formulate the business requirements. CIO
14 will work with trademarks to take the business
15 requirements and formulate those into technical
16 requirements so that we mutually agree on what
17 we're building, how we're building it and why.

18 The responsibility for the business
19 requirements is of course trademarks and finally
20 the OCIO's is my own, but together we will work to
21 make sure that these are defined. We use a
22 rational suite of products here built by IBM to

1 track requirements and those requirements are
2 tracked. They track every business requirement to
3 a series of technical requirements. It's not
4 necessarily a one-to-one mapping. We will make
5 sure along the way that we don't lose anything, or
6 if we make a choice to delay something that it is
7 well documented so that we can go back to it in
8 the future.

9 Part of the processes that I developed
10 over this last part, part of the systems that I
11 have employed, are all the foundational things,
12 configuration management, change management, bug
13 tracking, documentation, all of those best things,
14 the SDLC, the software development lifecycle that
15 I've told you about, all laid the foundation so
16 that my organization could handle a project of
17 this magnitude and have an ability to succeed. So
18 we're in a good position here.

19 I was also asked to provide some
20 information about hiring. The authorized ceiling
21 level for this year for me was 474. My overall
22 number is 549. That has not changed, but due to

1 budgetary constraints I can hire up to that
2 number. I currently have on board 454 unless
3 someone has decided to leave me in the last 2
4 weeks I don't know about yet, but I have been
5 experiencing some retirements. There are people
6 who are deciding to leave. I have the ability to
7 hire 29. Three of my senior executive service
8 positions are open, 9 architects, engineers and
9 developers, 13 technical managers and 4 program
10 analysts are among the list that I've discussed
11 with Mr. Kappos to fill first. Good leadership in
12 contract management is on the top of my list. So
13 much of our work here via contractor that I wanted
14 to bring in or promote those individuals who have
15 those skill sets in the organization.

16 I also have details which I'm very
17 grateful for. Two of the three detailees have
18 returned to trademarks rotating in Ron Sussman to
19 replace Chris Donenger as I guess my special
20 assistant for trademarks. They keep them
21 intimately abreast of what's going on. I have
22 also been assured by Debbie and others that as

1 soon as this project kicks off in a rapid manner
2 that more trademark help would be oriented toward
3 working on trademarks next gen which I would be
4 very happy to take.

5 Looking forward to some of the other
6 initiatives Mr. Kappos has asked us to look into
7 include a single laptop program. We issue more
8 computers, this is hardware in general both
9 desktops and laptops than I have employees. In
10 other words, some employees have both a desktop
11 and a laptop. That's double the licensing, double
12 the software licensing, double the cost, double
13 the maintenance. Because of that, many companies
14 have gone to a single laptop per employee program
15 which is relatively simple unless you're here.
16 This helps us get around some of the things if you
17 remember in the roadmap. We have an aging desktop
18 hardware situation where most of our computers are
19 between 3 and 5 years old which is industry
20 standard for end of life though some folks have
21 slightly older than that that they're using
22 personally. I'd like to keep the hardware here

1 between a 3- and 5-year lifecycle. We need to
2 reduce those costs. We need to adopt Windows 7.
3 I have had conversations over at NSA and they've
4 worked very closely with Microsoft to improve the
5 security of that project and Windows 7 will be
6 where FDCC 3.5 and 4.0 come from and we are trying
7 to move the government in that direction. Of
8 course we also need a way to deploy the baselines
9 that we created last year. We created three
10 baselines, a trademarks baseline, a patents
11 baseline and of course a generic baseline for the
12 rest of us who don't do examination or need to use
13 those tools, but paying contractors to go touch
14 20,000 pieces of hardware to put the new baseline
15 on isn't cost-effective. What I can do is put
16 those baselines on using a vendor to deploy new
17 hardware and I'll save us a lot of money that's
18 not waste.

19 MR. FARMER: Just to everybody is clear,
20 when you say baseline I think you're talking about
21 three different images?

22 MR. OWENS: Computer software images

1 that contain all the software related to that
2 segment.

3 MR. FARMER: One for the trademark
4 folks, one for patents and one for everybody else?

5 MR. OWENS: Yes.

6 MR. FARMER: Can you talk to us a little
7 bit about what your timeline is for doing
8 everything that you've got under the single laptop
9 program?

