

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, February 11, 2011

1 PARTICIPANTS:

2 TPAC Members:

3 JOHN B. FARMER, Chair

4 JAMES G. CONLEY

5 MARY BONEY DENISON

6 TIMOTHY J. LOCKHART

7 KATHRYN B. PARK

8 DEBORAH HAMPTON

9 MAURY TEPPER

10 ANNE CHASSER

11 Union Members:

12 HOWARD FRIEDMAN

13 RANDALL P. MYERS

14 HAROLD E. ROSS

15 Also Present:

16 DEBORAH COHN, Commissioner

17 DANA ROBERT COLARULLI  
Director, Office of Government Affairs

18 ANTHONY P. SCARDINO  
.....Chief Financial Officer

20 JOHN OWENS  
Chief Information Officer

21 GERARD ROGERS  
TTAB Chief Judge

22

- 1 PARTICIPANTS (CONT'D):
- 2 WILLIAM COVEY  
Office of Enrollment and Discipline
- 3 .....CYNTHIA LYNCH  
Administrator for Examination Policy
- 4 HARRY I. MOATZ  
Office of Enrollment and Discipline
- 5 ERIK M. PELTON  
Erik M. Pelton and Associates

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

2 (9:00 a.m.)

3 CHAIRMAN FARMER: If everyone can take  
4 their seats, please. I'd like to welcome  
5 everybody to the TPAC meeting. My name is John  
6 Farmer and I chair the committee.

7 I know this is old hat to perhaps  
8 everybody in the room because I look around the  
9 room and see so many familiar faces, but just in  
10 case someone is new -- or for folks watching at  
11 home -- this meeting is being webcast and it's  
12 also being transcribed. And just fair warning,  
13 you may appear in a public broadcast and your  
14 words may be captured and all of that.

15 During our presentation today, what  
16 we're going to do is come on through the program  
17 and with each part, we will first have our guest  
18 speak for a period of the time that we have  
19 allocated to them. Generally, we'd try to keep  
20 that to about a fifth of the time, so that we have  
21 time for questions. And the protocol that we  
22 follow is, after that person gives their initial

1 presentation, then I turn to whoever is the  
2 champion of that issue on TPAC, for that person to  
3 ask any question they may have, and have a  
4 dialogue. Then I open it up to all of TPAC.  
5 Then, as time permits, I open it up to people who  
6 are attending here in person, just because I  
7 figure that if you take the effort to come show up  
8 in person, you should be next on the pecking  
9 order. And after that, we take any questions or  
10 perhaps comments, if they're appropriate, that  
11 come in by e-mail.

12 Speaking of that, for those of you who  
13 may be watching at home or elsewhere within this  
14 building, right here, via webcast, you can send us  
15 questions or comments. The e-mail address to do  
16 so is asktpac@uspto.gov. And if they get here in  
17 time for the segment on which you are asking a  
18 question or comment, the protocol is that they're  
19 brought up to me and if I can work them in, I do  
20 so. And that way you have a way to participate  
21 even if you're not here.

22 Those of you who know me will not be

1 surprised by this: We try to start on time and  
2 finish on time since I know everyone here has  
3 things they need to get to.

4 We have three new members of TPAC and we  
5 welcome each of them and are thrilled to have them  
6 back on the -- to have them on the committee and  
7 to be up to full staff or full strength.

8 We have Deborah Hampton, who's right  
9 over here to my left. She is the IP manager at  
10 the Limited Brands, including Victoria's Secret,  
11 and Deb has agreed to serve on our Trademark  
12 Operations Subcommittee. So, Deb, welcome. It's  
13 great to have you.

14 Then we have Anne Chasser, who is a very  
15 familiar face to folks here at the USPTO. She's a  
16 former commissioner of Trademarks, so it's not  
17 been that long since she sat in this chair and now  
18 she's sitting in that chair. And she also is the  
19 associate vice president for intellectual property  
20 at the University of Cincinnati, and Anne has  
21 agreed to serve on the finance subcommittee. And,  
22 Anne, welcome back and we're thrilled to have you

1 here.

2           And then, Maury Tepper. It's Groundhog  
3 Day and Maury Tepper is back again for his third  
4 term on TPAC. I believe he is now starting  
5 approximately his sixth or sixth and a half year  
6 on TPAC. Maury is a partner in the law firm of  
7 Tepper and Eyster in North Carolina. And in  
8 addition to bringing back great historical  
9 knowledge, Maury has agreed to serve as a member  
10 of our Information Technology Subcommittee. And  
11 so, welcome back, Maury. You outrank all of us.

12           And just for a reminder, the other  
13 members of TPAC -- and I won't go through the  
14 bios, so we can get on with things that are here  
15 -- are Kathryn Park, Mary Boney Denison, Tim  
16 Lockhart, James Conley, Makan Delrahim -- who  
17 couldn't be here today -- and our union  
18 representatives, Howard Friedman, Harold Ross, and  
19 Randall Myers.

20           And so, with that, we will just dive  
21 right on into the agenda. Our first visit is with  
22 Dana Colarulli, who I see down here, who's the

1 director of the Office of Governmental Affairs.

2 And so, welcome, Dana, and the floor is yours.

3 MR. COLARULLI: Morning. Thanks, John.

4 Good morning, TPAC members. I'm happy to start  
5 off your agenda here, but I know you have a packed  
6 agenda, so I'm going to give a little bit of an  
7 overview of the issues that are facing the agency  
8 legislatively.

9 Let me get  
10 to the slides here. The number one issue being a  
11 continual issue for PTO, our funding. And that  
12 affects all areas of the office. It affects all  
13 areas of performance for the office, and a  
14 challenge that we've been struggling with for some  
15 time. This year is no different. We are  
16 currently funded under a continuing resolution.  
17 You'll hear more about this later today, when Tony  
18 Scardino comes in, but I wanted to give you a  
19 sense from the legislative side, and some of the  
20 things that we're doing to try to make the case  
21 for funding for the agency.

22 We're currently under a continuing



1 resolution for the current fiscal year, FY '11.  
2 We expect for the next fiscal year, FY '12, that --  
3 the President will unveil his budget next week. So,  
4 very soon here we're going to be talking about two  
5 different budgets at the same time. It's going to  
6 be a challenging legislative discussion, but the  
7 main points are the same.

8 In order to address  
9 some of the problems that the agency has, the agency  
10 needs access to the fees it collects. And  
11 something that's a bit foreign in Federal  
12 budgeting, we need to be able to budget on a  
13 multi-year basis. Our team here -- our CFO shop and  
14 Patents and Trademarks Operations -- do a very  
15 good job of anticipating what their funding needs  
16 are going to be, not just this year, but the next  
17 few years. I think nowhere is that more the  
18 case right now than on the Patent side where we're  
19 trying to address a significantly large backlog and  
20 unnecessarily pendency. We really need to know  
21 where our money's going to come from and what  
22 money we're going to have three years from now, as

1 that side of the shop is doing fairly significant  
2 hiring. So, I want to start out with that.

3 On the legislative front, I'll hit a  
4 couple of things, and why don't I just flip  
5 through the slides a little bit and then John will  
6 get to the other couple of points on the agenda  
7 that you wanted to talk about.

8 I kind of just hit some of  
9 this, but this is a slide I use when I talk about  
10 the challenges in front of PTO because really our  
11 legislative challenges stem directly from the  
12 operational goals that we're trying to achieve. I  
13 mentioned USPTO funding is the top one that faces  
14 the agency. Patent reform legislation, we're now,  
15 in our fourth Congress for this. Where it  
16 affects the Trademark side is our efforts to acquire  
17 a fee-setting authority for the agency.

18 Now, this would affect both the Patent  
19 and the Trademark side. A critical  
20 piece for PTO is what we call the  
21 sustainable funding model so that we can think  
22 about our funding in a multi-year way.

1           Now, beyond that there's some other  
2 active legislation that I'll talk about in a  
3 second. On the Trademark side there's only a few  
4 substantive things, but we should hit them here.

5           The difference between this Congress and  
6 the last Congress is leadership. The House  
7 switched parties, so Lamar Smith, who was  
  
8 previously the Chairman -- and most recently the  
9 ranking member -- is again the Chairman. On  
10 patent reform, this is very significant for us  
11 because he really did start a lot of that  
12 discussion and I think he has an interest in  
13 finishing it this Congress. I think that's good  
14 for us. We'd like to see legislation pass. But  
15 he did something that didn't exist last Congress;  
16 he recreated an IP subcommittee with  
17 Representative Goodlatte as the chairman and Mel  
18 Watt from North Carolina as the ranking member.

19           What this means for us is that there's  
20 another body for us to go up to and talk to about  
21 the issues facing the Office. There are  
22 opportunities there. There's some challenges.

1       It's a little bit more bureaucracy for us  
2       to work through the committee structure. But it  
3       also provides a little bit more time and attention  
4       to our issues. And as for both Chairman Goodlatte  
5       and Ranking Member Watt, we've had good  
6       relationships with in the past and they are aware  
7       of many of the issues facing the office.

8                 On the Senate, things are pretty much  
9       the same. The chairman remains Senator Leahy. He  
10       continues to be the chairman of the Judiciary  
11       Committee in the Senate. Senator Chuck Grassley,  
12       who was a member of the committee previously, is  
13       now the ranking member, with Senator Sessions going off  
14       to another committee leadership place. But  
15       Senator Grassley had been involved in patent  
16       reform in the past, had been involved in some of  
17       the other issues. The Senate has been the moving  
18       party, I think, on some other legislation outside  
19       of patents. Rogue websites is one of them,  
20       addressing online counterfeiting. And Senators Grassley  
21       and Leahy have both been involved in the  
22       development of that legislation.

1                   Introduced thus far in the 112th  
2 Congress: The Cuba Reconciliation Act -- which  
3 some of you may be familiar with -- was  
4 reintroduced, very  
5 recently, so we'll expect there to be some action  
6 on that bill. Other bills we know are coming up  
7 that may have some trademark impact: Performance  
8 rights, really a copyright bill that impact our  
9 world; rogue websites; Combating Military  
10 Counterfeits Act, that's an effort that Senator  
11 Whitehouse from Rhode Island approached us on last  
12 year, saying he wanted to address this area.

13                   Those have not been reintroduced, but  
14 they are the things that we're watching. And I  
15 already mentioned, not on that list, but patent  
16 reform to address the funding issues.  
17 I included this in the slide  
18 deck, but, again, you're going to hear it from  
19 Tony Scardino a little bit later today, and he'll  
20 give you a more up-to-date view of what our  
21 current funding situation is and what we've asked  
22 for up on the Hill. We're in this situation where

1 we have multiple continuing resolutions. We've  
2 been making the case that PTO really should be  
3 treated separately. We're 100 percent fee-  
4 funded. No taxpayer dollars at all. So even all  
5 of the gains that the new leadership up on the  
6 Hill want to make in reducing the federal budget  
7 overall, PTO really shouldn't be impacted. And  
8 reducing artificially our funding level really  
9 harms the agency and really undercuts the  
10 overriding goals to improve the economy --  
11 certainly on the Patent side and the Trademark  
12 side -- to issue these rights in a timely way and  
13 actually have them working in the marketplace.

14 We're continuing to try to make our case  
15 with our appropriators, our authorizers and, in  
16 fact, to anyone else who will listen. We've been  
17 spending much more time on the Hill on that issue  
18 than anything else. So that's kind of the  
19 legislative overview that I thought would be  
20 useful to TPAC.

21 John, there are a couple of other issues  
22 on the agenda that you wanted to talk about,

1 particularly issues that the committee raised in  
2 their annual report for the last couple of years  
3 to assist the operations of the TPAC, and I wanted  
4 to address both of those.

5           There are two suggestions in the annual  
6 report. One was the recommendation that TPAC be  
7 restructured, the  
8 restructuring specifically going to issues of  
9 appointments of the chair and potentially a vice  
10 chair or chair-elect. The second was an issue of  
11 timing and the timing of the overall limit that  
12 members have to spend on Advisory Committee  
13 activities.

14           Now, I know there's been a number of  
15 activities, John. I know you've had a couple of  
16 conversations with the Director as well trying to  
17 work through these issues. I know our legal  
18 counsel has been looking at these issues to see if  
19 there's any flexibility.

20           I think, unfortunately,  
21 there's two answers to this question. Number one,  
22 the structure which this advisory committee and

1 the TPAC and the PTO are authorized under is a  
2 structure that's similar to other advisory  
3 committees across the government. So dramatic  
4 changes to certain elements of that charter are  
5 difficult unless you're going to change the  
6 charters of all the other advisory committees  
7 across the government. So, surely from a  
8 legislative prospective, it's a hard push to make  
9 the case that one advisory committee among all the  
10 others in the federal government should really  
11 have very different rules. And that goes to both  
12 of these.

13           However, on the restructuring, I think  
14 there's places we can probably work together. At  
15 the end of the day, the timing of the appointment  
16 of members is at the discretion of the Secretary,  
17 and certainly we can work with you and work with  
18 the Department of Commerce to make those  
19 recommendations in a timely manner, and we'll do  
20 that. I think the harder issue, John and members,  
21 is really the counting -- changing the limit, the  
22 60-day limit for time spent. And that does go to



1 the same model that the other advisory committees  
2 are across the government and it does go to  
3 ethical concerns.

4 So when the statute was written, there  
5 was a decision to have a limit. Sixty days was  
6 the limit decided to avoid any  
7 questions of ethical concerns about members that  
8 are on the Advisory Committee -- members that are  
9 practicing and actually because they're practicing  
10 they can advise the agency well -- of having undue  
11 influence in front of the agency. So that when it  
12 was chosen, that limit was applied across other  
13 advisory committees across the government.

14 So I think that one is a bit more  
15 difficult. I'm happy to continue to look at this.  
16 I know our OGC has already looked at this quite a  
17 bit, but in terms of the read that we have  
18 of the proposals, I think both of them are a bit  
19 difficult. The first one, we can  
20 continue to talk about and work with TPAC.

21 CHAIRMAN FARMER: Okay. Thank you,  
22 Dana. I appreciate it.

1 MR. COLARULLI: Sure,

2 CHAIRMAN FARMER: On the reforms that  
3 TPAC has requested, I won't go through all of them  
4 because we're short on time. I don't doubt what  
5 you say and I know that you're speaking for the  
6 leadership here. I have spoken to a lot of other  
7 folks, including a member of TPAC who's a real  
8 expert on affairs on Capitol Hill, and I don't get  
9 the same feedback that it would be that difficult  
10 to accomplish because it just makes so much sense.

11 And I will tell you that TPAC could  
12 really use all of the assistance that can be  
13 provided because the current system for the way  
14 our terms are presently spread out though the year  
15 and other things you put in the report is just  
16 broken. And we really need help and we really try  
17 very hard on TPAC to give our all, to help the  
18 office as much as we can. And we are inhibited by  
19 this. And so, we just call on the leadership to  
20 just maybe reconsider their position and if they  
21 can give us support in the future, we'd really  
22 appreciate it there.

1           But speaking of supporting you all, I'll  
2       turn to my other thing and that is -- I say this  
3       at every meeting, it seems -- but it has been the  
4       continual and unanimous position of TPAC that the  
5       office should be allowed to keep all of its fees.  
6       And that the office should be given, in  
7       conjunction with being able to keep all of its  
8       fees, fee- setting authority, so that it can plan  
9       for the future.

10           I've said it so many times that I won't  
11       give the whole speech this time. I'll just add  
12       that TPAC is happy to help in any other way on  
13       that issue that we can. My imagination has run  
14       out. I don't know of anything to do other than to  
15       put it in an annual report and to continue to say  
16       it at these meetings, but if anyone in the PTO  
17       leadership can think of any other way in which  
18       TPAC can be brought to bear to try to influence  
19       this decision, we're eager to serve because we  
20       think it's imperative that it gets done.

21           And so with that, Dana, thanks for your  
22       time and thanks for coming to speak with us. Do

1       you have anything else?

2                   MR. COLARULLI: I have nothing else  
3 unless other folks do, but I'll make it a point to  
4 update this body for other legislation certainly  
5 that comes up, certainly on the funding as well.  
6 Possibly at the next TPAC meeting, you  
7 might consider having Tony Scardino and I together  
8 because we really do feed off each other.

9                   CHAIRMAN FARMER: Okay.

10                  MR. COLARULLI: I know that Tony's  
11 coming here about 11:00 today, so I'm --

12                  CHAIRMAN FARMER: Maybe we'll do --

13                  MR. COLARULLI: We're seamless in our  
14 presentations.

15                  CHAIRMAN FARMER: Maybe what we'll do is  
16 put your presentations back to back, so you can  
17 sort of mesh in the middle. Any other questions  
18 or comments for members of TPAC on this? Maury?

19                  MR. TEPPER: Thank you, John. Just a  
20 quick question.

21                  CHAIRMAN FARMER: Sure.

22                  MR. TEPPER: Because this is indeed a

1 continual frustration and an ongoing issue. Are  
2 you aware -- we are somewhat unique in being a  
3 user-funded agency?

4 CHAIRMAN FARMER: Yes.

5 MR. TEPPER: Are you aware of any other  
6 examples that we may look to or consider in the  
7 government of agencies that are supported by their  
8 customers, where their funding comes from outside?  
9 Just for our ability to perhaps study and look at  
10 how they're treated and how they're managed.

11 MR. COLARULLI: Sure. There really  
12 isn't any other good example is the answer. The  
13 SEC is probably the closest where all of their  
14 funding does come from the fees that they collect.  
15 There is multiple other fee-funded programs  
16 throughout the government, but they don't fund the  
17 full operations of an agency.

18 You know, PTO really is unique, as you  
19 say, in that way from the rest of the government.  
20 There's a number of other things that make PTO  
21 unique in terms of its funding structure. And  
22 that goes towards things like the PTO paying for

1 retirement, contributions to the federal  
2 retirement. PTO having direct budget authority  
3 outside, with Commerce, but also directly within  
4 the government, to OMB. There's a lot of things  
5 that were added to our statute that makes us a bit  
6 different. Some of these provisions came from a  
7 discussion before the American Inventors  
8 Protection Act in 1999 to actually discuss whether  
9 PTO should be more of a government corporation.  
10 Those proposals never went forward, but there are  
11 some features that make PTO look more like that.

