

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, May 21, 2021

1 PARTICIPANTS:

2 TPAC Members:

3 CHRISTOPHER KELLY, Chair

4 SUSAN NATLAND, Vice Chair

5 STEPHANIE BALD

6 DAVID J. CHO

7 TRACY L. DEUTMEYER

8 JOMARIE B. FREDERICKS

9 JENNIFER L. KOVALCIK

10 TRICIA MCDERMOTT THOMPkins

11 KELLY WALTON

12 Union Members:

13 CATHERINE FAINT, NTEU 245

14 HAROLD ROSS, NTEU 243

15 TPAC POPA:

16 PEDRO FERNANDEZ

17 HOWARD WILSON

18 USPTO:

19 COKE STEWART, Performing the Functions and
20 Duties of the Under Secretary of Commerce for
Intellectual Property and Deputy Director of
21 the United States Patent and Trademark Office

22 DAVID GOODER, Commissioner for Trademarks

1 PARTICIPANTS (CONT'D):

2 JAY HOFFMAN, Chief Financial Officer, USPTO

3 BRENDAN HOURIGAN, Director, Office of Planning
and Budget, USPTO4 DAN VAVONESE, Deputy Director for Trademark
5 Operations, USPTO6 AMY COTTON, Deputy Commissioner for
7 Trademark Examination Policy, USPTO8 GREG DODSON, Deputy Commissioner for Trademark
Administration, USPTO

9 JAMIE HOLCOMBE, Chief Information Officer, USPTO

10 OSMAN TURAN, Acting Trademark Product Line
11 Manager, USPTO12 TAMARA FOLEY, Attorney, Office of Legislative
Affairs, USPTO13 KARIN FERRITER, Deputy Chief Policy Officer and
14 Deputy Director for International Affairs15 HELENE LIWINSKI, Attorney-Adviser for the Office
of Policy and International Affairs16 THE HONORABLE GERARD ROGERS, Chief
17 Administrative Trademark Judge, Trademark
Trial and Appeal Board, USPTO18 BISMARCK MYRICK, Director of the Office of Equal
19 Employment Opportunity and Diversity, USPTO

20 Also Present:

21 MARK THURMON, Deputy Chief Administrative
Trademark Judge, USPTO22 MARY CRITHARIS, Chief Policy Officer and
Director for International Affairs, USPTO

1 PARTICIPANTS (CONT'D):

2 SEAN MILDREW, Deputy Chief Financial Officer,
3 USPTO

4 MICHELLE PICARD, Senior Advisor for Financial
5 Management, USPTO

6 ANASTASIA JOHNSON, Executive Assistant, Office
7 of the Commissioner for Trademarks, USPTO

8 * * * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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

2 (1:00 p.m.)

3 CHAIRMAN KELLY: Well, hello, and
4 welcome to the second public quarterly meeting of
5 the Trademark Public Advisory Committee. My name
6 is Chris Kelly and I am a partner at Wiley Rein in
7 Washington, D.C. and have the privilege of serving
8 as this year's TPAC Chair.

9 Before we begin today, I would like to
10 introduce my fellow TPAC members beginning with
11 this year's Vice Chair Susan Natland; Susan is a
12 partner at the Knobbe Martens firm in Irvine,
13 California. Moving on in the seniority, Stephanie
14 Bald, a partner at Kelly IP in Washington, D.C.,
15 Kelly Walton Senior Counsel at Electronic Arts in
16 Austin Texas; Jennifer Kovalcik Vice President
17 Technology & Intellectual Property Counsel at
18 Community Health Systems in Franklin, Tennessee;
19 Tricia Thompkins General Counsel at Shoe Show in
20 Charlotte, North Carolina; David Cho Assistant
21 Vice President Senior Legal Counsel for Trademarks
22 and Copyrights at AT&T in Dallas, Texas; Tracy

1 Deutmeyer, a Shareholder at the Fredrikson & Byron
2 firm in Des Moines, Iowa; and Jomarie Fredericks,
3 Deputy General Counsel and Chief Intellectual
4 Property and Brand Counsel and Director of
5 Intellectual Property at Rotary International in
6 Evanston, Illinois.

7 And I would also like to recognize our
8 union representatives here today, from NTEU we
9 have Catherine Faint filling in for Jay Besch, and
10 Harold Wilson and Pedro Fernandez from POPA.
11 Again, welcome to everyone and thank you for
12 participating.

13 Our first speaker today is Acting Deputy
14 Under Secretary of Commerce for Intellectual
15 Property and Acting Deputy Director of the United
16 States Patent and Trademark Office Coke Stewart.
17 We are very pleased to have Acting Deputy Director
18 Stewart with us today and I will turn it over to
19 her for her opening remarks.

20 MS. STEWART: Great. Thank you so much,
21 Chris, for introduction. Can everyone hear me
22 okay?

1 CHAIRMAN KELLY: Yes.

2 MS. STEWART: Okay. Well, thanks,
3 Chris, so much for serving as Chair of the
4 Trademark Public Advisory Committee. Thank you
5 also to Susan Natland for your service as vice
6 chair. To both of you, we very much appreciate
7 your willingness to lead TPAC and for your sharing
8 your experience with the Agency, and by extension
9 to all of our stakeholders.

10 I'd also like to represent -- recognize
11 all of the members of the Committee for your
12 willingness to provide us with your expertise,
13 your experience, and your guidance, and we know
14 you have busy careers outside of this public
15 service and we commend you for all that you do for
16 the USPTO and for the IP System. Your commitment
17 is important to the smooth operation of our
18 program and to the continued prosperity, health,
19 and wellbeing of our nation.

20 Finally, from everyone here at USPTO, a
21 very warm welcome and thank you to everyone tuned
22 in today for our quarterly meeting. Your interest

1 and engagement in the U.S. System of trademark
2 protection is important and very much appreciated.

3 As I prepared remarks for today, I was
4 reminded of how critical our mission is to
5 ensuring that brand owners are able to protect
6 their intellectual property and succeed in U.S.
7 And in global markets. It is increasingly
8 important for our innovators to have access to the
9 tools that safeguard their IP rights. We continue
10 our efforts to reach America's innovators,
11 entrepreneurs, and small businesses to ensure that
12 they are supported in a rapidly changing economy.

13 As always, there's a lot of material to
14 cover over the next few hours including the latest
15 developments in our business and financial
16 operations. Our Fiscal Year 2021 priorities,
17 legislative affairs, international programs, and
18 updates of the Trademark Modernization Act. You
19 will also hear from Bismarck Myrick on how the
20 office will support President Biden's Executive
21 Order on equity.

22 A lot has happened since our last

1 quarterly meeting with the economy taking a strong
2 upward turn and rapid progress in responding to
3 the pandemic. The result is that 2021 continues
4 to be a year with an unprecedented increase in
5 trademark filings. So far this fiscal year to
6 date, trademark filings are up 56 percent. We are
7 experiencing strong interest among Americans and
8 foreign brand owners with China representing the
9 largest portion of foreign filings.

10 With the overall increase in filings, we
11 have stepped up our efforts to guard against those
12 that appear fraudulent or that appear to
13 circumvent the U.S. Counsel rules implemented in
14 2019. We are actively taking measures to stop
15 bogus applications from moving forward, to secure
16 and modernize our electronic databases and to hold
17 fraudulent filers accountable. Protecting the
18 integrity of the U.S. Trademark Register continues
19 to be one of our most important priorities and
20 you'll hear more about that shortly from our
21 Deputy Commissioner for Trademark Examination
22 Policy Amy Cotton.

1 Another priority I'd like to highlight
2 is the expedited processing and examination of
3 COVID-19-related applications. As of mid-May, we
4 have received over 272 petitions for prioritized
5 initial examination of COVID-19 medical goods or
6 services. Sixty percent of these petitions have
7 been granted and the top three classes identified
8 in these granted decisions are Class 5 for
9 vaccines, anti-infected and antiviral, Class 10
10 for personal protective equipment, and Class A for
11 respirators and respiratory- protected devices.

12 The USPTO truly has been on the
13 frontlines of our nation's efforts to combat the
14 Coronavirus, and I want to particularly commend
15 all of our trademark employees who are working so
16 hard to address the surge of filings while dealing
17 with the pressures in their daily lives caused by
18 the pandemic.

19 While the USPTO currently remains in
20 Phase I of maximum telework, we do anticipate
21 moving into Phase II at some point in the coming
22 months. And as we begin the summer season, I

1 think we are all eager to regain a sense of
2 normalcy, especially here at the USPTO.

3 Another top priority of course is
4 implementing the Trademark Modernization Act of
5 2020. You'll hear more about the TMA from
6 Commissioner Gooder and others, and we look
7 forward to your comments to our Notice of Proposed
8 Rulemaking that published in the Federal Register
9 just this Tuesday.

10 It's also worth noting that we have
11 embraced our expanding role in promoting
12 innovation and entrepreneurship in the U.S.
13 Economy. We've updated our inventor and
14 entrepreneurial resources website to make it
15 easier to access resources during each step of the
16 patent and trademark application process.

17 This site provides links to trademark
18 applications and fee tables. It offers
19 post-application resources to help determine the
20 status of your application, and it provides
21 information to respond to office actions and how
22 to utilize petitions and appeals. It is easily

1 accessible from our USPTO homepage. I hope you'll
2 all take a look.

3 Finally we are getting ready to
4 celebrate the 75th anniversary of the Lanham
5 Trademark Act of 1946. Passage of this landmark
6 bill was a monumental achievement by
7 Representative Fritz Lanham from Texas. In the
8 face of fierce opposition, Lanham reintroduced his
9 trademark legislation repeatedly over the span of
10 a decade until the measure was finally passed and
11 signed into law by President Harry Truman.

12 His bill simplified registration,
13 eliminated arbitrary provisions, and provided
14 trademark owners the prompt recourse against
15 infringement. Along with the TMA, we continue to
16 build on the foundations provided by the Lanham
17 Act to guarantee trademark protections for current
18 and future generations of innovators and
19 entrepreneurs. So, thank you, again to the
20 members of TPAC for your commitment to civic
21 service and to all of you who are engaged in the
22 exciting dynamic and constantly changing world of

1 trademarks.

2 And thank you to David Gooder, Amy
3 Cotton, Dan Vavonese, and Greg Dodson, and the
4 entire trademark leadership team for working
5 tirelessly, not only to respond to the historic
6 increase in trademark filings, but to implement
7 one of the most significant pieces of IP
8 legislation in recent history.

9 With that, I'm honored to pass the baton
10 to our esteemed Commissioner for Trademarks who
11 will provide an update on trademark operations.

12 MR. Gooder: Thanks, Coke, very much.
13 Welcome, everyone. Good morning, good afternoon
14 wherever you happen to be sitting. Today we're
15 going to talk about a number of things. I'll be
16 updating you with regard to the trademark
17 organization and its personnel business
18 operations, metrics, et cetera. Then we'll be
19 discussing financial performance of the trademark
20 organization with Jay Hoffman, our CFO.

21 Next, we'll talk a bit about our
22 priorities for Fiscal '21. We're six months into

1 that fiscal year, and the most important of those
2 to the trademark community, the Trademark
3 Modernization Act, our efforts to boost register
4 protection, IT modernization and what we're doing
5 to attack the surge. And then, we'll then follow
6 with questions and wrap up after we cover the
7 other portions from other parts of the Agency.

8 So with that, let's go ahead and jump
9 in. Trademark staffing, as some of you may have
10 heard, we increased our examiner core by 47
11 examiners. That class started within the last
12 month, give or take, so we are now a notch over a
13 thousand employees of trademarks. That includes
14 675 or so -- 674 examiners, and you can see in the
15 chart how that breaks down across the trademark
16 organization. Some people ask: well, if you've
17 added 647, why are the examining attorney numbers
18 and hire from the last time not shown here? That's
19 because many examiners will maybe take a detail in
20 a different part of the Agency or change -- that
21 which unit inside of the trademark office they're
22 working in such as Policy, et cetera, so it's

1 always coincidentally in flux.

2 Next slide, please. So as Coke
3 mentioned, and as everyone is widely aware,
4 trademark applications in the last two years, and
5 especially this year, have been -- you'll hear the
6 word "unprecedented" a lot, and that's true. I'm
7 still searching for a word that's even more so
8 than that, but Fiscal '20 closed out at 9 1/2
9 percent above the prior year, which for a pandemic
10 year was pretty astounding, but this year, you
11 know, it's -- we're currently 220,000 applications
12 higher and projected to reach just a bit over
13 950,000 and it may be higher.

14 We're not sure where that will actually
15 end up, but it's significant, and it is creating a
16 surge on applications which has a knock-on effect
17 throughout all of the trademark organization, and
18 you'll hear more from Dan Vavonese about the
19 things that we're doing to get at that surge.

20 Next slide, please. When we're looking
21 at this -- the story here is kind of interesting.
22 Last year -- last fiscal year was sort of really,

1 you know, kind of slow at the beginning and then
2 crazy at the end. This year has been nothing but
3 up.

4 In terms of fiscal years, you'll see the
5 two big spikes. One came at the end of September
6 which is the end of the government's fiscal year
7 and one was the end of December, and we believe
8 the end -- the spike at the end of December had to
9 do with the fact that there was a fee increase
10 starting the 2nd of January which would have
11 motivated people to get things filed if they
12 needed to.

13 The thing that's fascinating is the four
14 months after that have also seen significant
15 growth. In fact, April closed out as being the
16 third highest month in history next to the
17 September and December of last year, so it doesn't
18 show any signs of abating although it's
19 fortunately at a lower level, so we'll keep
20 watching it through the year.

21 Next slide, please. So it's interesting
22 to look at where this growth is coming from, and

1 you can see that the blue line -- the top blue
2 line is the U.S. The orange-ish line in the
3 middle is China, and the gray line, next, is the
4 rest of the world, and the green line is the
5 European Union. And that's the European Union
6 post-Brexit, so the UK is in the gray line. And
7 you can see that while the U.S. has some, you
8 know, ups and downs, the rest of the world is
9 fairly moderate, you know, and fairly, you know,
10 flat.

11 China had the huge spikes significantly.
12 Now that's slowed up a bit recently, but right now
13 if you look across the whole filings for the year,
14 the left (phonetic) it's at -- that's a bit over
15 on the right, 59 percent with 26 percent of the
16 applications being from China. That is up from
17 typically somewhere in the 15-percent range. And
18 then the rest of the world at 10 and the EU at 5.

19 Next slide, please. Now, that's
20 obviously that with this kind of numbers and
21 growth it's having an impact on pendency both in
22 first action and then the disposal pendency which

1 lagged behind about, well, the amount of the first
2 action pendency, so four or five months. And you
3 can see that we are in the low 5-month range for
4 first action, and probably over 10 for disposal.
5 Now, that's currently we're meeting the goal for
6 disposal, but the first action is obviously beyond
7 it.

8 Now, on the website -- the public
9 website, you can see actually where we sit at any
10 given with regard to this. Dan's going to mention
11 that in a little more detail, how you find it,
12 what it's disclosing, but this is something we're
13 obviously keenly aware of and taking some
14 traditional and some novel approaches to dealing
15 with it.

16 Next slide, please. The positive news
17 is that on the quality front, we're meeting all
18 the targets and that's a credit to really to the
19 examining core and their ability to not only deal
20 with the pandemic but to maintain the quality,
21 what they were doing on given lots of challenges
22 whether that'd be dealing with homeschooling or

1 schooling at home by, you know, virtual means or
2 taking care of family, et cetera. It's been an --
3 I'm really impressed with the whole trademark
4 organization in their ability to deal with this.

5 So if you could get to the next slide,
6 that'd be great. Thank you. All right. Now, at
7 this point, I want to turn it over to our
8 financial team. Jay Hoffman is our CFO and
9 Brendan Hourigan who's the director of planning in
10 the office (phonetic), planning a budget, and
11 they're going to look at the trademark, the
12 operation from the financial perspective and
13 update you on that. So, Jay, I'll turn it over to
14 you.

15 MR. HOFFMAN: Great. Thanks, Dave. Let
16 me make a few introductory remarks here, and then
17 I will turn it over to Brendan Hourigan to walk
18 through the balance of the slides. So -- let me
19 see if I can get my camera working here. There we
20 go. So the revenue uncertainty caused by the
21 economic impacts of the pandemic is abating. As I
22 have previously described to the TPAC over the

1 last year, revenue uncertainty has been quite
2 volatile both to the downside at the outset of the
3 pandemic and to the upside as the economic
4 recovery took hold.

5 Trademarks has (phonetic) strong growth
6 in filings compared to the prior year albeit with
7 the caveat that the prior year included the
8 springtime 2020 COVID-related economic downturn
9 results. As of today, I can report the trademark
10 revenues have settled into a pattern that is
11 generally consistent with our annual forecast and
12 in fact are tracking above planning levels by
13 about 1 percent.

14 Trademark spending is tracking slightly
15 above plan due in part to Trademark Modernization
16 Act spending requirements as well as adding some
17 additional capacity to deal with the large surge
18 in applications. However even with these modest
19 spending adjustments, we are well within
20 tolerances for our budget in operating reserve
21 levels.

22 Lastly, I can report that the operating

1 reserve is in a very strong position thanks in
2 large part to our conservative spending decisions
3 last year coupled with the fee increase as well as
4 stronger than expected demand the last six to nine
5 months. Right now, the operating reserve is
6 sitting at approximately \$180 million which is a
7 \$105 million above our \$75 million threshold, and
8 it's working its way to the optimal operating
9 reserve level which is defined as six months of
10 operating costs or about \$205 to 210 million. So
11 generally, the state of the trademarks business is
12 in very solid shape.

