

TRADEMARK PUBLIC ADVISORY COMMITTEE

ANNUAL REPORT 2022



**UNITED STATES PATENT AND
TRADEMARK OFFICE**



TRADEMARK PUBLIC ADVISORY COMMITTEE OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

November 8, 2022

The President of The United States
The White House
Washington, D.C. 20500

Dear Mr. President:

On behalf of the Trademark Public Advisory Committee (TPAC) of the United States Patent and Trademark Office (USPTO), it is my pleasure to present TPAC's Annual Report for fiscal year (FY) 2022. TPAC is the statutorily authorized committee representing the interests of diverse users of the USPTO with respect to trademarks. Its duties are to review the policies, goals, performance, budget, and user fees of the USPTO with respect to trademarks, and to advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on these matters.

We appreciate the opportunity and are honored to serve the USPTO over the past fiscal year.

Very truly yours,

Susan Natland
Chairperson
Trademark Public Advisory Committee
United States Patent and Trademark Office

cc: The Honorable Gina Raimondo, U.S. Secretary of Commerce
The Honorable Kathi Vidal, Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office
Committee on the Judiciary of the Senate
Committee on the Judiciary of the House of Representatives

Enclosure: TPAC Annual Report for FY 2022

TABLE OF CONTENTS

(click topic to jump)

I. Introduction	1
A. Members of TPAC	1
B. TPAC subcommittees, task forces and working groups	2
C. Public meetings	2
D. COVID-19 and USPTO operations	2
E. Transitions within the USPTO	3
F. Director led employee listening sessions	3
II. Report highlights	3
A. The Trademarks organization	3
B. IT and e-government issues	4
C. Budget and funding issues	5
D. Trademark Trial and Appeal Board (TTAB or Board)	5
E. Policy and international affairs	6
III. Discussion of specific issues	6
A. Trademarks organization	6
1. Performance statistics	6
2. Examination quality and training	8
3. Updates completed in FY 2022	10
4. Ongoing initiatives	11
5. Response to COVID-19 for employees	14
6. Diversity, Equity, Inclusion and Accessibility	15
7. Expanding Access	15
B. IT and e-government: organizational IT transformation	15
1. The Office of the Chief Information Officer (OCIO) FY 2022 IT priorities	15
2. Development of robotic process automation (RPA) tools	16
3. Trademark product line accomplishments	16
4. TRAM retirement	17
5. Goals for Trademarks and Trademark Trial and Appeal Board (TTAB) systems	18
6. Overall concerns and recommendations	18
C. Budget and funding issues	18
1. Fee collection	18
2. Appropriations	19
3. Fee adjustment	19
4. Previously collected fees not available	19
5. Direct versus indirect spending	20
6. USPTO regional offices and Trademarks revenues	20

D. Trademark Trial and Appeal Board (TTAB or Board)	21
1. Performance measures and statistics.....	21
2. Pretrial Conference Pilot.....	23
3. Revisions to Trademark Trial and Appeal Board Manual of Procedure (TBMP).....	24
4. Stakeholder outreach.....	24
5. Information technology developments	25
6. Personnel.....	25
7. Precedential decisions.....	25
8. Oral Arguments.....	26
9. Fee adjustments and new fees.....	26
E. Policy and international affairs	26
1. Intellectual Property (IP) Attaché Program	26
2. Technical assistance and training.....	27
3. People’s Republic of China (PRC) trademark related matters	28
4. Anti-counterfeiting.....	29
5. WIPO Standing Committee on Trademarks, Industrial Designs, and Geographical Indications (SCT).....	30
6. Madrid Protocol	30
7. ICANN.....	30
8. TM5.....	31
9. Study of non-fungible token (NFT) technology’s impacts on IP rights	31
10. Trademarks for Humanity Award.....	32

Trademark Public Advisory Committee

Fiscal Year 2022 Annual Report

I. Introduction

The twenty-third annual report of the Trademark Public Advisory Committee (TPAC) reviews the Trademarks business unit and trademark-related functions of the United States Patent and Trademark Office (USPTO) (“Trademarks” or the “Trademark Office”) for the fiscal year ending September 30, 2022 (FY 2022). This report includes important information, such as a review of filing statistics, budget matters, policy changes, and IT initiatives and upgrades, that impact the public’s interest in trademarks.

Pursuant to 35 U.S.C. § 5(d)(2), this report is submitted within 60 days following the end of the FY 2022 and is transmitted to the President, the Secretary of Commerce, and the Committees on the Judiciary of the Senate and the House of Representatives. This report is submitted for publication in the *Official Gazette of the USPTO* and will be available to the public on the USPTO website, www.uspto.gov.

A. Members of TPAC

In FY 2022, the following individuals were voting members of TPAC:

- Susan Natland (Chair), Partner, Knobbe Martens LLP, Irvine, California (term ends December 1, 2022)
- David J. Cho (Vice Chair), Assistant Vice President Senior Legal Counsel – Trademark and Copyrights, AT&T Services, Inc., Dallas, Texas (term ends December 1, 2023)
- Jennifer Kovalcik, Vice President, Technology & IP Counsel, Community Health Systems, Franklin, Tennessee (term ends December 1, 2022)
- Tricia McDermott Thompkins, General Counsel, Shoe Show, Inc., Charlotte, North Carolina (term ends December 1, 2022)
- Tracy Deutmeyer, Shareholder, Fredrikson & Byron, P.A., Des Moines, Iowa (term ends December 1, 2023)
- Jomarie Fredericks, Deputy General Counsel and Chief Intellectual Property and Brand Counsel, Rotary International and the Rotary Foundation, Evanston, Illinois (term ends December 1, 2023)
- Adraea Brown, Vice President and Assistant General Counsel, H-D U.S.A. (Harley-Davidson), Milwaukee, Wisconsin (term ends, December 1, 2024)
- Rodrick Enns, Partner, Enns & Archer LLP, Winston-Salem, North Carolina (term ends December 1, 2024)
- Dana Brown Northcott, Vice President and Associate General Counsel, IP, Amazon.com, Seattle, Washington (term ends December 1, 2024)

In addition to the above voting members, the following non-voting TPAC members represent the membership of USPTO unions:

- Harold Ross of the National Treasury Employees Union (NTEU) Chapter 243
- Jay Besch, President of NTEU Chapter 245
- Pedro C. Fernandez of the Patent Office Professional Association

B. TPAC subcommittees, task forces and working groups

TPAC had five subcommittees in FY 2022, which advised the USPTO in area-specific proposals and initiatives. The five subcommittees and TPAC members assigned to each were:

Subcommittee	TPAC members
Trademarks Organization	Susan Natland (lead), David J. Cho
IT and E-Government	Jennifer Kovalcik (lead), Adraea Brown, Jay Besch
Budget and Funding	Tricia McDermott Thompkins (lead), David J. Cho
TTAB	Tracy Deutmeyer (lead), Rodrick Enns
Policy and International Affairs	Jomarie Fredericks (lead), Dana Brown Northcott

TPAC also deployed two task forces in FY 2022: (1) “Trademarks in the Spotlight” task force with the goal of showcasing trademarks both within and outside of the USPTO to highlight the tremendous value trademarks bring to the U.S. economy; and (2) Diversity, Equity, Inclusion and Accessibility (DEIA) task force with the goal of supporting and promoting DEIA within the USPTO and broader trademark community, including liaising with the Council for Inclusive Innovation (CI2).

The TPAC members assigned to each task force were:

Task force	TPAC members
“Trademarks in the Spotlight”	Susan Natland (lead), David J. Cho, Jomarie Fredericks, Rodrick Enns
DEIA/CI2	Adraea Brown (lead), Susan Natland, David J. Cho, Tricia McDermott Thompkins

Finally, TPAC formed five working groups in FY 2022 to provide guidance on particular issues. The five working groups and TPAC members assigned to each were:

Working Group	TPAC members
Anti-Counterfeiting	Adraea Brown (lead), Susan Natland, Dana Brown Northcott
Reducing Pendency/Fraud	Jennifer Kovalcik (lead), Tracy Deutmeyer, Tricia McDermott Thompkins
Access to Trademarks	Rodrick Enns (lead), Jomarie Fredericks, Tricia McDermott Thompkins
Stakeholder Listening Sessions	Tracy Deutmeyer (lead), David J. Cho, Dana Brown Northcott
General Trademarks	Susan Natland (lead), David J. Cho, Adraea Brown

C. Public meetings

TPAC conducted public meetings on January 28, 2022 (virtual), April 8, 2022 (virtual), July 29, 2022 (hybrid), and November 4, 2022 (hybrid). TPAC greatly appreciates the USPTO’s continued assistance in helping TPAC organize and conduct these meetings, and TPAC especially thanks the USPTO for the tremendous amount of preparation and organization that enables the virtual and hybrid public meetings to take place.

D. COVID-19 and USPTO operations

The USPTO remained fully functional while operating virtually most of FY 2022. Trademarks expanded work flexibilities by implementing five hybrid telework programs, offering expanded options based on employee roles and the needs of the business unit. These include expanded

permitted work hours and connectivity options. To educate employees on the new programs, Trademarks senior leadership, the workforce program office, and team leads held numerous briefings, “lunch and learns,” and provided intranet updates and extensive FAQs to assist with answering employee questions. On May 25, 2022, the USPTO fully reopened all locations to employees and resumed some in-person events and appointments for the public. TPAC continues to applaud the outstanding efforts of the USPTO management and employees for their stellar performance in this challenging environment.

In its ongoing response to COVID-19, the USPTO continues an array of measures for stakeholders, such as maintaining the Prioritized Examination Program for COVID-related goods and services.

E. Transitions within the USPTO

FY 2022 saw many transitions within the leadership of the USPTO.