12           So the answer is, there really isn't.  
13 There's been, from my count -- both from outside  
14 the PTO and within -- some eight or nine different  
15 proposals over the last decade to create a  
  
16 revolving fund for the PTO. To take the PTO off  
17 budget -- a term that used a little inaccurately,  
18 but essentially, taking PTO a little further  
19 outside the appropriations process, so that fees  
20 just flow directly to the agency.

21           And a number of those have failed for  
22 different reasons. I think we'll see one of those

1 proposals at least come to the floor of the Senate  
2 from Senator Coburn, I expect, that would create a  
3 revolving fund. And to the senator's credit, it  
4 tries to hit that balance of keeping PTO within  
5 the appropriations process, ensuring that the PTO  
6 is subject to oversight, but also ensuring that  
7 those fees collected do go directly to the agency.  
8 And the administration doesn't have a position on  
9 that proposal, so it's a creative one certainly,  
10 and trying to hit that balance, as I said. We'll  
11 see what happens.

12 The answer is no.

13 CHAIRMAN FARMER: Dana, thank you.

14 MR. COLARULLI: Sure.

15 CHAIRMAN FARMER: I'm going to go ahead  
16 and move us on to the next segment, just so we can  
17 stay on schedule. Thank you for coming to visit  
18 with us. I look forward to seeing you on June the  
19 3rd. Our next public meeting, by the way, is on  
20 June the 3rd, in case that wasn't obvious.

21 Now we turn to Debbie Cohn and we  
22 welcome her to the big chair. She's been

1 commissioner of Trademarks for a while, but this  
2 is her first time in that role with TPAC. So  
3 congratulations again and welcome and the floor is  
4 yours.

5 COMMISSIONER COHN: Thank you very much,  
6 John. Yes, I've been commissioner for almost 60  
7 days now. Well, actually, not quite, maybe 40  
8 days or something like that. And it's been a  
9 great experience working with wonderful people  
10 and, of course, working with TPAC.

11 The first item is a discussion regarding  
12 the trademark examining attorney's answering the  
13 phone when called and, you know, this, of course,  
14 relates to the broader topic of customer service.  
15 And I do want to say that customer service is  
16 really emphasized in our organization. It's in  
17 the Examining Attorney Performance Plans in  
18 various forms and, in fact, there is a requirement  
19 within performance plans that examining attorneys  
20 return telephone calls within either one -- either  
21 the same day or the next business day, depending  
22 on when the call comes in. And so we do take it



1 very, very seriously.

2 That said, I think we have to recognize  
3 that there are times during the work process --  
4 during the examination process where interrupting  
5 yourself and picking up the phone is just not  
6 practical. It breaks concentration, and anyone  
7 who does legal work or other types of work can  
8 certainly understand this. So, you know, we want  
9 to strike a balance between suggesting good  
10 customer service and lots of phone contact, which  
11 we know people want, and allowing the examining  
12 attorneys to do their jobs in the most effective  
13 manner. So I'll just open the discussion with  
14 that.

15 CHAIRMAN FARMER: Sure. We on TPAC had  
16 a good visit with you on that yesterday and a  
17 little chat about it, and I think it's the sense  
18 of TPAC that we agree that it's not anything that  
19 needs a formal regime or an office hours regime or  
20 anything like that, in that you have a  
21 professional examining corps and it will just be a  
22 matter of continually chatting with your examining

1       corps about best practices and customer service  
2       and professionalism. And we know that you do that  
3       frequently already, so it's not anything that you  
4       all have fallen down on, and that that will  
5       continue.

6                   And that we realize that it's a  
7       two-sided deal and that we on the bar side have  
8       tried to make ourselves available to examining  
9       attorneys, also. And I think a couple of the  
10      talking points that came out of yesterday are that  
11      when, you know, an examining attorney calls back,  
12      they should aspire -- you know, you can't be  
13      perfect to call back during the office hours of  
14      both themselves, obviously -- they're in the  
15      office -- but the person they're returning the  
16      call to. We know that that's the point that will  
17      be talked about, anyway. And that both sides of  
18      the deal -- those on the outside and those at the  
19      PTO -- should be very receptive and perhaps  
20      proactive to using e-mail to set specific times to  
21      chat, so neither side has to waste time chasing  
22      the other; so that both sides, the examining

1 attorney and the outside -- either pro se person  
2 or professional -- can be efficient.

3 And we know that you run a very tight  
4 ship on these regards and we'll try to get the  
5 word out to our side of the deal and we think that  
6 will be the path forward. And I think, for the  
7 time being, we no longer seeing as a championed  
8 issue. You know, if an issue comes up, of course,  
9 we'll have a dialogue in the future -- like we  
10 always do -- but for right now we can consider the  
11 issue addressed and appreciate your attention to  
12 it.

13 COMMISSIONER COHN: Great. Thank you,  
14 John. And I guess that -- I'm not sure whether  
15 your comments also cover the second issue, which  
16 dealt with returning phone calls during regular  
17 business --

18 CHAIRMAN FARMER: I covered it on my  
19 end. I don't know if you have anything else.

20 COMMISSIONER COHN: No, nothing else on  
21 that. We try to communicate that concept. People  
22 live and work in different time zones and

1 examining attorneys should be aware of that when  
2 they're returning phone calls and I think, for the  
3 most part, they are. And so we'll continue to  
4 emphasize good customer service and, Hopefully,  
5 things will move along well.

6 CHAIRMAN FARMER: The next thing we have  
7 -- and I think you may have some news for us here  
8 -- is status of transition for having examining  
9 attorneys putting their e-mail addresses on office  
10 actions.

11 COMMISSIONER COHN: Right. And just let  
12 me start out by noting that we did a study on this  
13 and we found that one-third of our examining  
14 attorneys had been doing this all along anyway,  
15 voluntarily. So, you know, we talked about making  
16 it a requirement and, in fact, we have recently  
17 made it a requirement. It will be effective April  
18 1st that examining attorneys include their e-mail  
19 addresses on all outgoing office actions.

20 CHAIRMAN FARMER: Thanks for that good  
21 news. I will say this is just a great example of  
22 how easy it is to work with the Trademark

1 Operation because this bubbled up and originated  
2 in TPAC and they said, well, we'll take a look at  
3 it and they made it happen. And so, you know, we  
4 really appreciate it and it just shows how easy  
5 these folks are to work with.

6 COMMISSIONER COHN: We --

7 CHAIRMAN FARMER: So I think we're on to  
8 the next one. The next one was on second -- or  
9 maybe it should say, additional courtesy copy  
10 e-mail addresses. And I think you may have some  
11 news there, also.

12 COMMISSIONER COHN: Right. This is -- I  
13 believe this was a suggestion that came out of our  
14 December 3rd roundtable on best practices for  
15 electronic communication. And what we're trying  
16 to do, as you say, is add up to five courtesy copy  
17 e-mail addresses so that the e-mail will not only  
18 just go to the correspondence address, but will go  
19 to other addresses as well. We found that this  
20 was -- people were uncertain about communicating  
21 by e-mail because they were uncertain about, you  
22 know, leaving -- just having one person as the

1 communication at the correspondent's address. So  
2 the answer, of course, is we can add more people  
3 to the list as courtesy copies. And we say that  
4 they're courtesy copies because our rules don't  
5 allow us to have more than one correspondent's  
6 address.

7           So we hope that this will encourage more  
8 people to authorize electronic communication.  
9 That said, we don't have a target date yet as to  
10 when this will be completed. It's a little more  
11 complicated on the backend technology side than we  
12 had originally envisioned, but we're working on it  
13 and we hope to have it -- at least a date for  
14 everybody soon.

15           In the meantime, one of the other things  
16 that came out of this December 3rd roundtable was  
17 the idea that before this actually happens, you  
18 all can work within your own e-mail systems to  
19 actually forward -- to have some e-mail forwarding  
20 so that more than one -- even if you only have one  
21 correspondent's address with us, that more than  
22 one address actually gets the correspondence. And

1       you can do that and that will achieve the same  
2       effect as having more than one e-mail address. So  
3       we hope that you take that suggestion and that  
4       people go ahead and make that change in the  
5       interim.

6                   CHAIRMAN FARMER: That sounds great. I  
7       mean, it's another example where there was an ask  
8       and you all have pushed it forward and we really  
9       appreciate. And part of the thinking -- just to  
10      explain the background -- is that, you know, many  
11      firms or other organizations use, like,  
12      Trademarks@CompanyName.com, so that, you know,  
13      people come, people go. E-mail is not lost. But  
14      we're really trying to make that contact to occur  
15      quicker between examining attorneys and folks  
16      representing applicants or applicants themselves.  
17      And if they can provide a courtesy copy e-mail  
18      address that would go to the person who is  
19      actually going to handle the file then that might  
20      facilitate that contact and get things resolved  
21      more quickly, while still having the primary  
22      contact go to the failsafe Trademarks@ mailbox.

1 And so this is another great step they're taking  
2 on trying to just make that communication occur  
3 earlier.

4 And I should say that, by the way, in  
5 case you need to know who to contact on TPAC, Deb  
6 Hampton has agreed to cover all the issues we've  
7 covered so far. I didn't have Deb jump right in  
8 and run this part of the discussion yet because  
9 it's her first meeting here, but at future meetings  
10 I will try very hard to restrain myself, and Deb  
11 will be running that part of the agenda. And so  
12 thanks for taking that on, Deb.

13 And the next on is what we call the  
14 deadwood issue, and Kathryn Park is our champion  
15 there. I don't know if there's much news at all,  
16 but in case there is, I'll turn the floor over to  
17 the two of you all.

18 MS. PARK: Well, I can just say that we  
19 were asked to review a proposed notice for a rule  
20 and we did provide comments. We thought it was an  
21 excellent draft proposed rule and we're just  
22 waiting for it to be published.



1                   And it's making its way through the  
2 approval process. We hope that will be completed  
3 very soon. And then, you know, just so everyone  
4 knows, the plan is to develop a pilot to actually  
5 gather some information through our post  
6 registration unit. To help us determine whether  
7 there actually is a problem and if there is one,  
8 what the scope of that problem is, and what we can  
9 do about it. And the way we're going to do this  
10 and what we're looking at is whether we believe  
11 that folks filing Section 8 affidavits and  
12 renewals are actually using the mark on the goods  
13 that they say they're using it on. So we're  
14 hoping to use a small sample and gather some  
15 information on that.

16                   CHAIRMAN FARMER: Wonderful. Two  
17 things. One, I have no idea who wrote that notice  
18 and I'm not asking for that person to lose their  
19 anonymity, but it was really well written whoever  
20 wrote it.

21                   Also, just so the whole public knows  
22 where we are in the deadwood issue, there was a

1 panel quite a while back on deadwood and a zillion  
2 flowers bloomed as far as ideas to attack it. And  
3 some were controversial, especially whenever I  
4 opened my mouth. And the way that TPAC chose to  
5 address it is, instead of saying that any  
6 particular practice to attack whatever deadwood  
7 problem -- any practice should be adopted that  
8 since we don't really know how extensive the  
9 problem is or whether it's concentrated in certain  
10 kinds of applications, that we hold our fire. And  
11 it's wonderful that the office is going to be able  
12 to do this scientifically valid study so we can  
13 get some real data and see the extent of the  
14 problem and whether it's concentrated in certain  
15 kinds of applications. And when we know that,  
16 then we can suggest appropriate measures, if any  
17 are needed, to address those problems and not come  
18 in with too big or too small a solution. And so  
19 we think it's a great way to proceed there and  
20 thanks for working on it. And Kathryn, thanks for  
21 leading us in TPAC on it.

22 The next issue is Tim Lockhart's issue,

1       which is the status of the  
2       congressionally-mandated study on trademark  
3       litigation.  So Tim's here, Debbie's here.  I  
4       don't know who has any news.  I think the comment  
5       period's still open, but I'll turn the floor over  
6       to you all.

7                   MR. LOCKHART:  Debbie, would you like to  
8       just give folks an update on where we are?

9                   COMMISSIONER COHN:  Sure, be happy to.  
10       As John said, the comment period has been extended  
11       for our request for comments.  It's been extended  
12       to February 14th, so there's still time.  We have  
13       a report due to Congress on March 17th and we're  
14       in the process of getting that ready.  Of course,  
15       we will have an evaluation -- or an analysis  
16       rather of the comments once the comment period has  
17       been completed.

18                   And we're also going -- a portion of the  
19       report will include educational efforts on, you  
20       know, just what trademark protection is and how to  
21       go about getting it.  And also about how you  
22       continue to protect your trademark.  We think

1 that's really relevant information when it comes  
2 to this particular topic.

3           There is a seminar going on -- today, in  
4 fact, or yesterday, in fact -- called "Protecting  
5 Your Intellectual Property in the Global Market  
6 Place" at Wayne State University in Detroit. And  
7 I mention that because a portion of that seminar  
8 includes a discussion of this topic. So we have  
9 somebody representing the trademark practitioner  
10 community there and USPTO is there and so we  
11 should have some interesting information resulting  
12 from that. There's a huge attendance; I think 150  
13 people signed up for it.

14           But that's really the update. You know,  
15 obviously we will have the report in March, so  
16 we'll wait and see.

17           MR. LOCKHART: Well, thank you very much  
18 for the update. It certainly sounds like  
19 everything is on track. The only comment that I  
20 have is the consensus of TPAC is, if there's any  
21 way to make that report public, if that's possible  
22 to do that, we would -- certainly we look forward

1 to seeing the report. And I think given the  
2 strong public interest in this topic, as you've  
3 noted, from the attendance at the conference  
4 yesterday and the comments you've received and the  
5 buzz, if you will, in the trademark community, but  
6 if there's any way to make that report public, we  
7 think that would be the way to go.

8 COMMISSIONER COHN: Okay. We'll  
9 definitely consider that.

10 CHAIRMAN FARMER: Okay, moving right  
11 along. Our next one is one that spans worlds, and  
12 that is update regarding any possible changes to  
13 trademark fees, such as for paper or electronic  
14 filings. That sort of spans through subcommittees  
15 because the whole should you charge more for paper  
16 issue is sort of in the main Trademark Operations  
17 Committee, but if there's ever going to be any fee  
18 adjustments, that would certainly get the money  
19 committee involved. So we're all interested in  
20 this.

21 COMMISSIONER COHN: Okay. Well, I'm  
22 afraid I don't have a lot of updating to do on

1       this one. The topic is still under discussion and  
2       we're actually expanding the discussion to try to  
3       come with possibly some alternatives to, you know,  
4       just charging a fee for paper. And the  
5       alternatives would be to try to, again, encourage  
6       electronic communication with the office because  
7       it's less costly and much, much more efficient.  
8       So I will definitely -- I shouldn't say definitely  
9       -- I hope to have a better update for you at our  
10      next TPAC meeting.

11                 CHAIRMAN FARMER: Okay, that's great. I  
12      know it's the sense of TPAC, just in the broadest  
13      sense, that we understand that paper processes  
14      costs the office more money and they slow things  
15      down. And so there is broad general support --  
16      unanimous support, I think -- on TPAC for the  
17      concept and we'll look forward to looking at  
18      details as they come out.

19                 I think the next thing, quality issues,  
20      and that's a discussion regarding the excellent  
21      first office action initiative. In any other  
22      programs that target substantive quality of office

1 actions -- and for future meetings, Deb Hampton  
2 has agree to head up our watching over quality  
3 issues, also. And so, Debbie?

4 COMMISSIONER COHN: If you look at our  
5 performance measures -- the two-pager that we  
6 ordinarily include with our materials -- you'll  
7 see there's a new measure in there this year and  
8 it measures the excellent office actions. And  
9 this new measure is in addition to our current  
10 quality measures. Our current quality measures  
11 for first and final action, as most of you know,  
12 measure the quality of the decision making --  
13 correct decision making. Well, we have added to  
14 that and this additional measure measures the  
15 decision making. It measures the searching, it  
16 measures the excellence in writing and evidence  
17 gathering and presentation. And so it's really  
18 designed to tell us how we're doing with regard to  
19 the entire communication, not just the correctness  
20 of the decision.

21 And we feel that's going to be of great  
22 help to our users, since you don't only want the

1 correct decision, you want to understand what the  
2 examining attorney is saying. And so we started  
3 that. We baselined it last year and we've got it  
4 incorporated into our external and internal  
5 measures this year.

6 In conjunction with this measure, last  
7 fiscal year, for the second part of the year, we  
8 had the pilot awards program for examining  
9 attorney that measured the excellent aspects that  
10 I just mentioned, and also incorporated phone  
11 usage because we know how important that is. And  
12 so we looked at the results of the award program  
13 and found that that award was earned by 33 percent  
14 of our examining attorneys. We are talking with  
15 the union right now about expanding that into  
16 Fiscal Year 2011 and we hope to do that, to gather  
17 more information. We weren't able to gather a  
18 complete set of statistics only because we haven't  
19 done all of the substantive training that we hope  
20 to do in conjunction with the new measure.

21 We did do some descriptiveness --  
22 Section 2(e) (1) training -- and we did see a good



1       increase in quality, we think, as a result of that  
2       training. We saw that go up. And so we've got a  
3       few other things in the works right now and we're  
4       planning things for this fiscal year. We're  
5       planning some Section 2(d) training. We're  
6       planning some training on identifications of goods  
7       and services, so we're hoping to really focus on  
8       all aspects of the office action, and all aspects  
9       of substantive refusals.

10               CHAIRMAN FARMER: Okay.

11               COMMISSIONER COHN: Oh, and I should --  
12       excuse me.

13               CHAIRMAN FARMER: Go ahead.

14               COMMISSIONER COHN: I should mention  
15       that phone usage did increase, we think, as a  
16       result of this program. It increased a fairly  
17       substantial amount, so we're hoping to increase  
18       that even more in the future.

19               CHAIRMAN FARMER: Okay, great. And the  
20       phone usage statistic measures when the examining  
21       attorneys pick up and place calls, right?

22               COMMISSIONER COHN: Well, yes. They may

1 not connect on that -- you may have to call them  
2 back.