13 So with that, I'd like to ask Brendan
14 Hourigan, our director of off, (phonetic) planning
15 budget to please walk through the detailed slides.
16 If you can, bring those back up, please.

17 MR. HOURIGAN: Okay, thank you, Jay. As
18 you can see from the agenda, I'm going to speak to
19 the FY 2021 financial position instead of the
20 business, and then talk about the next steps for
21 our budget processes which includes the '22 budget
22 going to Congress and the process that we are

1 undertaking with our 2023 budget formulation.

2 Next slide, please. So at our last
3 meeting, we showed our financial outlook based on
4 the most recent assumptions. We continuously
5 review our estimates so our financial outlook
6 today is a bit different. One of the main changes
7 to our outlook is that Congress approved our
8 reprogramming request to transfer the funds
9 deposited into the Patent and Trademark Fee
10 Reserve Fund back into our salaries and expense
11 account. So the 232 million in revenue that we
12 collected last fiscal year that was above our
13 appropriated authority we are now authorized to
14 spend.

15 If you look at the last line of the
16 table, you will see that what the approved funding
17 does to the end of a year operating reserve. It
18 increased our projected trademark operating
19 reserve by 16.4 million. We are currently on a
20 path to begin being well above our minimum
21 operating reserve level, which is currently 75
22 million, but we anticipate ending the year at

1 181.9 million.

2 We plan to spend less than we planned to
3 collect this year which means we'll be depositing
4 funds into our internal operating reserve. Our
5 estimated trademark fee collections is 465.8
6 million. Through April 30, 2021, total revenue
7 collections are 2.9 percent or 7 1/2 million above
8 the year-to-date plan. Application filings are
9 4.6 percent or 7.2 million above planned levels.

10 Next slide, please. This chart looks at
11 the revenue change comparing Fiscal 2021 to Fiscal
12 Year 2020. The yellow line is the 40-day moving
13 average as a percentage of change. You will see
14 that our fee collections have been consistently
15 coming in at 25 to 50 percent above last year's
16 collections. The caveat of course is that last
17 year's collections were unusually low at the
18 offset of the outset of the pandemic.

19 Next slide, please. This slide shows
20 the end of your aggregate revenue projections for
21 the trademarks business line. Each business day,
22 we calculate the end-of-year projection of revenue

1 based off trends we have experienced so far in the
2 fiscal year. We also factor in trends that we
3 know will occur in the future. That's what the
4 blue line represents, our end-of-year projections
5 calculated every day. We can compare the blue
6 line to the purple line which represents our most
7 up-to-date plan.

8 The plan is 466 million, the revenue is
9 tracking at 472 million, 6 million above the
10 planning level or about 1.3 percent. Note that
11 trademark revenue was growing steadily during the
12 first fiscal year quarter and then began to
13 converge with the forecast plan starting in
14 January and coinciding with the fee increase.

15 The next slide, please. This slide
16 shows the trademark end-of-year projections by fee
17 category. The percentages above the bar indicates
18 the percent difference between end-of-year
19 projections of the fee category and the annual
20 plan for the fee category. If you'll note that
21 the application filings are almost 30 percent
22 above plan, consistent with strong demand

1 particularly in the first part of the fiscal year.

2 Next slide, please. This chart shows
3 the trademark operating reserve balance as a
4 25-day moving average. You will see that we have
5 kept our levels above the minimum level of 75
6 million. The more recent numbers include the
7 funds that we received approval to transfer from
8 the Patent and Trademark Fee Reserve Fund which
9 contributes to the slightly higher average.

10 Next slide, please. So in terms of next
11 steps for our budget, we are still working to
12 finalize the FY '22 budget request. The
13 submission date to Congress is set for the end of
14 May. We have now heard that that date will be
15 Friday, May 28th. We sent the draft document to
16 TPAC last week for review and we have kicked off
17 our FY '23 budget formulation process. The
18 process includes re-baselining FY '22 requirements
19 and revenue estimates. We will also evaluate
20 aggregate revenue and aggregate cost for decisions
21 related to initiating a new fee setting effort.

22 Next slide. And that concludes the

1 slides for the finance update. Thank you.

2 MR. GOODER: Thanks, Brendan and Jay.
3 Moving on, I want to touch on the trademark
4 priorities for the year that we're in the midst of
5 right now and then we'll dive into four of those
6 areas significantly. As you can see on your
7 screen there are essentially four primary
8 priorities and one in the center. That one has to
9 do with the organization of the trademark office
10 itself and we're looking at how -- what do we need
11 to do to deal with the growth, et cetera.

12 Many people remember the trademark
13 office when it was 2 or 300 people, maybe 400.
14 There is that -- we are now, as you saw earlier,
15 over a thousand people, and if you think about it
16 in private sector terms, we are essentially a
17 company of half a billion in sales, a thousand
18 employees, and customers in 205 markets. That's a
19 significant organization, and so we're looking at
20 the organization and how that needs to evolve.
21 You'll hear more about that in upcoming TPAC
22 meetings, but I just want to make sure everyone's

1 aware that that's at the heart of everything we're
2 doing right now.

3 For this year specifically, our four
4 biggest priorities are, one, to get at this
5 application surge as best we can and try to work
6 through it faster than when we might normally have
7 been able to. Dan will talk about that process,
8 but the thing that I find most optimistic and
9 encouraging about it is, you know, it -- the good
10 news is we have more applications than we know
11 what to do with; the bad news is the same thing.

12 That provides an opportunity, though, to
13 pressure test a lot of our system and really look
14 for ways to make it more efficient, to modify how
15 we examine, how we handle things, everything we
16 do, and over time you'll hear -- today you'll hear
17 some of them, but things we're doing to get at
18 that.

19 Moving that around the screen to the
20 right, obviously the huge priority this year is to
21 implement the Trademark Modernization Act. That's
22 due by the end of December, and that has been a

1 one-year path which isn't very long, and Amy
2 Cotton Deputy Commissioner for Trademark
3 Examination Policy will take you through some of
4 that although the more deeper dive will be through
5 the roundtables that we have planned.

6 The next area is to look also at
7 register protection, and I'll save my comments
8 about register protection until when we get to
9 that but suffice to say that that has become of
10 the most significant areas for us. And finally
11 our IT modernization is back on track because of
12 -- frankly because of the increase in filings. As
13 you may remember from one of the first TPAC
14 meetings I did last year when finally started to
15 fall so dramatically in the spring, we had to
16 pause a whole lot of things, and the biggest thing
17 there was IT modernization.

18 With the increase in filings, that has
19 put us in much stronger position and we're able to
20 pull all those, A, back on track, and B, get them
21 progressing even faster. So anyway, with that I
22 will turn our conversation over to Dan Vavonese to

1 talk about this filing surge and how we're
2 attacking it. Dan?

3 MR. VAVONESE: Good afternoon, everyone.
4 I'm going to go through the -- go through some of
5 the things we're working on and go through a
6 little further explanation of what the results
7 have been from these huge filings, so if we go to
8 the next slide.

9 MR. GOODER: Hey, Dan?

10 MR. VAVONESE: (inaudible) --

11 MR. GOODER: Can you -- pull the
12 microphone a little closer? Yes, there you go.
13 Thanks.

14 MR. VAVONESE: Everybody hear me better
15 now? Mic check? Okay, good. So again, going to
16 talk about the surge and talk about what's causing
17 it, although we've already kind of done that,
18 what's the impact on our internal processing and
19 what we're doing about it, so if we go to the next
20 slide. So as Commissioner Gooder mentioned, you
21 know, these huge filings, especially over the last
22 six to nine months, have really impacted us hard

1 especially in September and December and the last
2 couple of months as well. We just continue to get
3 close to record filings each month.

4 Our unexamined application inventory,
5 these are the new applications that are sitting,
6 waiting to be examined. We have generally been in
7 the 150 to 200,000 range. That's been a
8 comfortable level for the number of employees we
9 have. As you'll see it has continued to go up.
10 We are now currently at around 425,000 new
11 application classes, and that's -- you know, and
12 that's the entire total of our classes that are
13 examined.

14 That doesn't mean they're ready to be
15 examined this moment. That could have -- they
16 could have been filed yesterday, but that number
17 is huge, and despite the best efforts of all of
18 our examining attorneys, they have been continuing
19 to work as hard as they possibly can despite in
20 the middle of a pandemic, in the middle of these
21 huge increases, and while trying to maintain the
22 register protection which is so important to us,

1 and I just want to echo Commissioner Gooder's
2 comments on just their continued hard work every
3 day, especially when it comes to the quality of
4 work that they're putting out.

5 So that's 425,000. That number is
6 continuing to go up. The five-month pendency that
7 we are at now on first action, we're in December
8 right now, so that December filing month which was
9 over a hundred thousand, we have to get through
10 that month which is a huge month to get through
11 just to get -- and just to start to get into
12 January and up (phonetic), so we're doing
13 everything we can to get through that.

14 So if we go to the next slide. So
15 what's the impact internally as a result of the
16 surge? And I'm going to go on chronological order
17 here based on when we received the file and then
18 on. So when it comes to new applications being
19 received and processed, we process all
20 applications within one week, and that means
21 uploading all the data provided by the applicants
22 and loading the actual file into our systems.

1 That's generally done within one week.

2 There are certain circumstances where it
3 takes longer to get that entered. Generally it's
4 when the classification is not specified by the
5 applicant because if this classification isn't
6 specified, we need our pre- examination unit to do
7 their carder (phonetic) review, check on those
8 cases in order to get the data uploaded to the
9 system because we can't just upload that data
10 without a class.

11 In those situations, it's taking almost
12 over two months to get those cases uploaded.
13 We're looking at what else we can do on this, but
14 I'm going to just put out a plug here, please if
15 you can help us by putting in the international
16 class and that will definitely help in getting
17 your initial data processed into the system. And
18 I'm also --

19 MS. NATLAND: Hey, Dan?

20 MR. VAVONESE: Yes?

21 MS. NATLAND: Real quick. Susan Natland
22 here. I just -- just a thought that came to mind

1 on this. Is there any way to require that a class
2 be entered? I mean, it may not be the right class
3 (inaudible) --

4 MR. VAVONESE: It's required in TEAS
5 plus. It's not required in the T-standard
6 application, so --

7 MS. NATLAND: Is there a way to make it
8 required in the TEAS-standard? I know that
9 (inaudible) --

10 MR. VAVONESE: We can't. Yes, we have
11 treaty obligations on this, but it's a good
12 thought, and it's something we need to look at
13 going forward both from the external side but also
14 from the internal side, how can we get these
15 processed.

16 MS. NATLAND: Right.

17 MR. VAVONESE: But I wanted to explain
18 that because I think there's been some mixed
19 communication regarding applications not getting
20 processed, and what we have found is it's that
21 situation and a couple of other minor situations
22 where the data doesn't get entered initially, and

1 we always do suggest that if you're having any
2 issues to contact either our TEAS email box or to
3 contact our Trademark Assistance Center if you
4 have any particular questions.

5 When it comes to first action pendency,
6 we talked about that. We are now currently at
7 about five months. The first action pendency is
8 actually a little over five months from when the
9 application is received until the application is
10 examined by an examining attorney. When it comes
11 to our amendments and responses to office actions,
12 just like the application surge, the filings have
13 gone up.

14 Our responses have come up based on the
15 office actions that have gone out, so we are
16 trying to keep up with that backlog as well, and
17 we have -- while it's typically about two weeks to
18 get the responses processed, we're now at
19 currently about three months to get those
20 responses processed.

21 If we go to the next slide. So those
22 were the three main areas, but there are other

1 areas where we are -- the backlogs have affected
2 us. I'll talk about how we're explaining that in
3 a minute. What are we doing? So we've
4 reorganized workloads among our staff, trying to
5 pinpoint certain areas that where the backlogs
6 have been worse to try to focus on those areas and
7 get that work out as soon as possible.

8 As Commissioner Gooder mentioned, we
9 also have hired new examining attorneys; that
10 started in April. They are still currently in
11 their training period, but within a couple of
12 months they will be starting to actual -- be
13 putting out more -- examining more applications,
14 so, you know, by the end of this fiscal year we're
15 hoping to see an impact from that.

16 We will be hiring plenty more examining
17 attorneys next year and in the coming years
18 because the projections are still for our filings
19 to increase. We are also hiring additional staff
20 to support our services areas to assist with those
21 pre-exam backlogs and with our response backlogs
22 as well.

1 Another route we're taking is on the IT
2 and automation side. We're developing certain
3 improvements in both the robotic process
4 automation as well as in artificial intelligence
5 to help provide tools to our staff so they can
6 more quickly process some of the issues that we
7 specifically know are slowing down the processing.
8 So those are things that we are -- we hope to have
9 -- we're in development and we hope to have them
10 implemented soon because it will definitely start
11 to provide an impact for us.

12 Most importantly, we are updating our
13 external communications regarding these backlogs.
14 We want to -- we are being more transparent
15 (phonetic) and providing more information about
16 the current timelines we're at so that we can
17 direct our customers directly to pay (phonetic).
18 Here's where we are when it comes to the different
19 parts of the process, not only so that our
20 applicants know where they are, but also so that
21 our stakeholder attorneys can explain to their
22 applicants what's going on as well.

1 We have launched internal pendency
2 metrics on our trademark dashboard to show where
3 we are on first action pendency and where we are
4 on our pre-exam loading and on our responses
5 post-registration, letters of protest. We're
6 trying to provide all that information and
7 updating it each month so people know where we are
8 on those timeframes.

9 If we go to the next slide. This is
10 just a quick snapshot of what one of the pages
11 looks like. We have on our homepage, if you
12 scroll barely down, you'll see an hourglass. The
13 hourglass is a link to get to our dashboard, to
14 get to our internal processing timeframes. We
15 will be doing an additional trademark alert and
16 other notices within different pages on our
17 website that direct our customers to this location
18 so that they can see where we are on these
19 different internal processing issues.

20 So that's the -- that's where we are and
21 the things we're working on and things we'll
22 continue to work on. We appreciate everyone's

1 patience with this. We are working at this from
2 several angles to try to get our timeframes back
3 to what you have come to expect, but please bear
4 with us as we continue to work through this.

5 I think that's the last slide from me
6 unless there's any questions.

7 MR. GOODER: There we go. Sorry about
8 that. Any questions from the TPAC on the -- in
9 this portion?

10 MS. NATLAND: I have a comment. I just
11 have a quick comment beyond (phonetic) --

12 MR. GOODER: Please go ahead.

13 MS. NATLAND: -- and that just thinks --
14 I really do appreciate the transparency in posting
15 the pendency information. I do think that helps
16 us at least set expectations for ourselves and for
17 our clients, so thank you for being so transparent
18 and providing other information to the public.

19 MR. VAVONESE: And if you have any
20 additional suggestions and other information you'd
21 like to see there, we all -- I'm happy to -- it's
22 a living website. We can certainly supplement as

1 appropriate.

2 MS. NATLAND: Great. Thank you.

3 MR. GOODER: Any other questions from
4 the TPAC?

5 MS. WALTON: I had a quick question.
6 This is Kelly Walton from TPAC. How has it been
7 -- you know, I think there was a requirement in
8 the past for trademark examiners to be in D.C., or
9 the home office maybe in the -- and obviously
10 that's probably not happening right. How is it
11 then on-boarding people remotely, and do you all
12 think that's working well and any challenges?

13 MR. VAVONESE: It's been working well.
14 It was tough last March because we had a new class
15 come on right as the pandemic started, so we had
16 to on-the-fly convert everybody to go home. It's
17 a good thing that we have experience with working
18 in a telework environment, so we had the supplies,
19 we had the infrastructure in place, but it was
20 still -- that was -- it was a -- it -- the
21 transition at the very beginning was tough but
22 then people got adjusted, and then for the more

1 recent classes, both last month and in October, we
2 do think we've learned and done a better job of
3 getting our people onboard and training in a
4 remote environment and we continue to learn and --
5 you know, and --

6 MS. WALTON: Yes.

7 MR. GOODER: -- update how we're doing
8 this.

9 MS. WALTON: Okay. That's great to
10 hear. Thank you.

11 MR. GOODER: Yes, these are --

12 MS. WALTON: (inaudible).

13 MR. GOODER: -- (inaudible) on, too.

14 There's a challenge. I want to kind of
15 particularly call out the class that started in
16 October who was intended to start in May, and they
17 were asked to just kind of hold and while we
18 figured out what was going on and watch what was
19 happening in the economy and they, to their
20 credit, really did. I know it was a frustrating
21 time for them, as it was for everybody trying to
22 figure out what was happening, but they held in

1 and --

2 MS. WALTON: Yes.

3 MR. GOODER: -- started in October and
4 they're now well on their way, so.

5 MS. WALTON: Good.

6 MS. FREDERICKS: Dan, this is Jomarie
7 Fredericks with TPAC. You know, in some of our
8 earlier discussions we heard that recently the
9 USPTO is allowing entrance, basically, to the
10 building again, and with vaccination, or without
11 masks, or I'm not sure of the details, but I just
12 wondered, not just in terms of the onboarding of
13 the new employees, but when you entered the --
14 existing employees, the long-term employees, do
15 you see any interest or when do you anticipate
16 allowing them back into the office?

17 MR. VAVONESE: Well, we already are in a
18 current phase where employees can request to come
19 into the office to work, you know that we have a
20 process in place that we're in a Phase I out of
21 three phases, and we will be, over the summer be
22 evaluating going to the next phases, but in

1 concert with the larger guidelines that have been
2 coming out, we'll be working closely with the
3 Department of Commerce on this, so I can't give
4 you a timeframe, but we are looking very closely
5 and following all the guidelines, you know,
6 government, at local, national to -- and we will
7 be following all of those in that transition back
8 to for the employees that do want to come back
9 into the office versus the employees that are
10 already permanently teleworking.