10 MR. OWENS: We are currently in the
11 evaluation stage. Next year I have budgeted in
12 the president's budget one-third of what I would
13 need to get the replacement program going. Not
14 that that would affect trademarks in general
15 because you do have funding on your own, but for
16 the rest and of course the core infrastructure to
17 maintain and operate it certainly also needs an
18 upgrade. Unfortunately during our initial testing
19 that trademarks was more than happy to assist us
20 with we found that our applications because they
21 are so old do not run properly on Windows 7 and
22 this is a problem. Microsoft is going through

1 extraordinary measures to get people to upgrade to
2 Windows 7 including working on their compliers and
3 several software relation packages to keep current
4 software products working on Windows 7 and we are
5 going to look into what it will take to make the
6 minimal number of changes necessary and we'll
7 document all that, I am not quite done with that
8 yet, to upgrade our current pieces of software to
9 manage on that operating system because if we are
10 18 months or more beyond the start of fiscal year
11 2011 before we can deploy trademarks next gen, I
12 would be in the 7- or 8-year timeframe for much of
13 our hardware here and cannot wait that long. So I
14 want to keep the examiners up to date with their
15 examination software but also the tools that they
16 use and I need to get them on the proper baselines
17 with the proper security controls so having a
18 little bit of overlap where we go a little bit
19 back and touch the applications that we have does
20 make sense and we will be performing the rest of
21 the analyses on those tests as we are right now
22 over the next few months. I'm hoping to get that

1 all locked down of what we have to change by
2 midsummer and then have a plan ready to go so that
3 we can start utilizing some of that money that's
4 in the president's budget next year for
5 deployment.

6 MR. FARMER: So that you think you'll
7 have these compatibility issues with Windows 7
8 worked out by midsummer, late-summer or something
9 like that?

10 MR. OWENS: Documented with a plan and
11 then the execution of the plan.

12 MR. FARMER: Then you're going to have
13 money to do about one-third of your laptop
14 replacement next fiscal year?

15 MR. OWENS: That is in the budget for
16 the next fiscal year, yes.

17 Let's a little bit about data.gov and
18 our efforts with Google. The president gave us 1
19 year to deliver all of the data here at the USPTO
20 that's publicly available to the general public in
21 bulk. We did sell to recoup fees of actually
22 processing and putting it on disk and so on some

1 data some of which was trademark's and because of
2 the very short timeframe and the need to modernize
3 our systems, we didn't have the ability to host it
4 today. As you know, I have talked about in the
5 past the inability to meet the demand even for our
6 currently publicly available systems most in
7 public and private on the patent side but all the
8 same it's all the same. So hosting large volumes
9 of data for download for the general public just
10 wasn't going to work for us at this point in time
11 so we searched out an organization who is
12 delivering content who had the ability to scrape
13 our websites efficiently working with us in
14 partnership without crashing our systems and that
15 was already doing something for free and of course
16 Google has Google Patents, not necessarily Google
17 Trademarks, but we did engage Google and a couple
18 other companies in a fact- finding conversation
19 and realized that Google would be the stopgap
20 measure until we redo our systems, and they're
21 willing to do it for free. So we are going to be
22 delivering them all of the bulk data including the

1 bulk data that we currently sell for trademarks to
2 them to host for anyone to download which means
3 anyone will be able to manipulate it. Just so you
4 know, that will be the trademark daily XML
5 applications -- TTAB which has current
6 subscription number EIP-5905T-OL. I'm sure if you
7 orders those that makes sense to you. And
8 trademark daily application image 24 hour box XML
9 tif jpeg EIP-5909T-OL. So they will be hosting
10 those for us for general public download for free
11 very late in March or early April.

12 Elearning is an initiative Mr. Kappos
13 had us kick off. It's an initiative to work with
14 a single company to host all of our training that
15 would provide training to anyone the USPTO deems
16 needs the training and our international partners,
17 that's internal and international partners, for
18 free but be able to charge the general public for.
19 They're willing to enter this conversation for
20 free so they're going to host all of our content
21 and they are going to deliver all of our elearning
22 classes, and then of course if someone were to

1 take it from the outside because they needed
2 training, report back to us whether or not the
3 training had happened. This is a good deal for us
4 concerned. We don't have the bandwidth nor the
5 systems to store or host the data so this is a
6 brand-new initiative. I'll provide further
7 timelines as I have them.

8 Just as a general note, our public
9 search facility in this building will have a small
10 reduction in hours. It's normally open 8:00 to
11 8:00. After the 6 o'clock hour we funded all of
12 that support through a contract. We are going to
13 now be open 8:00 to 6:00. We have just announced
14 that. That reduces 2 hours and will save us
15 \$250,000 a year. We are looking at an effort to
16 keep the doors open but no staff on board for the
17 last hour or 2 hours at the end of the evening for
18 those folks so that the hours would remain the
19 same, 8:00 to 6:00, but doors will be closed at
20 8:00 p.m. and we're trying to find out if we could
21 do that legally and safely to accommodate the
22 folks who work out of that facility for the

1 public.