3 CHAIRMAN FARMER: Right.

4 COMMISSIONER COHN: But it's when  
5 something is resolved by phone and the examiner's  
6 amendment.

7 CHAIRMAN FARMER: Okay, that's fine.  
8 Well, a couple things there. One, we just always  
9 loved the fact that on TPAC that you all are  
10 continually striving towards excellence on your  
11 own initiative. And we think that's great and  
12 keep up the good work. As I mentioned, Deb  
13 Hampton is our champion there. We've gotten an  
14 oral descriptive of the criteria for an excellent  
15 first office action and I think they sound bang-on  
16 to us. But just so TPAC can do what TPAC does,  
17 Deb's going to be taking a look at the actual  
18 written descriptions, and if we have any TPAC  
19 feedback -- I don't know if we will, but if we do  
20 -- we'll pass it along. But we think it's a great  
21 initiative.

22 A little bit of history here. Basically

1 the Trademark Operation pegged the speedometer on  
2 their old quality measure and they said let's come  
3 up with a tougher one, and they went out and put  
4 together a tougher one. And now they're working  
5 on trying to peg that speedometer. And so that's  
6 the way to go.

7 The next one is just a general report on  
8 current performance statistics. That's in Kathryn  
9 Park's area. I don't know if you have any  
10 comments on them. They all look pretty good to  
11 me.

12 COMMISSIONER COHN: I do want to make a  
13 couple of comments, if that's okay. And as  
14 everyone can see, our pendency remains at target  
15 levels for examination. Our pendency for most of  
16 our non-examiner functions is a bit higher than  
17 targeted, but I have -- for the month of January  
18 I've talked with the people in charge in those  
19 areas and we're seeing movement in the right  
20 direction, so we're hoping to have a much better  
21 report, even though it's not terrible. It's --  
22 we're getting back to our target levels.

1           And for quality, however, we are meeting  
2           and exceeding our targets in both examining and  
3           non-examining functions.

4           And then, just a word about filings. If  
5           you look at the filing statistics, you'll see that  
6           they were ahead -- that year-to-date we're ahead  
7           by 1.4 percent as of the end of December. As of  
8           the end of January, that's ticked up a bit and  
9           we're ahead by 2.6 percent. So just a little  
10          update on that.

11          CHAIRMAN FARMER: Excellent. We've  
12          always been told by the folks in the PTO that  
13          trademark filings are a real economic barometer,  
14          and so we all get really happy when we see that  
15          number goes up for a variety of reasons.

16          The next are a few issues that are  
17          mainly just check-ins. I mean, we all know the  
18          status on TPAC, but we want to be transparent to  
19          the public, so they can know what to expect, when.  
20          They're all Kathryn Park issues. The first is  
21          status of the TPAC goal of getting the Official  
22          Gazette published in HTML, rather than PDF.

1                   COMMISSIONER COHN: Yeah, this has been  
2                   on the agenda for a while and I think we've  
3                   mentioned before and it hasn't really changed.  
4                   It's not something that we can really do right  
5                   now. We're hoping to do it for Trademarks Next  
6                   Generation, but the underlying issue, the reason  
7                   that this is on the agenda, I think, was the fact  
8                   that it was the download speeds for the Official  
9                   Gazette were really, really slow for many people  
10                  and we've done things to improve that. So we're  
11                  hoping that that makes this less of an urgent  
12                  issue.

13                  MS. PARK: Debbie, it does. And I  
14                  think, as we said in the last public meeting,  
15                  there are several of us who've experienced that  
16                  it's much less of a problem now. And so, it's  
17                  been a vast improvement. Thank you.

18                  CHAIRMAN FARMER: Okay, and we have the  
19                  next one. This is, I think, in the same category,  
20                  but just so we can keep the public up to speed.  
21                  And that is the goal of eventually having  
22                  electronic certificates of registration with an

1 option for a paper certificate.

2 COMMISSIONER COHN: Yes, that continues  
3 to be an interest of ours as well. And we're  
4 working on that both from the statutory legal  
5 requirement perspective and from the technical  
6 perspective. And we're continuing to work on that  
7 and, you know, we're hoping to be able to do it  
8 before Trademarks Next Generation, but we just  
9 don't have a definite answer for you right now.

10 CHAIRMAN FARMER: That's fine. In both  
11 the case of that issue and in the one before, TPAC  
12 wasn't expecting anything to happen by this  
13 meeting. We just want to keep the public up to  
14 date on that long-term goal. And to go back a  
15 couple of years, when I first came into TPAC, what  
16 part of the dialogue was that, you know, there may  
17 be ways in which eventually the process from soup  
18 to nuts to trademarks can go faster without  
19 upsetting any personnel issues or anything like  
20 that.

21 And thus, we've tried to support the  
22 organization in their goal in getting to a

1 computer state where they can go completely  
2 end-to-end for all applications electronically,  
3 where they never have to step out into a paper  
4 world. And that would probably produce some time  
5 savings without changing, for instance, the 2.5,  
6 the 3.5 benchmark for initial exam or causing  
7 anyone else any personnel problems. And also, on  
8 the backend, if you go to electronic certificates  
9 of registration, you can still get paper if you  
10 want, but -- boom -- it just pops right out and  
11 that cuts some time off the backend. And so, the  
12 trademark community is served better without any  
13 discombobulation with personnel lives within the  
14 agency.

15 And they're getting there. And we  
16 appreciate it. And mainly, it's the upcoming  
17 changes in the computer system that we all have to  
18 wait on. And so thanks for pushing forward on  
19 that.

20 COMMISSIONER COHN: And, as I said,  
21 there was some legal statutory requirements that  
22 we're trying to work through as well. But, you

1 know, we agree with everything you've said.

2 CHAIRMAN FARMER: Right. We understand  
3 that those will have to be tackled, too, but we're  
4 all headed there.

5 The last one we have -- this is just  
6 another in the update category -- and this is  
7 Kathryn's area, and that is TMEP issues, goal of  
8 keeping it continually up-to-date. And parallel  
9 "wiki" TMEP -- and I think there's been a recent  
10 development on the latter one as far as the  
11 ability to put in some comments.

12 MS. PARK: I was going to say, there's  
13 been developments on both, I think. We had a good  
14 discussion about it yesterday, Debbie, but why  
15 don't you just tell the rest of the group?

16 COMMISSIONER COHN: Yeah, so there are  
17 two things going on, very closely related. One is  
18 the changing of how we publish and control the  
19 content of the TMEP. And the goal is to be able  
20 to more frequently update the TMEP because  
21 Trademarks will be in control and will be able to  
22 do it on their own without having to pass it off



1 to OCIO and wait for them to do their changes.

2           So, in that regard, we're making good  
3 progress on a new system and you may hear it  
4 referred to later on by John Owens as RDMS.  
5 That's the technical name for the system. I'll  
6 just call it the new system. And so it will --  
7 that's going along great. And we are having  
8 training for our TMEP editor and the other people  
9 involved in that process next week, so we'll  
10 actually know a little bit more then.

11           The other thing that this new TMEP will  
12 include is a better search system for external and  
13 internal users. That will not be available right  
14 away, so when we publish as a beta in March, which  
15 we're planning to do, it will only be for internal  
16 users. The external users, because our search  
17 system will not be improved yet and there won't be  
18 any positive changes for external users, we're not  
19 going to make it available just yet. And that's  
20 in contrast to the MPEP for patents. If some of  
21 you hear about that being available to the public  
22 in March, it's because their current MPEP system

1 has no search capability. So, for them, they will  
2 see an improvement.

3 We actually have a better search  
4 capability than will be available in March. So if  
5 anyone has any questions, please feel free if I  
6 wasn't clear about that.

7 So that's the progress on that side of  
8 the issue. The other issue, you were talking  
9 about the "wiki," the ability to make comments,  
10 and that we have launched. It's called IdeaScale  
11 and I think we did a brief demo last TPAC. We've  
12 gotten some good comments on that. We've gotten  
13 -- let's see, I think we've gotten 41 comments.  
14 We published -- 46 people have used the IdeaScale  
15 site. We've published Chapter 1200 of the TMEP  
16 and Section 900 and something dealing with  
17 specimens, and people have written in and given us  
18 comments. We've gotten comments on the comments.  
19 People have voted on the comments. And so it's  
20 been -- we think it's a really good tool and we're  
21 going to change the TMEP sections from time to  
22 time and give people an opportunity to comment on

1 that or anything else. We've gotten some  
2 unrelated comments as well.

3 And so we think that will be a great  
4 tool for us to use in the future and that's sort  
5 of the substitute for the pure "wiki" idea.

6 MS. PARK: Debbie, do you envision, at  
7 some point, you would have the ability to comment  
8 on the entire TMEP, it wouldn't be just a section  
9 up at a time?

10 COMMISSIONER COHN: We're piloting it on  
11 a section up at a time, but absolutely we can, you  
12 know -- we can basically do what we want, so we  
13 just wanted to see how it goes and how people  
14 respond to it.

15 CHAIRMAN FARMER: That's great. Debbie,  
16 did you have anything else in your section that  
17 you wanted to bring out to us? I'm not thinking  
18 of anything.

19 COMMISSIONER COHN: No, I don't think  
20 so. Thank you again for, you know, all your  
21 support.

22 CHAIRMAN FARMER: Okay, let me go around

1 the forum real quick. Kathryn, Mary, and Deb,  
2 since you're on the Section Committee, anything?  
3 Question? Comments?

4 Anything from the rest of TPAC? Anne  
5 Chasser?

6 MS. CHASSER: Yeah, I'd like to make a  
7 comment. As a new member of the TPAC and having  
8 had the opportunity to work with Debbie for five  
9 years while I was the commissioner -- and I just  
10 want to say how lucky we are that you have stepped  
11 into this role after great leadership from Lynn  
12 Beresford. And I don't know if members of the  
13 TPAC or the public realize Debbie's rich  
14 contribution to this agency. She's been with the  
15 agency for over 25 years.

16 But Debbie was the champion of the  
17 telework program. And when nobody thought it  
18 could happen, Debbie was there pushing it, working  
19 with the unions, and it is now the model not only  
20 within the federal government, but industry as  
21 well, is looking the success of the telework  
22 program that Debbie championed. So I wanted to

1 share that with the other members and tell you how  
2 delighted we are that you're leading this agency.

3 COMMISSIONER COHN: Thank you very much,  
4 Anne.

5 CHAIRMAN FARMER: That's great. Anyone  
6 else? Any other comments from TPAC? Oh, Maury.  
7 Yes?

8 MR. TEPPER: A quick and an easy  
9 question, I hope, other than seconding Anne's  
10 observation as to how blessed we are to have  
11 continuity in leadership and to have someone who's  
12 got such a proven track record and experience with  
13 the office willing to take on this role.

14 I'm pleased and not surprised at the  
15 continuing focus on excellence and I was also not  
16 surprised, Debbie, when you mentioned the training  
17 modules that you're introducing and your ability  
18 to sort of note an improvement in those areas in  
19 examination when they occur. I know that the  
20 Office of Quality probably has a long list of  
21 issues that they work on. For the benefit of  
22 associations or the public, do you have any means

1 for people to suggest ideas or to -- I don't have  
2 any in mind, but I'm just curious if there's a  
3 mechanism for input on suitable areas for training  
4 or observations as to where examining attorneys  
5 could benefit from, you know, periodic training?

6 COMMISSIONER COHN: Well, people are  
7 certainly -- feel free to get in touch with me or  
8 Sharon Marsh to let us know your ideas. You could  
9 certainly go through any of the user  
10 organizations, including TPAC, INTA. You know, we  
11 have a strong relationship with INTA, AIPLA, IPO,  
12 and the ADA as well as TPAC. And so any ideas  
13 that come through these organizations would  
14 certainly get to us very quickly. So, yeah, any  
15 way people would like to communicate, we'd be  
16 happy to hear it.

17 MS. PARK: Maury, I'd just like to say,  
18 as you know and Mary and many of us know from INTA  
19 and IPO, those organizations aren't shy about  
20 sharing any concerns about quality or anything  
21 else. And there's also the suggestion box on the  
22 website, which I think people do take advantage of

1 as well. So I think you hear in many ways  
2 whenever there's a concern.

3 CHAIRMAN FARMER: Yeah. To add some  
4 more detail to what Kathryn just mentioned, on the  
5 main trademarks page of the website, there's an  
6 e-mail box there. Another thing that TPAC asked,  
7 and the office delivered. And so you don't have  
8 to be high up and into AIPLA or whatever, you can  
9 just send an e-mail. And so one of the reasons  
10 we've put that in is if anyone wanted to give an  
11 "attaboy" or an "attalady" or whatever on a  
12 trademark examining attorney doing a good job or  
13 if they had a concern. But it's there for general  
14 feedback and so that's another avenue that anyone  
15 can use. You don't have to have an organizational  
16 affiliation.

17 Any other question, comments from TPAC  
18 members? From our members of the live audience?  
19 Yes, sir?

20 Mr. Pelton, do you want to step up to a  
21 microphone?

22 MR. PELTON: Good morning. I was

1       wondering if you could comment regarding the  
2       congressionally-mandated study -- my name is Erik  
3       Pelton of Erik M. Pelton and Associates -- as to  
4       whether or not there are any additional public  
5       forums or roundtables planned between now and the  
6       report to Congress? And also, as to whether or  
7       not the comments submitted are planned to be made  
8       public?

9                COMMISSIONER COHN: On the first  
10       question, we actually have been talking with the  
11       SBA about a forum that they had been planning, but  
12       they ended up canceling it because there was very  
13       little interest in it. So, as far as I know,  
14       there's nothing else being planned.

15               Whether or not the comments are going to  
16       be made public, I don't think I can answer that  
17       right now. The comments will be included with the  
18       congressional report, so, you know, I think that  
19       there will be ways to get ahold of them. I just  
20       don't know how we're going to do it.

21               MR. PELTON: Thank you.

22               CHAIRMAN FARMER: Any other questions or



1       comments from members of the audience?

2                   Okay. We didn't have any come in from  
3       cyberspace. We're a little bit ahead of time.  
4       You know how much I love that. So let's take a  
5       five-minute break and we will come back right  
6       after that.

7                   (Recess)

8                   CHAIRMAN FARMER: A little bit ahead of  
9       schedule and that's good. During our next segment  
10      we are going to have a little discussion and visit  
11      about the unauthorized practice of law issue and  
12      the related consumer protection concern that TPAC  
13      has expressed concerning online trademark services  
14      companies. And we've got three people that are  
15      here visiting with us today and we're glad to have  
16      them.

17                   We have Harry Moatz and Will Covey from  
18      the Office of Enrollment and Discipline. And we  
19      also have Cynthia Lynch, who's in the Trademark  
20      Operation. And I'm not sure if I have this right,  
21      but I believe she's the administrator for  
22      examination policy. And Cynthia, if I've gotten

1       that wrong, I apologize.

2                   And so I'll turn the floor over to you  
3 all and thanks for coming to visit with us.

4                   MR. COVEY: Good morning, members of  
5 TPAC. John, before I came down here, asked me to  
6 briefly give you an overview of what the Office of  
7 Enrollment does when they receive an allegation of  
8 an unauthorized practice of law. And for those of  
9 you who are watching this on a webcam, I've also  
10 created a statement, a written statement, that  
11 we're going to post on the TPAC's web page that  
12 basically gives an overview of what the Office of  
13 Enrollment does when they receive an allegation of  
14 an unauthorized practice of law.

15                   Basically what we do is -- and not  
16 getting into specifics of any particular case --  
17 the office takes each one of these allegations  
18 very seriously, looks at the facts that are  
19 alleged, and then determines whether or not it's  
20 appropriate to either send a cease-and-desist  
21 letter to the party that may be not authorized to  
22 practice law before the office. And then we also

1 work closely with the Trademark Operations and  
2 alerting them to these particular instances.  
3 Where the potential individual -- where the  
4 individual is a practitioner who's authorized to  
5 practice before the office -- for example, if the  
6 person is also a patent attorney or patent agent  
7 -- then we would also look at possible discipline  
8 from that angle, too.

9           So in a nutshell, that's basically what  
10 the office does. We do sort of fact-finding. We  
11 look at the facts, determine what appropriate  
12 action is necessary. Where the office doesn't  
13 have authority or jurisdiction over the  
14 individual, we then coordinate with local bar  
15 associations and states' attorneys generals to  
16 alert them to these potential actions by these  
17 individuals in the various states.

18           CHAIRMAN FARMER: Harry, did you have  
19 anything to add to that?

20           MR. MOATZ: Not really. We're very  
21 careful -- I shouldn't say not really, but we're  
22 very careful when we're trying to discern that the

1 person is not a licensed attorney. If they are a  
2 licensed attorney we do -- check for every  
3 jurisdiction. And even in the letter that goes  
4 out we're inquiring if you are an attorney, please  
5 clarify because something could have been missed.  
6 So there's no foregone conclusion when these  
7 letters go out, but so far, we've been right when  
8 we've concluded that they're not an attorney.

9 That's it. We opened it to any  
10 information that we can receive. And as Will  
11 said, we take all these cases very seriously. And  
12 most of them do come to us from the Trademark  
13 Operations, but people from the outside sometimes  
14 report this and sometimes we discover it on our  
15 own. Thank you.

16 CHAIRMAN FARMER: Okay. Thank you,  
17 Harry. And also, Cynthia Lynch has been playing a  
18 couple of roles in this, I think one regarding  
19 letters that may go out and one interfacing with  
20 other governmental agencies. And so, Cynthia, if  
21 it's okay with you, I'll turn the floor over to  
22 you now and you can tell folks about what role

1       you've been playing in this. And then after  
2       you're done I'll come back just to make sure a few  
3       things are known to the public.

4               MS. LYNCH: Sure. I just wanted to  
5       mention that the agency -- and we've done this  
6       through Trademark Operations in conjunction with  
7       our Office of General Counsel -- has conferred  
8       with the Federal Trade Commission, which is the  
9       nation's consumer protection agency, about any  
10      complaints that we have received about document  
11      filing companies or monitoring services. To date,  
12      the FTC has not pursued enforcement action, as far  
13      as I know, against any of these companies. What  
14      they explained to us is that they prioritize their  
15      enforcement action and that is, in part, based on  
16      the volume of complaints that they receive. So  
17      they have been very encouraging of us to continue  
18      to forward complaints that we receive over to  
19      them, and also to encourage any of our applicants  
20      or registrants or members of the public who  
21      complain to submit their concerns directly to the  
22      FTC, so we do direct them to do so.