- On April 13, 2022, Kathi Vidal was appointed as Under Secretary of Commerce for Intellectual Property and Director of the USPTO. TPAC applauds Director Vidal’s unwavering support of Trademarks, engaged involvement, and proactive approach in protecting trademarks and the trademark ecosystem that are so important for the U.S. economy.
- On June 21, 2022, Drew Hirshfeld, performing the functions and duties of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, retired, capping nearly thirty years of service to the USPTO. TPAC congratulates Mr. Hirshfeld for his stellar career at the USPTO and his dedication to patents and trademarks.
- On August 1, 2022, Derrick Brent was appointed as the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO. Deputy Director Brent’s vast experiences in intellectual property, his dedication to executing USPTO priorities, and his previous background serving in all three branches of government bodes well for Trademarks.

F. Director led employee listening sessions

Director Vidal held a series of small group listening sessions to hear from employees firsthand on how to improve the USPTO workplace and advance the USPTO’s mission. Everyone in the USPTO had an opportunity to participate and she heard from over 1000 employees. Sessions grouped employees by shared circumstances, positions, or organizational units. The goal of the listening sessions was to open feedback channels directly to the Director that cover the entirety of the USPTO and enable connections with all employees, regardless of their work location or situation. Director Vidal also opened a first-ever internal portal for employees to communicate directly with her and provide additional feedback and/or to ask questions. The USPTO plans to use information from the listening sessions and the direct communication, in combination with survey and town hall data, to inform agency decisions and improve employee engagement.

II. Report highlights

A. The Trademarks organization

There were 787,795 trademark application classes filed in FY 2022. While this is fewer than the record year of 943,928 trademark application classes filed in FY 2021, it is still 6% more than in FY 2020 and years prior.

Due to the surge of trademark application filings in FY 2021 and continued high level of filings in FY 2022, the number of unexamined trademark application classes in FY 2022 reached

first-action pendency continued to increase. First-action pendency is the average number of months between the filing of a trademark application and the USPTO's first action taken as a result of the substantive review of that application. The USPTO is continuing efforts to reduce first-action pendency.

Overall, despite the massive increase in trademark application filings the past couple of years and the challenges presented by the COVID-19 pandemic, Trademarks exceeded all but two of its performance goals.

TPAC commends the management team for their leadership and the hundreds of employees in Trademarks for their hard work.

B. IT and e-government issues

Users around the world rely daily on the USPTO's trademarks database and systems to research, file, prosecute, and maintain trademark applications and registrations. The USPTO's Office of the Chief Information Officer (OCIO) maintains the USPTO database and systems that provide this functionality.

IT staff within OCIO work to strengthen the systems relied upon for trademark examination quality, to reduce pendency, manage inventory, and build and maintain a secure and robust registration system. While the pace, budget, and cost of IT improvements are important factors, OCIO focuses on the business value that IT teams can deliver.

In FY 2022, OCIO:

- **Invested in IT modernization to create the foundation for a new suite of trademark IT solutions;** this will eventually replace the trademark legacy IT systems.
- **Maintained the trademark legacy IT systems to sustain business operations;** while the legacy systems are effective, they limit Trademarks ability to accommodate greater workloads and optimize current operations.
- **Developed six project teams to manage specific IT product areas;** each team made significant strides with all their products.
- **Collaborated across project teams to integrate cyber measures earlier in the development process;** this allowed faster deployment.
- **Coordinated with Trademarks and the Trademark Trial and Appeal Board (TTAB) to prioritize retiring TRAM by September 2023;** this will be the foundational update for moving to future-state IT systems.
- **Planned to add new teams and allocated resources for those teams;** this will help OCIO achieve its strategic goals of a modernized filing experience.
- **Together with Trademarks and other agency business units, implemented mandatory identity verification for USPTO.gov account holders who use the Trademark Electronic Application System (TEAS) and TEAS international (TEASi);** attorneys who verify their identities can sponsor support staff using a new web-based sponsorship tool.
- **Continue to develop solutions based on artificial intelligence (AI) and robotic process automation (RPA) to streamline certain pre-examination processes;** this helps automate some processes for greater examination efficiency.
- **Provided tools and support for teleworking employees;** this helps employees continue to telework efficiently with minimal interruptions.

C. Budget and funding issues

Total trademark fees collected in FY 2022 decreased by 2.8% from FY 2021. The lower fee collection level is due to decreases in trademark application filings and registration renewals in FY 2022 as compared to FY 2021. Overall, in FY 2022, trademark fee collections were slightly more than spending requirements for the trademark business.

At the end of FY 2022, the operating reserve for trademarks was \$209 million, which is \$89 million more than the minimum operating reserve level, and \$62 million less than the optimal reserve level, which is currently set at seven months of operating expenses. TPAC commends the proactive and diligent approach of the USPTO with respect to maintaining an appropriate operating reserve, which protects and supports Trademarks' operations.

Due to inflationary pressures on USPTO costs and a growing decline in Trademarks revenue beginning in March of 2022, a fee adjustment may be necessary in the future to ensure fee revenues are more than the costs to support Trademarks' operations. This decline is consistent with trademark offices in other jurisdictions including the EU and UK.

D. Trademark Trial and Appeal Board (TTAB or Board)

The overall workload of the TTAB in FY 2022 was relatively stable and manageable. The Board achieved all its goals for timely disposition of contested motions and issuance of final decisions in appeals and trial cases after working diligently through heavy caseloads of prior years.

The pre-pandemic era (FY 2017 through the first half of FY 2020) saw steep increases in new case filings, trial case motion practice, and the number of cases maturing to “ready for decision” (RFD), but filings began to moderate thereafter. In FY 2022, new filings of ex parte appeals fell by 9%, and cancellation petitions fell by 4.6%. However, new oppositions filings increased slightly, by 0.5%. Of the cases maturing to RFD in FY 2022, 68% were appeals and 32% were trials. The trial case percentage was the highest it has been in the previous five years. This significant increase stems from the pre-pandemic steep increases in new trial case filings. Overall, total pending oppositions fell 10.9% from the end of the first quarter in FY 2020 through the end of FY 2022. Over the same period, total pending appeals increased about 4.6%, and total pending cancellations increased 3%.

Even though the Board met its processing goals throughout FY 2022, management continued to focus staff on keeping pendency measures low, anticipating future increases in new cases filings in FY 2023 and beyond. The TTAB expects case filings to begin climbing again, as a result of the significant increase in trademark application filings in FY 2021 and the first two quarters of FY 2022. The Board also anticipates receiving new appeals from the expungement and reexamination proceedings that started under the Trademark Modernization Act (TMA) in FY 2022. The Board's staffing and docket management in FY 2022 have positioned it well to handle these anticipated increases.

While the Board had been hiring new attorneys and judges regularly when new case filings were consistently climbing, moderating caseloads minimized the need for significant additions in FY 2022. As of the end of FY 2022, the Board had only slightly increased the combined total of Administrative Trademark Judges (ATJs) and Interlocutory Attorneys (IAs) on staff, as compared to FY 2021.

The Board also issued its annual revision of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) on schedule, and issued 39 precedential decisions, the same number as in FY 2021. The Board continued laying the groundwork for a Pretrial Conference pilot program, an

initiative that began the previous year. The Board continued discussing these plans with TPAC and continued stakeholder outreach, seeking feedback on the prospective pilot. The Board also continued development of the TTAB Center, which will replace existing electronic systems in the future. TTAB also continued collaboration with Trademarks and the OCIO on system adaptations for deployment of the TMA and the retirement of TRAM.

E. Policy and international affairs

The Office of Policy and International Affairs (OPIA) formulates domestic and international policy regarding IP protection and enforcement and assists the Director of the USPTO in advising the President on these matters. Although Trademarks and OPIA collaborate closely on trademark policy matters, OPIA is an independent business unit.

OPIA participates in discussions and initiatives with foreign trademark offices and governments and with the World Intellectual Property Organization (WIPO) to help improve trademark office examination practice, harmonize trademark tools and practices, and coordinate compliance with treaties that relate to trademarks.

In addition, OPIA supports the Office of the U.S. Trade Representative (USTR) and other U.S. government agencies with international negotiations and consultations, and with drafting and implementing IP obligations. Among other goals, these efforts are designed to improve the experience of U.S. citizens in registering and enforcing their trademarks in the United States and in other countries.

To hear from all trademark stakeholders and those who might benefit from trademark protection, Director Vidal regularly held listening sessions with members of the public. She also established the first-ever Engage the Director website where stakeholders can communicate with her directly.

In FY 2022, at the suggestion of TPAC, Director Vidal announced the creation of a “Trademarks for Humanity” Award to recognize brand owners, from individual entrepreneurs to large companies, that use registered trademarks to advance humanitarian issues. This award will be the first trademark-related award for stakeholders in the history of the USPTO, and will be run by a team within OPIA. TPAC appreciates the hard work of the USPTO related to this milestone award.

III. Discussion of specific issues

A. Trademarks organization

1. Performance statistics

FY 2022 was another incredibly busy year for the Trademarks organization.

a. Trademark application filings

Fewer trademark application classes were filed in FY 2022 than in FY 2021. While this is fewer than the record year of 943,928 trademark application classes filed in FY 2021, it is still more than in FY 2020 and years prior.

Filing year	Trademark application classes filed	% change from previous year
FY 2022	787,795	17% decrease
FY 2021	943,928	27.5% increase
FY 2020	738,000	9.5% increase

Trademark application class filings in FY 2022 were 6% higher than in FY 2020.

Applicants from China contributed the largest share of filings from any foreign country (about 16% of total classes filed from applicants in mainland China). Trademark applications owned by applicants in mainland China, decreased overall by 44% from FY 2021 to FY 2022. Trademarks monitors all filings and consults with global IP partners to monitor filing trends to help take away insight for future planning.

b. Balanced disposals

Balanced disposals are measurements of certain examination milestones that are used as primary metrics for measuring the productivity of examining attorneys. They occur when a first office action issues, the application is approved for publication, or the application is abandoned prior to publication.