11 MS. FREDERICKS: Thank you.

12 MR. GOODER: Okay. No other questions.
13 Thanks, Dan. All right. Now, I want to turn it
14 over to Amy Cotton who will talk a bit first about
15 the Trademark Modernization Act and then we'll
16 move to the register protection topic. Amy?

17 MS. COTTON: Thanks, Dave. Good
18 afternoon, everybody. Can we go to the next
19 slide, please? Really excited to let you know
20 that the Notice of Proposed Rulemaking issued on
21 the 18th, just a few days ago, the comment period
22 is 60 days. Written comments will be due to

1 regulations.gov by July 19th to lay out what's in
2 the roundtable -- I'm sorry -- what's in the rule
3 package. We're holding two public roundtables on:
4 One on June 1st and one on June 14th.

5 This is going to be very much like the
6 roundtable that we held a few months ago. If
7 you've subscribed to our alert system, a trademark
8 alert went out with links to our updated TMA
9 webpage and a link to the roundtable event
10 webpages. You can go to those event pages and
11 sign up for speaking slots so you can make some
12 informal comments or ask questions, and we'll be
13 there to answer.

14 I wanted to just point out one thing.
15 Anything that is provided to us in the roundtable
16 is considered informal. The formal rulemaking
17 process is through regulations.gov, and anything
18 submitted there in writing will be part of the
19 written record and to which we have to respond in
20 the final rule, so I would urge formal comments to
21 go to regulations.gov, but if you want to hear
22 more about what's in the rule package, listen

1 today and listen for a more deep dive at the
2 roundtable.

3 So here is the listing of the things
4 that are in rule package. The letters of protest,
5 the response times, new ex parte, non-use
6 proceeding of procedures, attorney recognition for
7 representation and court orders concerning
8 registrations.

9 Next slide, please. One more? I'm
10 going to actually skip the letter of protest
11 because in the rule package there is just one tiny
12 provision on the rule. The determinations on
13 letters of protest are final and nonreviewable.
14 I've actually mounted the Trademark Modernization
15 Act statute. The procedures have all been laid
16 out in an earlier rule package that it was
17 implemented earlier this year.

18 With regard to the second big piece of
19 the TMA, the flexible response period, there are
20 three actual options in the rule package. The
21 first option appears in the text in the rule text,
22 but the other two are in the explanatory text, so

1 I just wanted to highlight that there are three
2 from which you can choose which one you like or
3 maybe there's one that you've had -- is not in
4 there that you like, but certainly pick one of
5 those and let us know what you think about it.

6 All of these options would apply both in
7 examination and in the post-registration
8 examination procedures. The shortened options
9 won't apply to Section 66(a) Madrid applications,
10 just to Section 1 and Section 44. The first
11 option is pretty simple. It's a three-month
12 response period with one extension. The second
13 option is a two-phase examination option. This is
14 a little bit more complicated, but we were looking
15 for ways to create efficiencies in examination and
16 so we were considering whether we could bifurcate
17 examination between formalities and substantive.

18 So on a bifurcated examination system,
19 we would have the first phase of the examination
20 on formalities with a 2- month respond period that
21 could be extendable in 2-month increments up to
22 the full 6 months, then the 2nd phase would be

1 substantive. There we would have a three-month
2 response period extendable up to the full six
3 months as well.

4 Now if you can add, you realize that
5 that now is a 12- month response period all told
6 if all extensions are done, but the idea being
7 that we could move applications through the system
8 on smaller issues more efficiently, and that might
9 help us deal with some of the surge in filings
10 that we're seeing.

11 The third option, we call it the Patent
12 Model, so here it's the initial response period
13 would be two months, but then it could be extended
14 in increments up to the full six months. The
15 extension fees we get progressively higher for
16 each month that you extend it, and so that pretty
17 much matches on the patent side.

18 Moving on to the third big bucket in the
19 TMA, the non-use cancellation mechanisms. The
20 next slide. These are the new proceedings
21 available. One is called expungement; one is
22 called reexamination. On the expungement and the

1 reexamination procedures, those are procedures
2 before the director. They are not before the
3 Trademark Trial and Appeal Board.

4 We, but also, though, have a new claim
5 for non-use at the Trademark Trial and Appeal
6 Board for expungement. This is in addition to the
7 non-use claims that are already available. It
8 does not supplant any existing claims.

9 For expungement, these would be targeted
10 to marks in Section 1, 44 and 66 registrations
11 that have never been used. The petition may be
12 filed between 3 and 10 years after registration.
13 For reexamination, these are targeted to Section 1
14 registrations that were not in use as of the
15 relevant date. The relevant dates for a 1(a)
16 application would be the filing date. The
17 relevant date for a 1(b) application would be the
18 later of the filing date of the AAU or the
19 expiration of time to file the SOU.

20 For reexamination, the petition may be
21 filed in the first five years of the registration,
22 but after that, no more reexamination petitions

1 can be filed against the registration. To the
2 extent that you wanted to challenge a registration
3 after these windows of time, you would have to go
4 back to the Trademark Trial and Appeal Board.

5 Next slide. So any person may file
6 these petitions with no standing requirement. The
7 petition has to be filed through a USPTO.gov
8 account through TEAS. The petitioner must provide
9 the domicile so we can determine if the petitioner
10 is foreign domiciled, and then they would need to
11 have the designation of a U.S. Attorney to file
12 the petition.

13 At the time of filing, a courtesy email
14 notice will go out to the registrant and the
15 register unto attorney of record that the filing
16 happened and any evidence, and the filing will be
17 uploaded into the TOCR (phonetic) system for folks
18 for public viewing.

19 Next slide, please. So in the petition
20 the petitioner has to provide a verified statement
21 of containing information about the reasonable
22 investigation and their evidence of non-use. So

1 the reasonable investigation, here are the sources
2 that we think would be important. Certainly this
3 is not exhaustive. There are certainly other
4 sources that can be looked at.

5 But a reasonable investigation must be
6 appropriately comprehensive, a search that's
7 likely to reveal use of the mark in commerce. The
8 sources must be reasonably accessible, and the
9 ones that can be publicly disclosed, and certainly
10 the reasonableness of the search will be
11 determined case by case. So we want to know what
12 you searched, how you searched it, and when you
13 searched it.

14 Next slide. So in the petition the
15 evidence provided must establish a prima facie
16 case for a proceeding to be instituted. We will
17 decide -- the director is the gatekeeper and the
18 director decides whether the prima facie case is
19 made based on the evidence and information
20 provided in the petition as well as the USPTO's
21 electronic record of the involved registration.
22 So we're looking at our records as well as what

1 comes in in the petition.

2 The Director can institute a proceeding
3 without a petition if the Director has that
4 evidence establishing a prima facie case. So for
5 example, a Director could -- the Director could
6 institute a proceeding on different goods and
7 services in that same registration that's already
8 the subject of a petition-initiated procedure, and
9 then we can consolidate review of the proceedings
10 on that same registration.

11 If a prima facie case is made, the
12 director must institute proceedings, and once the
13 proceedings are instituted, an office action will
14 issue and direct the registrant to respond within
15 two months with proof of use of the mark on the
16 challenged good and services.

17 Next slide, please. The registrant is
18 subject to our rules on electronic correspondence,
19 domicile address and representation if foreign
20 domiciled. The registrant has three options for a
21 response, provide us evidence of use. That'd be
22 great. And the other options, of course, are

1 providing evidence supporting excusable non-use,
2 but that's only in expungement, and it's only
3 applicable to Section 44, 66 registrants Madrid
4 and Paris.

5 The third option is deletion of the
6 goods and services. The registrant can delete in
7 the response and the effects will be immediate.
8 The registrant can delete through a Section 7
9 amendment to the registration, but we need to be
10 notified about that in the response, and the
11 registrant could voluntarily surrender the entire
12 registration; again we would need to be notified
13 in the response to the office action. If any one
14 of the these is sufficient and acceptable, then
15 the proceedings will terminate at that time and no
16 further movement of the proceeding.

17 Next slide, please. In the case of a
18 non-response, failure to respond will result in
19 the immediate cancellation in whole or in part, so
20 the goods or services that were -- upon which the
21 proceeding was instituted, those will be
22 cancelled. If there is remaining goods and

1 services that were not part of the proceeding,
2 those will remain intact. If the response is
3 unacceptable or incomplete, we will issue a final
4 action and there is a two-month response period.

5 The next slide. The registrant must
6 respond at that point with a request for
7 reconsideration, and a notice of -- I'm sorry --
8 an appeal to the Board. If the request for a
9 consideration contains acceptable proof of use,
10 again we will terminate proceedings and no
11 cancellation will happen. Otherwise the
12 examiner's decision to cancel would be appealed to
13 the TTAB.

14 Next slide. Estoppel. So goods and
15 services for which the use in commerce has already
16 been established, they may not be subject to
17 further expungement or reexamination proceedings.
18 This however does not estop further Board
19 proceedings so to the extent that goods and
20 services acceptable -- proof of use is offered and
21 accepted in an expungement or reexamination
22 proceeding that would not prevent a petitioner

1 from going to proceedings for non-use at the TTAB.

2 Also in the rule package, I wanted to
3 highlight that we're amending the rule to identify
4 expungement and reexamination proceedings among
5 those for which suspension of action by the
6 authors of the TTAB is authorized, so our normal
7 suspension rules will be in place for expungement
8 and reexamination.

9 Next slide. Actually, the next two
10 slides. Another piece of --

11 MS. NATLAND: Amy? Sorry --

12 MS. COTTON: Yes?

13 MS. NATLAND: -- before we move on, just
14 a really quick question before we move on from
15 expungement, the excusable non-use exception,
16 so-to-speak, for 44(e) and 66(a), is there a reason
17 why that there were some treaty -- okay --

18 MS. COTTON: Treaty?

19 MS. NATLAND: -- (inaudible) -- which
20 one? I'm just -- I don't want to put you on the
21 spot, but --

22 MS. COTTON: The Paris Convention and

1 the TRIPS Agreement is essentially what they
2 require us to provide for excusable non-use, and
3 the statute itself actually provides for that, the
4 TMA statute, so we are providing that to those --
5 it's a treaty entitlement for those Paris and
6 Madrid filers.

7 MS. NATLAND: Interesting. Now, is that
8 -- does that also go the other way when we're in
9 foreign countries where the registration is
10 attacked for non-use? Is that also available?

11 MS. COTTON: If they are members of the
12 same treaties, yes, theoretically, but I can't
13 speak to their implementation of it -- or whether
14 they can get (inaudible)

15 MS. NATLAND: I haven't ever heard of
16 that, but okay. Let's see (inaudible) if it's
17 reciprocal.

18 MS. COTTON: Great.

19 MS. NATLAND: Okay. Thank you.

20 MS. COTTON: Supposed to be.

21 MS. NATLAND: Okay, didn't know.

22 MS. COTTON: Okay. So there is a piece

1 in this rule package that is related to our
2 register protection initiative and I wanted to
3 highlight that. Under our current rules,
4 recognition ends when an application is abandoned
5 or registration expires or is cancelled or when
6 the applicant or registrant revokes the attorney
7 appointment or the attorney withdraws from
8 representation. That is our current rule.

9 Under the proposed rules, what we're
10 putting out for public comment is a proposal that
11 recognition should continue when, for example, an
12 application abandons, or post- registration
13 documents are filed and accepted or a registration
14 expires or is cancelled. In addition, a change of
15 ownership would not result in a change of attorney
16 recognition unless a proper revocation withdrawal
17 is filed.

18 The idea behind this is we need to make
19 these changes to our rules to make them more
20 consistent with our current practice for
21 applications and registrations, and we want --
22 we're doing this because we also need to

1 facilitate role-based access to our log-in program
2 so to the extent that USPTO.gov has -- our log-in
3 project has three phases. The final phase is
4 called Role-based Access, and the idea there being
5 that only those who are authorized to touch a file
6 can touch a file.

7 In order to facilitate implementation of
8 that, we need to continue representation,
9 recognition of representation for attorneys so
10 that they continue to be able to touch the files
11 that they have been representing applicants or
12 registrants on. If we follow our current rules
13 and your recognition terminated, you would no
14 longer be able to touch those files and file a
15 maintenance document without going through and
16 establishing recognition again, so we want to
17 tweak our rules to make them actually consistent
18 with our practice.

19 I also want to highlight that we're
20 proposing a rule to clarify attorney obligations
21 when withdrawing from representation, and to
22 differentiate the ground under which the attorney

1 may request withdraw versus those situations where
2 the attorney must request withdrawal, and this
3 puts us more consistent with our rule of
4 professional conduct.

5 Lastly just very quickly, we're also
6 adding a proposed rule to codify (phonetic)
7 USPTO's longstanding procedures concerning action
8 on court orders, cancelling or effecting a
9 registration. The USPTO requires a submission of
10 a certified copy of the court order and normally
11 does not act on such orders until the case is
12 finally determined, and so we're just making the
13 rule consistent with our practice that appears in
14 the TMEP, so just wanted to clarify that.

15 So we're looking forward to doing a
16 deeper dive on the rule package and a roundtable
17 and hearing from you, your questions, and your
18 thoughts on it, and hopefully that will help us to
19 put together a final rule that everybody loves and
20 that we can implement by December 27th at least to
21 expungement and reexamination. The rule is
22 proposing to extend the implementation, the

1 deadline for response period for six months.

2 So the idea for the implementing the new
3 flexible response periods would be instead of
4 rushing to try to get everybody's docketing system
5 in place by December, we give another six months
6 so that we could work on our docketing system and
7 you could work on your docketing system, so just
8 wanted to flag that as well. So that's all I have
9 right now on TMA.

10 MR. GOODER: Thanks, Amy. One point I
11 want to make also is that when you -- you
12 mentioned this a bit as when you look at and read
13 the draft rule, you'll notice a number of optional
14 provisions, and that was a real shift into how we
15 wanted to do this so that -- the first thing is we
16 went out early to get as much public comment,
17 generally speaking, as we could that helped us in
18 writing the rule in a way that was hopefully
19 responsive already, and then with the other
20 options in it, that we think would help us provide
21 a rule that in the end, like you say is, as
22 everybody is as happy with as can be, and so

1 you'll see options in there that are -- you may
2 kind of wonder, and that's why that those are in
3 there.

4 Any questions from the TPAC on the TMA?
5 So many acronyms.

6 Amy, you've done a brilliant job. Okay.

7 MS. COTTON: Hush (phonetic).

8 MR. GOODER: Now, let's get the topic of
9 protecting our register better. The sort of
10 preliminary comment I want to make before Amy
11 takes you through sort of things what we're doing,
12 what we're changing, some successes we've had, et
13 cetera, is this. I came from a background of
14 having to deal with area (inaudible)
15 counterfeiting in, hmm, 40, 50 countries, give or
16 take. And when you deal with that kind of thing
17 day in and day out, you start to look at things a
18 little bit differently, and when we all started
19 looking at all the various sort of bad-faith
20 things going on, scams, et cetera, it struck me
21 that a lot of this conduct is exactly the same as
22 counterfeiting. It adapts to challenges. They

1 move quickly.

2 And it's not just -- it's not just a
3 scam. It's not just this or that. It's stuff
4 that actually affects the integrity of the
5 register, and I think outside partitioners,
6 everyone at the office, we all take a little pride
7 in the register being as good as it can be, but it
8 also impacts businesses, and anybody who works
9 with companies or is in a company understands how
10 a trademark register that isn't accurate or that
11 it's full of dead wood or full of problematic
12 filings has a real adverse effect on it.

13 So as this became a bigger and bigger
14 deal as we were watching it, and we were watching
15 it evolve through the pandemic, you saw a ton of
16 things explode in lots of areas, and we saw bad
17 actors increasing in our system, too, so that's
18 why it's become such a big deal to all of us, and
19 I think to the -- everybody out in the trademark
20 community as well. So with that, I will turn it
21 over to Amy because I want everyone to really
22 understand what we're doing and where that's

1 headed, and literally some of the kind of things
2 that we're facing. Amy?

3 MS. COTTON: Thanks, Dave. Next slide,
4 please. So the USPTO examining attorneys have
5 historically not investigated fraud, but instead
6 we relied generally on USPTO procedures that were
7 based on this presumption of good faith, that all
8 of our applicants were in good faith. The issue
9 of fraud then was left to interparty's proceedings
10 at the Board or the Courts where discovery was
11 available and evidentiary rules applied, but we
12 know that stakeholders are no longer in a position
13 to file opposition to cancellations against the
14 increasing volume of potentially fraudulent
15 submissions, and now the fraud that we're seeing,
16 fake signatures, unauthorized practice of law,
17 misuse of real attorney information, they're
18 really less suited to interparty's proceedings.

19 So hearing from our stakeholders, we
20 pivoted from our past policy and we're now taking
21 action to address fraud in examination.
22 Initially, though, it made the most sense, from a

1 resource perspective, to use our, you know, 674
2 examining attorneys to investigate suspicious
3 behavior appearing in trademark filings, and so we
4 gave guidance to our examiners to issue requests
5 for information from applicants if something looks
6 fishy, but maybe the specimen of use for the
7 applicant or the attorney name or the address,
8 they're not really on their face fake, but, you
9 know, we sort of gave discretion to our examiners
10 to look a little deeper when something, some
11 spidey (phonetic) sense was going off.

12 We didn't' make that investigation
13 mandatory because in every case that added
14 scrutiny adds up. It adds up to pendency and it
15 impacts all the applicants' abilities to receive
16 timely registrations and not just the bad faith
17 hope. And, but more importantly, individual
18 examining of the attorneys are not really in a
19 position to spot filing trends. Fake specimens,
20 they come in in large waves of virtually identical
21 specimens in different applications listing
22 different owners, and because those owners differ

1 than these applications aren't grouped together as
2 co-pendings which are groups of applications
3 assigned to one examining attorney for consistent
4 handling.