1           And I thought I would also just provide  
2 here that their online complaint form, you can  
3 just go on the FTC's website and submit a  
4 complaint. It can be found at  
5 [www.FTCComplaintAssistant.gov](http://www.FTCComplaintAssistant.gov). So we're just  
6 continuing to stay in communication with the FTC  
7 on that front.

8           I guess from an operation standpoint,  
9 turning to just suspected cases of unauthorized  
10 practice, I wanted to mention, you know, in  
11 addition to working with the Office of Enrollment  
12 and Discipline and obviously in any cases where we  
13 find that someone who is attempting to appear as  
14 an attorney in a case is not an attorney, once we  
15 know that we just refuse to accept filings from  
16 that person, refuse to recognize them as an  
17 attorney.

18           We do have other situations where folks  
19 are not presenting themselves as attorneys, but  
20 are serving or have attempted to serve as the  
21 correspondent in a large number of cases for third  
22 parties. And in instances where we found out

1       about that situation, we've done a search and  
2       pulled together all the cases where we find that  
3       person serving as a correspondent for others. We  
4       then send them a letter, basically indicating that  
5       we suspect unauthorized practice and requiring  
6       them to show us what legitimate reason they might  
7       have to serve as the correspondent for so many  
8       third parties; letting them know that if we don't  
9       find an appropriate justification that we are  
10      going to refuse to recognize them as a  
11      correspondent in trademark cases and we're going  
12      to remove them as the correspondent and basically  
13      prohibit them from doing that in the future.

14                 So in the instances where we've done  
15      that, I don't think there have been any situations  
16      where we found that there was a legitimate  
17      justification, and so then we've taken action to  
18      just remove them from those cases.

19                 CHAIRMAN FARMER: Okay. Thank you,  
20      Cynthia. Will Covey did mention a nice written  
21      statement that the Office of Enrollment and  
22      Discipline provided to TPAC. He gave a thumbnail

1 sketch of it. That will go up on the TPAC portion  
2 of the website.

3 Will and Harry, I did have a question  
4 for you. And that is I've read the statement and  
5 it's very informative and it addresses situations  
6 where someone is caught in a UPL situation, how  
7 you handle it, and that was all very clear. A  
8 question I have for you all is what sort of  
9 happens in the situation where there is an  
10 attorney in the picture, but the office discerns  
11 that the attorney is not doing what the attorney  
12 should be doing, maybe the person is a figurehead  
13 in that they are non-attorneys doing things that  
14 constitute the practice of law?

15 MR. MOATZ: I'll take the question. In  
16 those situations, the attorney himself or herself  
17 is investigated and if they are aiding the  
18 unauthorized practice, lets other people basically  
19 conduct the interviews, prepare and sign the  
20 documents, we'll have a case of unauthorized -- or  
21 aiding the unauthorized practice. And the charges  
22 would be presented to the Committee on Discipline,



1       who can find the probable cause. And usually the  
2       types of charges are aiding the unauthorized  
3       practice, conduct prejudicial to the  
4       administration of justice, on down. There's a  
5       plethora of charges that can be raised depending  
6       on the circumstances. It's not pretty.

7                   CHAIRMAN FARMER: Got it. And just to  
8       -- we had an excellent visit with these folks in  
9       subcommittee yesterday, but just so we can be  
10      transparent to the public, I've noticed in the  
11      blogosphere discuss this issue. Some bloggers  
12      will say, well, why is it that the office can't go  
13      take action against the people who are not lawyers  
14      who are doing this as opposed to only being able  
15      to deal with those who are lawyers for stepping  
16      outside, aside from their ability to refer to  
17      state bars or other folks for UPL things? And my  
18      understanding -- and correct me if I get this  
19      wrong -- is that the office is very limited. It  
20      has its powers under Rule 11.5, but it really has  
21      no authority to take any action against someone  
22      who is not a lawyer. And for someone who is a

1 lawyer, aside from no longer permitting them to do  
2 what they shouldn't be doing for the agency, you  
3 really only have the power to turn them over to  
4 state bar authorities. Is that a fair statement?

5 MR. MOATZ: That's correct.

6 CHAIRMAN FARMER: Okay. So hopefully,  
7 that will clear that up.

8 And now I want to pass along some stuff.  
9 A friend of mine is -- well, a contact of mine is  
10 the ethics counsel for the Virginia State Bar, Jim  
11 McCauley. And he authorized me to pass along this  
12 information to you all and so I'll just pass it  
13 along. I'm not seeking comment on it from our  
14 folks who are visiting with us today. Jim writes  
15 that, "We believe the preparation of legal  
16 instruments should remain the practice of law."

17 And he did this because there was  
18 recently a bill introduced in the Virginia Senate  
19 that would bless the operational model of a  
20 certain online filing service. And as a matter of  
21 fact, while I know you all can't talk about  
22 specific people or entities you deal with, Jim

1       McCauley is not under that restriction. This bill  
2       was put forward by representatives of  
3       LegalZoom.com, and the Senate -- the committee  
4       within the Senate killed the bill. And so that  
5       exception that was sought by LegalZoom.com was  
6       denied. I will say that in Virginia-speak, in  
7       Virginia, we always have a different way of  
8       describing everything. And in that legislative  
9       context, a bill is passed by indefinitely, it is  
10      not killed. And so that subcommittee or committee  
11      passed it by indefinitely.

12                 Jim McCauley authorized me to read the  
13      following statement, also. He writes, "Companies  
14      like LegalZoom cause consumers to believe that the  
15      documents prepared by them are legally sufficient  
16      to meet their needs while warning the consumer  
17      that they are no substitute for a lawyer. This  
18      sort of double-talk enables them to disclaim any  
19      liability for the documents they prepare.  
20      Lawyers, on the other hand, face multiple exposure  
21      and possible discipline for preparing poorly drawn  
22      legal instruments for their clients." And so I

1 pass that along.

2 I would also add a little bit of  
3 history. I know that some people could look at  
4 this issue and say, well, this is just lawyers  
5 looking out for lawyers and looking out for their  
6 income. And I'll tell you that the concern within  
7 TPAC historically has been deeper than that. Yes,  
8 there's just a flat UPL (inaudible) issue, but  
9 below that and the reason why we've taken a lot of  
10 interest in it is we believe it's a consumer  
11 protection issue, too, and that is that we have  
12 concerns. We're not reaching conclusions, but we  
13 have concerns that maybe some online services are  
14 giving the appearance to an unsophisticated  
15 potential customer pool that they can do more for  
16 them than they can and deliver results that they  
17 may not be able to deliver because of the  
18 limitations on not practicing law. And so it's  
19 for that consumer protection reason, also, that we  
20 have brought this issue up.

21 We're glad to see that you all are  
22 pursuing this to the extent you have the legal

1 authority to do so, and that you're talking with  
2 consumer protection agencies such as the FTC. And  
3 I guess (inaudible) is just please keep it up and  
4 please be as vigorous as you can, particularly in  
5 trying to get the interest of organizations such  
6 as the FTC in this. We realize that they feel  
7 like their stack has got to be big enough in order  
8 for them to move, but we just appreciate any help  
9 that you all can continue to give us to try to get  
10 them to give it some priority.

11 With that said, did you all have any  
12 other comments based upon what I said? Anything  
13 from anyone else on TPAC?

14 Oh, by the way, Maury Tepper, who's --  
15 saying Maury is new to TPAC just sounds wrong, but  
16 who's back on TPAC; is going to be the champion on  
17 this issue, so he will be handling it going  
18 forward. Any questions or comments from anyone  
19 here in the audience?

20 Okay. Well, not seeing anyone. We  
21 didn't get any e-mail from cyberspace. Maybe we  
22 put them to sleep.

1 (Laughter)

2 CHAIRMAN FARMER: And so, now, in that  
3 case, thank you very much for coming to visit with  
4 us. We appreciate it. And we will turn to Chief  
5 Judge Gerry Rogers of the TTAB. And I'm going to  
6 give the floor to Mary Denison in a second, who is  
7 our TTAB champion, but, first, congratulations are  
8 in order. Last time Judge Rogers visited with us,  
9 he had interim tag in front of his name and that's  
10 been ripped off his jersey, and he is now the  
11 chief judge of the TTAB. And so congratulations  
12 on the new job. (Applause)

13 CHIEF JUDGE ROGERS: Thank you.

14 CHAIRMAN FARMER: And so Mary and Gerry  
15 -- I didn't mean to rhyme that -- the floor is  
16 yours.

17 MS. DENISON: I'd like to second John's  
18 congratulations on being awarded the position. We  
19 know that you're going to bring the TTAB up to  
20 even higher levels of achievement and we're  
21 looking forward to continuing to work with you.

22 And we have some really great news: The

1 private bar is going to be very excited about your  
2 report today on the TBMP. It's exciting on two  
3 fronts: Because people are dying to get their  
4 hands on the new TBMP on one front, and it will  
5 also free up the judges and so they'll have more  
6 time to write decisions.

7 So with that, I'll turn it over to you.

8 CHIEF JUDGE ROGERS: Great, thank you. Thank  
9 you, John and Mary and everyone at TPAC. It's  
10 been great working with you all through the year I  
11 was acting and I'm looking forward to continuing a  
12 productive relationship as we move forward.

13 As Mary said, we finally see the light  
14 at the end of the tunnel on the TBMP revision  
15 project. The revised manual has been approved for  
16 release by the Office of Management Budget, which  
17 approves release of the TMEP, MPEP, and TBMP all  
18 as guidance documents issued by the agency. And  
19 so we are in the stretch run of proofreading the  
20 Word documents that were each of the chapters and  
21 which are being converted to XML documents, and  
22 that will serve as -- those XML documents will

1       serve as the base, if you will, in the RDMS system  
2       that Commissioner Cohn referenced earlier. And so  
3       we hope that that system is going to be -- and I  
4       think we'll hear more about this from John Owens  
5       later on -- is on schedule to be deployed on March  
6       4th. And we will have our documents proofread and  
7       ready to be loaded into the RDMS system when it's  
8       up and running. And then we'll take the month of  
9       March essentially to get the documents loaded, to  
10      make sure that they've been loaded properly, make  
11      sure that the content is all there, and then be  
12      able to deploy it to the web in March.

13                 We are going to be following the lead of  
14      Trademarks, so we will use the IdeaScale feature.  
15      And I would certainly urge anyone who has the  
16      opportunity to do so to get on the web now and to  
17      use the IdeaScale feature that's available for the  
18      TMEP and become familiar with it. Since our user  
19      community is pretty much the same user community  
20      as Trademarks has, we're not going to reinvent the  
21      wheel and we're just going to follow their lead  
22      and allow everyone to become familiar with that



1       IdeaScale commenting feature and then they're be  
2       able to use it for the TBMP, also.

3               And in terms of searching, like the  
4       MPEP, as we heard earlier, ours was not a very  
5       searchable manual before, so you will have  
6       increased searchable capabilities when the manual  
7       is deployed in RDMS. And I did want to note that  
8       you certainly are going to be able to search the  
9       manual using a web browser even as we enhance the  
10      search capability in the RDMS system. So even  
11      searching by web browser will be an improvement  
12      over what you had in the past where you had to get  
13      online and then search within the PDF document.

14              So that's where we stand with issuing  
15      the revised manual and allowing people to comment  
16      on the revised manual.

17              Another question I know everyone will  
18      have is how are we going to keep it revised so  
19      that we don't have to spend such a gargantuan  
20      effort again in the future to revise it? And as  
21      has been alluded to earlier, the RDMS system  
22      allows us to control the revisions. We'll be able

1 to make the revisions more frequently. And  
2 because we had to essentially cut off the revision  
3 of content as of November 15th, we already know  
4 things that need to be revised in the content that  
5 will be deployed in March. For example, there  
6 were some changes in the federal rules that kicked  
7 in as of December 1, but we won't get them in  
8 until our first revision.

9           What we will be most likely to do is to  
10 have Judge Lycos, who's been shepherding this  
11 project through to completion, continue to work on  
12 the manual in addition to her ramping up her work  
13 on deciding cases, so that our first revision  
14 would come before the end of this fiscal year. If  
15 we were looking at a schedule where we would issue  
16 a revision twice a year, every six months, the  
17 revision would come at the end of the fiscal year.  
18 We don't want to do that. We don't want to be  
19 competing -- have competing the time that would be  
20 necessary to prepare a revision on the manual and  
21 the time that the judges and the attorneys want to  
22 be spending on casework at the end of the fiscal

1 year to be where they need to be at the end of the  
2 fiscal year for performance appraisal purposes.

3           So -- and because of the content  
4 revision being cut at November 15th, we will  
5 strive to get a revision out sometime in the third  
6 quarter or no later than the beginning of the  
7 fourth quarter because then everyone will be free  
8 to do their end of the year push on motions and  
9 final decisions. And then we will, hopefully,  
10 settle into a schedule where we will have a  
11 revision every six months, probably in the June  
12 and December timeframe. You know, that may change  
13 based on our experience, that that's what we're  
14 thinking right now.

15           Any questions on the manual? Mary?

16           MS. DENISON: No, I'd just like to say  
17 that we would encourage you to -- once we get the  
18 baby put to bed, so to speak, and the first  
19 revision is out, the manual is out, then get  
20 working on the revision. Because at that point,  
21 it's going to be slightly out of date and it would  
22 be great to have the June date, if we could, for

1 the first revision. That would be really  
2 fabulous. And we know you've put an awful lot of  
3 work into this and we're just delighted it's  
4 coming out. And did you say when it was coming  
5 out exactly?

6 CHIEF JUDGE ROGERS: It should be in March.  
7 That's still our target. That's still our goal.  
8 And, of course, if there are any glitches with the  
9 full deployment of the RDMS system, maybe we'll  
10 get set back a week or two, but that's still our  
11 goal is to get it out by mid-March.

12 MS. DENISON: So users should look for  
13 it sometime before April.

14 CHIEF JUDGE ROGERS: Yeah. And we have been  
15 talking with Public Affairs about putting out a  
16 release and some information that we can  
17 distribute to all of the IP organizations in  
18 addition to posting something on our website that  
19 will herald the release of the manual, in part  
20 because it may be an opportunity for Public  
21 Affairs to educate all PTO constituencies about  
22 the IdeaScale feature that's going to be available

1 for all of the manuals or is available in part for  
2 some of the manuals now and will be more widely  
3 available. And the board's manual will be the  
4 first one fully and completely deployed in the  
5 RDMS system, so we'll certainly be taking some  
6 steps to make sure that people are aware of the  
7 release of the new manual.

8 MS. DENISON: Thank you. You want to go  
9 on to developments with accelerated case  
10 resolution?

11 CHIEF JUDGE ROGERS: Yes. And unfortunately, I  
12 didn't get it into the slide deck, but as we  
13 discussed at the subcommittee meeting yesterday,  
14 we've taken the suggestions from AIPLA. And we've  
15 worked out a chart that we will be able to post  
16 shortly on our website that shows the five  
17 different suggestions that AIPLA has offered in  
18 response to the TPAC's invitation to offer  
19 suggestions for plug-and-play or turnkey options  
20 for ACR. And it's a nice visual way to highlight  
21 the differences among the five different AIPLA  
22 proposals. Hopefully, posting that up on the

1 website will encourage other IP organizations to  
2 also come forward with their suggestions for ACR  
3 plug-and-play or turnkey options.

4           We'll also be having a meeting -- myself  
5 and Cindy Greenbaum, the managing interlocutory  
6 attorney, and Judge Peter Cataldo, who's been  
7 working a lot on our ACR initiative, and our staff  
8 attorneys. And we've discussed this with the  
9 interlocutory attorneys already in some of the  
10 recent staff meetings. But we'll be looking to  
11 them to derive from their experience, that is of  
12 our staff attorneys, additional suggestions for  
13 plug-and-play or turnkey options that we can also  
14 post on the web. So you can see that the process  
15 is to generate suggestions from the bar, but also  
16 from within, and then to get them all up and  
17 posted on the manual -- I mean, on the web page  
18 along with the manual.

19           And then we will also shortly post the  
20 updated case list for cases where parties have  
21 agreed to ACR or the case has been decided by ACR.  
22 And again, that's a tool that doesn't provide

1 options to choose from, but it does provide  
2 resources for parties to look at and see what has  
3 been done in other cases. And Judge Cataldo's  
4 recently updated that case list, and so that will  
5 be up on the web very shortly.

6 MS. DENISON: Thank you. We're very  
7 excited about this chart, which I have if anyone  
8 wants to look at it. It should be up shortly in  
9 some modified version. And we're thrilled that  
10 this has happened because we think it will  
11 encourage people to use ACR because it will make  
12 it much easier for them how the process could go.  
13 They don't have to sit down and figure out we drop  
14 this, we add that, and it will just make it easier  
15 for people to agree upon it. And we think that  
16 that will ultimately end up in shorter cases,  
17 cases resolved more quickly.

18 And Judge Rogers mentioned to me while  
19 there haven't been a whole lot of cases that have  
20 gone through the whole process with ACR, there are  
21 quite a few cases where the parties opt for ACR  
22 and they actually end up settling quicker and so

1       they never end up going through the whole process.  
2       And that's a very positive development.  So we  
3       believe that anything that we can do to promote  
4       ACR is actually in the interest of trademark  
5       users of the system.

6               And we view this chart as a fluid  
7       document and I think Judge Rogers does, too.  And  
8       we would urge -- this is based on AIPLA's initial  
9       comments and we would still welcome comments from  
10      any other bar group or any other person.  And so  
11      once the chart goes up, I believe you're going to  
12      put up some sort of an e-mail contact so that  
13      people can give comments on it and that sort of  
14      thing.

15             CHIEF JUDGE ROGERS:  Sure.

16             MS. DENISON:  So people should feel free  
17      to comment on the different proposals.  And if  
18      people have other creative ideas, I'm sure that  
19      Judge Rogers would consider them.

20             CHIEF JUDGE ROGERS:  Absolutely.

21             MS. DENISON:  Because we're just, you  
22      know, open to any ideas because the ACR process is



1 sort of a creative process. It's what you make  
2 it. And so, again, I'm just emphasizing that it's  
3 a fluid document and we would love input.

4 CHIEF JUDGE ROGERS: Yeah. And we also continue  
5 to stress the availability of ACR. It's one  
6 element in the strategic plan. It's five elements  
7 that relate to TTAB practice and one of those is  
8 to continue to promote and encourage the use of  
9 ACR and development additional options. So it's  
10 something that we will be talking about whenever  
11 one of our judges or attorneys goes out and speaks  
12 at a CLE program. So, hopefully, that will also  
13 generate more suggestions coming into the website.