Trademarks completed 1,448,282 balanced disposals in FY 2022. This was about 8% less than the 1,579,621 balanced disposals planned for the year and 2.5% more than the amount completed in FY 2021.

c. Total office disposals

Total office disposals refer to the number of applications that resulted in registration or abandonment. There were 692,092 total office disposals in FY 2022, about 3.1% higher than the 671,092 disposals in FY 2021.

d. Average first-action pendency

The average first-action pendency increased to 8.29 months by the end of FY 2022. First-action pendency is the average number of months between a trademark application filing date and the USPTO's first substantive review of that application (usually resulting in a notice of publication or a first office action).

The first-action pendency has exceeded the target range of 2.5 to 7.5 months every month since March 2022. The target range is a balance between meeting customer needs and managing incoming filings. While Trademarks met the target range from FY 2007 to FY 2020, the significant increase in filings in FY 2021 resulted in Trademarks not meeting the target range in FY 2021 and FY 2022.

To lower the amount of unexamined applications and reduce first-action pendency, Trademarks:

- Hired 93 new examining attorneys.
- Developed numerous automated processes and bots to assist examination in areas such as suspension checks, pseudomarks, and checking addresses on commercial mail receiving agencies.
- Initiated a TM Flex contract for contract paralegals and investigators to work on register protection initiatives in investigating bad faith applications.
- Engaged an external consultant to conduct a business process optimization analysis of the entire trademark examination process.

As stakeholders have expressed concern over the significant increase in first-action pendency during FY 2022, TPAC will continue to monitor efforts to address and prioritize this issue in FY 2023.

e. Average disposal pendency

Due to the significant increase in trademark filings the past couple of years, Trademarks did not achieve its average disposal pendency target goals for FY 2022. Disposal

pendency measures the time between filing a trademark application and the final disposition of that application (through registration, abandonment, or issuance of a Notice of Allowance). Generally, speaking, disposal pendency runs about six months behind first-action pendency.

Average disposal pendency	Months
Excluding: Suspended applications and applications related to inter partes cases	13.82
Including: Suspended applications and applications related to inter partes cases	15

An application is suspended when the outcome of another matter must be determined before further action on the application can be taken. This can occur if a previously filed trademark application still under examination is referenced as a possible bar to registration. Inter partes cases include opposition, cancellation, and concurrent use proceedings before the TTAB. Both disposal pendency numbers are much higher in FY 2022 than in FY 2021 (11.23 months and 12.39 months, respectively).

f. Overall

During FY 2022, Trademarks met or exceeded all its performance goals, except first-action pendency and disposal pendency. TPAC commends Commissioner Gooder and his management team for making these results possible through a challenging time. Most importantly, these results would not happen without a dedicated team of over 1,000 employees in Trademarks who all contribute to providing service to customers in a complex and dynamic system.

2. Examination quality and training

High quality work is essential to ensure that the trademark register is an accurate reflection of trademark owners’ rights. Once again, Trademarks has exceeded its targets in this critical area.

a. Examination Quality

- Examination quality is measured by evaluating random samples of applications at two different points during the examination process.
- **“First point review”** looks at first office actions that reject applications for registration or raise other formal requirements.
- **“Second point review”** occurs at the final disposition of an application, either a final refusal to register or a decision to approve the application for publication.

The goal at both points is to determine whether the examining attorney’s decisions and written office actions comply with the Lanham Act, the trademark regulations, and issued examination guidance.

i. Compliance rate

Trademarks exceeded all its compliance rate goals for FY 2022. The compliance rate is the percentage of evaluated actions or decisions that were determined as correctly

made, with no deficiencies or errors. Compliance rate is an indication of examination quality, with a higher compliance rate indicating higher examination quality.

FY 2022	Goal compliance rate	Actual compliance rate
First office action	95.5%	96.1%
Final disposition	97%	98.5%

ii. Exceptional office action standard

An exceptional office action is one that meets the USPTO’s standards for the appropriateness of the likelihood of confusion search, the quality of the evidence provided, the clarity of the writing, and the quality of the decision-making. In FY 2022, Trademarks exceeded the goal of 50%, with 59.8% of office actions meeting the criteria.

b. Training

At the end of FY 2022, there were 718 examining attorneys (an increase of 8.5% from FY 2021). Trademarks provides ongoing and evolving training for examining attorneys, and tailors training for new examining attorneys.

i. New examining attorneys

Trademarks hired 93 new examining attorneys, who began work in October 2021 and March 2022. All were trained virtually and they continue to work remotely.

Due to expectations for continued and consistent hiring over the next several years, Trademarks piloted a new training model (the Trademark Academy) in FY 2022 for its new hires. The Trademark Academy is a special separate training unit with Trademarks dedicated to training new classes of examining attorneys during their first year with the USPTO. The Trademark Academy is staffed by administrators, law office managers, instructors, and mentors who collectively focus on consistency in training and first year experience, all conducted in a virtual environment.

The inaugural year of the Trademark Academy was highly successful, and Trademarks plans to continue this model for FY 2023 and beyond, creating a permanent structure within its organization for these positions.

ii. Ongoing Examining attorney training

In FY 2022, Trademarks provided the following training sessions on examination policies and procedures:

- Dissecting Distinctiveness – Section 2(f), 2(f)-in-part, and Disclaimer Considerations in Composite Marks
- Section 2(e)(1) vs. 2(e)(2) – How to Decide Which is the Right Refusal
- X-Search training focused on common deficiencies
- Unscrambling Blockchain, Cryptocurrency, & NFTs
- Digital Goods in the Metaverse
- Training for examining attorneys on new examination system, TM Exam Nice Classification 11th Edition training, highlighting changes in the International Classification system brought about by the implementation of the 2022 version

Also, the Office of Trademark Quality Review and Training (OTQRT) published four editions of its Two Quick Reminders newsletter.

3. Updates completed in FY 2022

a. TMEP updates and examination guides

The USPTO issued an update to the Trademark Manual of Examining Procedure (TMEP) in July 2022. The TMEP is a valuable resource for applicants and examining attorneys, and TPAC commends Trademarks for providing ongoing and regular updates to the TMEP.

Between updates to the TMEP, the USPTO occasionally provides guidance on specific issues through examination guides. Typically, examination guides supersede the current edition of the TMEP, if there are any inconsistencies. They are usually incorporated into the next edition of the TMEP.

b. Examination guides issued

The USPTO issued an examination guide in December 2021 to explain the procedures for ex parte expungement and reexamination proceedings under the Trademark Modernization Act (TMA).

The USPTO also issued an examination guide in May 2022 to clarify that the standard for an examining attorney to establish a prima facie case of genericness is the same as for other substantive refusals, i.e., there must be sufficient evidence to support a “reasonable predicate” for finding the trademark generic under the applicable legal standard.

c. The Acceptable Identification of Goods and Services Manual (ID Manual)

The USPTO issued a final rule to incorporate classification changes after the 11th Edition of the Nice Classification, version 2022, which became effective on January 1, 2022. The changes are available in the ID Manual.

The ID Manual lists pre-approved identifications of goods and services and their respective classifications that examining attorneys will accept without further inquiry, if the specimens of record support the identification and classification. Although the listing of acceptable identifications is not exhaustive, it serves as a guide for examining attorneys and those preparing trademark applications on what constitutes a sufficiently definite identification.

Throughout the year, the USPTO receives feedback from Trademarks employees and external customers about suggestions to add to the ID Manual and has implemented many of the suggested changes. Some of the enhancements this year include: the addition of entries for goods and services related to non-fungible tokens (NFTs), blockchain technology, cryptocurrency, and virtual reality; and the continued integration of acceptable identifications from the Madrid Goods and Services Manager into the ID Manual.

d. Rulemaking

In FY 2022, the USPTO issued two final rules to amend the international classification changes and to implement provisions of the TMA.

i. International trademark classification changes

On October 6, 2021, the USPTO issued a final rule to amend the rules of practice to modify the class headings incorporated into the Nice Agreement. This rule added new services to, or deleted existing services from, the class headings for Class 36 and Class 45 to further define the types of services appropriate to the classes. The changes became effective on January 1, 2022.

ii. Changes to implement provisions of the TMA

On November 11, 2021, the USPTO published a final rule to amend the rules of practice to implement provisions of the TMA that:

- Established ex parte expungement and reexamination proceedings (and related fees) for cancellation of a registration when the required use in commerce of the registered trademark has not been made
- Provided for flexible office action response periods, including an option for an extension of time to respond
- Amended the existing letter-of-protest provisions to indicate that letter-of-protest determinations are final and non-reviewable
- Provided for a new nonuse ground for cancellation before the TTAB
- Added a provision to address procedures regarding court orders cancelling or affecting registrations

Ex parte expungement and reexamination proceedings

The final rule's provisions relating to the new ex parte expungement and reexamination proceedings took effect on December 18, 2021, and the USPTO began accepting petitions for expungement or reexamination on that date. At the end of FY 2022, the USPTO had received 144 petitions, consisting of 65 reexamination petitions and 79 expungement petitions.

Flexible office action response periods

The final rule's provisions relating to the new periods for responses to pre-registration offices actions will take effect on December 3, 2022. Under these rules, applicants (excluding Madrid Protocol Section 66(a) applicants) or registrants must respond within three months to office actions issued during examination of an application or post-registration office action. However, they may request a single three-month extension of time to respond for a fee of \$125. Failure to submit a response or extension request within three months of an office action will result in abandonment of the application or cancellation or expiration of the registration.

Changes relating to post-registration office actions becomes effective on October 7, 2023.