5 So these waves are harder and harder to
6 detect by individual examining attorneys. And
7 because of the time it takes to investigate such
8 matters as fake addresses or specimens that appear
9 legitimate but turn out fake, Trademarks is no
10 longer in a position to really rely solely on our
11 examining attorneys to fight fraud. So, you know,
12 due to this increased volume of applications and
13 the need to keep examining attorneys focused on
14 their production goals and pendency, Trademarks
15 has been moving more towards reliance on pursuing
16 administrative sanctions to enforce USPTO's rules
17 of practice.

18 So here are some schemes that we're
19 seeing, false use claims applicants -- and you
20 know this one -- applicants or registrants
21 claiming use of amor agon (phonetic) goods and
22 services for which they cannot establish use in

1 commerce. We have filing forms where applicants
2 that submit fake or doctored specimens that don't
3 demonstrate use in commerce. We've seen U.S.
4 Counsel circumvention. These are false attorney
5 names or false U.S. addresses. We've got real
6 U.S. Attorney names and credentials, but the
7 attorney is actually unaware that their name and
8 credentials is being used.

9 We've seen offers to rent U.S.
10 Attorneys' bar credentials to circumvent the U.S.
11 Counsel rule. We've seen the unauthorized
12 practice of law. U.S. and foreign non- attorney
13 filing firms are engaging in unauthorized
14 practice. They're providing advice and appearing
15 in submissions, but we have seen forged signatures
16 on submissions as well.

17 We've seen trafficking in applications
18 or registrations highjacked through unauthorized
19 changes of correspondence address in our records,
20 brands that are imposter brands. Somebody applies
21 for a famous mark and everything looks the same as
22 the company's name except one little email address

1 is different.

2 We've seen applicants stockpiling
3 registrations for their own use on ecommerce
4 platforms where they're offering to sell those to
5 third parties for the same purpose, and of course
6 the scam solicitations. They appear to originate
7 from the USPTO. They use our information to dupe
8 applicants or registrants into paying for services
9 they don't need.

10 Next slide, please. So there are three
11 buckets, three avenues for sanctions against bad
12 actors after investigation that we have at our
13 disposal, and one, the criminal provision, so
14 every declaration of use assigned under penalty of
15 perjury, 18 U.S.C. 1001, law enforcement has that
16 mandate. Second, we've got USPTO rule of
17 professional conduct.

18 When attorneys are engaging in
19 misconduct, those are handled by your Office of
20 Enrollment and Discipline. The last bucket is
21 rules of practice and the website terms of use,
22 and these are under the authority of the

1 commissioner for trademarks.

2 Next slide, please. The commissioner of
3 trademarks has the authority to manage and direct
4 all aspects of the activity of the USPTO net
5 effect, the administration of trademark
6 operations. That's pretty good. We like that.
7 Okay. The commissioner for trademarks has the
8 ability impose sanction on parties who file
9 submissions in trademark matters in violation of
10 our rules of practice and our terms of use for our
11 websites. So we are now leveraging that authority
12 in a way that we really haven't done before to get
13 at this issue.

14 Next slide, please. So how do we know
15 when we've got fraud on our hands and then how do
16 we handle it? The trigger for an investigation
17 might be an examining attorney who reports a
18 possible fraudulent activity in applications to
19 us. USPTO data analytics might discover
20 suspicious filing trends, those waves of
21 applications.

22 Law enforcement investigating criminal

1 behavior, they'll talk to us about those
2 investigations. We might see something in the
3 media about fraudulent behavior affecting U.S.
4 Applicants, and we hear from our customers through
5 the Trademark Assistance Center, through the
6 scams' mailbox, or the TM policy mailbox, and we
7 also hear through the letter of protest procedure
8 from our customers.

9 Next slide. When we discover a scheme,
10 we identify all the affected applications and
11 sequester any unassigned applications in the
12 holding dockets. So we try to keep them -- cordon
13 them off from action until we can figure out what
14 we're going to do with these. We will find the
15 affected applications. Maybe there's a common
16 email address that we see, a common USPTO.gov
17 account used, a common credit card. Whatever it
18 is, we'll find the affected applications and pull
19 them aside.

20 We collect evidence. We will try to
21 figure out what are the rule violations that we're
22 seeing, and once we establish that, it depends on

1 the nature of the rule violation. We may direct
2 examining attorneys to issue the appropriate
3 refusals or requests for information. We can
4 direct all of our examiners to handle these or we
5 have some work project examining attorneys that
6 are specifically dedicated to this that we can
7 use, or we might issue a show/cause order.

8 That show/cause order will direct the
9 offending party to explain the conduct. They will
10 identify potential sanctions and we will set a
11 deadline for response.

12 Next slide. When the response comes in,
13 or if the response comes in, then we figure out
14 what we're going to do. In most cases if there's
15 no response or we don't like what they said to us,
16 it doesn't really advance their cause, we will
17 issue a final order for sanctions. Those
18 sanctions will include striking a submission,
19 terminating the proceeding, which could be
20 abandoning the application, precluding parties
21 from submitting further documents on their own
22 behalf or the behalf of others, referring

1 practitioners to OED, or termination of the
2 USPTO.gov accounts which they were -- the bad
3 actions were happening. So those are all the
4 different sanctions that might appear in a final
5 order for sanctions.

6 Next slide. Now if an attorney is
7 involved with any of these activities or rule
8 violations, or apparent rule violations, we can
9 refer those representatives to the Office of
10 Enrollment and Discipline for investigation and
11 possible discipline. They have the ability to
12 actually refer -- they have reciprocal discipline
13 that's already with many state bar associations
14 that they can actually refer the attorney to the
15 state bars.

16 Well, for cases that involve criminal
17 activity, we'll go to law enforcement to the
18 Department of Commerce, Office of Inspector
19 General, we'll consult with them, and they then
20 liaise with other law enforcement agencies.

21 Next slide. Two recent orders for
22 sanctions that I wanted to draw to your attention,

1 and, you know, you can go to this link on our
2 website and find all of the orders for sanctions
3 that we've issued. With regard to Mr. Xue
4 Chaoxing, in late November of 2020, we identified
5 one application for a well-known mark and it was
6 filed in the name of the legitimate owner, but the
7 correspondence address was a third party.

8 We identified it in several other
9 examples, and then in March we became aware of
10 about 11 additional ones filed in rapid
11 succession, each filed by the USPTO.gov account
12 associated with an individual in China known to be
13 involved in other improper activity before the
14 office, so we issued a show/cause order to this
15 individual and requested an explanation.

16 He responded and admitted to the
17 unauthorized practice of law. He admitted to a
18 great many things including sharing his log-in
19 information with his subordinates, and based on
20 this information, we issued the order for
21 sanctions, precluding him from making further
22 submissions, and we locked his account. We also

1 can tell from his response that there may be U.S.
2 Attorneys involved with his activities, so we're
3 continuing to investigate and expect further
4 actions to be taken.

5 With regard to a Vietnamese individual
6 Mr. Ngo, we became aware that he was filing dozens
7 of changes of correspondence, address, and
8 trademark registrations primarily owned by banking
9 institutions. It reached about 300 different
10 instances of changes of correspondence address
11 that we had to reverse every time he did it.

12 We locked his account, but he would
13 create new accounts to continue filing, and we
14 received responses from him, but they didn't make
15 much sense. He appears to be operating under the
16 belief that he owns most of the banks of the
17 world. So we issued the order for sanction, and
18 we removed his authority to represent himself
19 before the office.

20 We're working to block or revert any
21 changes made by him and OCIO is locking all of his
22 accounts and trying to stop additional accounts

1 from being formed. So we are seriously working on
2 addressing these issues through the commissioner
3 for trademarks authority to make sure that the
4 operation and administration of the trademark
5 system goes smoothly, so this is new territory for
6 us, and we're really excited about it. It's a lot
7 of resources, and it will take some time to really
8 get our people going.

9 It's a big machine that we're trying to
10 get moving here, but we're really optimistic that
11 this will address some of the business models that
12 we're seeing that are not conducive to a register
13 with integrity. So that's -- I'm happy to take
14 any questions on that.

15 MR. GOODER: Thanks, Amy. And one thing
16 I'll point out is these so-called imposter
17 applications that Amy was talking about or the
18 gentleman in Vietnam who was basically hijacking
19 existing filings, and these are two (inaudible) --
20 you know, you deal with counterfeit, you watch it
21 evolve or -- well, these are new this year that
22 have never been seen before, so any questions from

1 the TPAC about register protection?

2 MS. KOVALCIK: To start --

3 MS. COTTON: Sorry.

4 UNIDENTIFIED SPEAKER: Sorry. Go ahead.

5 MS. KOVALCIK: I'd just like to applaud
6 you for taking these steps and going after these
7 actions that are having quite a big effect, and I
8 was just wondering if for the benefit of everyone
9 participating with this meeting if you could
10 remind us the best way to communicate to you if we
11 become aware of an application that is filed by an
12 improper person or missing credentials or
13 something that would be ripe for this type of
14 investigation. How is it best to communicate to
15 the office?

16 MS. COTTON: There's a couple of ways.
17 One of the best ways is a letter of protest
18 because that's something that to the extent that
19 you've got, you know, relevant evidence that you
20 can give us that we can put in front of an
21 examiner, that's really helpful. But to the
22 extent that's not available, we have the TM scans

1 at USPTO.gov mailbox that you can use to submit
2 information to us as well. So those are a couple
3 of different ways that we can get information, and
4 I bet Dave would love a call, so I bet you could
5 call him.

6 MS. KOVALCIK: Thanks, Amy.

7 MS. FREDERICKS: Amy, this is Jomarie
8 Fredericks with TPAC. Do you anticipate -- I
9 mean, some of this requires different skillsets
10 that I think a lot of examiners probably have, and
11 I also think that these types of scams are
12 probably not going to lessen as we go forward. I
13 think they'll increase. Do you anticipate in
14 hiring additional personnel or personnel with
15 maybe different skillsets to at some point
16 basically specialize in dealing with these things?

17 MS. COTTON: Yes.

18 MS. FREDERICKS: Thanks.

19 MR. GOODER: Yes. Yes, a really good
20 point, Jomarie, because it does, and if you think
21 about this as brand protection, it does need
22 different kinds of skillsets. You know, you got

1 to a lot of really smart people, but you do need
2 that skillset, that expertise, frankly that
3 ability to think in different kinds of -- you
4 know, be able to think about it from the mind of
5 somebody who's essentially conducting a criminal
6 act, and, you know, that's just not -- that's not
7 been something that's -- you know, is part of our
8 general wheelhouse.

9 To some extent, but not too (inaudible)
10 now, so we're looking at beefing up our
11 investigative resources, but the time to do it, to
12 make sure there's dedicated resource to do it;
13 like I think a lot of brand owners utilize when
14 they start dealing with any counterfeiting, it
15 becomes a sort of a side job for people who are
16 doing other things in the organization and the
17 trademark team or maybe it's brand security or
18 premises security, and then as the problem gets
19 worse and worse, you hit a point where you say
20 we've got to have dedicated resources for this,
21 and that's where we are, and that's what we're
22 doing.

1 MS. FREDERICKS: Thank you. I recently
2 participated in a USPTO webinar that was sort of
3 -- spent some time on how to spot a fake specimen,
4 so I know you're doing a lot of training with your
5 examiners already. It was really interesting.
6 Some of them were easy to spot, and a lot of them
7 really weren't, and so they showed some of the
8 techniques that they use to try to ferret these
9 out. It's well done. Thank you. Thank you,
10 (inaudible).

11 MR. GOODER: Good to hear.

12 MS. NATLAND: Hey, Amy, it's Susan
13 Natland from TPAC. I also want to commend you on
14 all of your efforts with the TMA and with these
15 other actions to attack the scams. One thing I
16 know we touched on before is how the PTO is
17 publicizing its efforts and, you know, with
18 respect to the types of things that can happen to
19 you if you do involve yourself, like the criminal
20 sanctions getting reported to the office of OED
21 (phonetic). I'm just curious as to what efforts
22 are being made in addition to posting that orders

1 for sanctions that you mentioned to publicize what
2 the USPTO -- without obviously giving away any
3 trade secrets, but just as more of a deterrent, an
4 educational platform to people to know there are
5 going to be ramifications if they do participate
6 in these types of activities?

7 MS. COTTON: Dave, you want to take that
8 one?

9 MR. GOODER: Sure. Yes, the short
10 answer to the question is we're increasing the
11 publicity around it in a couple of ways. One, to
12 make sure that when the sanctions are issued or
13 with things like that, the people know about it,
14 and they know what the bad conduct was. There is
15 a case that got resolved down in South Carolina
16 against a lot being entrepreneurial, let's say,
17 who had, you know, scammed a lot of people for a
18 lot of money, and so we're able to put him on the
19 website, but we're going to be more so doing it
20 via social media, things like that.

21 The other thing that was -- we beefed up
22 a lot is helping an owner of an application that's

1 involved in the -- have more guidance on what they
2 could do, what should they check; if they get
3 scammed what do they do. It's one thing to report
4 it to law enforcement and things like that which
5 is great, but what do you actually do with your
6 application if you think you've been the victim of
7 it, things like that. And literally, it's a topic
8 that we all talk about everywhere we're talking,
9 but we want to get a much bigger communication
10 effort for exactly the reason you're talking about
11 for the deterrent effect.

12 And also so our customers know that
13 there is something going on. It's one of those
14 frustrating things to read something somewhere
15 then, and the people being interviewed are
16 basically talking about it, but they are not
17 really talking about it in its current state.
18 They're kind of using their impressions, and we
19 want to correct some of that, and make sure people
20 really know what's happening.

21 Good question. Thank you.

22 MS. BALD: Quick question. This is

1 Stephanie Bald from TPAC. Going off of what
2 Jomarie said, it's really just another side of
3 what she commented about different personnel.
4 What about IT-type resources that can help you? I
5 assume your IT systems aren't built for this.
6 They're built to file and prosecute trademarks.
7 I'm wondering if that is another area where you're
8 looking into ways to use technology to do those
9 work (phonetic).

10 MR. GOODER: We sort of (inaudible)
11 there, too. You're right, you know, that we
12 occupy -- or we all as a trademark ecosystem have
13 a database that's always been open. Ever since
14 the act was created, it's been an open kind of
15 system, and that we just can't have it that way
16 anymore, but what's the good news of that is the
17 PT over the years has built a very robust ability
18 to analyze what it does, and it enables the
19 investigators, et cetera, to really dig into
20 things, but what we're needing to add is more of
21 the kind of IT that helps with law enforcement
22 activity.

1 I mean, it's essentially that kind of
2 thing, right? You're tracking trends, you're
3 tracking how connected these things are. If you
4 want to read something that's absolutely kind of
5 amazing from a scam perspective, you know, look
6 further through reports that have come out of
7 Pakistan recently from an investigation there.

8 It is an organized, sophisticated,
9 connected crime group. It is not a bunch of
10 mom-and-pop hackers or mom-and-pop scammers that
11 thought this was a good idea, and the numbers
12 don't show it either, so that kind of thought
13 where it is being required. The other thing is
14 there are a couple of tools being developed that
15 one is already fairly far along and being actually
16 used to some extent that tracks duplicate
17 specimens.

18 So if you load a specimen, and it can
19 find everywhere that that appears, and which helps
20 you see where a pattern has evolved of activity.
21 Now, maybe it's legitimate use of multiple stuff
22 and then -- but this will help, and to Amy's

1 point, one examiner isn't going to necessarily see
2 that. The other area we're trying to look into
3 whether there's enough sophistication yet is just
4 looking at stuff in as for digital manipulation,
5 that kind of thing, and it's one thing to do them
6 one at a time.

7 When you're getting 60-70,000
8 applications a month, it's a different kind of
9 task, but that's on the list as well. Greg may
10 have some comments about some of this, too,
11 because a lot of this falls into his area if he
12 oversees IT, et cetera, so -- but, yes, given our
13 volumes we have, we have to do it that way.

14 MS. BALD: Yes, it just it reminds me of
15 how, you know, pretty much every major corporation
16 has a corporate security group. What's the
17 trademark office's corporate security group, and
18 how do you get all the people from all these, you
19 know, to find out what's the flow from the
20 examiners to that group, the investigators to law
21 enforcement? It's a whole new ballgame and it
22 just seems like, you know, fixing it in a couple

1 areas, it has to be this comprehensive approach
2 with (inaudible) to have confidence what's the
3 problem.

4 MR. GOODER: Yes, and it is actually, so
5 call it Brand Security, call it Brand Protection,
6 call it whatever kind of group you want to. That
7 is Amy's group. And then they work immediately
8 with the legal department, Office of General
9 Counsel, and the solicitor's office who are
10 dealing with the law enforcement side of it, and
11 then dealing with Jamie Holcomb's group on the
12 tech side, and Office of Governmental Affairs.

13 I mean, it is just -- the new general
14 counsels are guiding Dave Berdan (phonetic). Dave
15 also comes from a consumer products background and
16 has dealt with the same things, so we look at this
17 exactly the same way that we did in our companies,
18 and that's how we are organizing, pulling things
19 together, so it is a team.

20 It is a brand protection by a security
21 team because the brand in many ways is the PTO,
22 and -- or the USPTO -- and, you know, the customer

1 being the victim of it is our customer, so it's
2 just tracked in so many ways, but you raise a good
3 issue which is you can't just be a little
4 department and solve the problem. It's too big,
5 and it's too expense -- Amy, do you want to add
6 anything to that or --

7 MS. BALD: I know that Amy does
8 everything, but Amy is doing the TMA, who's doing
9 this, just seems like it really is going to take a
10 lot of resources.