14 MS. DENISON: Thank you.

15 CHIEF JUDGE ROGERS: Now, one thing we did talk  
16 about -- we didn't actually get much of a chance  
17 to talk about in the subcommittee yesterday, but  
18 will require some looking into, is brought up by  
19 some of the AIPLA suggestions, and that is the  
20 possibility of needing to make revisions to the  
21 ESTTA online filing system. Because some of the  
22 AIPLA options suggest having the system

1       automatically generate accelerated case resolution  
2       schedules based on selections that the parties  
3       might make of various turnkey options.  And so  
4       we'll have to look into that and see how much work  
5       that would entail and whether we'll be able to do  
6       it through the system or whether we're going to  
7       essentially have to require parties who want to  
8       choose one of these options to instead get on the  
9       phone with one of our staff attorneys, and then  
10      work out a schedule and then have that enshrined  
11      in an order.  But either way, we can pursue the  
12      options that have been suggested by AIPLA and  
13      maybe suggested by others.  I'm just not quite  
14      sure yet whether we'll be able to have the system  
15      automatically generate schedules that are  
16      different from the norm.

17                   MS. DENISON:  I understand the  
18      complications with that.  I would encourage you to pursue it,  
19      if you could do it, I think it would actually save  
20      you some time and manpower.

21                   CHIEF JUDGE ROGERS:  Sure.

22                   MS. DENISON:  So it would be great if

1       you could do it. But I think it's wonderful that  
2       you've got this going up without that.

3                   CHIEF JUDGE ROGERS: Yeah.

4                   MS. DENISON: Thank you. Next, I think,  
5       is the settlement RFC that's coming.

6                   CHIEF JUDGE ROGERS: Yes. Yes, and so we've  
7       worked very well, I think, with the TPAC going  
8       through a couple of drafts of this Request for  
9       Comments on the settlement talks. And before I  
10      discuss a little bit more detail on that specific  
11      Request for Comments, I did want to bring everyone  
12      up to date on some discussions I had with Deputy  
13      Director Barner just before she left in regard to  
14      the TTAB elements in the strategic plan. And our  
15      thinking is that we will finalize this particular  
16      Request for Comments on this element in the  
17      strategic plan on settlement and mediation.

18                   And we will also be preparing a Request  
19      for Comments on another element of the strategic  
20      plan that relates to TTAB, and that is outreach  
21      and discussion with stakeholders about what useful  
22      performance measures we should adopt, what

1 performance measures will allow stakeholders to  
2 assess whether the board is fulfilling its  
3 mission. And that will be a separate Request for  
4 Comments I will be working on in the near future,  
5 after we very soon finalize this Request for  
6 Comments on settlement issues.

7           But then we are thinking of the  
8 possibility of a roundtable, working through the  
9 TPAC, to have what would essentially be the first  
10 of a series of annual meetings with stakeholders  
11 about TTAB issues. And at that we would be able  
12 to discuss responses received in regard to these  
13 two different Request for Comments in addition to  
14 the continuing developments under ACR, which is a  
15 third of the five elements in the strategic plan  
16 that relate to TTAB.

17           So that's how that RFC figures into the  
18 bigger picture. But the specific Request for  
19 Comments on settlement talks, I think we've made a  
20 lot of progress on working through a number of  
21 drafts in-house and with the TPAC. And as we were  
22 -- as Mary and I were discussing earlier, what I

1 now want to do is just get a look at all of the  
2 comments that have come in in regard to the  
3 Trademark Litigation Study and see if there are  
4 any ideas or comments or thoughts from those  
5 submissions that might be worked into this Request  
6 for Comments. And then we'll get -- so we should  
7 be able to look at those next week after the  
8 comment period closes, make some final revisions  
9 to the Request for Comments, and then, as with  
10 other Requests for Comments or Notices of Proposed  
11 Rulemaking, it will then go out and get internally  
12 circulated and then will eventually be issued.  
13 But, hopefully, that will be in the very near  
14 future.

15 MS. DENISON: Yeah. So we're delighted  
16 that the RFC on settlements is coming out and hope  
17 we'll see it in March.

18 CHIEF JUDGE ROGERS: And now we turn to the  
19 statistics and how the board is doing on the  
20 incoming filings. This first slide in the slide  
21 deck shows incoming appeals, oppositions,  
22 cancellations, just so you know kind of what our

1 incoming workload is like. And I think for the  
2 last year we've been kind of watching these  
3 figures and trying to figure out whether the  
4 economy has been bumping along the bottom, when  
5 things are going to improve. We know, of course,  
6 that trademark filings are picking up a little bit  
7 in the Trademark Operation and so we're waiting to  
8 see when those will be reflected in incoming  
9 filings at the TTAB.

10 So appeals, you can see in the middle  
11 column here, were down only slightly from the  
12 fourth quarter, but down significantly from the  
13 first quarter last year. So year after year it  
14 was a significant difference in terms of incoming  
15 appeals.

16 On the other hand, oppositions and  
17 cancellations are holding pretty steady. And you  
18 can see in the first quarter of this year we  
19 actually had an increase in new oppositions from  
20 the fourth quarter of last year and an increase  
21 year-over-year compared to last year. So  
22 certainly opposition practice seems to be firming

1 up. And I'd say that cancellation practice,  
2 again, in terms of incoming cases, is holding  
3 pretty steady. I'm not quite sure what the  
4 explanation is for why appeals are down and maybe  
5 that's just a matter of practice and the economics  
6 of selecting and adopting marks, but we'll just  
7 keep an eye on those statistics and see how they  
8 go. And we'll have to monitor them to make sure  
9 that our staffing levels stay appropriate based on  
10 the filings that come in.

11 In terms of what we're putting out on  
12 final decisions, you can see that, again, in the  
13 middle column, focusing on the first quarter of  
14 the current fiscal year we did not issue as many  
15 as we had in the first quarter last year.  
16 Certainly not as much as we issued in the first --  
17 in the fourth quarter of last year, but it's  
18 traditional that the fourth quarter has a lot of  
19 cases issued as people try and finalize their  
20 year-end production. And the first quarter is  
21 typically a time when people take time to catch  
22 their breath after the close of the prior fiscal

1 year. We also have a lot of people take  
2 use-or-lose leave in December. So the first  
3 quarter figures are always a little bit down.

4           And we also had the retirement of Judge  
5 Hairston at the beginning of the fiscal year and  
6 then just recently the retirement of Judge Walsh.  
7 So we're -- again, even though we had gotten  
8 ourselves back to 18 judges when Judge Wolfson and  
9 Judge Lycos were promoted, we are back down to,  
10 you know, 16 now. So we expect that those figures  
11 are going to pick up as we move forward. And we  
12 were also, of course, completing a lot of work on  
13 the manual, so -- and a lot of judges were working  
14 on the manual revision, so that also kind of ate  
15 into our capacity to issue final decisions.

16           In terms of the time, one thing I would  
17 like to note on this slide is that in discussions  
18 with Deputy Director Barner, we did set the goal  
19 for this year at 12 to 14 weeks for finals. And  
20 you can -- and that is the measurement of issuance  
21 of final decisions from the time the cases have  
22 been tried and/or argued and are ready for a



1 decision. So we've traditionally focused on that  
2 as a performance goal for issuance of finals  
3 because that's the part of the process that is  
4 within the TTAB's control. So as a guide for  
5 assessing whether the TTAB is doing its job,  
6 you're looking at a figure that's totally within  
7 the TTAB's control.

8           However, we know that there's concern --  
9 and some of this has been brought up in the  
10 Trademark Litigation Study -- about end-to-end  
11 processing, much of which is not in TTAB's  
12 control, but nonetheless is a useful statistic to  
13 look at. And so we're probably going to get  
14 information like this up on the website and do a  
15 better job, as we were discussing yesterday in the  
16 subcommittee, about explaining TTAB's goals,  
17 existing goals, and what might be performance  
18 goals in the future and what goes into them and  
19 how they're measured, and those sort of thing.

20           But if you look at some of these  
21 end-to-end processing figures on -- appeals are  
22 always pretty steady, so average end-to-end

1 processing from the commencement of an appeal to  
2 its final decision, you can see the fourth quarter  
3 to the two first quarter figures, both in terms of  
4 averages and medians, they're pretty steady. I'm  
5 not quite sure why we had a much different median  
6 in the first quarter of last year, but the rest of  
7 the figures on appeals are all pretty consistent.

8           The place where we tend to have a lot of  
9 fluctuation are the average figures on end-to-end  
10 processing for interparties' cases and the median  
11 processing. But the one thing that does really  
12 stand out is if you look at the ACR cases --  
13 again, three of them issued in the fourth quarter  
14 of Fiscal Year '10 and two issued in the first  
15 quarter of the current year -- it's significantly  
16 lower average figures than for cases that were  
17 tried under traditional schedules.

18           Now, the first quarter of FY '10 we only  
19 had one ACR case go out, and you can see that was  
20 significantly higher. But that's because as  
21 people become familiar with ACR cases we sometimes  
22 have cases that have been pending for a number of

1 years and the parties find themselves on the eve  
2 of trial and they say, you know what? We don't  
3 want to go through another six months. We're just  
4 going to agree to ACR now.

5           And so that was one case and it was  
6 probably a case that had been -- obviously a case  
7 that had been pending for a number of years, but  
8 where the parties agreed on the eve of trial or at  
9 the beginning of trial that they wanted it wrapped  
10 up through an ACR proceeding. So that's why that  
11 figure is kind of high. But otherwise, the ACR  
12 figures are a nice alternative to the figures for  
13 traditional trial.

14           On contested motions, we're doing very  
15 well. We've been very steady in this regard.  
16 We've had fewer attorneys working on the manual  
17 revision than we have had judges, so they've been  
18 able to keep up with the filings. The pendency  
19 figure for the first quarter of FY '11 is actually  
20 slightly higher than the 7.6 weeks. It was around  
21 eight weeks. There was a slight revision after I  
22 had prepared this chart, but still well under the

1 FY '11 goal of 10 weeks.

2           And one thing I note that has been  
3 coming up in some of the comments on the Trademark  
4 Litigation Study is that -- and in other forums is  
5 that the TTAB sometimes takes too long to get  
6 decisions out on contested motions. That's not a  
7 new chorus. We've heard that chorus before for  
8 many years. It is important to recognize that the  
9 reported figure when we issued these figures is an  
10 average figure. And so there are certainly  
11 motions that get decided within a couple of weeks,  
12 and then there are some that take longer than the  
13 10-week goal, and that's how we get to this  
14 average figure. The possible explanation is that  
15 for some of the motions that take longer is that  
16 there are often situations where there are  
17 multiple contested motions: One motion begets  
18 another motion begets a cross- motion. And then,  
19 by the time you get around to deciding all the  
20 motions, you've got a whole passel full of them,  
21 and so the time, you know, kind of accrues until  
22 they all get decided.

1                   But you can also see from this slide  
2                   that especially in the fourth quarter of the year  
3                   we spent a lot of time on the phone getting input  
4                   from practitioners about the particular motions  
5                   that were pending before us and using the phone to  
6                   try and resolve them. So we're confident that  
7                   continuing to make extensive use of the phone in  
8                   getting motions decided will help us continue to  
9                   reach the goal on contested motions.

10                   So I think that's about it on where we  
11                   stand with the statistics. And I would just close  
12                   this -- and before we hear any questions or  
13                   comments -- with the idea that we're open to  
14                   considering all sorts of measures that might help  
15                   the bar figure out whether the board is doing its  
16                   job. And again, we'll have a Request for Comments  
17                   on that and discuss it at a roundtable later in  
18                   the year. So these are just the traditional  
19                   performance measures that we've traditionally  
20                   used.

21                   MS. DENISON: Great. Well, thank you.  
22                   I have to say we're a little disappointed in the

1 statistics for the first quarter, but understand  
2 that you still were working on the TBMP and have  
3 been down several judges. So we would expect that  
4 the second quarter's going to look a whole lot  
5 better with the TBMP out of the way. And you can  
6 get through the backlog of cases awaiting decision  
7 pretty quickly, we hope.

8 CHIEF JUDGE ROGERS: Yes, and I hope so, too.  
9 Because I have to ride herd on that backlog of  
10 cases awaiting final decision and it's been  
11 growing, so. And Bernie Abdi, my secretary, and I  
12 end up working in a file room that is overrun with  
13 hard copies of files that have been printed out  
14 and awaiting decision by the judges, so we're  
15 going to stay on top of it.

16 MS. DENISON: Yeah, and maybe we could  
17 just go straight into the judge vacancy since  
18 that's just come up.

19 CHIEF JUDGE ROGERS: Yep. Yeah, absolutely.  
20 I've worked with Office of Human Resources on a  
21 vacancy announcement. Again, another subject I  
22 discussed with Deputy Director Barner just before

1 she left the office, and with Director Kappos in  
2 our discussion of the transition was the need to  
3 fill vacancies on judge positions as they arise.  
4 And we certainly aren't planning any expansion of  
5 the judge ranks at this point in time, but we do  
6 want to backfill vacant positions so that we can  
7 keep our staffing level current and try and work  
8 off this backlog. And so we've gotten approval to  
9 go ahead and hire two judges to replace -- well,  
10 to fill the position that I formerly filled and to  
11 fill the position of Judge Walsh, who retired in  
12 January. And so it could be as early as next week  
13 that we'll have a vacancy announcement out to hire  
14 another two additional trademark judges.

15 MS. DENISON: That's great. We would  
16 urge you to do that as quickly as possible.

17 CHIEF JUDGE ROGERS: Yeah, yeah. And it's in my  
18 interest to do so, so I'll certainly follow up on  
19 that.

20 MS. DENISON: Okay. And the final thing  
21 was the old cases under the pre-2007 rules.

22 CHIEF JUDGE ROGERS: Yeah. Again, something

1       it's in our interest to work off those cases as  
2       quickly as possible. And we did forward to the  
3       TPAC members for a discussion in the subcommittee  
4       a report by our technical program manager who has  
5       been monitoring that backlog of cases. And it  
6       continues to go down. The number of cases  
7       proceeding under or being practiced under the  
8       pre-2007 rules continues to shrink. We're not  
9       going to put any particular effort into trying to  
10      get them to wrap up faster because I think we've  
11      got other issues that are more important, such as  
12      getting the manual out and keeping it revised and  
13      working off the backlog of current cases that are  
14      awaiting final decision. And a lot of those  
15      earlier cases, I mean, some are actively being  
16      litigated, some are on appeal, and some continue  
17      in settlement talks. But every one of those  
18      categories of those older cases continues to drop.

19               And so I think at this point it's really  
20      just a matter of the best use of our resources is  
21      to monitor the situation and to continue to do the  
22      things that we've been doing, which is to make



1 more frequent inquiries about bankruptcy  
2 proceedings that are holding some of them up from  
3 final resolution and civil actions and settlement  
4 talks and essentially trying to ride herd on them  
5 a little bit more. But other than that, just kind  
6 of monitor the situation and hope that time will  
7 heal that wound.

8 MS. DENISON: You know, I'm not sure the  
9 public is aware of this, but there are hundreds of  
10 cases still pending under the 2007 rules. And so  
11 the board actually has to operate under the old  
12 rules and the new rules and that just makes for  
13 a more complicated day-to-day existence,  
14 for the judges to put on this hat or that  
15 hat when they're deciding a case. And so my  
16 understanding is that you have been following up  
17 with some of the people in the cases and doing  
18 more frequent reminders and asking for status  
19 reports. And we would urge you to continue to do  
20 that because the more of these old cases you get  
21 rid of, you know, the sooner, the better. I think  
22 it will make your life better.

1 CHIEF JUDGE ROGERS: Yep. No, we're in complete  
2 agreement with TPAC on that score.

3 MS. DENISON: Do you have anything else?

4 CHIEF JUDGE ROGERS: No, not in particular.

5 MS. DENISON: Okay. Well, I'd just,  
6 again, like to reiterate that we're delighted that  
7 you're permanently the chief judge and we --

8 CHIEF JUDGE ROGERS: I'm still on probation.

9 MS. DENISON: Okay.

10 CHIEF JUDGE ROGERS: Till the end of November.

11 MS. DENISON: A few more months.

12 CHIEF JUDGE ROGERS: Director's prerogative  
13 until the end of November.

14 MS. DENISON: And we really hope that  
15 you will bring the TTAB to a new level of  
16 excellence. Thank you.

17 CHIEF JUDGE ROGERS: Thank you.

18 CHAIRMAN FARMER: If it's okay, I'll  
19 jump in with a few things now and, first of all,  
20 echo what Mary just said. We are hearing from our  
21 dialogues that hope may still be alive for the  
22 possibility of there being a non-current judge

1 helper position, part-time/full-time, maybe  
2 additional duties, to help with keeping the TBMP  
3 up to date. And Mary, I think it's the full sense  
4 of TPAC that we think that would be a wonderful  
5 thing, if it can ever happen. We've called for it  
6 in some previous juncture, and I can't recall if  
7 it was the strategic plan or something else, but  
8 we realize that you all are really going to be  
9 focused like a laser beam on pendency. And to the  
10 extent you all can keep the manual up to date with  
11 the lowest possible lift and go after that, we're  
12 just 100 percent behind you on the effort to  
13 getting that support that you may be able to get.

14 The other thing that I had -- actually I  
15 have two more things -- is --

16 CHIEF JUDGE ROGERS: John, if I can just respond  
17 to that for a moment.

18 CHAIRMAN FARMER: Oh, yes, please.

19 CHIEF JUDGE ROGERS: I just wanted to say that I  
20 think for the first revision we will focus on  
21 having Judge Lycos ride herd on that because she  
22 has shepherded this manual through to its

1 completion and she's also already got a to-do list  
2 and a number of things that we know need to go  
3 into the first revision of the manual. So I think  
4 for the first revision at least we will continue  
5 to work with her. And then some individual  
6 champions, to borrow a TPAC approach to things, we  
7 do have, for instance, Judge Mermelstein, who  
8 focuses on ESTTA and online filing issues and  
9 Madrid Protocol issues that come up in board  
10 proceedings. Judge Cataldo will focus on parts of  
11 the manual that may need updating because of ACR  
12 issues. And so we have a group that will work on  
13 that first revision, but then we will be thinking  
14 about these other options to transition into a  
15 stable platform for making future revisions.