4. Ongoing initiatives

a. Register Protection Program

The USPTO's Register Protection Program includes a series of initiatives designed to ensure that the registrations the USPTO issues and maintains are accurate, valid, and enforceable. It also aims to fight scams and fraudulent activities aimed at the USPTO and trademark filers. The initiatives include the Post Registration Audit Program, the maintenance filing deletion fee, the U.S. counsel rule, the administrative sanctions

program, expungement and reexamination proceedings under TMA, and mandatory identity verification for USPTO.gov trademark customer accounts. While no one initiative is the answer, each works together as a shield around the filing system.

i. Post registration audit and maintenance filing deletion fee

Post registration audit

During FY 2022, the USPTO continued to conduct random audits of declarations of use, as authorized by 37 C.F.R. §§ 2.161(b) and 7.37(b). The goal of the program is to improve the integrity of the trademark register by cancelling registrations with unsubstantiated use claims and removing unsupported goods and services from audited registrations.

In FY 2022, trademark examining attorneys and OTQRT program analysts audited more than 5,000 cases where post-registration maintenance declarations were filed. For each audited file, the USPTO requested additional evidence from the registrant to substantiate claims of use. As of July 1, 2022, in 56% of the audited registrations, either a response deleting goods or services was filed or the entire registration was canceled. In 82% of audited registrations, registrants were represented by counsel.

Maintenance filing deletion fee

In early FY 2021, the USPTO introduced a \$250 deletion fee for any maintenance filing being examined or audited where goods or services should have been deleted due to lack of proof of use. Following implementation of that fee, in FY 2022, the overall deletion rate in audits has fallen from 53% to 50%.

Notably, the USPTO saw a sharp decline in the need for second and third office actions, because registrants amended their registrations earlier in the audit process. Post-registration specialists have reported that there is a significant increase in Section 8 and 71 filings that contain more specimens of use in the filing up front, presumably to make the registration “audit-proof.” Also, maintenance filings appear to contain an increased number of deletions for unused goods or services before they are even submitted, which was the goal of the fee.

ii. U.S. counsel rule

The USPTO implemented the U.S. counsel rule in 2020, which requires foreign-domiciled filers to be represented by a U.S.-licensed attorney before the USPTO in trademark matters. Since implementation, there have been efforts to circumvent that rule, mostly by foreign filing firms that either hijack attorney credentials to file submissions or that improperly contract with U.S. attorneys to use their credentials in submissions for a fee.

In FY 2022, the USPTO increased the investigative capacity of the administrative sanctions program, added two more legal policy attorneys to its Register Protection Office (RPO), and increased coordination with the Office of Enrollment and Discipline (OED).

Once OED enters into and publishes a settlement agreement with a U.S. attorney who has admitted to violations of the U.S. counsel rule or other USPTO Rules of Practice (such as signatures and certifications, and Rules of Professional Conduct):

1. The RPO begins reviewing submissions from that attorney, assisted by contract investigators.
2. The USPTO issues administrative orders to the entity, typically a foreign filing firm, that has contracted with the U.S. attorney, laying out evidence of widespread rule violations that support terminating any invalidly filed applications and blocking the USPTO.gov accounts used to make the invalid submissions.

iii. Administrative sanctions program

The USPTO issued 43 administrative orders in FY 2022 to pursue sanctions against parties responsible for fraudulent submissions. These orders impacted thousands of applications. Fraudulent submissions included:

- Misappropriation of attorney names and credentials
- Forged or otherwise improper signatures
- False or invalid attorney information, owner information, and domicile addresses
- Unauthorized changes to correspondence or attorney information
- Digitally altered or fabricated specimens that do not show actual use in commerce

In FY 2022, the USPTO continued to update its website to provide focused webpages on scams, register protection, improper submissions, and attorney representation issues. These webpages provide, among other information:

- The names of companies engaging in suspicious or deceptive solicitations
- The names of parties sanctioned by the USPTO for improper activities
- Information for avoiding unintentionally improper submissions
- Guidance on identifying and avoiding scams
- Recommendations for victims of scams

The office also added the use of social media to publicize these problems to trademark filers.

iv. Trademark Modernization Act nonuse cancellation proceedings before the Director

Under the TMA's nonuse cancellation proceedings, the USPTO and its customers have two proceedings to clear unused registrations from the trademark register, namely ex parte expungement and reexamination proceedings. These proceedings provide faster, more efficient, and less expensive alternatives to a contested inter partes cancellation proceeding at the TTAB.

A specialized group of attorneys in the Office of the Deputy Commissioner for Trademark Examination Policy reviews third-party petitions that request institution of expungement or reexamination proceedings to determine whether to institute proceedings.

Proceeding numbers since December 2021 implementation to the end of FY 2022

Petitions resulting in instituted proceedings	51
Reexamination	25
Expungement	26
Director-initiated instituted proceedings	8
Proceedings that have terminated	14
Resulted in full or partial cancellation of registrations	11

v. USPTO.gov identity verification

In recent years, the USPTO has seen an increase in malicious and damaging uses of its trademark records. For example, unauthorized changes to email addresses (primarily the correspondence address) have increased, allowing bad actors to redirect legitimate office communications leading to a number of requests to correct records.

To boost security, in October 2019, Trademarks began requiring filers to log in to a USPTO.gov account with two-step authentication to use the TEAS and TEASi filing systems (where users go to file applications and various responses to office communications). In August 2022, the USPTO began requiring USPTO.gov account holders filing trademark documents to verify the identities associated with their accounts, either through an automated online identity (ID) verification process or through a notarized paper form. This helps ensure that account holders are who they say they are and permits the USPTO to prevent bad actors from making filings in trademark records.

The USPTO is exploring additional ways to give customers more control over who can file documents and/or make changes to trademark records. This initiative will keep filings more secure.

5. Response to COVID-19 for employees

Because Trademarks has been a leader in telework since 1997, it was not difficult to transition to a mandatory telework environment in March 2020. All employees in Trademarks began working on a full-time teleworking schedule, including the new examining attorney hires who had been on campus in Alexandria for only about two weeks.

Although the USPTO reopened in May 2022, it updated its telework agreements to allow even more flexibility in working from home, including allowing most new employees the option of working from home on day one of employment. In addition, Trademarks continued its expanded work hours and connectivity options. The USPTO also provided resources to support mental and physical health and employee engagement. Trademarks made particular effort to improve communication with those working from home. TPAC commends the efforts of the USPTO to recognize and address the effect of the pandemic on its dedicated workforce.

6. Diversity, Equity, Inclusion and Accessibility

Under Director Vidal's leadership, as well as the leadership of Deputy Director Brent, Bismarck Myrick and Fred Steckler, the USPTO has engaged in a concerted DEIA effort, including rewriting job descriptions to make them more equitable and inclusive, bringing on board DEIA expert Caren Ulrich Stacy, posting a job description for the first-ever Diversity Officer and forming the first ever DEIA committee.

7. Expanding Access

The USPTO's Council for Inclusive Innovation (CI²), chaired by Secretary of Commerce Gina Raimondo and Co-Chaired by Director Vidal, launched numerous programs to expand access to the entrepreneurship ecosystem and brand protection. The USPTO invested heavily in pro bono services throughout the country, increased the number of law schools offering trademark pro bono services, started an inclusive innovation internship program and launched an inclusive innovation website to provide access to training and support for trademark services. The Council expanded its leadership into other areas of government to take an all-of-government approach to serving trademark stakeholders and reaching all those who could benefit from trademark protection. The USPTO's regional offices and the regional outreach office expanded their reach into all areas of the country, presenting and offering trademark tutorials and support across the country. Through the USPTO and National Inventor's Hall of Fame partnership, nearly 250,000 children participated in Camp Invention or after-school programs targeted at teaching them intellectual property competence including with regard to trademarks. Through the USPTO's teach-the-teacher program, training on trademark protection was introduced into many additional schools throughout the country.

B. IT and e-government: organizational IT transformation

1. The Office of the Chief Information Officer (OCIO) FY 2022 IT priorities

A scalable, secure, and resilient IT infrastructure is a critical component of the USPTO. The USPTO established new technology and telework policies and practices to ensure employees have a healthy and productive work environment with the ability to work from home, in the office, or to select a hybrid work option. The OCIO continued to make progress on its priorities, including cybersecurity, resilience, and migration to the cloud.

a. Cybersecurity and resilience

Cybersecurity plays a key role ensuring that the USPTO IT systems are protecting the confidentiality, integrity, and availability of information processed, stored, and transmitted by those systems, while also protecting the privacy of individuals. IT vulnerability, identification, and remediation are top priorities in the face of significant ongoing and emerging threats and attacks. With the current landscape, cybersecurity risk is never completely eliminated and must be factored into business operations.

The USPTO routinely identifies and remediates system vulnerabilities to ensure secure operations in Trademarks, and works to reduce the risk that a potential vulnerability will disrupt the business. Risk management, contingency, and continuity planning allow the USPTO to quickly adapt and recover from any changes to the IT environment. The goal of resiliency is to continue USPTO mission-essential functions at all times during any type of disruption.

b. Migration to the cloud

OCIO seeks to utilize cloud resources where such cloud resources will deliver value to the USPTO faster, drive cost savings, and increase product security.

During FY 2022, OCIO completed several initiatives relating to utilization of cloud resources:

- **Security:**
 - Implemented a next generation firewall
 - Global adoption of a product security compliance tool
- **Observability:** increased monitoring through native tools and log aggregation
- **Identity and access management:** instituted single sign-on (SSO) with Okta access management
- **Network:** increased cloud direct connects network speed from one gigabits per second to two gigabits per second
- **Cost savings efforts:**
 - Right-sized computing and storage resources
 - Purchased a cloud storage plan for an overall 30% savings







2. Development of robotic process automation (RPA) tools

In FY 2021, Trademarks began assessing manual tasks in the trademark workflow to determine the suitability of RPA tools. In FY 2022, Trademarks launched bots that assist examining attorneys and support staff by automating certain routine tasks. These automations improve workflow efficiency by saving examination time and decreasing overall application processing time.

- **USPTO Virtual Assistant:** Trademarks piloted an interactive chatbot that responds to the 25 most commonly asked customer questions that the Trademark Assistance Center (TAC) receives about certain USPTO services.
- **Pseudomark bot:** This bot is currently in development and will help filter out trademarks that do not require the creation of a pseudomark.