11 MS. COTTON: It does, and then if, you
12 know, everybody had their day job and now you're
13 adding, you know, this on top of it, so we're
14 trying to figure out to get -- you know, create,
15 you know, a unit that can handle this, and then,
16 you know, standard operating procedures, and like
17 I said, it's a machine that we're creating, and,
18 you know, it's taking a little while to get it
19 going which is why you're just hearing about it
20 now even though we've been doing this for a long
21 time.

22 It's just a matter of trying to get all

1 of ducks in a row so that we have our story
2 together to tell you what we're doing, and of
3 course, you know, there's always that law
4 enforcement angle, so you can't share too much
5 because of that, so that that's factoring in.
6 But, yes, we're excited about the progress that
7 we're making and we're really trying to pick up
8 some steam and momentum, but it is amazing how
9 many steps it takes and how many people are
10 involved just to take down one account. It's
11 amazing. But you all know that because you do
12 brand protection; this is new for me, so.

13 MR. GOODER: Amy will be happy when the
14 TMA is put to bed and running smoothly and she can
15 check that off of her list, so. Any other
16 questions on this? If not, we'll roll to IT
17 Modernization, and Greg Dodson. Anything
18 (inaudible)? Okay. Greg, it's all yours.

19 MR. DODSON: Thank you, David, and just
20 to piggyback on that. I am extraordinarily
21 excited because the first thing you have to do is
22 admit you have a problem, and in the past we

1 didn't admit that we had a problem, and now we're
2 admitting it; we recognize it. I think truly the
3 only way to solve this problem is through
4 automation and through machines.

5 Humans are fallible and these problems
6 are getting tougher and tougher, and unless we
7 address them in a truly 360-degree kind of a way,
8 we will never actually -- we'll always be two
9 steps behind the bad guys, so we have got to get
10 out in front of them and I very much applaud what
11 Amy is doing and what Dave is doing to admit that
12 we've got a problem and try to get us past this.

13 So with that, I will thank the
14 Commissioner once again for his welcome. I am
15 Greg Dodson. I am the deputy commissioner for
16 trademark administration, and I'm going to talk to
17 you today as I always do on information technology
18 modernization and what it means for the
19 organizations, so next slide please.

20 All right. So new ways of working. I
21 want to say up front that it's an exciting time in
22 the IT business. I think I'm going on my fifth

1 year in the USPTO, and I think we've got the best
2 relationship with the chief information officer
3 that I've seen since I've been here, and I applaud
4 Jamie Holcombe, the CIO, Debbie Stevens, the
5 deputy CIO, and the entire CIO team for
6 recognizing where we are in the process, what we
7 need to do to get ahead, and realizing that this
8 isn't a bunch of tribes all trying to get there in
9 their own different way, but this is a
10 collaborative effort and we need to get there, so
11 I'm just excited about that.

12 David mentioned -- the Commissioner
13 mentioned that we had to take a bit of a strategic
14 pause for this little thing called COVID-19.
15 We're kind of working our way out of that now
16 which is really exciting. I'm extraordinarily
17 thankful to the CFO Jay Hoffman and his team for
18 recognizing that we need a little bit of
19 additional help financially to get back on track.
20 You know, if you were training for the Boston
21 Marathon last spring anticipating being able to
22 run it in April and you had to take some time out

1 from your training regimen and you were planning
2 on doing it again in October of this year, you
3 don't just go right back out and run 26 miles
4 right away.

5 We've got some work that we have to do.
6 We stopped for a year, a little bit over a year,
7 actually, and it took -- it's taking us a while to
8 kind of get back in the groove, and Jay and his
9 team are helping us with a little bit of that
10 federal green to kind of get over that hump by
11 allowing us to bring some more teams on to try to
12 do the best that we possibly can to get there.

13 And then of course the leadership of
14 Drew Hirshfeld and Coke Stewart in the front
15 office who recognizes well that we had to take a
16 delay, and they are doing everything they can to
17 kind of help push us along, and if there's
18 speedbumps in the way or if there's sand in the
19 gears, they're doing everything they possibly can
20 to get us there, so it really is a good time to be
21 in the IT modernization business, and I was in the
22 Air Force purple represented joint. I got a

1 purple dot up here, and it is a joint issue for us
2 to be able to make this happen.

3 So let me kind of pick up where we were
4 last year -- or last year; actually I guess it was
5 last year. But the last meeting that we had and
6 just kind of walk through some of the highlights
7 of what we've been doing. So when I briefed you
8 the last time, we were just kind of getting the
9 teams onboard. They were learning how to get to
10 their virtual offices and how to virtually badge
11 in and do the other stuff, just the onboarding
12 things that we had to work through.

13 I'm happy to report that those teams are
14 now established, developmental efforts are
15 ongoing. We're going to talk about a few of those
16 as we go through this, and we're starting to see
17 some progress, especially in the areas that are
18 really kind of exciting to me because they're the
19 innovation areas, the entrepreneurial areas like
20 artificial intelligence and robotics processing
21 and things of that nature which are cool and neat
22 and stuff that you can kind of get your head

1 around and are going to take us, I think, into the
2 next step as Dave was talking from a trademark
3 branding perspective.

4 So I talked to you the last time about
5 the centers and have -- we have broken out the way
6 we were going to do development in the centers,
7 and so I'm going to kind of walk through the six
8 that we have, but I really want to foot stomp one
9 thing because I think this kind of, at least on
10 the trademark side of the house, glues it all
11 together.

12 In the summer of 2019, a gentleman that
13 I work with, Glen Brown (phonetic) and I worked
14 with David's predecessor to try to bring an
15 organization into play that was going to help the
16 trademark business kind of focus IT efforts in the
17 way that it needed to be done, and we kind of
18 hitched-on to this topic or that's kind of been
19 the name of the group director for information
20 technology.

21 For those of you that have been hanging
22 around the trademark business for a while, you

1 know that the way we kind of established the law,
2 this was with group directors, and then we had
3 subordinate organizations to them. So we kind of,
4 you know, imitated that and we created a group
5 director for information technology and we started
6 that process in the summer of 2019. Happy to
7 report that just last month, in April, we finally
8 got the last parts of that into place and we're
9 now able to officially announce that that
10 organization is established.

11 That organization has a development
12 team, a testing team, a product ownership team, a
13 future-looking team. It really is for those of
14 you that understand the way that IT works on the
15 patent side, our very, very big brother, they have
16 an organization called the Office of Patent
17 Information Management, and we kind of took a look
18 at them and kind of leveraged some of the work
19 that they did and did some best practices and some
20 other things, shrunk that down by about 90 percent
21 because we're 10 percent the size of the patent
22 organization, and said, here we go.

1 And we threw these folks into the
2 breach, and we're really starting to see with the
3 work that that dedicated team is doing and then
4 the folks that Jamie and his team and the CIO are
5 putting together were able to start to make some
6 really cool thing happen, so let me kind of talk
7 to you about what we're doing.

8 So from the external center perspective,
9 you know, we've done a lot of stability work.
10 We've gotten -- you know, for those of you that
11 have been watching this operation for a number of
12 years, our systems considered legacy. Some of
13 them like me, we call them -- I call them classic
14 because legacy has a bad connotation to them, so I
15 like to call them classic capabilities, but, you
16 know, we allowed them to atrophy because we had
17 this vision of bringing a capability on, and it
18 made perfect sense financially, and from a human
19 perspective to not put a lot of money into our
20 legacy/classic capabilities.

21 When the previous program kind of washed
22 away, we had a lot of work that we needed to do

1 just to be able to survive, and so we've been
2 putting a lot of money and a lot of effort into
3 this, and so from the external perspective we've
4 had a lot of components that have gotten their
5 releases done from a stability perspective. We
6 deployed features into our TEAS project.

7 Many of you have heard that we're
8 working on an ID verification capability. We're
9 going through that, that the software was
10 deployed. We're now going through some basic
11 usability testing. We're going to follow that up
12 with some basic beta testing, a very closed data
13 to make sure that the system works and then we're
14 going to present that to the world.

15 TSDR capability that a lot of people
16 use, we're enhancing our cyber security, because
17 as you know those of you that remember about a
18 year and a half ago we had some real issues with
19 data miners and when they got into the system and
20 really started to pull that thing down, that had
21 ramifications across the entire enterprise.

22 Everybody essentially goes to the same

1 database; they just go to it in different ways.
2 And when TSDR got hammered by the data miners, it
3 brought down the entire search platform that we
4 had and we were struggling there for a while. So
5 working with Don Watson on the cyber security side
6 and the CIO, we've done some really good,
7 structured work to try to bring that capability
8 into play.

9 On the examination side, I extol the
10 virtues of Peter Bowdrie (phonetic) every time I
11 get a chance to talk about this. Peter is just a
12 wonderful attorney. He's been here for a long
13 time. He knows how to do this work and he's
14 running this department for us. So thank you to
15 Dan Vavonese for continuing to allow us to
16 leverage the capability that Peter brings. But
17 Peter is doing a lot of good work for us today.

18 We deployed overnight a stability fix to
19 FAST 1 one which I got to admit kind of caught us
20 a little bit by surprise. I thought about
21 changing it from was deployed on May 21st. I'm
22 kind of looking at this somewhat jokingly, and now

1 I'm looking at May 21st, 2022, is when we're going
2 to deploy it. It's not really, but the point is,
3 is that sometimes we struggle. Why does that
4 happen? That happens because we're really trying
5 to fix old stuff and we're doing the best that we
6 possibly can.

7 We work through it, but, you know, our
8 poor examining attorneys over the course of the
9 last couple of the days have really kind of been
10 in a bad place with some of the work that we're
11 doing, and we're really struggling to try to get
12 there, but, you know, the intentions are sound,
13 the work is good. It's just a tough act right
14 now. We got that out there and we think we're
15 kind -- we've kind of nipped it in the bud for the
16 rest of the day.

17 DevSecOps, you're going to hear a lot
18 more about that concept when Jamie's team talks
19 this afternoon, but we've got that working on the
20 next Gen exam capability and we're trying to get
21 that pipeline squared away and we're doing a
22 pretty good job with getting that done.

1 Our international team working with our
2 new contract staff has established some
3 microservices; don't want to try to unpack that
4 for you on this meeting, but, you know, cloud
5 microservices is a way to kind of deploy things in
6 a much quicker way to try to bring capability, a
7 strategy to task right off the bat, and that's
8 what we're trying to do here with international,
9 and we're receiving a lot of -- frankly we're
10 receiving a lot of good -- getting good vibes from
11 way over there in Geneva from the International
12 Bureau and a lot of our Madrid customers who are
13 seeing the results of these labors, and so we're
14 really excited about that.

15 Next slide, please, if I may. TTAB.
16 Don't want to steal any of Chief Judge Rogers'
17 thunder here, but he's got a wonderful Judge who
18 works as his lead product owner for the TTAB.
19 They're doing some fantastic work. You can see
20 that they just completed a two-year stabilization
21 project. That was a huge undertaking for the
22 TTAB, and kudos to them for getting that done.

1 We're working on their TTAB center which
2 is as you know what this is all composed around
3 and integrating that Notice of Opposition form
4 right there, and then finally to kind of ducktail
5 with what Amy's doing on the TMA, there's a lot of
6 work that has to go on the TTAB side of the house,
7 so we're working at that as well.

8 One of the most interesting areas of
9 endeavor that we have within our centers, data and
10 analytics. You know, if you're not data driven
11 these days, you're probably missing something.
12 This is a really, really interesting area of
13 responsibility for us and our lead product origin
14 is all -- is doing some really, really good work
15 down in that shop. You can see the three of the
16 four legacy systems have now been retired and
17 decommissioned, so that's good work.

18 We're reducing the number of legacy
19 reports. You can see 400 legacy reports. I'm
20 sure we didn't have 400 customers out there that
21 took every one of those reports, but Jim's looking
22 at this. He's decomposing this, distilling this

1 process, and now we're down to a hundred. We're
2 working to get that into our enterprise down in
3 warehouse, but they're doing some really, really
4 good in there, and you're going to see the results
5 of that both in a production capability and in our
6 ability to display in a very understandable form
7 the way our process is working, and you don't need
8 somebody explain it to you. It'll be right there
9 and it'll be readily apparent to you.

10 And the -- to help with the legal policy
11 office, the form paragraph search application that
12 supports that analysis, so we're working at that,
13 and then finally underpinning all of this is our
14 content management system. I'm sure many of you
15 have heard about TRM (phonetic). We've been
16 talking about TRM for probably close to a decade
17 and a half now, and we're continuing to work on
18 building the TRM systems which is Trademark
19 Records Management. We're working to get that.

20 With Jamie's help, we're working to move
21 that over to the Cloud, create a very cyber
22 hardening structure around there to be able to

1 keep the bad guys out and we're looking -- that
2 thing is looking really, really, really positive
3 as we're going forward with this. And so that's
4 that.

5 All right. Next slide, please. I
6 covered three bullets in one conversation. Okay,
7 so exciting stuff, RPAs, Robotic Process
8 Automation. Think Pac-Man chugging through stuff,
9 things that people don't want to do. RPAs that's
10 what we're working on. We've got one to help --
11 kind of to help Dan's team, Dan Vavonese's team,
12 with the auto suspension modifies our business
13 logic and trade-ups.

14 We're working on the Trademark
15 Assistance Center so when you pick up a phone to
16 talk to a live support agent -- maybe before
17 you've done that, you've gone through the chatbot
18 and chatbot has kind of helped you answer some of
19 the questions, and so you can get to the real
20 meaty issues that you need to work with the
21 trademark assistance experts with as opposed to
22 just asking very basic questions, and one of the

1 other really interesting RPAs that we've got going
2 on are pseudo marks; you know what those are.

3 But it's aligning the workflow and
4 automating the workflow as we're looking at pseudo
5 marks to kind of help alleviate that process
6 upfront and smooth flow the work that the
7 examination support unit does. I said that I
8 would talk -- that's all that what we've done
9 since the past. Let me talk to you real quickly
10 about what we're going to do in the future here on
11 the external side.

12 I mentioned that we're going to do the
13 beta testing next for the ID verification. For
14 those that use TESS, and I know there's a number
15 of you out there, we're working on replacing that
16 architecture and throwing it over to the Cloud,
17 which is going to make it more resilient, more
18 robust, you're going to get better response times,
19 and we're working on the syntax capability there
20 to make the search function a little bit easier.

21 The ID manual, the public one, we're
22 continuing the synonym work and we're also going

1 to throw that one out to the Cloud, so that's a
2 wonderful thing. On the exam side, more on the
3 intercomponent that we're doing. We're continuing
4 to work on the user interface so that when the
5 examination team opens up the system it makes much
6 more sense to them. It's far more user friendly
7 and is far easier to navigate, and our editing
8 tool, our trade-ups capability, we're continuing
9 the enhancements to support that.

10 Many of you know for many years we've
11 had two trade- up systems, the blue trade-up
12 system, then a yellow trade-up. Some of the
13 capabilities overlapped in a Venn-diagram kind of
14 way, other of the capabilities didn't. We're
15 working to bring that all in to get to one
16 trade-ups capability. We're continuing to work on
17 our -- or I'm sorry -- our international
18 component. We've got some fiber weight work to do
19 in there, and so we're working on that compliance.
20 We're going to continue to work with TTAB which
21 I'll let Judge Rogers talk about.

22 On the CMS side, I mentioned that we're

1 going -- you know, the Cloud, that work continues.
2 That work gets ever more and more robust as we go
3 into the future, and finally on the DNA side, as
4 we continue to find these reports and these little
5 modules of work that we're doing out there, we're
6 shoving those over into the enterprise down in
7 warehouse to try to support it in one place so
8 that we don't have a bunch of pockets of expertise
9 that exists out there.

10 Finally for our novice filers, I would
11 encourage you to take a look at our trademarks
12 basic page. Tonya Amos (phonetic), her team down
13 in the electronic filing work has made some
14 significant changes to our webpages, made them far
15 more user friendly. They speak English now,
16 Frank, which is really nice, too, so take a look
17 at those; we think you'll enjoy those. And our
18 next step is to do the Madrid work and also bring
19 petitions into a place that makes it a little bit
20 more enjoyable for the work that you're doing.

21 And with that, I will open the floor up
22 for questions.

1 MR. GOODER: There was never much going
2 on is there? Any questions from the TPAC? Our
3 next session is with Jamie Holcombe, OCIO, but
4 we're scheduled I think, Chris, up for a break?

5 CHAIRMAN KELLY: That's correct.

6 MR. GOODER: (inaudible).

7 CHAIRMAN KELLY: Ten minutes. So we can
8 reconvene at 2:53 if that works for everyone.

9 MR. GOODER: Yes, sure does.

10 CHAIRMAN KELLY: Great. See you in 10.

11 MR. GOODER: Thank you.

12 (Recess)

13 MR. HOLCOMBE: I guess I'm going to open
14 by welcoming everyone to the next part of our
15 great TPAC. I will be followed momentarily by Oz,
16 but I must admit that I too am very happy with the
17 collaboration that is ongoing between trademarks
18 and the CIO's staff. It's amazing what can be
19 done when people understand the mission and are
20 focused on getting results.

21 So we didn't have the greatest
22 deployment last night, but the team got together.

1 We were transferring and going from the old Visual
2 Basic architecture and transferring into the new
3 DOS net architecture. Well, that should've been
4 done a long time ago, right? But it's done now.
5 We had some problems, and I'm here to tell you
6 we're getting those fixes out there right now, so
7 I'm really happy and proud of the team.