16 CHAIRMAN FARMER: Sounds fine. Thank  
17 you for that.

18 And then on the ACR plug-and-play I have  
19 a question for you, so I'll ask the question and  
20 then I'll tell you why I'm asking the question and  
21 we can go forward from there. And that is I know  
22 that we now have some more material up on the

1 website thanks to what I believe was the AIPLA  
2 submission. We thank them for putting that in.  
3 We would welcome more submissions.

4 My question to you is are these truly  
5 plug-and- play in that can someone now just go and  
6 say we'll take Option D, tell it to the TTAB, and  
7 it is done, or is there an additional lift?  
8 That's the question part.

9 And then the explanation behind the  
10 question is that, you know, our longstanding goal  
11 has been to get to that stage where you can just  
12 literally pick it and go and thus the uptake we  
13 feel will be more likely. And so for the benefit  
14 of the public is it truly plug-and-play now or do  
15 we still have a little bit to go before we get  
16 there?

17 CHIEF JUDGE ROGERS: I don't think the AIPLA  
18 options -- which, again, were set forth in a  
19 narrative form, in a letter form -- are completely  
20 plug-and-play. When I looked at that narrative  
21 document and then tried to take all the  
22 information and put it out into a chart form that

1 would allow parties to compare the different  
2 approaches and try and see the positives and  
3 negatives of each of the different approaches and  
4 how they could decide which one they would prefer,  
5 I have a few lingering questions that I want to go  
6 back to AIPLA with and make sure that I understand  
7 completely each of their proposals.

8           And to the extent that we don't have a  
9 system that can automatically generate these kinds  
10 of schedules that the various options from AIPLA  
11 contemplate, it probably is useful for most  
12 parties to engage one of our staff attorneys in a  
13 phone conference and say I'd like to adopt that  
14 AIPLA plug-and-play option. But then the attorney  
15 can have a little bit of a discussion with the  
16 parties just to make sure that they understand  
17 what they're adopting, but also to offer them any  
18 other assistance that they might need in terms of  
19 discussing possible stipulations of fact.  
20 Because, for example, one of the things that the  
21 AIPLA proposal contemplates is that in any of  
22 their options the parties could submit

1 stipulations of fact up until the time the ACR  
2 submissions would be made. And it's often, we've  
3 found, useful for the parties to sit and discuss  
4 the claims and defenses that are present in the  
5 case with one of our staff attorneys to aid them  
6 in identifying facts that could be stipulated to  
7 and need not be the subject of even ACR  
8 litigation.

9           So at least for now, I think, it's still  
10 useful for most parties contemplating ACR to have  
11 a conference with one of our staff attorneys and  
12 to discuss how we can best pursue the schedule  
13 that they would like to pursue. But at least the  
14 AIPLA plug-and-play options will give them ideas  
15 that they can come to the attorney with and say  
16 we'd like to start with this. And then if there's  
17 anything else we can talk about that will enhance  
18 the experience, let's have that discussion.

19           CHAIRMAN FARMER: Thanks. What I take  
20 from that is that it's going to be a bit of an  
21 evolutionary process and that down the road, with  
22 more experience and as systems mature, it may get

1 to be a shorter path from a willingness to pursue  
2 ACR to having it implemented with a little less  
3 customization and a little less dialogue. But  
4 it's just going to take a while for things to  
5 clarify and for systems to be able to work with  
6 that.

7 CHIEF JUDGE ROGERS: Yeah.

8 CHAIRMAN FARMER: Do you think that's a  
9 fair statement?

10 CHIEF JUDGE ROGERS: I think so, yeah.

11 MS. DENISON: John, I would just like to  
12 comment that it's never going to truly be  
13 plug-and-play unless they can get the electronic  
14 part worked out so that you can see that. And so  
15 I think this is just the first step and,  
16 hopefully, in a week or so, this chart will be up.  
17 That will give people, you know, a start. We look  
18 at this, again, as a fluid document and the whole  
19 process as fluid. And so, hopefully, Judge Rogers  
20 will be able to get more information about how the  
21 electronic end of it will work because that will  
22 definitely facilitate things. But this is really



1 just the first step.

2 CHAIRMAN FARMER: Right. I agree  
3 entirely with that.

4 CHIEF JUDGE ROGERS: And those discussions  
5 regarding ESTTA and the electronic end of things  
6 will also kind of morph into our transition to  
7 Trademarks Next Generation. So it's going to be a  
8 continuing process, I think, for the next few  
9 years. And, fortunately, the strategic plan runs  
10 through 2015, so we can continue to work on it as  
11 long as it takes. Now, that doesn't mean I'm not  
12 hoping to have electronically available  
13 plug-and-play options sooner than 2015, but I'm  
14 just saying we anticipate that this is going to be  
15 a subject of continuing attention for the board  
16 for some time to come.

17 CHAIRMAN FARMER: Okay, thanks. The  
18 last comment I had was in the area of performance  
19 benchmarks. I know you're discussing a possible  
20 RFC on that issue to see what the trademark  
21 community would love to have there and some  
22 roundtables. I would encourage the TTAB to

1 consider putting something rudimentary out there  
2 now and then it can be morphed to that process.

3 I think that there are three performance  
4 benchmarks that are just obvious ones that should  
5 be put out there. There are three time-based  
6 ones. One is the time for processing ex parte  
7 appeals. In other words, appeals from decisions  
8 of examining attorneys. The second is final  
9 decisions in contested cases and in contested  
10 motions in interparties' cases. And it seems like  
11 those are just the three obvious time benchmarks  
12 that are most within the power of the board  
13 because you're not then captive to how quickly  
14 parties move through the process, so it's not the  
15 same as end-to-end pendency, for example. And  
16 that those are ones where you could easily have a  
17 publicly available chart, just like the Trademark  
18 Operation gives us, where you report -- and I'm  
19 borrowing from their chart -- we have Fiscal Year  
20 2010 actual, Fiscal Year 2011 target, Quarter 1  
21 results, and variants from plan. And those, I  
22 think, are the ones that are just obvious ones --

1 to reuse that word -- to put out there.

2           And then it may be supplemented, it may  
3 evolve as you go through an RFC process for a --  
4 or some panels or whatever. But just, you know,  
5 those, I think, are the first ones at least that I  
6 look at when I dive in. I don't know if Mary has  
7 a different view on it.

8           And then by having benchmarks the public  
9 can also be educated and see what it is that the  
10 TTAB is looking to accomplish in each of those  
11 three areas. And it also helps set up some  
12 expectations for them so that they know that, no,  
13 it's not reasonable to expect that an ex parte  
14 appeal will be decided in one week or a final  
15 decision in a contested case, an interparties  
16 case, would be in five weeks or something. So  
17 it's not only an organizational accountability  
18 standard, but it's also an expectations- setting  
19 standard. And so I'd just encourage you all to go  
20 ahead down that road and then you can morph it as  
21 you need as we learn more from the trademark  
22 community.

1           Mary, I don't know if you had anything  
2 building on that or not. Judge Rogers, if you  
3 have any comments on that -- you don't have to  
4 have any comments on that since I realize it was a  
5 speech and not a question.

6           CHIEF JUDGE ROGERS: No, no, that's fine. And I  
7 think we indicated in our discussions yesterday  
8 that it's my goal to get information up on the  
9 board's website about these existing goals, which  
10 are the three that you've just discussed, and then  
11 invite people to go to the website and to monitor  
12 our progress in meeting those goals and to explain  
13 them a little bit more. So as you say, that's  
14 useful for creating understanding and dealing with  
15 parties' expectations. So we'll be happy to do  
16 that.

17           CHAIRMAN FARMER: I think that's great.  
18 And for instance, in the materials you gave us,  
19 one thing I liked is for one them -- I think it  
20 was the final decisions -- you stated a goal.

21           CHIEF JUDGE ROGERS: Yeah.

22           CHAIRMAN FARMER: I think it was 12 to

1 14 weeks. I know in some years past it's been 10.  
2 But I think when you have that goal up there, in  
3 addition to how you all are doing, that's very  
4 helpful. And so as you all put that up on the  
5 website, I think that will be helpful for your  
6 organization and also for the public. And so  
7 thanks for moving ahead on that.

8 Did anyone else -- Mary, I don't know if  
9 you've got anything else. Anyone else on TPAC  
10 have any questions or comments on these issues?

11 Okay. Anyone in our live studio  
12 audience have any questions or comments on this?

13 Once again, we've gotten absolutely  
14 nothing from cyberspace.

15 And so in that case, I think we are up  
16 to our next break. So we will take a five-minute  
17 break and then we will come back with Tony  
18 Scardino, the CFO. Thanks.

19 (Recess)

20 CHAIRMAN FARMER: Our next guest is Tony  
21 Scardino, who's the CFO of the USPTO. Tony, thank  
22 you for coming and the floor is yours.



1 government programs that much between now and  
2 September 30th and find some numbers, like \$78  
3 billion they really have to find? We don't know  
4 how they're going to do it.

5 So today's news is, you know, the  
6 Republicans are fighting amongst each other. And  
7 I'm not trying to be political, but it's a matter  
8 of, well, if you said you were going to cut  
9 discretionary non-defense versus if you include  
10 defense, it's about a \$16 billion difference if  
11 they include defense as part of the cuts. So  
12 where does the Department of Commerce fall within  
13 this? And that's what we're trying to figure out.

14 There's going to possibly drop a bill  
15 today, certainly by Monday, which is going to give  
16 you the outline for how they're going to find or  
17 cut the President's budget by \$100 billion. So  
18 we're trying to figure out, okay, if they just  
19 list the programs, they may not list PTO. Well,  
20 that would be wonderful. But that doesn't tell  
21 you about anything.

22 Because we've asked for what's called an

1 anomaly. Okay, we want them to include access to  
2 all of our fees as well as the 15 percent  
3 surcharge. That's -- you know, there's a public  
4 session and that's the President's Budget Request.  
5 So there's nothing secretive about that.

6           However, we don't know whether we're  
7 going to get that or not, so many things could  
8 happen. At least four is the way I see it. We  
9 could have a full-year CR and \$2.016 billion,  
10 which is where we're funded at right now. That's  
11 probably the worst-case scenario, but it could  
12 really happen.

13           We could also -- actually there's a  
14 fifth scenario. We could go back to '08 levels,  
15 which is \$1.916 billion, a \$100 million cut below  
16 the level we're living at right now. That's  
17 actually, obviously, the worst-case scenario.

18           Or some better scenarios: We could get  
19 full access to our fees and we can get the  
20 surcharge authority. Okay, just like the  
21 President's budget requested. That's the  
22 best-case scenario. Or we could not get the



1 surcharge authority, we can get just full access  
2 to our fees. Because right now we're collecting  
3 at a greater rate than we're allowed to spend.  
4 We're allowed to spend at \$2.016 billion. And if  
5 our current projections continue, we'll collect  
6 about \$2.2 billion. So that means at the end of  
7 the year some of that money becomes unavailable to  
8 spend. Last year we had \$53 million that was  
9 unavailable to spend; this year would be a greater  
10 number. So, you know, my crystal ball is as  
11 cloudy as anybody else's because this story  
12 changes every half a day.

13           And in that, we don't even know if  
14 they're discussing PTO since we're different, but  
15 we're not. I mean, we're part of the Department  
16 of Commerce, but because we're fully user-fee  
17 funded, we don't really affect 302(b) allocations,  
18 but we're just not sure how we're being treated.

19           So as Dana mentioned earlier today,  
20 we're working very closely with the authorizers  
21 and the appropriators, but, as you can imagine,  
22 their lives are very, very, very challenging right

1 now. So it's a little difficult to get their  
2 time. They've been very nice about it, but  
3 they're just very busy.

4           So I use that as a pretext because what  
5 I'm going to give you right now it's just -- you  
6 know, it's a snapshot in time and that snapshot  
7 will change possibly by this afternoon if they've  
8 released their kind of blueprint for what the  
9 2011's going to look like.

10           So I'll be happy to take questions, but  
11 why don't we go through this for a second? I'm  
12 not really sure about the intermission thing, but  
13 let's see.

14           Okay. So our projected fee collections  
15 are based upon getting a full-year CR with what  
16 we're calling an anomaly that says we can still  
17 collect the surcharge and get full access to our  
18 fees. The surcharge would go into effect  
19 mid-March, so that's the range of what we would  
20 collect on the Patents and the Trademarks side.  
21 Similar, you see \$2.436 million, that is the high  
22 end of what we think we would collect, but that

1 would enable us to do everything we want to do  
2 this year in terms of hiring more examiners, RIT  
3 development, you know, overtime and PCT,  
4 everything that we need to do to kind of meet our  
5 strategic plan goals for 2014 and 2015 in terms of  
6 pendency and backlog reduction.

7 As we discussed at our last meeting, you  
8 know, at the end of the year, going into 2011, we  
9 had some carryover, some money that came forward  
10 on the Trademark side and the Patent side. About  
11 \$100 million on the Trademark side; a little more  
12 than that, slightly, on the Patent side. So what  
13 we would project right now still is 85- to \$100  
14 million in carry-forward surplus going into next  
15 year. You know, it's things are pretty -- I mean,  
16 you know, the workload, as Debbie says, you know,  
17 is starting to inch up a bit. And in order to  
18 maintain the same pendency, you know, we're  
19 working towards that with overtime and others.  
20 But we won't spend a lot more money than we  
21 brought in to this year, but we are hoping on the  
22 Patent side, of course, that's where, you know,

1 the drain with all the hiring we're doing and some  
2 of the IT development, that's where we needed the  
3 help with the surcharge.

4 So, as you'll see, down at the bottom  
5 here, the percentages, projected obligation 90  
6 versus almost 10. That's important when we get to  
7 the next slide.

8 Okay. As you can imagine, over the last  
9 four years our obligations have shifted more to  
10 the Patent side because that's where our  
11 workload's grown and our staffing has grown. So  
12 we're spending more money, you know, in terms of  
13 the split, we're spending more money on the Patent  
14 side. So I think it's important for everyone to  
15 see that, you know, it takes a lot to move 1  
16 percentage point. (inaudible) going from 89 to 90  
17 percent, that still means percent or 90.4 percent  
18 of all of our money spent was on Patents'  
19 operations, so. As I mentioned, the currency arc  
20 has us at \$2.016 billion. That is last year's  
21 level plus the supplemental of \$129 million. That  
22 was 1-8-8-7 billion plus the 129, it gets you to

1 2.016. But we're collecting money at a greater  
2 rate than that.

3           So we've -- because of that, Director  
4 Kappos has asked us to delay everything that we  
5 can possibly delay in case we have to live at the  
6 CR level for the year or else we can't continue.  
7 You know, we couldn't overspend, so we'd only have  
8 seven months to kind of adjust. So if we spent  
9 too much money during the CR period, you know,  
10 then you've only got seven months to adjust for  
11 that.

12           So besides hiring in areas like  
13 Trademarks, TTAB, and patent examiners, we've  
14 slowed up all non-patent examiner and other  
15 hiring. So if we lose somebody in the IT world or  
16 CIO or CFO, we're not filling that job. We're  
17 kind of on hold. We're going through the process.  
18 And then if things look good after March 4th, then  
19 we will actually give job offers.

20           So there are exceptions to everything,  
21 but it makes it challenging for all government  
22 agencies to operate when you don't know what

1 funding level you're going to have. Similarly,  
2 travel, training, supplies, equipment, everything  
3 that comes our way, if it's not absolutely  
4 critical, we're saying let's hold off till after  
5 the CR. Pretty common for all federal agencies.  
6 It's just difficult when we know we're collecting  
7 the money, if we only had access to spending all  
8 the money.

9           So if we had a full-year CR, as I  
10 mentioned, you know, Dave Kappos, Director Kappos,  
11 testified a couple weeks ago before the House  
12 Judiciary Committee and they said what would  
13 happen at a full-year CR? He said it would be a  
14 disaster. I don't think I gave him that word, but  
15 I wholly support him using that word because it  
16 would be disastrous. Everything that we've been  
17 moving towards, we would have to actually stop  
18 just to maintain, keep people on board with  
19 salaries, just to be able to pay them and keep,  
20 you know, our systems on, the lights on. But we  
21 couldn't do any more development.

22           And, of course, that would then affect

1 patent pendency and backlog. It can only go the  
2 other way, the opposite way of where it's going  
3 right now.

4 Now, here's the trick: Monday, the  
5 President releases his budget for 2012. It's very  
6 challenging when we've been developing a budget  
7 for six months with the Office of Management and  
8 Budget and the President's Office, the entire  
9 government's been developing their budget, and  
10 they don't know what we have for '11. So how do  
11 you actually drop a budget or develop a budget or  
12 deliver a budget for '12? So our situation is  
13 very dependent, of course, if we either ramp up or  
14 we ramp down. You know, everything that we say  
15 that we're going to be able to do with '12 depends  
16 on a surcharge authority and full access to our  
17 fees. If we don't get this authority in '11, we  
18 will not be able to meet many of our targets,  
19 which then, of course, means there's no way we'll  
20 meet them in '12 regardless of what we propose.  
21 So it's very challenging.

22 On Monday, we're going to have a press

1 release go out and, you know, we are hoping for  
2 the best. But you have to also plan for the worst  
3 in case of if '11 results in a funding level that  
4 does not sustain all of our goals and targets,  
5 we're not going to be able to meet our '12  
6 targets. If we stop hiring, that means you cannot  
7 continue to process the workload. So, you know,  
8 we continue to educate, you know, our new staffers  
9 on the House Appropriations Committee especially  
10 because it's a good dialogue, it's just we're  
11 different than others. We're not full budget  
12 authority and we are collecting money. With the  
13 money we're collecting is workload that just piles  
14 up. So I know you all understand that. I just --  
15 you know, it's the mantra that I'm constantly  
16 telling people because we're a little different.

17           So here's the schedule. You know,  
18 you've all seen our budget. I can't release  
19 anything here in a public setting until Monday;  
20 it's embargoed. But it would support us meeting  
21 our strategic plan goals in 2014 and 2015. So I  
22 consider it a very fair budget. I think it will



1 have the support of our stakeholders and  
2 constituents and members of Congress. But it's  
3 just a matter of whether we'll be able to do that  
4 in sync with what they decide to do for '11.