3. Trademark product line accomplishments

OCIO's works with Trademarks' IT staff and six integrated product teams that manage the various IT components of systems that support Trademarks. The following chart describes the different trademark product lines and their respective accomplishments in FY 2022:

Product Line	Result
 <p>A modernized technology suite designed to provide the public with an intuitive, positive USPTO experience.</p>	<ul style="list-style-type: none"> • Finalized Trademark Modernization Act Phase 1 • Implemented identity verification • Integrated image/word search • Enhanced public-facing websites • Completed high-level eFile architecture design and cost analysis for cloud intake
 <p>Migration of functionality needed to support electronic trademark processing and examination from legacy applications to a modernized platform.</p>	<ul style="list-style-type: none"> • Increased examination efficiency and accuracy • Created new editing tools • Refined ID Checker • Enhanced public and internal notes features • Developed a new screen capture tool for Microsoft Edge
 <p>Supports data exchange and requirements specific to the Madrid protocol</p>	<ul style="list-style-type: none"> • Completed cloud Madrid transaction • Completed Okta integration of all cloud application programming interfaces
 <p>Conversion of core services (database, docket, etc.) to a cloud-enabled environment</p>	<ul style="list-style-type: none"> • Helped create TRAM retirement roadmap • Migrated common data from TRAM • Built show cause order and order for sanctions processes and databases
 <p>Business-centric, self-service analytics platform to allow analysts to develop data products</p>	<ul style="list-style-type: none"> • Launched RPA bots (USPTO Virtual Assistant and pseudomark) • Created and enhanced a new dashboard • Completed setup of new cloud management service
 <p>End-to-end system for filing and processing TTAB submissions and drafting and disseminating orders and decisions</p>	<ul style="list-style-type: none"> • Enhanced ESTTA forms for reexamination or expungement appeal proceedings • Enhanced TTABVUE to display and search by reexamination or expungement proceeding numbers • Completed Okta integration for TTAB Center

4. TRAM retirement

OCIO set a new deadline to complete TRAM retirement by the end of FY 2023, reducing the timeline from the previous target of June 2024. TRAM is the backbone of all legacy Trademarks IT systems, and its retirement is essential to implementation of modernized systems. To meet this earlier retirement goal, USPTO added product teams for FY 2023 and developed a comprehensive strategy for hundreds of features across trademark product lines on how to retire TRAM. In parallel to the TRAM retirement efforts, next generation work continues for TM Exam (replacement for FAST 1), Trademark Modernization Act (TMA) Phase 2 (flexible response periods), eFile (replacement for TEAS and TEASi), and treaty obligation capabilities for TM International (Madrid). TM Exam and TMA work are targeted for completion in December of 2022, while eFile and Madrid efforts will continue throughout the year-long TRAM retirement effort.

5. Goals for Trademarks and Trademark Trial and Appeal Board (TTAB) systems

Two main focuses for TTAB systems included continued maintenance and enhancement of existing legacy systems and planning and development for next generation TTAB Center systems.

- Continuing work on a new TTAB Center to integrate and modernize the current functions of the TTAB's legacy systems, including the following:
 - **Electronic System for Trademark Trial and Appeals (ESTTA)**: a system for the electronic filing of submissions to the TTAB proceedings
 - **Trademark Trial and Appeal Board Inquiry System (TTABVUE)**: a public application for viewing TTAB dockets and images
 - **Trademark Trial and Appeal Board Information System (TTABIS)**: an internal system for generating actions and tracking the status of proceedings, as well as recording data and issuing reports
 - **TTAB Reading Room**: a public platform for searching and displaying TTAB final decisions and precedential orders
- Working toward incremental retirement of legacy systems
- Developed a new Notice of Opposition form (to serve as a template for replacing other ESTTA forms)
- Incorporating additional new features into TTAB Center (such as authentication and a user docket for case management) to enhance user experience

6. Overall concerns and recommendations

TPAC recommends the USPTO continue its long-term efforts to replace legacy IT systems and promote greater efficiency in examination by leveraging and developing new tools to automate appropriate processes with user-driven input and prioritization. In the interim, TPAC recommends OCIO continue to support legacy systems until replaced, while also enhancing services, tools, and efficiencies for both external and internal customers.

Specifically, TPAC supports efforts to make prosecution and examination more efficient, accurate, and consistent, and to reduce pendency while maintaining quality examination. The USPTO's ability to make significant progress on its deployment of new enhancements and capabilities, all while stabilizing and securing the entire system, is a testament to its thoughtful strategy and planning.

The USPTO's rapid pace of execution has been well served by the OCIO's implementation of agile DevSecOps strategies in its process for setting, tracking, and completing its goals. TPAC applauds the efforts to retire TRAM earlier. As the USPTO continues to face an increasing number of cyberattacks, the OCIO should sustain its focus on the robust security and resiliency of the USPTO IT systems. This will not only protect the valuable data of millions of trademark applicants and registrants, but it will also support an efficient and comprehensive examination process by leveraging new artificial intelligence (AI) and RPA technologies.

C. Budget and funding issues

1. Fee collection

Total trademark fees collected in FY 2022 were \$459.2 million and represented a decrease of 2.8% from FY 2021. Trademark application filings and renewals decreased this year. Excess fee collections not available in the current year were deposited into the Patent and Trademark

Fee Reserve Fund (PTFRF) and will be available through reprogramming authority. The operating reserve total in the below table accounts for this deposit.

Key budget metrics for FY 2022	Amount
Total funds available with operating reserve and other income	\$664 million
Total spending	\$455 million
Total available in operating reserve at end of FY 2022	\$209 million

a. Trademark Operating Reserve

At the beginning of FY 2022, the Trademark operating reserve was \$207.8 million. At the end of FY 2022 the operating reserve was \$209 million, which is still above the minimum level (i.e., \$120 million, or three months of operating expenses). The optimal level of operating reserve is seven months of operating expenses.

The optimal operating reserve target is reviewed every two years to assess the likelihood and consequence of market variability and other risks, ensuring an appropriate reserve level that mitigates the uncertainty and complexity of the trademark business unit.

TPAC appreciates the efforts of the Office of the Chief Financial Officer to review the operating reserve targets every two years. In the past, the operating reserve has been impacted by high IT costs as well as unanticipated lapses in appropriation authority. TPAC continues to monitor the operating reserve closely with a goal of exceeding the minimum level and moving toward sustaining the reserves at or near optimal level.

2. Appropriations

The FY 2022 President’s Budget deviated from prior years by requesting an appropriation equal to the USPTO’s projected spending instead of its estimated fee collections. This projected spending was lower than the estimated fee collections by \$64 million.

TPAC and PPAC jointly expressed concerns in a letter sent on July 27, 2021 to the Chairs and Ranking Members of the House and Senate Judiciary Committees. The letter requested that Congress appropriate to the USPTO its estimated fee collection level of \$4.058 billion rather than the \$3.994 billion requested in the President’s Budget. In March 2022, Congress appropriated \$4.058 billion, which is \$363 million above the funding level for FY 2021. TPAC is pleased that USPTO received full and timely access to its fee collections in accordance with the intent of the America Invents Act (AIA).

3. Fee adjustment

New fee increases that went into effect in FY 2021 increased FY 2022 fee collections for Trademarks by \$78 million. The USPTO routinely evaluates fee collections to assess the adequacy of revenues related to aggregate costs and to determine if additional fee adjustments are needed. The USPTO has begun analyzing the sufficiency of its aggregate fee collections, taking into consideration public policy, inflationary increases, operational requirements, and financial needs. The impact of inflation paired with declines in trademark filings may necessitate further fee adjustments to support Trademarks’ operations.

4. Previously collected fees not available

Before the AIA, the USPTO did not have fee setting authority and did not have full access to fee collections. So, from FY 1990 through FY 2011, fees and surcharges collected from customers were not always appropriated to the USPTO. Previously collected funds in USPTO accounts at the Department of Treasury (Treasury) amount to \$1.024 billion (\$210

million of which is from fees collected for trademark services). The USPTO has confirmed with Treasury that the funds are in its account but needs congressional approval to access the funds.

TPAC continues to urge Congress to give the USPTO access to these funds, which would allow the USPTO to reach optimal reserve levels of seven months of operating expenses for Trademarks, mitigating the risk of economic uncertainty. Access to these funds would also have other benefits, like increasing the USPTO's capacity to improve its infrastructure and services, increasing initiatives to protect U.S. innovation and brands, and reducing instances of fraud.

Additional details on the unavailable amounts can be found in the Part III, Financial Section of the 2021 Performance and Accountability Report, Note 2 titled "Fund Balance with Treasury."

5. Direct versus indirect spending

In FY 2022, Trademarks' share of total USPTO expense was 11.4%. Of the total USPTO Trademarks expenses reported, direct expenses for Trademarks and the TTAB accounted for 52.3%; Trademarks allocated direct expense accounted for 16.0%; and 31.7% was comprised of Trademarks allocated indirect expense.

TPAC notes that information technology, including both program-specific systems (allocated direct) and general infrastructure (allocated indirect) expense, comprised 25.8% of total Trademarks' expenses.¹

Trademarks' share of the allocated direct and indirect expense, as a percentage of total Trademarks expense, is higher than the corresponding percentage share for Patents, although in absolute dollars it is lower.² Allocated expenses include infrastructure for agency-wide information technology, human resource management, financial management, legal services, policy and international activities, and USPTO administration and management.

TPAC has provided advice on the allocation of costs to Trademarks and has worked with the USPTO to identify improvements in the allocation of some overhead costs. The USPTO is committed to a transparent process that provides the most appropriate allocations for accurate and transparent financial reporting. TPAC will continue review of agency financial reports and provide advice to the USPTO on cost allocation, as appropriate.