8 And without further ado Oz is going to
9 tell you about all the great stuff we're doing at
10 CIO. Take it away Oz.

11 MR. TURAN: Thank you, Jamie. I
12 appreciate that. Good afternoon everyone. I am
13 Oz Turan. I'm the acting product line manager
14 supporting trademark (inaudible) organization. So
15 let's move onto the next slide, please. Next
16 slide again.

17 All right. So at our last TPAC public
18 meeting in March most of you may recall that the
19 CIO discussed three of OCIO's top priorities for
20 this year. And I'd like to start off with some
21 updates on those priorities. The first listed
22 priority you see here, cybersecurity, OCIO

1 continued to strengthen its cybersecurity posture.

2 For example, we recently implemented
3 malware scanning for all files that are received
4 through TEASs, and TEASi filings. We've also
5 implemented measures to protect against
6 confederate threats and phishing attempts from
7 outside bad actors. For example, we're now
8 including warning banners on all inbound emails
9 that help remind our employees to be extra careful
10 about clicking any link or attachments from
11 external sources.

12 And with respect to resiliency we've
13 recently completed construction on the new primary
14 data center in Manassas and that includes
15 commissioning the power and the cooling systems.
16 And the next step, of course, is to configure the
17 space, the equipment, the network all of which is
18 projected to be completed by this July. And as
19 for moving to the Cloud, OCIO continues to mature
20 its cloud processes. For example, we've recently
21 established a cloud intake process which includes
22 guidance and best practices that any of our

1 current IT systems can take advantage of and also,
2 accelerate their own Cloud migration efforts.

3 And finally, OCIO recently achieved a
4 significant milestone in that we successfully
5 migrated MyUSPTO's disaster recovery
6 infrastructure to the Cloud with automatic
7 failover. So now, we have two blue/green
8 production environment on our premise and those
9 are basically mirrors of each other. But with the
10 addition of disaster recovery up in the Cloud, and
11 so we can move seamlessly between all three of
12 those environments and, in short this is a great
13 example of a successful hybrid cloud
14 implementation.

15 Moving on to the next slide, some
16 additional highlights. I'd like to touch on a few
17 other highlights since the last TPAC meeting.
18 Some of these updates, of course add tying in
19 with, and complement Greg Dodson's earlier
20 comments today.

21 The first one here related to our budget
22 formulation process, we just wrapped up our

1 FY22/23 budget validation and formulation cycle.
2 In our request, and hoping that it's approved, we
3 plan to increase our capacity and resources to
4 help accelerate some of our major modernization
5 activities, such as replacing the TRAM system;
6 replacing TEAS and TEASi, and also introducing new
7 capabilities to support trademarks and examination
8 processes using technologies such as AI and RPA.

9 And now, none of these are really new
10 for us; it's just that as Greg mentioned due to
11 prior budget reductions we've had to defer those
12 plans largely and this helps us get back on track.

13 Next up, as Greg mentioned, we are
14 currently supporting a closed group, usability
15 testing on a new prototype for identity
16 verification for TEAS and TEASI's filings. And so
17 will allow us to collect valuable information and
18 feedback which will further allow us to improve
19 the customer experience at a later deployment.

20 Next up, we've recently surged up
21 additional teams, Agile teams, to develop new IT
22 capabilities, to support the Trademark

1 Modernization Act. These teams are also helping
2 to tackle the trademark filing backlog by
3 developing the AI and RPA technologies, as Greg
4 mentioned earlier, to assist the examination
5 processes.

6 The next bullet here, finally we
7 continued to mature our Cloud and DevSecOps
8 processes for both trademark and TTAB systems. To
9 clarify, by DevSecOps pipelines, that stands for
10 development, security, and operations. And that
11 essentially automates how we deliver software into
12 production from design and to delivery, but with
13 security being baked in every step of the way.
14 And cybersecurity is at the forefront throughout
15 the entire process.

16 And so for example, the TTAB product
17 with respect to Cloud, they're migrating their
18 systems to the Cloud and the architecture that
19 they're using is actually serving as an example,
20 or as a template that other systems planning
21 similar migrations can follow.

22 And finally, as Greg mentioned as well,

1 during his presentation the Trademark Exam Team
2 finished building out its DevSecOps pipeline and
3 so they can now build and deploy software into
4 production with minimal external assistance. And
5 so this includes automated testing, it includes
6 cybersecurity scans and so with this pipeline in
7 place it should allow for a significant boost in
8 the team's throughput.

9 And so beyond those activities, at least
10 at a high level, there are also many other
11 activities we're involved in. We do continue to
12 wrap up our stabilization efforts. We're
13 continuing to reduce technical debt and we're also
14 continuing to improve our technical infrastructure
15 that will support how we develop and deploy
16 software in the future. And so those are my
17 highlights. Be happy to take any questions at
18 this time.

19 MS. KOVALCIK: Hey Oz, this is Jen
20 Kovalcik from TPAC. I'm curious, for the next
21 budget cycle and planning purposes, is it
22 primarily focused on continued stability and

1 enhancement of existing systems? Or within this
2 next budget year are you also planning to
3 introduce any new systems?

4 MR. TURAN: Right. With the additional
5 funding we will be able to introduce new systems.
6 So while we have been trying to keep the lights
7 on, so to speak, with a significantly reduced
8 budget over the past couple of years, with some
9 additional resources, this will allow us to resume
10 our original plans to modernize. So while in some
11 cases, for example, TMA where it will be
12 implemented in some of the legacy systems, at the
13 same time we know we need to modernize these
14 systems. We want to get them up to the Cloud to
15 the extent that is possible and practical. And
16 so, again, with the additional funding we
17 definitely plan to modernize.

18 MS. KOVALCIK: Do you envision moving
19 all databases into the Cloud or will those
20 continue to stay from the early (inaudible)?

21 MR. TURAN: The degree to which
22 databases get moved to the Cloud is still

1 something that we're still in the planning stages.
2 There are, certainly some constraints to consider
3 in terms of cost effectiveness for each
4 transaction, inputs and outputs. WE want to make
5 sure that whatever we do is cost effective but at
6 the same time we want to ensure that it's also --
7 you know, makes sense from a supportability. But
8 by and large the Cloud is a place where we want to
9 encourage maximum adoptions, especially due to the
10 maintainability.

11 But Jamie, anything further you'd like
12 to add to that to make sure I hit the mark on
13 that.

14 MR. HOLCOMBE: Oz, you're right on. The
15 point about applicability out in the Cloud is,
16 it's all different. What does that mean? The
17 biggest fallacy that a lot of government agencies
18 have is we move everything to the cloud it'll be
19 cheaper; that's not so true. If you have a lot of
20 chattiness between a client and a server, what you
21 get is a lot of charges against your transactions.
22 And that makes it more expensive to be housed out

1 in the Cloud. So it all depends upon the
2 application. And of course, you could refactor
3 and redesign applications to take advantage and
4 make them less chatty; that's a good idea. But it
5 all depends.

6 Storage costs are another big deal,
7 right? And we have to get with commodity
8 providers who provide the greatest quality and
9 security. So it's not just cheap. It also has to
10 be good. Thanks.

11 MR. TURAN: Thank you, Jamie.

12 MS. KOVALCIK: Thank you both.

13 CHAIRMAN KELLY: Any other questions
14 from TPAC members?

15 Okay. Jamie, and Oz, thank you both
16 very much. We appreciate it.

17 MR. HOLCOMBE: Thanks a lot. Have a
18 great weekend.

19 CHAIRMAN KELLY: You too. Okay. Next,
20 we will receive a legislative update from the
21 acting director of the Office of Governmental
22 Affairs, Kimberly Alton.

1 MS. FOLEY: Hi everyone. I'm actually
2 -- Kim is not able to join us today.

3 CHAIRMAN KELLY: Oh.

4 MS. FOLEY: So my name is Tammy Foley.
5 I'm an attorney with the Office of Governmental
6 Affairs, so I'll give you the update.

7 CHAIRMAN KELLY: Well, welcome Tammy.

8 MS. FOLEY: Thank you. Next slide,
9 please? Okay. So first I just want to flag a key
10 piece of legislation that has been introduced so
11 far in this Congress. The first is, I'm not going
12 to read the entire title, I'll go with the short
13 vision, the Informed Consumers Act. This was a
14 bipartisan bill that was introduced in March that
15 seeks to combat the online sale of counterfeit
16 consumer products by ensuring transparency of high
17 volume, third-party sellers in these online retail
18 marketplaces. So it essentially directs the
19 online retail marketplaces to authenticate the
20 identity of the high volume third-party sellers,
21 which should, hopefully, deter the online sale of
22 counterfeit goods by anonymous sellers. The bill

1 will also ensure that consumers can see basic
2 identification and contact information of these
3 high volume third-party sellers.

4 The next bill is a bill that would
5 provide the Customs and Border Patrol enhanced
6 authority to share information on merchandise that
7 is suspected of violating copyrights. In the end,
8 the last bill that's on this slide, I think
9 everyone has heard of so far is the Endless
10 Frontier Act. This is a bipartisan bill that
11 establishes federal programs that support
12 manufacturing, telecommunications, and research
13 and development in the United States, with the aim
14 of increasing competitiveness with, and reducing
15 reliance on China.

16 Among the several measures introduced in
17 the bill, and the one that is of particular
18 interest to the PTO is the establishment of
19 regional technology hubs that are meant to spur
20 innovation in the United States. The bill was
21 reported favorably out of committee earlier this
22 month and is currently on the Senate floor where,

1 as of my account this morning, there were 400 plus
2 amendments offered; included in those are the two
3 previous bills that I just talked about, the
4 informed act and the CBP bill. We're continuing
5 to monitor the amendments as they are introduced
6 up to - for any of them that touch on USPTO
7 equities.

8 And then, lastly, yesterday on the House
9 side there was a bipartisan bill that was
10 introduced that also combats the online sale of
11 counterfeit products. This is the Shop Safe Act I
12 think we discussed it when it was introduced at
13 the last Congress. We understand that it's been
14 amended slightly but it's - again, it's
15 incentivizes online platforms to adopt best
16 practices that will prevent third-party sellers
17 from listing counterfeit products for sale. The
18 bill incentivizes best products - our screening
19 and vetting sellers of products addresses repeat
20 counterfeit sellers and ensures that consumers
21 have relevant information to make informed
22 decisions.

1 Next slide, please. Oh, before I move
2 on, are there any questions relating to the
3 legislation?

4 Okay. And then finally, I just want --
5 a slide on a couple of hearings that have gone on.
6 The first is, as I think you guys all know Mr. Don
7 Graves was confirmed to be the Deputy Secretary of
8 Commerce. He was voted out of the Senate on the
9 13th, and I believe he started on the 14th. So he
10 had no downtime.

11 And then there was also a hearing for
12 Ms. Leslie Kiernan to be the General Counsel for
13 the Department of commerce. She was also reported
14 favorably out of committee on May 12th, and we
15 hope that she will come for a (inaudible).

16 And then finally, Secretary Raimondo
17 testified on May 6th before the House
18 Appropriations Committee on the president's
19 budget. And she is scheduled to testify on the
20 same before the Senate Appropriations, next week
21 on May 26th.

22 And I believe that's all I have. Let me

1 check the next slide just to be sure. Yep. If
2 anyone has any questions?

3 CHAIRMAN KELLY: Any questions from TPAC
4 members? Okay. Tammy, thank you very much. We
5 appreciate it.

6 MS. FOLEY: Thank you.

7 CHAIRMAN KELLY: Next is Helene Liwinski
8 from the Office of Policy and International
9 Affairs with a policy and international update.

10 MS. FERRITER: Hi. And before Helene
11 gets started, my name is Karin Ferriter. I'm the
12 deputy chief policy officer. I just wanted to
13 convey the regards of the chief policy officer
14 Mary Critharis. She had planned to be with this
15 group today but she was unavoidably detained. She
16 asked that we announce that we'll be hiring, or
17 you'll be seeing, perhaps, two new faces. We are
18 hiring two senior (inaudible) trademark attorneys
19 (inaudible) focus on international and the
20 (inaudible) domestic (inaudible). And so at the
21 next meeting, hopefully, you'll be able to be
22 introduced to them.

1 And with that, Helene, it's -- they're
2 all yours.

3 MS. LIWINSKI: Good afternoon, everyone.
4 I'm very happy to speak to you today on behalf --
5 on Mary's behalf. Next slide, please.

6 I have a lot to cover today so I will
7 try not to rush through this too quickly. Next
8 slide.

9 Starting with some updates on China.
10 Following USPTO's January 2021 report on
11 non-market factors impacts on filing with patents
12 and trademarks in China the China National
13 intellectual property administration launched a
14 campaign to target bad faith trademark
15 registrations. So this campaign explicitly
16 targets what are called preemptive registration,
17 which is a type of bad faith that is a grave
18 concern to our U.S. brand owners.

19 And a preemptive registration, otherwise
20 known as malicious squatting involves a bad faith
21 filer beating the true owner of a trademark by
22 filing an application with the CNIPA first. So

1 our IP attaché in Beijing, recently promoted to
2 the rank of IP counselor, reports that the plan
3 seeks to stop bad faith actors; including refusing
4 to approve assignments of trademarks when they are
5 made for profit. Those unfair (inaudible) would
6 know that an assignment has been made for profit.

7 So administrative penalties are featured
8 prominently, suggesting that this campaign could
9 significantly increase deterrents against bad
10 faith filers and their agents. Bad faith conduct
11 will also impact social credit scores. And of
12 significant note, the prohibition of subsidies for
13 trademark applications is explicitly part of the
14 campaign. But it's unclear whether the
15 prohibition is only for the term of the campaign
16 or whether it's something that will continue
17 indefinitely.

18 So the measures of the campaign are in
19 effect as of April through October and the CNIPA
20 will evaluate the results at the end of the
21 calendar year. The (inaudible) would appreciate
22 stakeholder input or any observations that you

1 have, or any experiences or interactions with this
2 campaign, and ask that you provide us with any
3 feedback whether positive or negative. Next
4 slide, please?

5 Next, we have some updates with respect
6 to our work with the World Intellectual Property
7 organization in its administration of treaties and
8 participation in decision- making and negotiating
9 bodies. For example, we participated in the Nice
10 Committee of Experts hybrid meeting that took
11 place in April. France had submitted a proposal
12 to reclassify alcoholic beer from Class 032 to
13 Class 033, whereas non- alcoholic beer would
14 remain in Class 032.

15 Some U.S. stakeholders had indicated
16 they were opposed to the proposal so the USPTO
17 conducted outreach efforts of other stakeholders
18 and several foreign IP offices, facilitating a
19 successful challenge to the proposal. So at the
20 meeting, France withdrew the proposal due to lack
21 of support and beer will stay in Class 032
22 regardless of alcohol content.

1 Now also, at WIPO the 44th session of
2 the Standing Committee on the Law of Trademarks,
3 Industrial Designs and GIs took place earlier this
4 week. The discussions on days 2 and 3 focused on
5 the treatment of country names and geographical
6 names of national significance, as well as GIs.

7 With respect to country names and
8 geographical names of national significance, the
9 U.S. continues to monitor three somewhat similar
10 proposals relating to exam guidelines; an
11 instrument addressing both examine unauthorized
12 use, and guidance from WIPO in the domain name
13 space. So these proposals have been in
14 discussions for several sessions now, and the U.S.
15 continues to have concerns as to several other
16 delegations in the varying capacities. Also,
17 member states continue to contribute to a
18 questionnaire on nation brand protection. In
19 discussions were initiated regarding possibly
20 holding a further info session on nation brands at
21 a future SCT session.

22 With respect to GIs, discussions were

1 held to identify consensus topics for information
2 session at the next SCT, agreement was reached on
3 two topics. One advocated for by the U.S. which
4 involved examination of GIs, and a second on
5 prevention, on bad faith use, and registration of
6 GIs in the domain name system which was primarily
7 advocated for by the EU.

8 The GI information session featuring the
9 discussion of these topics will take place at the
10 next session of the SCT. We already conducted
11 three GI information sessions including a virtual
12 one on the margins of last SCT, but we would like
13 to continue having these info sessions; we are
14 interested in seeking more information from other
15 delegations about how they handle specific GI exam
16 issues. Next slide, please.

17 May is the month of big meetings so we
18 are also planning for the TM5 midterm meeting
19 hosted by CNIPA this year. The TM5 partners will
20 be meeting next week. We have already been busy
21 exchanging views throughout the month about work
22 on current and future projects. We received two

1 proposals for new projects co-led by EUIPO and
2 CNIPA so we're looking forward to hearing more
3 about those. They'll be discussed now and voted
4 on at the annual meeting in November.

5 In addition, JPO, or Japan will -- is
6 expected to host an experts meeting on artificial
7 intelligence this summer, and we're excited to
8 hear about the developments the partnership had as
9 AI is becoming more and more relevant for each of
10 our offices. Next slide. (Inaudible) Trademarks
11 Team is also preparing for the ICANN71 meeting
12 coming up in June. USPTO has been an active
13 participant in ICANN since it began in '99 and
14 provides IP advice to the U.S. Department of
15 Commerce's National Telecommunications and
16 Information Administration or NTIA, who is the USG
17 lead on domain issues within ICANN. So USPTO's
18 part of a larger interagency team when it comes to
19 ICANN issues.

20 Within ICANN, OPIA is closely monitoring
21 the development of a new framework that would
22 provide timely access to the WHOIS registrant

1 data. And ICANN has nearly conducted its review
2 of the Rights Protection Mechanisms, RPM, such as
3 the Trademark Clearing House, claims notice,
4 sunrise provisions applicable to gTLDs launched
5 under the 2012 new gTLD programs.

6 The second part of the review expected
7 to begin later this year will look at the Uniform
8 Domain Name Dispute Resolution system --
9 Resolution Policy, I'm sorry, the UDRP. OPIA is
10 actively involved in ongoing small working groups
11 which look at whether acronyms of
12 intergovernmental organizations, or IGOs should
13 receive any special protection in the DNS, or the
14 Domain Name System, and if so, how. Next slide,
15 please.