2 MR. FARMER: John again I want to thank
3 you and Scott and the rest of your staff for
4 chatting with us yesterday at length and giving us
5 this very comprehensive briefing today. I know
6 you've got a lot of tough challenges in terms of
7 legacy systems and financial constraints, but I
8 certainly think you're doing a fine job with what
9 you've got and I want to commend you for that. We
10 at the TPAC got a pat on the back for helping put
11 together the preliminary list of external
12 requirements and I want to commend the Patent and
13 Trademark Office, especially the trademark
14 operation and Howard and his union members for
15 getting together the requirements for the
16 examining attorneys and the internal folks. I'm
17 so happy to hear that you're comfortable with that
18 process and you feel like you're getting the
19 external and internal requirements or will in a
20 comprehensive, systematic and thorough way because
21 that's absolutely key I think for Trademarks Next
22 Generation, so I think we are all so pleased that

1 that process is going well. I've asked most of my
2 questions as we went along and you certainly
3 answered those.

4 This is not a really so much as a
5 comment and I'm not sure if it's something that
6 your office should address or maybe the OCFO, but
7 we know there are going to be considerable costs
8 going to our standard laptop configurations to
9 doing the other things that you're currently doing
10 and certainly Trademarks Next Generation is going
11 to have a considerable cost. One thing that would
12 be of interest to TPAC and probably the public at
13 large would be the savings to be realized by
14 leveraging this technology and fixing problems and
15 going to the new system in a cloud computing
16 environment. So you might want to coordinate with
17 OCOF and at some point, maybe the next TPAC or the
18 one after that, if we could get some information
19 about the savings to be realized because I think
20 when people look at just the cost, that's only
21 part of the picture and we are going to be saving
22 money too. So I think that would help us go

1 through the cost-benefit analysis and see exactly
2 the actual cost and the savings to be realized.
3 That would be helpful.

4 MR. OWENS: Actually as part of the
5 Capital Investment Decision process and the
6 "Capital Investment Decision Paper," return on
7 investment and cost analysis as you saw with the
8 roadmap is in there including savings or estimated
9 savings. So we will do some of that analysis
10 during that process and of course will be happy to
11 provide that when it's complete.

12 MR. FRIEDMAN: I would just quickly add
13 so I don't incur the wrath time-wise of John
14 Farmer that particularly in view of John's
15 gracious comments and Debbie's gracious comments
16 as well as Tim's, I too want to commend our
17 bargaining unit for responding and giving such
18 good input regarding the survey. I think about a
19 third of our bargaining unit responded, obviously
20 a very high rate, and secondly, I also want to
21 commend in particular ecommerce union
22 representatives for compiling the report and

1 coming up with such a comprehensive and very
2 readable report. So thanks for all the comments.

3 MR. OWENS: It was fine work and well
4 appreciated by my office. If I have time, sir,
5 just one last thing. Earlier today you were
6 talking about the TMEP and that a couple of years
7 ago something was submitted that was not
8 successful. I can tell you what's happening with
9 the patent document. We are taking that document
10 and marking it up in XML and we are going to
11 create a standard template using readily available
12 commercial products to do the formatting online
13 whether it's in a wiki or just online is to be
14 talked about yet. But we do have a plan in place
15 and I'll be happy to engage trademarks on that
16 effort just so you know we do have a plan to
17 facilitate the PMEP and we'll work with trademarks
18 to get what they need.

19 MR. FARMER: That sounds wonderful.
20 Thank you for your presentation, John. Are there
21 any other questions or comments from TPAC members
22 for the CIO. How about from folks who are sitting

1 in? I think we're doing with that segment then.

2 Thank you very much. We appreciate it.

3 Now the floor is open generally. Does
4 anyone here from the public have any comments or
5 issues they want to bring forth to TPAC? Not
6 hearing any, before we adjourn TPACers, if I could
7 just huddle up with you for a second after we
8 adjourn, I have a proposal for how we finish out
9 our day with Elizabeth and Kathryn having to
10 depart because their flights were getting wiped up
11 headed back up north. So if you could stay in
12 place, but everyone else, thank you for coming.
13 We appreciate it. Thanks for your input. And
14 thanks to the folks at the office for working with
15 us. We appreciate it.

16 (Whereupon, at 12:47 p.m., the
17 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, Carleton J. Anderson, III do hereby certify
4 that the forgoing electronic file when originally
5 transmitted was reduced to text at my direction;
6 that said transcript is a true record of the
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8 counsel for, related to, nor employed by any of
9 the parties to the action in which these
10 proceedings were taken; and, furthermore, that I
11 am neither a relative or employee of any attorney
12 or counsel employed by the parties hereto, nor
13 financially or otherwise interested in the outcome
14 of this action.

15 /s/Carleton J. Anderson, III

16 Notary Public # 351998

17 in and for the Commonwealth of Virginia

18 My Commission Expires: November 30, 2012

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