6. USPTO regional offices and Trademarks revenues

TPAC has previously expressed concerns about Trademarks' revenues being used to fund USPTO regional offices because of their traditionally patent-oriented focus. Although efforts have been impacted by COVID-19, the regional offices are modestly increasing their trademark public outreach and education events and interacting with regional trademark practitioner communities, for example, supporting and participating in roundtables on trademark related topics. Moreover, staff at the regional offices are receiving more trademark focused training. That said, when the outreach topic requires more than a basic level of

¹ Where possible, costs are directly traced to the benefitting business unit using IT code charging. Other allocation methods such as *# of gigabytes of space* are used to allocate IT costs such as storage to the business units based on usage.

² Certain indirect support costs, such as financial statement preparation, are allocated evenly to Trademarks and Patents since the effort required for this activity is relatively equal. This type of allocation is not dependent on organizational size and results in an equal share of allocated costs, but appears as a higher percentage of total cost for smaller business units.

trademark knowledge, subject matter experts from the Trademark Office make the presentations, conduct the educational event, etc.

Overall, TPAC applauds continued efforts to strike a balance between patents and trademarks in the regional offices and outreach.

D. Trademark Trial and Appeal Board (TTAB or Board)

The Board achieved all its performance measures during FY 2022 and entered FY 2023 well positioned to continue meeting its goals. Some highlights:

- New case filings of ex parte appeals and petitions to cancel declined in FY 2022, while notices of opposition increased slightly.
- Production by attorneys and judges kept pace with the number of contested motions becoming ready for decision (RFD) and the number of appeals and trials becoming RFD on the merits.
- The rate at which cases matured to RFD slowed again in FY 2022, continuing a recent trend. Thus, the percentage of all pending cases that are becoming RFD is stabilizing, driven by two years of increases in the number of trial cases maturing to RFD, while appeals becoming RFD decreased.
- Caseload increases are expected in FY 2023 and beyond due to the surge in trademark application filings throughout FY 2021 and the first half of FY 2022, as well as appeals that may arise from the new expungement and reexamination proceedings created by the Trademark Modernization Act (TMA).
- A focus for the Board in FY 2023 will be further development of its Analytics and IT team.

1. Performance measures and statistics

In FY 2021, cases maturing to RFD fell by 2.9%, while production of final decisions decreased by 8.4%. However, the Board still decided more cases (668) than the number that became RFD (661).

As a result, the Board started FY 2022 with 26.2% fewer cases awaiting decision on the merits than at the beginning of the prior year. Just under 30% of these RFD cases were trial cases. Over the course of FY 2022, the inventory of cases RFD rose, as expected. Ultimately, the number of cases ready for decision at the end of FY 2022 totaled 150, 38.7% of which were trial cases. TPAC recognizes these positive developments and appreciates the diligent work of TTAB staff to keep pace with its workload.

a. Total filings compared to FY 2021

In FY 2022, appeals and cancellations decreased, while oppositions increased slightly. Extensions of time to oppose also decreased.

Type of filing	FY 2022	FY 2021	% change
Oppositions	6,702	6,669	.5% increase
Cancellation proceedings	2,290	2,400	4.6% decrease
Appeals	3,213	3,531	9.0% decrease
Extensions of time to oppose	16,814	17,200	2.2% decrease

b. Pendency

The TTAB maintained the same pendency³ goals in FY 2022 as in FY 2021. Those goals were an average processing time of no more than 12 weeks from RFD to issuance of final decisions in appeals, and no more than 15 weeks for such decisions in trials; and an average processing time for decisions on contested trial case motions of 12 weeks or less from RFD. In addition to allowing the TTAB to assess its own performance, pendency figures are useful averages for those involved in typical proceedings, permitting clients and counsel to more accurately estimate how long it will take the Board to resolve their cases or motions.

- Average pendency for trial cases from RFD to decision in FY 2022 ranged from 8.4 weeks to 13.6 weeks on a quarterly basis, and was 11.6 weeks for the year, well under the target of no more than 15 weeks. By comparison, in FY 2021 this figure ranged from 8 weeks to just above 11 weeks on a quarterly basis, and was 9.8 weeks for the year. The FY 2022 increases were attributable to the increase in trial cases becoming RFD.
- Average pendency of precedential decisions issued in FY 2022 was 19.8 weeks for final decisions in inter partes cases (compared to 40.3 weeks in FY 2021), 26.6 weeks for final decisions in ex parte cases (compared to 43.6 weeks in FY 2021), and 29.2 weeks for interlocutory orders (compared to 29 weeks in FY 2021).
- With respect to pendency for contested motions, quarterly averages in FY 2022 ranged from 8.8 weeks to 12 weeks, and the cumulative average for the year was 11.1 weeks, well under the TTAB's target of no more than 12 weeks. This compared to 9.9 weeks for the year in FY 2021. The number of motions resolved by issued decisions was 1,409 in FY 2022, a 2% decrease from 1,439 motions decided in FY 2021.
- The average end-to-end (commencement to completion) pendency of inter partes cases decided in FY 2022 was 142.6 weeks (compared to 150.6 weeks in FY 2021), a decrease of 5.3%. Median pendency of such cases was 128 weeks (compared to 140 weeks in FY 2021), a decrease of 8.6%.
- The FY 2022 average pendency for ex parte appeals from RFD to decision ranged from 6.2 weeks to 10.6 weeks, on a quarterly basis, and was 9.2 weeks for the year (compared to 7.7 weeks in FY 2021), well within the target.
- The average end-to-end processing time for ex parte appeals decided in FY 2022 was 38.9 weeks (compared to 36.1 weeks in FY 2021), an increase of 7.8%. Median pendency of such appeals was 36 weeks (compared to 34 weeks in FY 2021), an increase of 5.9%.

c. Accelerated Case Resolution (ACR) utilization

- ACR procedures in trial cases fell in FY 2022 just as in FY 2021, continuing a decline from prior years. This decline was expected because the Board changed its rules in 2017, allowing all trial cases to benefit from efficiencies that were previously only available to parties who agreed to use ACR.
- Even in cases not involving an agreement to use some form of ACR, parties are more often agreeing to stipulations as to facts or procedure. Stipulations are often part of

³ Unless otherwise stated, pendency is measured from the date the case becomes RFD to the date the final decision is issued. "Average pendency" figures are calculated after excluding cases that resulted in issuance of precedential orders or decisions, or consideration of such issuance, as well as cases with anomalous prosecution histories such as lengthy suspensions or remands.

ACR agreements, and the familiarity with them in the ACR context may be contributing to more use of them even outside ACR cases. The potential Pretrial Conference Pilot project being considered by the Board also would stress use of stipulations by parties in trial cases.

d. Year-end inventory

- The TTAB issued final decisions addressing the merits in a total of 562 cases in FY 2022 (a 15.9% decrease compared to 668 cases in FY 2021), leaving the total inventory of cases RFD at the end of FY 2022 at 150 cases (a 61.3% increase compared with the FY 2021 final inventory of 93 cases). The vast majority of cases at the TTAB are resolved without the need for a final decision addressing the merits.
- The inventory of contested motions RFD at the end of FY 2022 was 202, as compared with 186 such motions pending at the end of FY 2021. The number of cases with motions RFD at the end of FY 2022 was up 8.6% compared to the end of FY 2021.
- At the end of FY 2022, there were no motions pending that had been RFD for more than 12 weeks. This positions the Board to continue to meet the pendency goal for processing contested motions in FY 2023.

The Board's management team is cognizant of the challenges that remain for the future. In particular, the surge in new trademark application filings in FY 2021 and the first two quarters of FY 2022 may result in increasing new appeals and trial cases for the Board in FY 2023 and beyond. The deployment of new expungement and reexamination proceedings in Trademarks may increase appeal cases for the Board, depending on the rate at which registrations are canceled in whole or in part in TMA proceedings.

The Board plans to manage its workload by adding targeted personnel as needed, and taking other measures to enhance analytical assessment of cases, case types, and anticipated workloads for all Board personnel. The Board's Analytics and Information Technology unit spent much of FY 2022 planning to bring onboard a Business Intelligence Analyst to help with workforce planning and planning for the future TTAB Center.

2. Pretrial Conference Pilot

Many challenging cases with unnecessary motion practice or excessive records could be helped by early Board intervention in a post-discovery, pretrial conference. In FY 2022, the TTAB continued to lay the groundwork for a pilot program that would actively engage the parties in cases that appear to be heading to a trial that could result in a large, unwieldy, or unorganized record. While the Board recognizes that a large record is not necessarily an unwieldy, unorganized, or redundant record, these issues tend to manifest themselves in cases that involve lack of familiarity with Board procedure, more contested motion practice and inefficient presentation of evidence and arguments. In the pilot, the Board will focus on putting the parties on the right track with a conference suggesting more efficient ways of proceeding, thereby presenting the best case for consideration on the merits, and saving time and resources for the parties and the Board.

The Board already has authority under its existing rules of practice to require the parties to participate in a conference. However, the rule providing this authority is broadly worded. The Board is developing the pilot program, for intended deployment during the first quarter of FY 2023, which will be transparent and establish defined means for identifying cases with characteristics that make them appropriate cases for inclusion in the pilot.

During FY 2022, the Board continued to engage TPAC in discussion of the pilot and continued to conduct stakeholder outreach, encouraging comments and feedback. In response to some of that feedback, the Board has determined that the Administrative Trademark Judge (ATJ) who sits in the final pretrial conference during the pilot program should not sit on the ATJ panel deciding the case. Further consideration of public comment was underway at the end of FY 2022.

3. Revisions to Trademark Trial and Appeal Board Manual of Procedure (TBMP)

In June 2022, the TTAB revised its TBMP, per its annual revision schedule. The TBMP update incorporates changes due to the TMA and case law reported between February 28, 2021 and March 4, 2022, and reflects current TTAB practice and procedure.