16 Finally, just some highlights on some of
17 the training that -- ongoing training that OPIA is
18 doing. OPIA's trademark and GI training is
19 conducted through our global and special property
20 academy headed by Miriam DeChant. In previous
21 briefings we've talked about how OPIA's training
22 has not missed a beat in the virtual environment.

1 And while there are many drawbacks to conducting
2 the virtual only training, I wanted to highlight a
3 few cases where there have been some benefits,
4 like reaching a larger audience.

5 So for example, a training conducted in
6 March with the Association of Southeast Asian
7 Nations focused on exam of nontraditional marks
8 and included over 190 attendees from eight
9 national offices. Also, in March the OPIA
10 trademark team and the Trademark Office
11 Classification policy and practice, in
12 collaboration with WIPO, provided a Madrid
13 protocol webinar to 348 program attendees about
14 the USPTO classification and IT practice. And
15 participants from that training included 39
16 foreign government officials from 25 countries, as
17 well as practitioners and (inaudible).

18 With such bigger audiences, more
19 frequent and consistent training has been
20 possible. Since mid-2020 OPIA has conducting
21 nearly monthly trainings with the IP office of
22 Afghanistan, the attendees who have been staying

1 after regular work hours, we alternate topics
2 depending on their needs. And we've received
3 feedback from them that the training has
4 influenced their practices and procedures. So
5 conducting regular trainings has been instrumental
6 in building relationships with this office as well
7 as others and we've leveraged that for future
8 work.

9 And I believe that's all I had. Any
10 questions?

11 MS. BALD: Helene, thank you for that
12 excellent presentation. Stephanie Bald from TPAC.
13 I was very interested to hear about the campaign
14 in China on bad faith filing in particular your
15 mention of how there was going to be a prohibition
16 on the subsidies. I know a lot of us believe that
17 that is, at least in part, what's driving these
18 astronomical filings. Could you explain a little
19 more about what that means? Have the subsidies
20 already been prohibited? Is it something that's
21 happening in the future? I think we'd all like to
22 hear about that if you could expand a little bit.

1 MS. LIWINSKI: Unfortunately, I don't
2 have the details of the program and when the
3 subsidies were scheduled to stop or what was
4 triggered. But I can definitely get back to you
5 with some additional information on that from the
6 China team.

7 MS. BALD: Yeah, I was just wondering
8 who -- isn't that like a local government? Is it
9 a coordinated -- Amy's nodding her head.

10 (Inaudible) actually be executed.

11 So I will just ponder that and --

12 AMY: (inaudible) that.

13 MS. LIWINSKI: I will be happy to
14 provide you with the answers to that. Apologies
15 for not having that off the cuff.

16 MS. BALD: No problem. No problem.
17 Thank you.

18 CHAIRMAN KELLY: Any other questions
19 from TPAC members?

20 Okay. Thank you very much.

21 MS. LIWINSKI: Thank you.

22 CHAIRMAN KELLY: . We appreciate it.

1 Next up is Chief Judge Rogers with the TTAB
2 update. Judge Rogers.

3 JUDGE ROGERS: . I'll unmute myself.
4 Thank you. I guess we are in the lightning round
5 of the TPAC meeting with the 10 minute
6 presentations, so I will try to keep you on
7 schedule, or get you on schedule. Next slide,
8 please.

9 I just want to provide you a little bit
10 of context because we've spoken - we've heard
11 earlier today about the surge in trademarks and
12 its impact on operations there. I wanted to talk
13 about the search of the was already occurring in
14 TTAB a few years ago to give you some context for
15 what is happening now at TTAB. The surge that
16 TTAB experienced a few years ago stemmed from
17 those increasing levels of application filings
18 that were going on for years and years. You've
19 heard former Commissioner Denison talk about the
20 fact that only had, I think, three down years in
21 filings in the last, over 20 years and so every
22 year that application filings were increasing,

1 even prior to the current search meant more work
2 for TTAB. So in fiscal '17 and '18 and '19 we saw
3 appeals being commenced at the TTAB climb by about
4 7 percent. Extensions of time to oppose by 7-1/2
5 percent oppositions almost 20 percent and
6 cancellations almost over 31 percent. So these
7 were pretty significant increases in terms of new
8 cases being commenced at the TTAB, and had
9 ramifications for the work that was being done by
10 attorneys on motions and trial cases and by judges
11 at the end of the process. Next slide, please.

12 Before I get into those ramifications on
13 the attorneys and the judges and their respective
14 chores, their respective responsibilities for
15 handling cases, that are pending at the TTAB, I
16 did want to point out that notwithstanding the
17 surge in trademarks, we've actually seeing
18 moderating filings over the last year and a half.
19 Now, that may change and we may see this to be
20 kind of a temporary lull compared to the earlier
21 surge we saw in '17 to '19 and we may see another
22 surge down the road based on the trademark surge.

1 But in between we saw appeals continue
2 to increase last fiscal year, but extensions of
3 time to oppose decline, so did oppositions. And
4 while petitions to cancel also increased last
5 year, the rate of increase was much lower than
6 what had been true for the three previous years.
7 So we did see kind of moderation and filings
8 coming to the TTAB, all of fiscal '20. Next
9 slide, please.

10 And so far, year to date, in fiscal '21
11 this decline that started last year has continued.
12 So appeals are increasing, as could be expected
13 based on the trademark search, but at a lower rate
14 than they were increasing last year. And
15 extensions, oppositions, and cancellations all are
16 down your today compared to last year. Now, keep
17 in mind, these are declines from what were
18 historically high figures as recently as Fiscal
19 '19, so there still large numbers for TTAB, but it
20 does give us an opportunity to catch her breath.
21 These declines have helped us catch up with the
22 motion practice work that was resulting from that

1 search in trial cases, and with the disposition of
2 cases that have worked their way through TTAB
3 processes and a panel of judges. Next slide,
4 please.

5 So the surge in the trial cases that we
6 saw that was happening in particular for about
7 three years there, resulted in a lot of motion
8 practice and it was kind of difficult for us to
9 predict during those three years, and has
10 historically been somewhat difficult for us to
11 predict how many motions are going to rise in the
12 trial cases that are commenced at the Board. As
13 many of you know, we have a high rate of default
14 in cancellation cases, particularly those
15 involving abandonment or nonuse claims so those
16 cases certainly don't result in motion practice.

17 But many oppositions and more protracted
18 petitions for cancellation do result in motion
19 practice. So the inventory and motions rose by 50
20 percent in fiscal '19 alone. And it meant that we
21 were struggling to meet our pendency goals in
22 terms of processing motions from fiscal '18

1 through the end of last fiscal year. However,
2 interlocutory attorneys under the management of
3 managing attorney Ken Solomon put in tremendous
4 efforts over the last couple of years to try and
5 get a handle on this; we've also hired into
6 interlocutory attorneys.

7 And last fiscal year we had reduced the
8 inventory of contested motions waiting for
9 decision by 12 percent, and we had none over 12
10 weeks pendency at the end of the fiscal year. The
11 significance of that is that our processing goals
12 for contested motions is to get them decided on
13 average, some take longer, some are quicker, but
14 on average in 12 weeks or less. And this meant
15 that we were able to start the current fiscal year
16 with no cases pending for a period of time above
17 our goal. So this year we've already reduced
18 inventory another 15 percent, and we met the
19 pendency goals in both quarters 1 and quarter 2.
20 Next slide, please.

21 And this slide shows you the impact of
22 the increasing number of trial cases that had come

1 into TTAB for about three years. On the number of
2 cases going through the entire process and
3 requiring disposition by a panel of judges on the
4 merits. So it kind of took us by surprise. We
5 never know how many cases are going to go through
6 the entire process. Obviously settlement rates
7 are very high, default rates are high and some
8 cancellation cases, and trial cases. So were
9 never quite sure how many cases are going to be
10 fully litigated and require disposition on the
11 merits. We know that a more substantial number of
12 appeal cases are certainly going to go through the
13 process and require disposition on the merits, but
14 even those are less than 50 percent of what ever
15 gets commenced at the Board.

16 So the number of cases, both appeals and
17 trials combined that require disposition on the
18 merits had actually gone down in '17 and '18, but
19 because of those new cases coming in we had,
20 particularly those trial cases, we had a trial
21 cases as a percentage of all cases requiring
22 disposition by a panel of judges increase in

1 fiscal '18 and '19 as high as up to 31 percent of
2 all cases requiring disposition on the merits.
3 And that's a much higher than our historical
4 figures which are normally down in the 22, 23
5 percent of all cases requiring disposition being
6 trial cases.

7 So in fiscal '19 we had an almost 15
8 percent increase in cases requiring disposition on
9 the merits. And again, just as with the attorneys
10 not being able to meet the motion processing goal
11 we were unable to meet our processing goals for
12 overall pendency from the time cases are ready for
13 decision until the judges get to issue those
14 decisions. So what we did for the last fiscal
15 year was decouple what had been two parts of one
16 overarching pendency goal for final disposition of
17 cases on the merits.

18 And we had had one goal for appeal on
19 trial cases combined. We recognized that
20 processing time for appeal cases is lower and
21 faster and quicker than processing time for many
22 trial cases, so we set goals for last year of

1 getting appeals decided within 12 weeks from the
2 time they're ready for decision; they've been
3 briefed, or argued, and trial cases in 12 weeks or
4 less. Again, these are figures on average. So we
5 were able to stabilize our inventory in fiscal '20
6 because we actually saw a decline in the number of
7 cases maturing to ready for decision which was a
8 welcome relief given the significant increase in
9 cases maturing to ready for decision in fiscal
10 '19.

11 And now, we are back to a more
12 historical level where about 22, 23 percent of the
13 cases requiring disposition on the merits are
14 trial cases. Next slide, please.

15 And the sum total of all of that
16 information that I've just given you is that for
17 the current fiscal year average pendency to
18 disposition of contested motions is about 10
19 weeks. That's the figure that we maintained each
20 of the first two quarters and through the
21 composite measure at the midpoint of the fiscal
22 year. We expect that will continue to mediate

1 throughout the rest of the year and we have this
2 docket of work well in hand. Appeal decision
3 pendency is well below our 12 weeks or less goal.
4 Trial decision pendency at 10 weeks as well below
5 our 15 or weeks lesson goal, and both of these -
6 all of these inventories are relatively stable.

7 However, were not going to change these
8 goals. You might think should we change these
9 goals, lower those goals given the average
10 dependencies that were now achieving. We think
11 not. We think that because of the pending
12 possible search of appeals and trial cases based
13 on the trademark search, based on the possibility
14 of us getting appeals from TMA expungement and
15 re-examination proceedings and various other
16 reasons we expect that this is a law before what
17 could be a storm. So we're going to keep our
18 goals the same. We have continued to hire
19 attorneys to try and drive down that motion
20 pendency goal even a little bit lower so that if a
21 surgeon does materialize we'll be able to
22 accommodate it; and we will be in a position

1 because of what's been planned in our budget to
2 hire judges if we need them in the next fiscal
3 year.

4 So that's where we stand with the
5 numbers. I will just mention a couple of other
6 things and try and get us back on track. One is
7 that we recently deployed a new form for those who
8 are interested in proposing that an issue to a
9 decision of the TTAB be redesignated from not a
10 precedent to a precedent. To date we have not
11 received any such nominations, but that form is
12 there and it's on our webpage. You can nominate a
13 decision that you think should be considered for
14 redesignation is a precedent anonymously. You can
15 give us contact information and then we'll be able
16 to discuss it with you and make sure we understand
17 why you think it should be redesignated as a
18 precedent and what part of the decision, whether
19 it's all of it, or part of it is the significant
20 part.

21 The reason we may need to talk with
22 people about these nominations, or we would at

1 least benefit from talking to people about these
2 nominations is that we have considered the
3 possibility of designating TTAB, and that may be
4 useful in a case where a decision has already
5 issued and somebody thinks it should be
6 redesignated as a precedent for a particular
7 reason. And we may agree, but we may think
8 there's another part of the case that is not quite
9 up to our standards or we would have done things a
10 little bit differently if we knew it was going to
11 be a precedent at the time we issued it.

12 So that's where we stand with precedence
13 and Judge Karen Kuhlke is our lead judge for
14 precedents; has done a wonderful job, as she does
15 every year, and we are at 25 precedents so far
16 this year, so were well on our way to meeting our
17 goal there.

18 And then the last thing I'll mention is
19 to follow up on Greg Dodson's discussion. We are
20 working very closely with Trademarks and the CIO
21 on next generation TTAB systems. As Greg pointed
22 out, we recently completed a two-year

1 stabilization effort for ESTA and TTABITS
2 (phonetic) which is the internal version of
3 TTABVUE. And some of those things you don't see,
4 you don't experience but they're back end
5 processing fixes and they make things more
6 efficient for us and for our staff. But that
7 stabilization effort is complete and so now we're
8 really turning our attention to working with
9 trademarks on the TMA stuff because we want to be
10 able to take appeals from the new ex parte
11 proceeding that stood as early as next year in
12 trademarks seamlessly. And we are also setting
13 the groundwork, laying the groundwork for the new
14 TTAB center which will ultimately involved
15 replacements for ESTA and TTABITS and TTABVUE.

16 So that's where TTAB stands. If there
17 is time, Chris, I'm happy to take any questions.

18 CHAIRMAN KELLY: . Sure. Any questions
19 for Judge Rogers?

20 MS. BALD: Judge Rogers, I have a couple
21 of questions. I thought it was interesting to
22 hear that things are moderating and it's good news

1 that you can catch your breath a little. I was
2 wondering whether that was anticipated based on
3 filings and kind of projecting out when they would
4 hit the opposition stage or if you think the
5 increase in TTAB's filing fees might have any
6 impact on the filings both for extensions of time
7 and also for notices of oppositions, and petitions
8 to cancel?

9 JUDGE ROGERS: It's certainly possible.
10 We did see when we first deployed that the impact
11 of the fees is certainly one possibility. I'm not
12 sure that in the long run it will permanently
13 reduce the number of times that parties come to
14 the Board for an appeal or trial case. We did see
15 predictions that we would have fewer extensions of
16 time to oppose when we first deployed the fees for
17 the extensions.

18 However, they went down for a year, but
19 then they went back up, and they increased again.
20 So it's quite possible that some people have
21 chosen not to file extensions of time to oppose,
22 and we are okay with that if that means that

1 parties are discussing settlement sooner and not
2 taking as much time to decide whether to file an
3 opposition or not. If parties are settling their
4 cases and have, to some extent, encouraged a
5 greater discussion of settlement that's okay. We
6 don't want to force parties into filing notices of
7 opposition if they don't really think that they
8 are necessary. So the fees, you know, could have
9 a possible effect.

10 One thing that we were discussing
11 yesterday during the executive session --
12 Stephanie, you weren't with us yesterday -- but
13 was the possible impact of greater use of letters
14 of protest in regard to filings. And that,
15 perhaps, means that people are able to get the
16 office to pay closer attention to application
17 sooner, rather than waiting until it's time to
18 file an opposition. But to tell you the truth,
19 we've never had really great analytical tools for
20 figuring out when we can expect increases based on
21 increases in trademarks.

22 Obviously, those increases from '17 to

1 '19 in terms of new cases being commenced to TTAB
2 was predictable based on the increases that have
3 been going on for many years in trademarks. What
4 was unpredictable about it was having so many
5 trial cases go through the process and required
6 disposition on the merits because that put a
7 burden on the attorneys and the judges who were
8 required to decide many more trial cases than was
9 typical for TTAB for many years.

10 So we do hope to develop better
11 analytical tools and one of the things that we
12 have planned for and we will be hiring are some
13 new analytical personnel devoted and working just
14 for TTAB, we hope to come up with some models that
15 will allow us to predict our workloads better and
16 then have our hiring and staffing levels more
17 attuned to the predictions. And so we will be
18 hiring for a couple of positions in this area in
19 the coming fiscal year.

20 MS. BALD: So my second question -- I
21 think you've already answered it, probably the
22 same answer, but I'm wondering how the change in

1 pendency of application going from pretty much a
2 standard 3 months to first action to a 5.2 month
3 to action is also -- it seems like that would
4 shift your model in terms on where -- when the
5 oppositions hit?

6 JUDGE ROGERS: Well, I don't know that
7 that's true. I mean we certainly need to work
8 closely with Trademarks as well on some of these
9 analytics and we have done that in the past. And
10 we do know for example that we are more likely to
11 see oppositions than appeals when there's a surge
12 in trademarks first, simply because if there are
13 applications that are published for opposition
14 very soon after they're filed they could be
15 subject to extensions of time to oppose or
16 oppositions, within months of them being filed.
17 Whereas, an appeal is not likely to get to us
18 until at least a year has passed and now, perhaps
19 even longer given the --

20 MS. BALD: Right.

21 JUDGE ROGERS: -- The pendency times.
22 However, I think Dave -- Dan Vavonese and Dave

1 Gooder would point out that they still have an
2 increasing number of examining attorneys who are
3 doing a lot of work. They're not necessarily able
4 to maintain historical pendency levels but given
5 the amount of work that a large number of
6 Trademark examining attorneys are doing they are
7 still the opportunity for us to get a lot of
8 appeals and to get a lot of trial cases, once that
9 work that is being done becomes ripe for appeal,
10 or ripe for publication and opposition. So I
11 don't think we want to draw the conclusion that
12 everything that's going on in Trademarks and
13 everything that's going on here means we're on a,
14 you know, a perpetual decline here because we've
15 seen things go up and down over the years at TTAB,
16 and I expect that they go up again.