5 So Director Kappos is actually  
6 testifying on March 2nd to the budget that gets  
7 delivered on Monday, so it'll all be publicly  
8 available. We'll get you individual copies, but  
9 it'll be on our website as well on Monday. And  
10 so, you know, starting next week we'll be getting  
11 many, many, many questions once it goes public.

12 Any questions or thoughts? I know I  
13 went through that pretty quickly, but I've been  
14 talking to it a lot this week.

15 CHAIRMAN FARMER: Thank you for doing  
16 so. Just for everyone who knows, our Money  
17 Committee on TPAC consists of James comely and  
18 Anne Chasser. And so actually I'm going to turn  
19 things over to them if they have any questions or  
20 to lead any discussion for this.

21 MR. CONLEY: Thank you, John. Tony,  
22 thank you for your comments and thank you for your

1 group's representation in the subcommittee  
2 yesterday. We had quite a discussion about this.

3 TPAC certainly echoes, you know, the  
4 interest in resolving these issues and moving  
5 towards a more sustainable model as per what has  
6 been expressed in our annual report, and the  
7 record reflects that. We want to do whatever we  
8 can to get you that kind of surety in our planning  
9 so that we can have operations and IT investments  
10 that advance our collective interests.

11 And in yesterday's meeting, you know, we  
12 were looking over what were the foundations of  
13 many of the things that drive costs and the like,  
14 and some of that is the manifestation of what has  
15 been put in place over time through the ABI  
16 accounting system. And I thought it would be good  
17 just for the record for you to comment on how the  
18 workflow has changed since, for example, when I  
19 started on TPAC in 2008, when we had to go through  
20 the trouble of doing this annual study. But  
21 because of the system and its maturity, now our  
22 visibility of costs on an ongoing basis has

1 considerably improved.

2 MR. SCARDINO: Yes. Okay, I've been  
3 here five months, so I wasn't here in 2008 when  
4 you joined. But I would -- and I've talked to my  
5 staff and my colleagues, and credit you and your  
6 colleagues for helping us to kind of make the  
7 system more mature. You know, it's an annual  
8 requirement (inaudible) circulate 1-25 (phonetic),  
9 so it wasn't anything that was just placed on us  
10 to do.

11 Having said that, since we are -- how  
12 would you say -- more transparent than most  
13 organizations on money coming in versus money  
14 going out, you know, statutorily we have to be,  
15 our modeling has improved and our systems of  
16 collecting this data has improved tremendously  
17 where it's just a normal part of our workflow. We  
18 collect this data actually on a quarterly basis  
19 and we provide it to the subcommittee on a  
20 quarterly basis. So we'll still do an annual  
21 report and provide that information, but it's just  
22 a normal part of our process now. It's not like,

1 oh, time to do the annual report. That's just  
2 part of our process.

3 And, you know, I applaud the  
4 subcommittee as well as the committee for helping  
5 us to see the wisdom in that as well as it really  
6 was an inevitable place for us to go.

7 MR. CONLEY: No, and as these, you know,  
8 funds become more challenging to manage in a  
9 predictable way, seeing all those costs in  
10 real-time is very helpful from a managerial  
11 perspective.

12 MR. SCARDINO: Exactly. I mean, that's  
13 the reality is we would like to provide oversight  
14 in others. You know, we can get asked at any  
15 point in time by GAO or House Surveys and  
16 Investigation, but the reality it's a management  
17 tool first and foremost. So it's very helpful for  
18 all of us.

19 MR. CONLEY: We didn't have any other  
20 questions, Mr. Chairman.

21 CHAIRMAN FARMER: Okay, thanks. Any  
22 questions or comments from other TPAC members?

1 Howard?

2 MR. FRIEDMAN: Well, I would just  
3 reiterate, as we have in prior meetings, that we  
4 are different. It is one of those matters where  
5 labor and management and industry are all on the  
6 same page. It is imperative that we get our  
7 money, that we have fee-setting authority, and  
8 that it helps the economy. It creates jobs and it  
9 allows people, when they get appropriate  
10 protections, intellectual property protections, to  
11 get financing and to get venture capital funding.  
12 And we will continue to work -- labor will -- with  
13 the office and with industry to do whatever we can  
14 on the Hill.

15 CHAIRMAN FARMER: Great, thank you. Any  
16 other comments or questions from TPAC members?

17 Anything from the members of our live  
18 audience? Okay. Tony, then I think we're done.  
19 Thank you very much for coming and giving us your  
20 report. We appreciate it.

21 MR. SCARDINO: Thanks for having me.

22 CHAIRMAN FARMER: Okay, great. James,

1 your mike is still on.

2 We will now go over to John Owens, the  
3 chief information officer. And our TPAC champions  
4 on technology are Maury Tepper and Tim Lockhart.  
5 And so I'm going to sort of stand aside and turn  
6 things over to you, John, and I'll let them be  
7 your primary interlocutories. So thanks for  
8 coming.

9 MR. OWENS: Thank you and good morning.  
10 I have to say it was nice to welcome back Maury to  
11 the team. I look forward to working with you on  
12 the IT matters.

13 So after last time, I want to give you  
14 all a brief review of Trademark Next Generation.  
15 And I'm going to set a little expectations here  
16 after talking to Mr. Kappos and, of course,  
17 Debbie. First is we're going to take the time to  
18 do the right thing. I know Mr. Kappos as well as  
19 myself always like setting very aggressive goals,  
20 and sometimes we don't meet them, but we're just  
21 not going to run out and spend your hard-earned  
22 money. Right? We're not into that. We want to

1 do the right thing for the agency.

2 As I reported last time, we did hire an  
3 independent third-party expert to come in and  
4 review both the CIO and Trademarks. And we are  
5 working very closely with Gary Cannon and Debbie  
6 in Trademarks and my team to incorporate the  
7 recommendations into our plan to build the best  
8 system we can for you.

9 And if I could just make one comment, I  
10 think that one of the things that it brought to  
11 light -- at least for me and I know several  
12 members of the team -- was that Trademarks is a  
13 lot more complicated than a lot of people think.  
14 So it was a good amount of progress actually made  
15 behind the scenes.

16 So we did hire a Trademark Next  
17 Generation program manager dedicated just to this  
18 program to help us take all the various pieces of  
19 the current system and where we'd like to go and  
20 migrate and merge them together; working as a  
21 liaison with a direct-reported line to Mr. Kappos  
22 as well as myself; program plans delivered on

1 12-2010 to stand up a separate virtualized  
2 internal platform.

3 We hired contractors temporarily to help  
4 us with architecture. We are letting, as soon as  
5 we are allowed due to finances, an SL position or  
6 two for architecture in the -- architects in the  
7 organization that are actually federal employees,  
8 but this is a good stop-gap measure until that  
9 happens.

10 And the IT platform plans and investment  
11 decision documents are sent up for -- were  
12 provided for recommendation on 12-16. So things  
13 are moving. Now, they are moving a lot more  
14 behind scenes and it all affects you, but I would  
15 like to talk a little bit about a product delivery  
16 that we made in conjunction with Trademarks in a  
17 greatly improving collaborative environment, and  
18 that's TDR II.

19 I would like to point out that we demoed  
20 this for everyone last time and we did make our  
21 beta date for deployment on 1-28 of this year.  
22 The beta version is up and available. We are open



1 to receiving feedback on that product online. We  
2 have future pilots versions in iterative releases  
3 going to start happening, the first one to include  
4 multimedia services, sound, and video. We're  
5 hoping to get that in March.

6 Two additional cloud pilots are in the  
7 planning -- early planning stages: One for TARR  
8 and the other one for search. And we are  
9 exploring a private cloud for Trademarks as I had  
10 talked about previously, which is basically a  
11 virtualized infrastructure. And we're planning on  
12 releasing that into production so we can migrate  
13 our systems to it in the fourth quarter of this  
14 year.

15 If you had noticed a little snippet of  
16 the website up on top when you go to the Trademark  
17 Document Retrieval System, or TDR, you have the  
18 option of using the legacy system or the new one.  
19 I would highly encourage your members to please  
20 use the new one and let us know. It is much more  
21 interactive. It is exactly what you saw last time  
22 cleaned up, tested, and rolled out. I was very

1 proud of the team.

2 Remember, the front end to this product  
3 is housed in the global cloud and the backend is  
4 securely kept here behind our DMZ. So this is one  
5 of the first efforts not only for the federal  
6 government to go into a public space, but because  
7 the documents for TDR are public we felt it was  
8 more than capable of using a public offering in  
9 this instance for the publicly available data  
10 while securing our backend behind our security  
11 systems here with very secure links between Google  
12 and ourselves.

13 So please, please, use the system and  
14 provide us feedback. We'd love to hear what you  
15 have to say.

16 Some more planned activities that we  
17 have. We are updating the Trademark Next Gen  
18 capital investment decision paper in March with  
19 all of the sundry plans and changes that we'd like  
20 to implement. There are several main portions.  
21 First is that separation and virtualization that  
22 we've talked about before, we want to create that

1 separate Trademark environment. We are going to  
2 stand up, as I said, that virtual cloud internally  
3 before the end of the year and we would like to  
4 start to migrate systems to it. Approximately 28  
5 that can be migrated will be done through the plan  
6 that we currently have through 2013.

7 We're going to develop an infrastructure  
8 that brings in common, what's known as  
9 services-oriented architecture components: The  
10 enterprise service bus, a more robust content  
11 management system, a business rules engine, and a  
12 workflow system. And we plan on getting those  
13 core components of a foundational system for the  
14 next generation by the end of this calendar year.

15 We are also going to do a study on case  
16 management systems which we plan on having done  
17 for the fourth quarter.

18 We're going to improve our internal  
19 processing, focusing on the completion of several  
20 products mostly FAST. That will bring additional  
21 functionality to several teams internally. We  
22 also are going to look at TICRS next generation,

1       developing a new generation of TICRS based on this  
2       new architecture, a similar functionality that was  
3       brought to the public with TDR II, but for use  
4       internally here at the USPTO.

5               We're going to continue to improve our  
6       e-government initiatives by upgrading the current  
7       web-based services to include additional features.  
8       Some more functionality will be provided to TEAS  
9       4.8, and more details in the near future. And  
10       we're going to continue to develop our reference  
11       systems, the document reference system which will  
12       allow us to house not only the TMEP, but the MPEP  
13       and other documents for the various court systems  
14       and reference manuals for the agency, and that is  
15       ongoing.

16               Speaking of the TMEP, I don't know if it  
17       was previously talked about, but the release of  
18       the initial look at what it will look like, a  
19       commenting system for people to comment. It's a  
20       couple of chapters or a chapter 1200 and Section  
21       904.03 for the TMEP. Please don't ask me what  
22       those are.

1           We're provided to the public with the  
2 use of the IdeaScale tool for comment. As I  
3 understand we have received zero to none after  
4 talking with Meryl. Comments on the tool, that's  
5 been very easy to use. But we are receiving  
6 comments on the sections. And for any CIO that's  
7 good news because I don't want you to have to  
8 comment about the tool. The tool should be  
9 seamless enough to use. And the comments back on  
10 the substantive work that we'd like to do or get  
11 comments on, on the chapters and such, is what's  
12 important. So that is going splendidly.

13           Also, the reference document management  
14 system, that is the RDMS system that we are  
15 migrating to for housing the TMEP, MPEP, TBMP, et  
16 cetera. It is planned for a beta release  
17 internally on March 2011, and that's for internal  
18 use only. It will not supplant the external  
19 system that's currently available today.

20           Now, depending on how that goes, as long  
21 as we have an equivalent or better performance on  
22 the system and functionality on the system, we

1 will then set a date for public release of the  
2 product.

3 Other progress. We demonstrated for you  
4 the last time the new employee universal laptop.  
5 Beta was deployed on 1-15. It fixed several  
6 issues that Trademarks had during beta 1. I think  
7 off the top of my head beta 1 had 93 bug reports,  
8 which, in general, considering there's over 100  
9 applications for the various business units, was  
10 pretty doggone good.

11 We did hit one small snag with Beta II,  
12 with FAST that I believe were already corrected.  
13 But the production rollout is still planned for  
14 March. And we plan on the complete deployment  
15 everyone in the organization to be done by FY  
16 2012.

17 In conjunction with that, as you had  
18 seen last time, we are providing a new phone  
19 system for the agency. And that's the same phone  
20 system that will be available whether you're at  
21 home or in the office. For those of you in the  
22 audience that have seen or used beta 2, you have a

1 new phone on your desk. And that phone is part of  
2 a larger changeover. As we change out your  
3 computer, we give you a whole new voiceover IP  
4 phone. We totally upgrade the telecommunications  
5 and collaborations suite, including new video  
6 conferencing tools at the desktop for the  
7 employees to use. And this will also happen at  
8 the same time starting at the end of March.

9           So we've had a few issues lately. The  
10 first being the (inaudible) with PTAS. And what  
11 that is is the Patent and Trademark Assignment  
12 System. We had deployed a patch to this very old  
13 system. It was one of our worst systems, as a  
14 matter of fact. And we tried to patch it together  
15 to hold it together while we operated next gen  
16 back in November. What we did not notice right  
17 away was that the system as intermittently failing  
18 to deliver assignments. And when it came to light  
19 it developed a little bit of a backlog.

20           What we have done, using an agile  
21 development methodology, is we are releasing  
22 almost weekly patches to the system, which, on our

1 current schedule, will end in May. In the  
2 meantime, we are also looking at developing a new  
3 system which, hopefully, will fix a few of the  
4 issues that have been brought up here before,  
5 namely e-mail and replace of fax and deeds, the  
6 underlying documents available to the public at  
7 the same time.

8 So it's a two-pronged approach. First,  
9 we have to get stable what we have. And the  
10 second, we're looking at what it would take to  
11 actually upgrade the system to allow for the  
12 e-mail instead of faxes in particular that was  
13 talked about last time.

14 We also had some issues with the  
15 Trademark Examiner Search System. Several batch  
16 processes that happen in the evening got large  
17 enough where they started to collide or overlap.  
18 We re-spread those out with the appropriate amount  
19 of time and we're looking at ways of optimizing  
20 that system for better performance because without  
21 it, examination slows down and we don't want that  
22 to happen.



1 I'd be open to comments, questions.

2 MR. LOCKHART: Well, John, you know,  
3 once again I want to thank you and your team and  
4 also the senior folks on the Trademark Operation  
5 for a very good subcommittee meeting yesterday. I  
6 thought we had a very good exchange of views. You  
7 know, obviously you're continuing to move forward,  
8 making a lot of progress. I appreciate your  
9 resetting of expectations regarding when we're  
10 likely to achieve Trademarks Next Generation.

11 Is it fair to say based on your slide  
12 headed "Planned Activities, Continued" -- I guess  
13 this is number 6 -- that you say we're going to --  
14 in terms of implementing the program plans and  
15 separating and virtualizing the systems, and  
16 you're saying that roughly 28 systems can be  
17 migrated through February of 2013. So is it fair  
18 to say that we're about two years away from  
19 substantial implementation of Trademarks Next  
20 Generation realizing that you're going to be  
21 taking steps along the way? And I realize it's  
22 not a situation where, you know, on a Friday we're

1 under the current system and on a Monday we're  
2 under the new system. But is that fair to say  
3 that we're about two years out?

4 MR. OWENS: If you're looking at the  
5 overall scope of the project, two or three years  
6 from end to end would probably be accurate. I  
7 would like to point out, though, that we have done  
8 some things to start it where we thought it was  
9 appropriate. And that -- by "we" I mean  
10 Trademarks and us, the CIO; namely the TDR  
11 product. Here we had a product that regularly  
12 failed, that wasn't useful, that people had a lot  
13 of complaints about, and we introduced a  
14 replacement that was not only much more modern and  
15 embraced some of the newest technologies that gave  
16 the folks in CIO and Trademarks enough time to get  
17 to know and understand and work with, but is much  
18 more stable.

19 You will continue to see -- I think one  
20 of the major things that changed is the concept of  
21 going from one gigantic big bang, we're going to  
22 do it all at once, one day we'll flip a switch to

1 a much more evolving system where over a period of  
2 time you will see changes like improvements to  
3 TDR, improvements to tests, and so on and so  
4 forth. As we migrate the backend systems,  
5 hopefully, you will see -- which is the goal --  
6 better performance, better stability, better  
7 resiliency, like I had talked about before. But  
8 those major improvements that will affect the  
9 consumer base or our constituency will be seen  
10 along the way. It's not going to happen all at  
11 once. You won't have to wait till the end.

12 I know Trademarks, Debbie and her team  
13 and Gary, have collected an enormous amount of  
14 feedback from what customers would like to see,  
15 and some of those things we're already  
16 incorporating into plans that we have going on  
17 today so that you will see progress slowly but  
18 surely sprinkled throughout that amount of time.  
19 As I said, one of the things that I think we  
20 learned over the last few months was the -- which  
21 I thought the situation with the Trademark system  
22 was enormously complex. I think now I understand

1       that it's gargantuanly complex, much more complex  
2       than I had originally looked at myself or even  
3       parts of the team. And I think we've come to a  
4       new understanding that evolutionary method to get  
5       us from where we are to where we want to go is  
6       much better for the agency and much better for you  
7       all. But what it'll mean is you will see slow and  
8       steady progress instead of being able to count  
9       down the days to an hour and a date and a time  
10      that, you know, more than likely wouldn't have  
11      come.

12                 MR. LOCKHART: No, I appreciate that and  
13      I think that's a good approach. It makes a lot of  
14      sense. And so I know the trademark community will  
15      continue to see the incremental rollout of these  
16      various improvements and enhancements to the  
17      system as we move toward full implementation. So  
18      it looks like we're going to be about two years  
19      along that evolutionary process before we could  
20      say it's substantially complete. Okay. But I  
21      certainly do appreciate the fact that -- like you  
22      already have information going into the cloud,

1       you're already in the process of implementing it.  
2       You certainly have a lot of planning activity  
3       still going on, but you're also implementing  
4       things. And so I do appreciate that.

5                   It looks like from your slide on VOIP  
6       that you're going to start rolling that out at the  
7       end of the next month. And do I remember  
8       correctly that you think it's going to take about  
9       a year assuming the funding is there to get all  
10      the new laptops and phone instruments out?