4. Stakeholder outreach

During FY 2022, though operating in a hybrid environment, the TTAB continued various initiatives to engage stakeholders in discussions of policy and procedure, and to provide guidance on the benchmarks for successful practice before the Board. With the re-launching of some in-person conferences and meetings following the changes in the COVID-19 pandemic, the TTAB participated in some in person events. The TTAB also continued its partnerships on various programs with IP stakeholder groups, the USPTO's Trademark organization, the USPTO's OPIA, and USPTO regional offices, including events featuring public hearings in TTAB cases.

Outreach events with a global or international focus included the following:

- ATJ participation in European Union IP Case Law Conference
- Deputy Chief ATJ participation in Global IP Roundtable

Events involving TTAB hearings and presentations included the following:

- A joint program with the Patent Trial and Appeal Board at the University of Oregon Law School
- A joint program with the American Bar Association Section of Intellectual Property Law
- A program jointly organized by the New Mexico State Board IP Section and the USPTO's Texas Regional Office

Events involving stakeholder IP groups included the following:

- IP Law Association of Chicago Annual IP Symposium
- Colorado IP Inn of Court, Judge Yeakel IP Inn of Court (Austin, TX) and Giles S. Rich Inn of Court (D.C.)
- International Trademark Association Annual Meeting
- ABA-IPL 2022 Annual Meeting
- ABA-IPL Trademark Days with the USPTO
- Rocky Mountain IP & Technology Law Institute
- Foundation for Advancement of Diversity in IP Law
- New York IP Law Association Hot Topics in IP Program
- AIPLA's Trademark Boot Camp
- Individual ATJs or Interlocutory Attorneys (IAs) also participated in programs at Southern Illinois University, George Washington University Law School, and for USPTO student interns

5. Information technology developments

During FY 2022, the TTAB's IT team continued collaborating with the Trademarks organization and OCIO to prepare for the implementation of the TMA and retirement of TRAM. The Board team also continued to lay the groundwork for the future TTAB Center in the cloud, which eventually will replace the legacy systems – ESTTA and TTABIS/TTABVUE.

6. Personnel

The TTAB added three IAs in FY 2022: Steven Ferrell and William Jackson, both coming to the Board from Trademarks, as well as Ashlyn Lembree. Michael Webster was promoted from an IA to Managing Interlocutory Attorney following the retirement of Kenneth Solomon. TPAC thanks Kenneth Solomon for his years of service to the Board.

Two ATJs retired from federal service: David Mermelstein and Linda Kuczma. TPAC also thanks Judge Mermelstein and Judge Kuczma for their years of service to the Board. As of the end of FY 2022, the TTAB had 23 ATJs, plus Chief Judge Rogers and Deputy Chief Judge Thurmon, 18 full-time IAs, one part-time IA, a managing IA, a supervisory paralegal, two lead paralegals, and eight paralegals. The TTAB also hosted a legal extern during the summer of FY 2022.

7. Precedential decisions

The TTAB issued 39 precedential decisions in FY 2022 under the leadership of Judge Karen Kuhlke, TTAB's Lead Judge for precedents. While the Board tracks the number of precedential decisions, it focuses on identifying appropriate cases through which it can address the myriad of substantive and procedural issues facing stakeholders. As such, the number of precedential decisions varies from year to year, depending on the types of cases that mature to RFD and the issues they present.

In FY 2022, the Board's precedential decisions addressed issues including:

- Various Section 2 bases for refusal or challenge
- Claims of fraud on the USPTO
- Dilution
- Non-ownership
- Abandonment
- Claim preclusion
- Consequences of failure to file a trial brief and relief from same
- Requirement for a valid domicile address under Section 1(a)
- Disclaimer requirements under Section 6(a)
- Issues under Sections 1, 2, 3, and 45 regarding whether matter functions as a mark or whether matter is generic
- Pleading and entitlement to a statutory cause of action (formerly standing)
- Amendment of pleadings
- Discovery sanctions for violation of the Standard Protective Order
- Page limitations in ACR proceedings
- Admissibility of trial evidence

In addition, in FY 2022, the Board continued offering an online nomination form where the public can nominate non-precedential decisions for the Board to consider redesignating as precedential. Four decisions were so redesignated.

8. Oral Arguments

Beginning August 8, 2022, the Board resumed an in-person hearing option. Parties still can choose a virtual hearing. In inter partes cases, both parties must agree to holding the hearing in person. Otherwise, the hearing will be virtual. Many panels still will have an ATJ appear virtually, even if the parties and their counsel appear in person.

9. Fee adjustments and new fees

After implementing certain new fees and fee adjustments in FY 2021, the Board made no changes to fees in FY 2022. Fees for appeals to the TTAB from decisions in the new expungement and reexamination proceedings created by the TMA are the same as existing appeal fees.

E. Policy and international affairs

1. Intellectual Property (IP) Attaché Program

The USPTO's IP Attaché Program, an important part of the Office of Policy and International Affairs (OPIA), continues to advocate for improving international IP systems and to support U.S. businesses and other stakeholders with IP interests abroad. In coordination with OPIA's subject matter experts, the IP attachés regularly engage with foreign governments and the private sector on a variety of issues. Their advocacy includes:

- Discussing IP policy with foreign government officials
- Providing training on IP law, enforcement, and administration
- Conducting public awareness and outreach programs

Additionally, the IP attachés directly assist U.S. stakeholders looking to conduct business abroad, to educate them on how to register and enforce their IP internationally. They also provide information about foreign laws and regulations and the operation of foreign courts, agencies, and governments. IP attachés serve in embassies, consulates, and missions throughout the world, covering China, and regions including Southeast Asia, South Asia, Central Eurasia, Europe, Latin America, the Middle East, and North Africa. OPIA is currently hiring an IP attaché for a new post in Johannesburg, South Africa. IP attachés also represent the USPTO at Geneva to discuss multilateral IP issues.

a. FY 2022 accomplishments

In the first three quarters of FY 2022, including preliminary data for the third quarter of FY 2022, the IP attachés:

- Assisted more than 6,770 U.S. stakeholders,
- Conducted more than 70 public awareness programs, with more than 7,400 participants
- Conducted more than 3,300 meetings with foreign government officials
- Reported 56 significant IP successes

Some examples of the IP attachés' work this year include social media campaigns to raise public awareness during the COVID-19 pandemic, and training on patents, trademarks, copyrights, and trade secrets in various countries, including the United Arab Emirates, Saudi Arabia, Mexico, Peru, Bolivia, Ukraine, China, and Thailand. The IP attaché for the Middle East and North Africa worked with Kuwaiti authorities to address stakeholder concerns about counterfeits by establishing a mechanism for filing online complaints about counterfeit products in Kuwait.

Throughout FY 2022, the IP attachés also engaged in significant outreach to the corporate community, academia, and other U.S. stakeholders to raise awareness about the IP Attaché Program and its services and to learn which issues were of the greatest interest and concern to those groups. The IP attachés conducted outreach in Alabama, Arkansas, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, Tennessee, and Washington, D.C.

2. Technical assistance and training

OPIA provides technical assistance to foreign trademark officials, typically by providing training on examination procedures and policy, Madrid Protocol implementation, and IP office administration. These programs provide an opportunity for OPIA to share best practices with other officials, to demonstrate how the USPTO trademark system works, and to illustrate why it was designed and is administered that way. These exchanges are critical to improving foreign examination practices and promoting dialogue between the U.S. and foreign offices on issues impacting U.S. stakeholders.

a. Training for foreign audiences

In FY 2022, OPIA's Trademark Team and the IP attachés trained over 1,200 foreign government officials and other foreign audiences through more than 25 programs on trademark examination, administration, law, and policy. OPIA's Trademark Team and the IP attachés conducted these programs virtually or in person.

OPIA's Enforcement Team, in conjunction with the IP attachés where appropriate, also trained over 5,000 government and law enforcement officials in over 75 programs focusing on the health and safety dangers of counterfeit goods, among other topics. The programs ranged from criminal investigations in COVID-19 related counterfeiting and fraud cases to a workshop on combating the proliferation of unregistered, unlicensed, and counterfeit health and safety regulated products.

OPIA Trademark Team members also communicate regularly with foreign offices regarding specific policy questions and concerns.

b. Training for U.S. audiences

In the U.S., OPIA also conducted approximately 20 programs providing trademark-related education and training to approximately 1,700 U.S. stakeholders, SMEs, Tribal Nation members, and U.S. government officials.

Full fiscal year training and activity statistics will be available in the USPTO's 2022 Performance and Accountability Report and Data Visualization dashboards.

c. Webinars

OPIA provided webinars on various trademark topics including trademark examination, trademark office administration and management, TTAB practice, the U.S. counsel rule, geographical indications, and the Madrid Protocol. Webinars were given to officials and stakeholders in Afghanistan, Argentina, Brazil, Chile, Colombia, El Salvador, the Kingdom of Tonga, Mexico, Paraguay, Peru, the Republic of Fiji, the Republic of Nauru, Uruguay, countries in sub-Saharan Africa, and countries in Southeast Asia. OPIA also provided trademark training to U.S. embassy personnel stationed in Southeast Asia, the Russian Federation, the Middle East, North Africa, sub-Saharan Africa, and Latin America. OPIA partnered with the Department of State's Foreign Service Institute to virtually produce its annual IP training for Foreign Service Officers. In addition, OPIA

offered webinars for U.S. industry on recent trademark and copyright cases from China as well as a program on using various IP rights for product design protection in China.

3. People's Republic of China (PRC) trademark related matters

OPIA has pursued trademark related reform directly with PRC counterparts in conjunction with other U.S. government departments and agencies. Additionally, OPIA's Alexandria-based China Team coordinates with IP counselors in Beijing, Guangzhou, and Shanghai, who provide boots on the ground to help U.S. businesses navigate the IP landscape and resolve problems they encounter in China.

a. U.S. government recommendations and coordination

OPIA led the preparation of U.S. government recommendations and supporting technical explanations on proposed trademark-related measures issued by PRC authorities. These authorities include the China National Intellectual Property Administration (CNIPA), the State Administration for Market Regulation (SAMR), and the Supreme People's Court. Matters included standards for determining general trademark violations, and measures for the administration and protection of collective and certification marks. Many of the recommendations are directed towards China's implementation of its IP commitments under the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China (Phase One Agreement).