17 The other issue that we have to keep in
18 mind is that during the pandemic our attorneys and
19 judges have been working around the clock, stuck
20 in their homes like everybody else with few
21 opportunities to take their annual leave and take
22 vacations and so there's just been a lot more work

1 done by all of our people. And at some point, I'm
2 expecting that they're going to start taking
3 vacations and then we will probably see pendency
4 levels rise a little bit closer to normal levels.

5 MS. BALD: Judge Rogers, I can't believe
6 you let people take vacation.

7 JUDGE ROGERS: Little ones. Little
8 ones, long weekends.

9 MS. BALD: Thank you, that really helps.

10 JUDGE ROGERS: Sure.

11 CHAIRMAN KELLY: Any other questions for
12 Judge Rogers?

13 MS. KOVALCIK: Hi, Judge Rogers, this is
14 Jen Kovalcik, at TPAC. I'm curious about the
15 request to have a case designated as precedential.
16 Could you walk us through that that process looks
17 like if you were to receive a request and maybe
18 what the timeline is or how it's evaluated?

19 JUDGE ROGERS: . Well, we'll actually
20 have to see how the timeline goes because we
21 haven't gotten any nominations yet. Occasionally
22 over the years we've gotten nominations in the

1 sense that somebody has sent an email in and
2 suggested that something be considered for
3 redesignation as precedent. And we've always been
4 willing to accept those. The reluctance we had to
5 actually redesignate decisions as precedential and
6 we've received these requests from outside
7 practitioners, but also from the trademark
8 examining operation which might see a decision in
9 an ex parte case that would provide useful
10 guidance for examining attorneys and they might
11 want to cite it in the TMEP.

12 So we've seen these, but what we
13 normally do when we designate a decision as
14 precedential is we work very closely with the
15 solicitors office and others including if they are
16 international issues, perhaps with OPIA to make
17 sure that we get the decisions as perfect as we
18 can get them before we make them -- designate them
19 as precedent and issue them. And the reason we do
20 that is because we may think that a decision in a
21 particular case or on a particular motion is
22 worthy of being designated as a precedent for

1 reason A or B, but once it's a precedent it can be
2 sited for anything in that decision and will be
3 cited for almost anything in that decision.

4 So we have to be very careful about
5 whether everything in that decision is something
6 that we want to -- expect could be cited back to
7 our attorneys and judges in briefs. And so, we
8 will look very closely at the nominations and we
9 will discuss them in-house as we normally do. Our
10 current clearance process involves review and the
11 opportunity for comment by all of our judges if
12 it's a final decision on the merits. All of our
13 attorneys and judges if it's a decision on motion
14 practice.

15 And we will have to build in a timeline
16 when we receive nominations to redesignate already
17 issued decisions that allows for that kind of
18 consideration in house. And we also consult with
19 the solicitors office and again, other business
20 units within TTAB to make sure that this is a
21 decision that the director would stand behind and
22 that the Agency can stand behind.

1 We know from the Arthrex case and the
2 hearing at the Supreme Court that it's very
3 important to the federal circuit and potentially
4 to the Supreme Court that the director have firm
5 control over establishing office policy through
6 precedential decisions. So we're going to have to
7 look long and hard at these nominations, but we do
8 expect to be able to get responses to those who
9 nominate the decisions back to them pretty
10 quickly. And also, we don't expect to receive a
11 lot of nominations. So we're not going to be
12 overwhelmed; we don't expect to be overwhelmed.

13 PTAB, last year, deployed the same form
14 and they have not received a deluge of requests
15 for redesignation of PTAB decisions. But the way
16 it will work is the form will get filled out and
17 it will be routed as an email to an inbox that I
18 have access to, that Deputy Chief Judge Mark
19 Thurman has access to and Lead Judge for
20 Precedents Karen Kuhlke has access to. So we
21 will, among the three of us, be monitoring these
22 incoming nominations pretty closely and will be

1 very interested to see what we get.

2 MS. KOVALCIK: . If you do get them
3 will it follow the same process as a newly issued
4 decision or is there, perhaps, a smaller group
5 that will be vetting those nominations?

6 JUDGE ROGERS: . No. I expect that we
7 will be following pretty much the same process.
8 Again, when we have had questions about
9 redesignating it, I could point you to -- and I'm
10 happy to send you a list of four or five cases
11 that were issued as not precedents, but they were
12 redesignated over the years, sometimes within a
13 few months after issuance, sometimes as late as
14 maybe 18 months after issuance. But again, we want
15 to make sure that anything we designate as a
16 precedent, whether in whole or in part, is
17 something that all of our attorneys and judges
18 feel -- they would stand behind.

19 I don't want any decision to go out
20 based on a smaller group review when it might not
21 reflect the view of a super majority of attorneys
22 and judges at the Board because I want to make

1 sure that anything that bears the designation of
2 being a Board precedent is something that you all
3 know the rest of us will apply in good faith in
4 future cases that raise the same circumstances or
5 in the same legal issues.

6 MS. KOVALCIK: Thank you so much. It's
7 helpful to understand the process.

8 JUDGE ROGERS: Sure.

9 CHAIRMAN KELLY: Any other questions for
10 Judge Rogers?

11 Okay. Judge Rogers, thank you. Very
12 informative, as always.

13 JUDGE ROGERS: My pleasure.

14 CHAIRMAN KELLY: Next, we are going to
15 hear from the Director of the Office of Equal
16 Employment Opportunity and Diversity, Bismark
17 Myrick, to speak about the USPTO's efforts in
18 support of the presidential order on advancing
19 racial equity. And USPTO affinity groups. So
20 Director Myrick, welcome. We look forward to
21 hearing from you.

22 MR. MYRICK: Well, good afternoon on

1 this Friday everyone. My name is Bismark Myrick
2 and I work in a small office that part of the
3 USPTO called the Office of Equal Employment
4 Opportunity and Diversity. We have three major
5 functions in our office and maybe before I go into
6 those I should say that I like to remind groups
7 like yours that in addition to being the place
8 where you file your trademark applications or
9 request a hearing before the PTAB, the USPTO is
10 also a very large and complex employer. We have
11 almost 13,000 employees and we employ some of the
12 world's most sought after workers.

13 So I work in one of those offices that
14 is designed to support the workforce at USPTO and
15 the three programs that I'm principally
16 responsible for are the programs that deal with
17 internal employee complaints, a program that makes
18 sure that our employees and applicants with
19 disabilities have the accommodations that they
20 need to manage a diverse workforce. And then, I
21 take on a variety of affirmative responsibilities.
22 By affirmative I just mean things that people

1 haven't specifically requested we undertake to
2 make sure that our work force is diverse and
3 inclusive.

4 One of our major efforts in that regard
5 is to make sure that our managers and supervisors
6 have the tools that they need to manage a diverse
7 workforce. I was delighted, however, when our
8 Director, our Acting Director asked me to lead the
9 Agency's implementation of Executive Order 13985.
10 Essentially the Executive Order has two principal
11 components. The first one is for the USPTO and
12 all federal executive branch agencies to undergo
13 an equity assessment. The administration to help
14 us, provided with a great tool that asks a variety
15 of different questions about the services that
16 USPTO provides. And the goal of that
17 questionnaire is to elicit areas where we can
18 improve our services and outreach to underserved
19 communities.

20 The second part of the Executive Order
21 is to then, turn that assessment -- the results of
22 that assessment into action. And so based upon

1 the equities assessments we will be identifying a
2 number of areas that we will pursue in an effort
3 to make our services more accessible. We can go
4 to the next slide, please.

5 I was very lucky to have a prominent
6 group helping me to steer this project forward.
7 We created two teams within the USPTO. One team
8 was led by Patent Administrative Judge Michael
9 Kim, and another team was led by Nestor Ramirez, a
10 group director also in the Patents Business Unit.
11 Their role was to assist the various subcomponents
12 of the USPTO with implementing, with using that
13 equity assessment tool that I mentioned just a
14 moment ago. We can go to the next slide.

15 So I'm delighted to tell you that we are
16 working very diligently towards our first deadline
17 which is June 15th. By June 15th we are to have
18 reported out two or three broad areas when the
19 USPTO plans to focus on improving equity. Right
20 now, we have -- all of the various subcomponents
21 of USPTO have undergone an internal equity
22 assessment and right now our steering group,

1 steering committee is working on refining the
2 results of that equity assessment in an effort to
3 get approval of our chain of command here within
4 the USPTO and then over to the Department of
5 Commerce. We can go to the next slide.

6 While I have you on this great Friday
7 afternoon, I also wanted to share with you some
8 really important work underway at USPTO and that
9 is work with the employee organizations of the
10 USPTO. When I started here at PTO almost 17, 18
11 years ago we had three affinity groups or employee
12 organizations. Today we have 29 organizations,
13 more than 1 in 10 employees is a member of one of
14 those organizations and they are doing fantastic
15 work for us in efforts to help us recruit and
16 retain a diverse workforce.

17 Let me give you an example of one of the
18 great things that our affinity groups are doing.
19 We have the first government chapter of The
20 Society of Hispanic Professional Engineers. This
21 society helps us to recruit engineers from Puerto
22 Rico. And once our newly hired employees get here

1 and they fly into Dulles Airport members of our
2 affinity group actually go out to Dulles Airport
3 and pick them up. And they show them where to
4 find a coat and where to find a place to live.

5 We have another affinity group called
6 the Society of Ethiopian American Engineers and
7 Scientists. This group asked me for assistance in
8 putting together an IP primer on an afternoon
9 during the spring, a Friday afternoon during the
10 spring here in Washington. That was available to
11 their broader community, Ethiopian community
12 within the Washington metropolitan area. I did
13 not think that anyone was going to show up on a
14 spring Friday to listen to an IP primer. But boy
15 was I surprised when our auditorium downstairs was
16 full of Ethiopian Americans on a spring afternoon,
17 Friday, full of people interested in hearing
18 information about intellectual property
19 protection.

20 It was interesting, we were able to film
21 that with the broadcasting board of governors and
22 that program was rebroadcast in Ethiopia where one

1 of our examiners received a telephone call from
2 his former professor, engineering professor in
3 Ethiopia who said that he saw him play a role in
4 the program taking part downstairs in our
5 auditorium. And I thought, wow, this is a
6 wonderful example of how we're leveraging the
7 diversity of our workforce to further the mission
8 of the USPTO.

9 There are literally hundreds of examples
10 of the work that these organizations are doing at
11 PTO. The most important one is to make sure that
12 every employee at PTO has a voluntary peer support
13 network that provides mentoring and assistance.
14 And with that, that concludes the information that
15 I planned to share with you. If there is time
16 available I'm happy to try to respond to
17 questions.

18 CHAIRMAN KELLY: Thank you very much.

19 (Audio missing between Track 3 and
20 4) Director Myrick?

21 MS. NATLAND: Hi (inaudible) from TPAC.
22 Very interesting, Director. I just have a

1 comment. I actually saw the clinical program at
2 UCLA that is through the USPTO. I just have a
3 suggestion to maybe consider if you haven't
4 already, providing guidance to these schools in
5 terms of students who are (inaudible) around and
6 making sure that diversity and inclusion is one of
7 the (inaudible) at UCLA, you know, it's
8 application process to the (inaudible) clinic.
9 And so that was just an idea I have for trickling
10 this down to students and having that be a
11 recruiting opportunity as well.

12 MR. MYRICK: Thank you.

13 CHAIRMAN KELLY: . Any other questions
14 or comments? Well, thank you very much, Director
15 Myrick. We look forward to seeing you in the
16 future keeping us abreast of your progress.

17 MR. MYRICK: Thank you.

18 CHAIRMAN KELLY: So that concludes our
19 speakers. So I know that we have at least a
20 couple of questions. Hold on here. Okay. The
21 first one I think is really to OPIA, the
22 Commissioner, sort of anyone.

1 And it is; as you may know the U.S.
2 State Department has a growing backlog in
3 authentication of documents for foreign filings,
4 which is causing significant harm, including loss
5 of IP rights because of failure to meet deadlines
6 imposed by foreign offices and courts.
7 Compounding this is a similar growing backlog at
8 the USPTO in processing requests for certified
9 documents which then need to be authenticated by
10 the State Department.

11 What can the USPTO do to address these
12 backlogs to speed up processing of these critical
13 documents? Specifically, one, with respect to the
14 backlog at State Department, how can the office
15 use the interagency process to persuade the
16 administration to prioritize authentications. And
17 secondly, with respect to the USPTO backlog, what
18 is the office's timeline to improve processing
19 times for certified documents and which office is
20 taking the lead?

21 MS. LIWINSKI: This is Helene Liwinski.
22 If I can take the first part of the question. We

1 had heard about these delays and we understand how
2 they are impacting your work. So we will be
3 engaging with our colleagues at the State
4 Department and we will provide more information as
5 soon as we can on how we can address this issue.
6 Thank you.

7 CHAIRMAN KELLY: Any other comments?

8 MR. GOODER: . Yeah, and I'll just --
9 this is Dave. I'll just add to that as well that
10 this has been obviously something that, I can't
11 say for state but certainly at the -- at our place
12 is highly impacted by the pandemic because it's a
13 very manual process and it requires people to
14 actually view these things, et cetera.

15 That said, I've already scheduled some
16 time next week for us to push it to this --
17 especially with regard to what can we do with this
18 and how can we push it at State so that they
19 understand the issue. And that's not always easy
20 because -- to do unless you've actually kind of
21 really explained it to people about how this
22 actually impacts. It's one thing to say it's

1 causing us to lose rights. But how it's happening
2 will be useful to them, I think. And hopefully,
3 they can make some changes. And we can certainly
4 look at it from the PTO's end as well.

5 And then your question didn't say this,
6 but I assume this is mostly with regard to --
7 maybe the TPAC members want to chime in on that;
8 it's mostly with regard to certified trademark
9 registrations, the litigation or that type of
10 thing?

11 CHAIRMAN KELLY: I believe so.

12 MS. BALD: I think I can fill in. So I
13 think there's two parts to it. Certified
14 trademark registrations is directly the office,
15 but I think it's in general also, difficulties
16 with legalization. And so, to the extent OPIA is
17 -- their purview is kind of working with
18 stakeholders that are trying to enforce IP rights
19 overseas. I think that is part of the concern as
20 well. To the extent that clarifies things.

21 And then, I also wanted to just actually
22 pose a question about that. I know it is -- that

1 it's within the State Department's purview. But
2 is there a role for the legislative affairs? I
3 don't know who was here. It wasn't Kim, Tammy.
4 Is this one thing -- I mean, it is a serious issue
5 and I'm hearing it as a TPAC member, stakeholders
6 are coming to me and I think a lot of the other
7 TPAC members have received similar requests and
8 I'm just wondering who owns this, and how could --
9 how can we make some change?

10 MR. GOODER: Yes. I think that's a
11 really good question is to go up there and -- that
12 was kind of my question too, to be honest with
13 you. So the -- what I've got set up for next week
14 absolutely includes Governor Ferris, because it's
15 -- the problem is it's -- there's a foreign
16 component to this and as Helene pointed out it's
17 an earlier it's not just an IT office issue, it's
18 a national law issue about what's required so that
19 you can bring that back to the U.S. And we kind
20 of got the same thing. It's not something that
21 PTO has control over other than the provision of
22 the copies. But that doesn't mean that we can't

1 push forward to try to improve the situation, at
2 least in the U.S. to speed it around.

3 I would say that if you do know, you
4 need these things, generally speaking, right now
5 you could -- so one of the documents that you
6 could get on an expedited basis are trademark
7 registrations. And something we used to do always
8 and I encourage brand owners to do it is have 5,
9 10, 15 of them on hand. Some governments may
10 object to the certification but at least you've
11 got them if you know you're going into litigation
12 get them early. I saw some information that the
13 expedited turnaround time right now is about 28
14 days. So kind of for the time being turning a big
15 ship takes a bit so just kind of plan that into
16 your schedule.

17 CHAIRMAN KELLY: Any other comments?
18 Okay. Helene, our second question is directed to
19 you. Are any of the OPI events available as
20 recorded videos, or upcoming events listed
21 somewhere? If so, please provide weblinks.

22 MS. LIWINSKI: So the trainings that I

1 was describing in my presentation that we do with
2 the foreign offices; those are not recorded.
3 Those are just almost like an education sessions
4 that we hold with foreign governments talking
5 about our practices, talking about their practices
6 so those sessions are neither recorded, nor
7 archived, nor webcast anywhere. We do have some
8 resources on our GIPA, the Global Intellectual
9 Property Academy of (inaudible). We -- I believe
10 we're in the process of updating some of our
11 training materials just broadly on trademarks and
12 other forms of IP. And I can get you those
13 resources; would be happy to share those links
14 with you.

15 CHAIRMAN KELLY: Okay. And we also
16 received another question regarding using
17 artificial intelligence with examining specimens.
18 But Commissioner, I think you really touched on
19 that in your comments earlier when we were talking
20 about fraud and security.

21 I'm not aware of any other questions
22 from the public. Okay. So hearing none, then I

1 guess that concludes our meeting. Commissioner,
2 unless you would like to say anything or anybody
3 else, I think we're --

4 MR. GOODER: No.

5 CHAIRMAN KELLY: All right. Very good.

6 MR. GOODER: I think we're good. Thank
7 you everyone.

8 CHAIRMAN KELLY: Thank you everyone and
9 we look forward to seeing you at our next public
10 meeting which is scheduled for Friday, July 30th.
11 Thank you all.

12 (Whereupon, at 4:08 p.m., the
13 PROCEEDINGS were adjourned.)

14 * * * * *

15

16

17

18

19

20

21

22

1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Mark Mahoney, notary public in and for
4 the Commonwealth of Virginia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21 My Commission Expires: August 31, 2021

22 Notary Public Number 122985