11                   MR. OWENS: That would be accurate.  
12      From the start of March on, to hit every last  
13      individual here, every contractor and so on, well  
14      over 12,000 PC setups, which we're delivering the  
15      phone at the same time we're delivering the PC.  
16      And you might say to yourself, well, why are you  
17      doing that? Just to recap last meeting, a couple  
18      of reasons.

19                   One, the voiceover IP system is heavily  
20      tied to the collaboration system called UBCS that  
21      we are deploying, which means the phone system,  
22      the voiceover IP, whether the user has a headset

1 or a handset, combined with the videoconferencing  
2 tools that we're -- and document sharing tools  
3 we're putting on everyone's desktop, are all the  
4 same Cisco products. Well, a couple of Microsoft  
5 products thrown in there. So they're innately  
6 tied together because if I don't deploy them at  
7 the same time, what'll happen is we will actually  
8 regress in capability.

9           Today, running under Windows XP, we have  
10 a legacy system for a company that's defunct --  
11 Nortel -- and the system is known as MCS. It's  
12 their collaboration suite. That product does not  
13 work on Windows 7 in a stable manner and,  
14 therefore, if we were to deploy the new laptop  
15 with Windows 7 and all the latest capabilities, we  
16 would not have that functionality. And that's not  
17 going to be useful for us as we deploy across the  
18 United States a wider workforce. So there is an  
19 unfortunate but inherent tie to this voiceover IP  
20 system which provides that fundamental  
21 infrastructure on that brand-new network that I  
22 and the team have built over the last few years

1       that is now done, and that extra bandwidth that I  
2       had ordered from, you know, to increase the  
3       capability of the data coming in and out of the  
4       agency. So there is a focal point there.

5                We also wanted to make sure we did not  
6       disrupt the examiner more than once. When we have  
7       been practicing during beta 2, coming into your  
8       office at night, taking away the old equipment,  
9       migrating all your data, putting all the equipment  
10      back, so when you get in you have a phone and a  
11      laptop when you arrive. Now, I've been a victim  
12      of my own work here from day one. I started as a  
13      beta 1 customer. The only phone on my desk is a  
14      Cisco phone. I use it every day. The laptop and  
15      the only computer I have in my office is one of  
16      these laptops. And I believe in eating my own dog  
17      food. So several members of my staff are exactly  
18      the same way. We pay the penalty first. And I  
19      have to say that the system works pretty well even  
20      in the beta condition that it's in.

21               So because we don't want to have that  
22      disruption, we're going to change it over all at

1       once. Now, that does make us heavily reliant on  
2       funding. Now, I know you all heard from Tony a  
3       minute ago, but remember, even though the laptops  
4       -- of course, we've already purchased many of them  
5       and with Trademark funds we could easily purchase  
6       the rest -- we cannot use Trademark funds to  
7       purchase a foundational system for the entire  
8       agency. And you can't get half of a VOIP system  
9       and you can't get half pregnant. It's just not  
10      done. So we do have a serious constraint there  
11      with making sure that we acquire the funding to  
12      move that program forward.

13                   And though some IT projects were delayed  
14      to make sure that you all understand, Mr. Kappos  
15      did not delay universal laptop during the CR or  
16      the voiceover IP system because it is critical to  
17      our future success here at the agency. Replacing  
18      these 7+ year old computers and outdated systems  
19      with a fully modern, single baselined with  
20      variances for the Business Unit, fully FDCC  
21      controlled, fully secured desktops that allow  
22      mobility across the United States is critical to



1 the success of the entire USPTO, not only  
2 Trademarks.

3 MR. LOCKHART: And, John, refresh my  
4 recollection. What is -- what do you call the  
5 report that you put out I think about once a week  
6 that has the status of all the pending Patent and  
7 Trademark IT projects? You got an acronym for  
8 that, I think.

9 MR. OWENS: Well, yes. We use the  
10 Enterprise Project Management System from  
11 Microsoft. It's basically Microsoft Project on  
12 steroids. All project tracking status are done in  
13 that enterprise system. It has been for well over  
14 a year. Our customers have access to that system.  
15 Chris Doninger and company, you know, Gary and the  
16 people in Trademarks, folks in Patents, have full  
17 access at any time to look in the system. What  
18 you can pull out of it is a full accounting of  
19 what we're spending, what we're spending it on,  
20 the current status, burn rates for our  
21 contractors, the amount of money we spent, and it  
22 all ties back to the financial systems, the BPI

1 model that was before mentioned. All of that ties  
2 together in the system, so we have a complete and  
3 accurate reporting on each and every project that  
4 is going on, where it is, what it's doing, what  
5 it's spent. And that is available to everyone.  
6 That is the system we use. EPMS is the acronym  
7 for it.

8 MR. LOCKHART: EPMS, yeah. Well, I  
9 appreciated your discussion of that in the  
10 subcommittee meeting yesterday. I think that's a  
11 very useful tool, although, you know, as I said,  
12 quite frankly, some of the technical details are  
13 above my level, but I know that you understand it  
14 all. And I think it's great that the Trademark  
15 folks have access to it and they can provide  
16 comments on it on an ongoing basis.

17 And I want to thank Maury for what I  
18 thought was an excellent suggestion that our  
19 subcommittee spend a few minutes, you know, every  
20 time we're here for the TPAC meeting reviewing the  
21 most recent version of that and just getting an  
22 update, you know, at a more granular level than is

1       appropriate here exactly where you are. But I  
2       think that's a wonderful information-sharing tool,  
3       and I was just real pleased to hear that certainly  
4       on the Trademark side, but also on the Patent  
5       side, that people have access to that information.

6               I only had one final point that I wanted  
7       to make, and this came up in our meeting  
8       yesterday. We were talking about PTAS, the Patent  
9       and Trademark Assignment System. And one of the  
10       characteristics or maybe a key characteristic of  
11       Trademarks Next Generation is that it will  
12       separate out completely trademark processing from  
13       patent processing. And here we have a legacy  
14       system where the assignments are processed, you  
15       know, both for patent and trademark through the  
16       same system. And apparently, this issue about  
17       would it make sense -- and I don't know that I've  
18       thought this through enough to know that I have a  
19       firm opinion on it yet, but would it make sense to  
20       separate out the trademark portion of that and  
21       record those assignments and issue the Notices of  
22       Recordation completely separate from the way it's

1 done on the Patent side? And maybe is that  
2 something the Trademark Operation should be doing  
3 as opposed to your shop? And again, I haven't  
4 really thought it through yet, but apparently  
5 that's an issue that hasn't gotten a lot of  
6 attention.

7           So I would recommend that you and Debbie  
8 and your folks think about that maybe between now  
9 and when we come back in June and maybe, you know,  
10 give us your thoughts about whether it makes sense  
11 to completely separate that out as you're talking  
12 about going toward e-mailing the Notices of  
13 Recordation and making underlying documents  
14 available for review. You know, does it make  
15 sense to separate that out and should it remain  
16 under OCIO or perhaps should it go to the  
17 Trademark Operation as part of Trademarks Next  
18 Generation?

19           MR. OWENS: I will be more than happy to  
20 have that discussion with Debbie in Trademarks.  
21 That's not a problem. I think it was we just  
22 hadn't got to it yet, but more than happy to have

1       that conversation.

2                   MR. LOCKHART: No, I appreciate that  
3 fact. It's just, you know, as you say, this is an  
4 extremely complex system that you're trying to  
5 develop. You're having to keep these legacy  
6 systems operating. You know, you're flying the  
7 airplane while you're trying to build a new  
8 airplane on top of it. So I certainly recognize  
9 the complexity of that. But it's interesting  
10 that, you know, we have a lot of smart folks  
11 around this table, but that particular issue, I  
12 don't know that it had ever come up before, so I  
13 think that would be something worth looking at.

14                   MR. TEPPER: Thank you. John, just a  
15 couple additional questions or points to follow  
16 up. And I'm very pleased that you have come to  
17 appreciate the complexity of trademark systems.  
18 I'm convinced we need you to come out and help us  
19 get the word out to some of the associations and  
20 the external customers of the agency, who often  
21 take a look at the form and say, well, why can't  
22 they just change that blank? That looks like it

1       ought to be really easy.

2                   MR. OWENS:   Be happy to.

3                   MR. TEPPER:   Also glad to hear that you  
4       believe in eating your own dog food, although I  
5       hope it's at least steak, if not caviar, for our  
6       future system.   (Laughter)

7                   MR. OWENS:   Sometimes I don't ask.

8                   MR. TEPPER:   You touched on this, but I  
9       would like to go back and maybe just underscore a  
10      little bit more for the benefit of the record.  
11      We've heard our CFO's presentation today and you  
12      mentioned some of the impacts on these projects  
13      and the systems here that, you know, failure to  
14      obtain the funding that we are seeking would have,  
15      but if you could go back and maybe just clarify a  
16      bit.   And you don't need to go into detail, but  
17      I'd like kind of underline just how significant an  
18      impact it would be if we are not able to obtain  
19      funding on everything that we've heard today from  
20      your shop.

21                  MR. OWENS:   Sure, I'd be happy to do  
22      that.   So IT over the years, prior to when I

1 arrived, funding had been taken out of the IT shop  
2 to fund other initiatives, mostly in patents, for  
3 a number of years, mostly hiring actually and  
4 patents. And, of course, the IT stability waned.  
5 You know, the IT organization did not grow. We  
6 did not change out. Everything from the legacy  
7 desktops that are on everyone's system, you know,  
8 is the foundation of everyone's interaction with  
9 our systems today to the very old, archaic  
10 hardware and software we had deployed.

11 And those of you on the TPAC today that  
12 had reviewed it or were here at the time, my  
13 office had produced, just as I -- with my help  
14 before I took this position, a roadmap, a  
15 five-year roadmap to improve the infrastructure of  
16 the organization and never get into that situation  
17 ever again. Because it is incredibly detrimental  
18 and it takes a lot of time and effort not only  
19 from the CIO's part, but from an entire agency's  
20 part to get out of.

21 Now, during the issues we had with  
22 finances in 2009 and so on, that five-year plan

1 went to a seven-year plan. And when Mr. Kappos  
2 came on board, he told me, no, it will be a  
3 five-year plan. You have to catch up.

4 And, of course, that had to come with  
5 the appropriate level of funding, which we were  
6 happy to receive. And I have to tell you, if you  
7 look at the status that we produced on that board  
8 -- on the dashboard an about that program, we are  
9 back on track having mostly recovered. A couple  
10 of smaller programs in the yellow, but mostly  
11 everything else green for the entire roadmap today  
12 and we are back on the five-year plan. Now, we  
13 still have two more years on parts of the plan and  
14 then, of course, we just operationalize the rest.

15 But where the big overlap is is not with  
16 Trademarks Next Gen. I mean, Trademarks Next Gen  
17 is funded out of trademark fees, and they have a  
18 fence around them and I understand how all that  
19 works. And, of course, that's not the issue. The  
20 issue is those foundational programs that tie the  
21 entire agency together, and they have significant  
22 overlap.



1                   Now, we already put in a new network,  
2                   but things like bandwidth in and out of the  
3                   agency. There's no way to separate the bandwidth  
4                   needed in and out of the agency to just go to, you  
5                   know, 500 desks. You just can't do that. The  
6                   voiceover IP system, significant overlap; the  
7                   collaboration tools, significant overlap. The  
8                   support of development or deployment of any core  
9                   system or upgrade or patch that would affect the  
10                  entire core as a whole, of course, all relies on  
11                  that unified money, most of which -- some 90  
12                  percent, I believe -- comes from patents. And if  
13                  we are not allowed to retain and use our fees and  
14                  do suffer from them being diverted from this  
15                  agency, we will not carry those core foundational  
16                  programs forward. And that will impact negatively  
17                  trademarks, not directly, but indirectly. And  
18                  that pain will be felt just as hard as it would  
19                  have been felt if it was directly affecting the  
20                  Trademark Next Generation program.

21                         So what I think is important to realize  
22                         is, is that we as an agency operate with some

1 common environments, whether it's the environment  
2 here or upgrading servers or whatever. And even  
3 though we are migrating to a separation of  
4 systems, there are fundamental infrastructure  
5 systems that will never separate because it just  
6 doesn't make sense in the business and there's no  
7 reason to increase costs just to duplicate  
8 something that would not have significant use.

9 So I am very worried. And in fact, the  
10 things that keeps me up at night is whether or not  
11 lately I will get the fees that -- well, the  
12 agency will get the fees to fund the programs that  
13 I have going and we do not slip back into a  
14 deficit when it comes to executing the roadmap  
15 that quite honestly is doing quite well, and I'd  
16 like to continue it that way.

17 MR. TEPPER: Thank you, John. I think  
18 we all agree that's the last thing we'd want to  
19 see as well.

20 You also mentioned in your remarks, I  
21 know you mentioned Chris Doninger and you  
22 mentioned Gary Locke and meetings with Debbie and

1 some of the reporting tools you have, but I think  
2 it'd be helpful if you would maybe provide just an  
3 overview of the mechanisms in place for OCIO  
4 maintaining and receiving input from Trademark  
5 Operations on these projects, on the content and  
6 how you all are able to adjust along the way.

7 MR. OWENS: Just a small correction.  
8 Secretary Locke doesn't attend the Trademark  
9 meetings, but it's Gary Cannon, my counterpart in  
10 Trademarks that I meet with. Though Mr. Locke is  
11 a very nice guy, he's got bigger problems.

12 (Laughter)

13 The -- actually Trademarks' relationship  
14 continues, in my opinion. I'd like to hear from  
15 Debbie as well as she'd like to grow and improve.

16 We have several meetings at a working  
17 level that happens without management every week  
18 on every project. We have the EPMS system as the  
19 central gathering point for all of the projects'  
20 status. We have two major programs: One on  
21 legacy and one on future systems, each of which  
22 hold meetings. And then we have this big meeting

1 called the TM meeting that's gone on for some  
2 time. And I think from where it was when I first  
3 started a couple of years ago for where it is  
4 today has incredibly improved the collaboration  
5 and communication between the two organizations.

6           And we regularly scrubbed EPMS reports.  
7 We regularly take in work and have conversations  
8 at at least three different levels in the  
9 organization. The first and the lowest level  
10 would be the working level right up and through  
11 what's known as the IT liaison level, which is one  
12 of the fundamental first steps in our executive  
13 review process for funding programs. So the  
14 number of times we meet from beginning to end, you  
15 know, whether it's Debbie or I or my deputy and  
16 Debbie or some combination thereof, right down to  
17 the people actually doing the work, meeting with  
18 the contractors, and delivering the products and  
19 services is happening at a much greater level than  
20 I've ever seen it before, and it continues to  
21 improve.

22           And I think that some of the systems

1 that we've employed in a centralized way, again,  
2 another central system -- the EPMS system -- has  
3 helped that collaboration by not having, you know,  
4 10 or 12 pieces of paper all circulating, but one  
5 centralized system that everyone can put in their  
6 comments, everyone can derive the status, everyone  
7 can look and track the spend, the money, who's  
8 going what, the time, the schedule, and so on in a  
9 very standard way has helped that collaboration  
10 immensely.

11 COMMISSIONER COHN: Yes. I think that  
12 we have made extra and very pointed efforts to  
13 increase our communication with one another, to  
14 increase our collaboration, and to commit to  
15 making sure that we achieve the goal, which is to,  
16 you know, improve our systems, maintain our  
17 systems, but -- you know, particularly with regard  
18 to Trademarks Next Generation, to move forward and  
19 get something accomplished. So, yeah.

20 CHAIRMAN FARMER: I have one really  
21 quick question and that is as far as access TDR is  
22 concerned, I don't know about others, but I know

1 in our shop the common way we would get there  
2 would be to go into TESS and to search for a mark  
3 either by serial number if we're just checking  
4 something on our docket or just entry of the mark  
5 if we know we're going to get to it that way. And  
6 then at the top of the screen there are various  
7 options to go into other databases, and one of  
8 them is TDR. And then you click on the TDR button  
9 if you want to see where things stand or maybe  
10 you're checking on a mark that you're trying to  
11 push aside in clearance.

12 I think presently if you take that route  
13 -- go to TESS to get to TDR -- it takes you into  
14 old TDR. And A, am I right? I think I am. And  
15 B, if so, if there's a plan to migrate that link  
16 over so that folks who entered the system via TESS  
17 go into the new TDR.

18 MR. OWENS: See, that's an interesting  
19 user observation that no one in my shop would ever  
20 know. So I'm more than happy to take that  
21 feedback, Mr. Farmer, and I will figure that out.  
22 And either we'll put two links there, an old one

1 and a new one, or have an intermediate step there.  
2 Hopefully, just two links that will encourage  
3 people. I don't really want to replace the old  
4 one just in case something happens or someone  
5 doesn't get what they want, but I do want to  
6 highly encourage and make sure both options are  
7 available. Thank you, sir, for that observation.

8 CHAIRMAN FARMER: Thanks. I didn't know  
9 I was that smart. It was actually just a  
10 question, but thanks for looking into that.

11 Any other questions or comments from  
12 TPAC members?

13 Any question or comments from members of  
14 our audience?

15 Okay, thank you. John, thank you very  
16 much for your time. We appreciate it.

17 Are there any questions or comments or  
18 whatever from anyone on TPAC regarding any other  
19 issues that they want to bring forth at this time?

20 Any questions or comments or statements  
21 from folks who've attended today that they wanted  
22 to bring up to TPAC?

1           Okay. In that case, we're done. Thank  
2 you very much for your time. Thank you for  
3 coming. Thanks for all the people who have  
4 visited with us over the past couple of days.

5           Administrative note -- well, two. One,  
6 our next public meeting will be on Friday, June  
7 the 3rd, same bat time, roughly the same format.  
8 And we in TPAC have already set our schedule for  
9 public telephone conferences and we will try to  
10 get those to the office so they can get those up  
11 on the web soon for those who like to listen in on  
12 those.

13           And for our TPAC members only, what I'm  
14 going to suggest, so I can grab you all before we  
15 all dissipate, is that we just take like a  
16 15-minute break, grab lunch, and just bring it  
17 back here and let's have a quick working Executive  
18 Session.

19                           (Whereupon, at 12:01 p.m., the  
20 PROCEEDINGS were adjourned.)

21                                   \* \* \* \* \*

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

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Notary Public, in and for the Commonwealth of  
Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192