In addition to formal written engagement, OPIA supports the Office of the U.S. Trade Representative (USTR) in extensive technical dialogues with CNIPA and other PRC authorities implementing the U.S. China Phase One Trade Agreement.

b. Stakeholder outreach

Separately, OPIA continues extensive educational outreach to U.S. businesses operating or considering operations in China, including providing an updated China Intellectual Property Rights (IPR) Toolkit. In January 2022, OPIA published a compendium of PRC IP and related measures for businesses and practitioners. These materials complement multiple webinars in which USPTO's experts on PRC-related IP issues address myriad trademark and other IP topics, including enforcement of IP rights in the PRC, and how the U.S. government can help companies register and protect their IP. OPIA also continues to solicit input from stakeholders about their experiences in all facets of protecting and enforcing IP rights in the PRC, including combatting bad faith trademark filings and other actions at CNIPA and USPTO.

Continuing the well-attended virtual quarterly PRC IP and case law updates initiated by OPIA's China Team, three seminars were conducted in FY 2022. The team focused on case law reports, legal developments regarding bad faith trademark filings, and news on administrative punishment of trademark agencies involved in bad faith filing behavior.

In September 2022, USPTO and CNIPA organized and presented a joint virtual trademark program open to the public, featuring presentations by experts from both offices on developments in each country. Experienced IP practitioners from both countries provided valuable personal insights and practice tips.

4. Anti-counterfeiting

This year, in partnership with the National Crime Prevention Council, the USPTO continued to fund a multi-year outreach project to raise awareness of trademark counterfeiting, with a focus on the online sale of counterfeit goods. This project is managed by OPIA. The first phase of the campaign was aimed at teens, tweens, parents, and teachers to educate them on the dangers and risks of counterfeit products, such as cosmetics, personal care products, electronics, and sports gear.

a. Go for Real campaign

The “Go for Real” campaign, which went live on June 27, 2020 and is ongoing, uses online games and other educational materials, social media, and public service announcements (PSAs), to educate young teenagers and their parents about the risks of counterfeiting. The iconic McGruff, the Crime Dog, who starred in a series of popular PSAs in the 1980s and 1990s, is the face of the campaign and is bridging the gap between young and old.

In FY 2022, the USPTO shared the Go for Real campaign material with the Mexican Institute of Industrial Property (IMPI). To appeal to a local audience, IMPI developed its own mascot, an axolotl, which is a Mexican salamander, to better appeal to Mexican children and teens. IMPI’s “Elige el Original” campaign uses mixed media formats to disseminate educational resources, PSAs and radio ads to encourage youth to think of themselves as innovators and creators, and to start building respect for intellectual property among this young audience.

USPTO’s public awareness efforts have also been on display at the World Intellectual Property Organization (WIPO). The current Go for Real PSAs were presented during the recent session of WIPO’s Advisory Committee on Enforcement. The PSAs were viewed by representatives from more than 100 WIPO member states attending the meeting. The USPTO continues to use high-visibility events such as CES and SXSW to amplify anti-counterfeiting efforts with interactive, educational displays as part of their start-up and trade show exhibits.

b. Additional programming and training

Throughout FY 2022, OPIA provided policy advice and technical expertise on domestic and international IP matters to multiple other federal agencies. These included USTR, the U.S. Department of State, the Intellectual Property Enforcement Coordinator (IPEC), and other bureaus of the Commerce Department. In addition, the USPTO assisted USTR in the preparation of its annual review of global developments on trade and IP and the Special 301 Report. The Special 301 Report identifies U.S. trading partners in which IP protection and enforcement has deteriorated or remained at inadequate levels and where U.S. persons who rely on IP protection have difficulty with fair and equitable market access. The USPTO assisted in its preparation by providing extensive information on the state of IP protection and enforcement in 80 countries under review. The USPTO likewise provided USTR with information in connection with its evaluation and compilation of the annual Notorious Markets List, which highlights prominent online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting. The most recent list identified 42 online markets and 25 physical markets that were reported to engage in or facilitate substantial trademark counterfeiting and copyright piracy.

The USPTO offers basic- and advanced-topic programming for U.S. small and medium-sized enterprises (SMEs) doing business abroad through its Global Intellectual Property Academy (GIPA), a component of OPIA. These in-depth programs organized and conducted by OPIA attorneys cover best practices in domestic and international IP protection and enforcement and are typically delivered through face-to-face and distance learning modes, both from the USPTO's headquarters in Alexandria, VA, and around the country in cooperation with the USPTO's regional offices and other business units. In FY 2022, GIPA provided IP awareness and education programming to over 6,526 U.S. SMEs, U.S. government officials, and other U.S. stakeholders. About 22% of GIPA's 175 programs in FY 2022 targeted this domestic audience of IP rights owners, users, and policymakers.

5. WIPO Standing Committee on Trademarks, Industrial Designs, and Geographical Indications (SCT)

a. Geographical indications

At the WIPO SCT, OPIA is advancing discussions on national examination practices to seek better international understanding of how geographical indications (GI) applications are reviewed on a country-by-country basis. OPIA aims to create transparency in national examination practices by identifying similarities and differences among systems, and providing information that will benefit GI holders, national offices, and GI users. The SCT held an information session on GI issues in March 2022 to share practices as to how various countries examine GIs in *sui generis* and trademark systems. The session also included a discussion about ways to prevent bad faith registration of domain names consisting of, or containing, GIs.

b. Trademarks

The SCT continues to discuss protection for country names in trademarks and in generic top-level domains (gTLDs). The SCT also continues to conduct a questionnaire on countries' development, use, and enforcement of nation brands.

6. Madrid Protocol

The WIPO Working Group on the Legal Development of the Madrid System for the International Registration of Marks (MWG) has been considering two significant proposals for several years: the dependency provision of Article 6 of the Madrid Protocol and adding three new languages (Arabic, Chinese, and Russian) to the Madrid System's three existing languages (English, French, and Spanish).

The next MWG meeting is in early November 2022 and dependency is expected to be on the agenda. In light of the conflict between Russia and Ukraine, it is as yet unknown whether the new languages proposal will also be an agenda item.

The USPTO is obtaining and assessing feedback about the positive and negative consequences on U.S. stakeholders for both proposals.

7. ICANN

OPIA/USPTO is the IP advisor to the National Telecommunications and Information Administration in the ICANN Governmental Advisory Committee and also participates in various other ICANN community meetings. The main topics of discussion within ICANN continue to be domain-naming server abuse (involving pharming, phishing, malware, botnets and spam); possible policy changes for the introduction of any future

gTLDs; the development of a framework for access to the WHOIS domain name registration database (largely dark since passage of the EU General Data Protection Regulation in May 2018); and review of the Uniform Domain Name Dispute Resolution Policy (UDRP). The acronyms of inter-governmental organizations and the final report is pending before the ICANN Board.

8. TM5

TM5 is a forum of five intellectual property offices—the USPTO, the CNIPA, the European Union Intellectual Property Office (EUIPO), the Japan Patent Office (JPO), and the Korean Intellectual Property Office (KIPO)—that allows the trademark offices to work together to harmonize processes, discuss challenges, and exchange information throughout the year, especially through its cooperative projects aimed at improving and aligning trademark processes, including combatting bad faith filings, common status descriptors, ID list, non-traditional marks, image searching, anti-counterfeiting, and misleading (fraudulent) solicitations.

a. TM5 Annual Meeting, November 3-5, 2021

In November 2021, CNIPA hosted a virtual TM5 Annual Meeting over three days, including a user session. During the closed portion of the meeting, the TM5 member offices discussed TM5’s ongoing projects and deliverables, which are available on the TM5 website. The third and last day was devoted to a user session, which provided users of each trademark office the opportunity to obtain updates on projects, office developments, and interact with partner delegations. U.S. trademark practitioners from the American Intellectual Property Law Association (AIPLA), the American Bar Association (ABA), the Intellectual Property Owners Association (IPO), the International Federation of Intellectual Property Attorneys (IFIPA), and the International Trademark Association (INTA) participated in this interactive session.

b. TM5 Midterm Meeting and IT Experts Meeting

On April 28-29, 2022, the USPTO participated in the hybrid (in-person with CNIPA participating virtually) 2022 TM5 Midterm Meeting in Washington, D.C. to discuss ongoing and proposed projects and to exchange views on recent trends in the TM5 member offices. The midterm user session was held on May 1, 2022, at the INTA Annual Meeting in Washington, D.C., where a joint TM5-INTA workshop was held for users on recent amendments to trademark-related laws. An additional joint TM5-INTA workshop was held during the INTA Annual Meeting on May 2, 2022, to discuss revisions to trademark examination guidelines. In July 2022, the USPTO participated in a TM5 working level meeting in Alicante, Spain, and a virtual technical cooperation workshop on IT for trademark examination. Topics included block chain, image search, and artificial intelligence.

9. Study of non-fungible token (NFT) technology’s impacts on IP rights

On June 9, 2022, Senators Leahy and Tillis requested that the USPTO and the U.S. Copyright Office conduct a joint study of non-fungible tokens (NFTs) and their impacts on IP rights. OPIA’s Trademark, Patent, Copyright, and Enforcement Teams are currently collaborating with the U.S. Copyright Office regarding the study.

10. Trademarks for Humanity Award

Based on a proposal made by TPAC, OPIA is planning a new Trademarks for Humanity Award program to recognize brand owners, from individual entrepreneurs to large companies, that use registered trademarks to advance humanitarian issues. In addition to promoting and rewarding the use of trademarks for the betterment of society, the program will highlight the critical role that trademarks play to foster innovation, competitiveness, and economic growth.