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Trademark Public Advisory Committee (TPAC) – public meeting

Friday, November 22, 2024

11:00 AM



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Welcome

Adraea Brown

Chair, Trademark Public Advisory Committee



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Welcome remarks

Derrick Brent

Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office



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Updates from the Office of the Commissioner for Trademarks

David Gooder

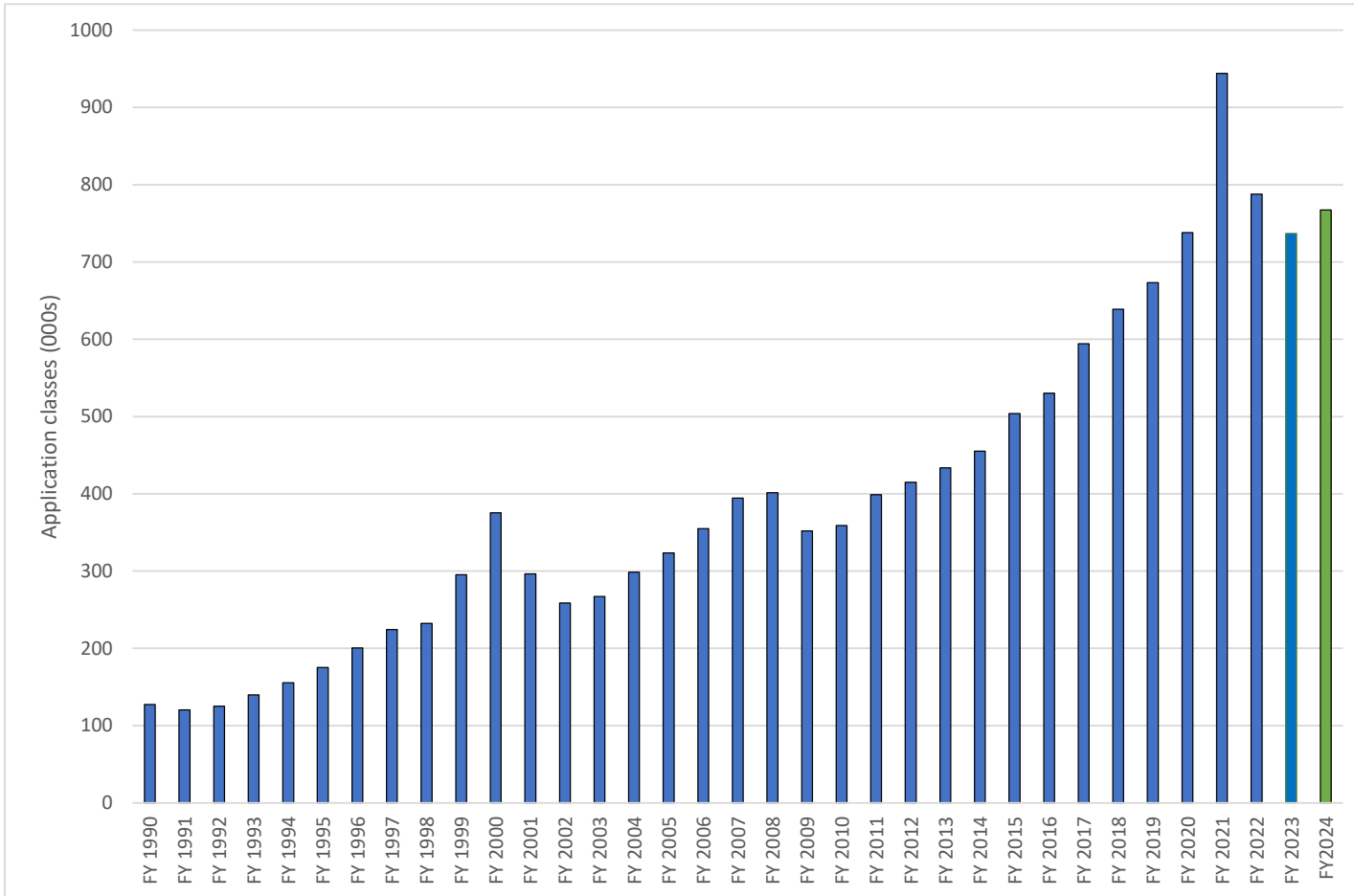
Commissioner



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New Application Filings

Trademark application filing levels



FY 2024

- 767,138 classes
- 4.1% vs FY 2023

FY 2023

- 737,018 classes
- -6.5% vs FY 2022

FY 2022

- 787,795 classes
- -16.5% vs. 2021
- +6% vs. 2020

FY 1990 - FY 2021

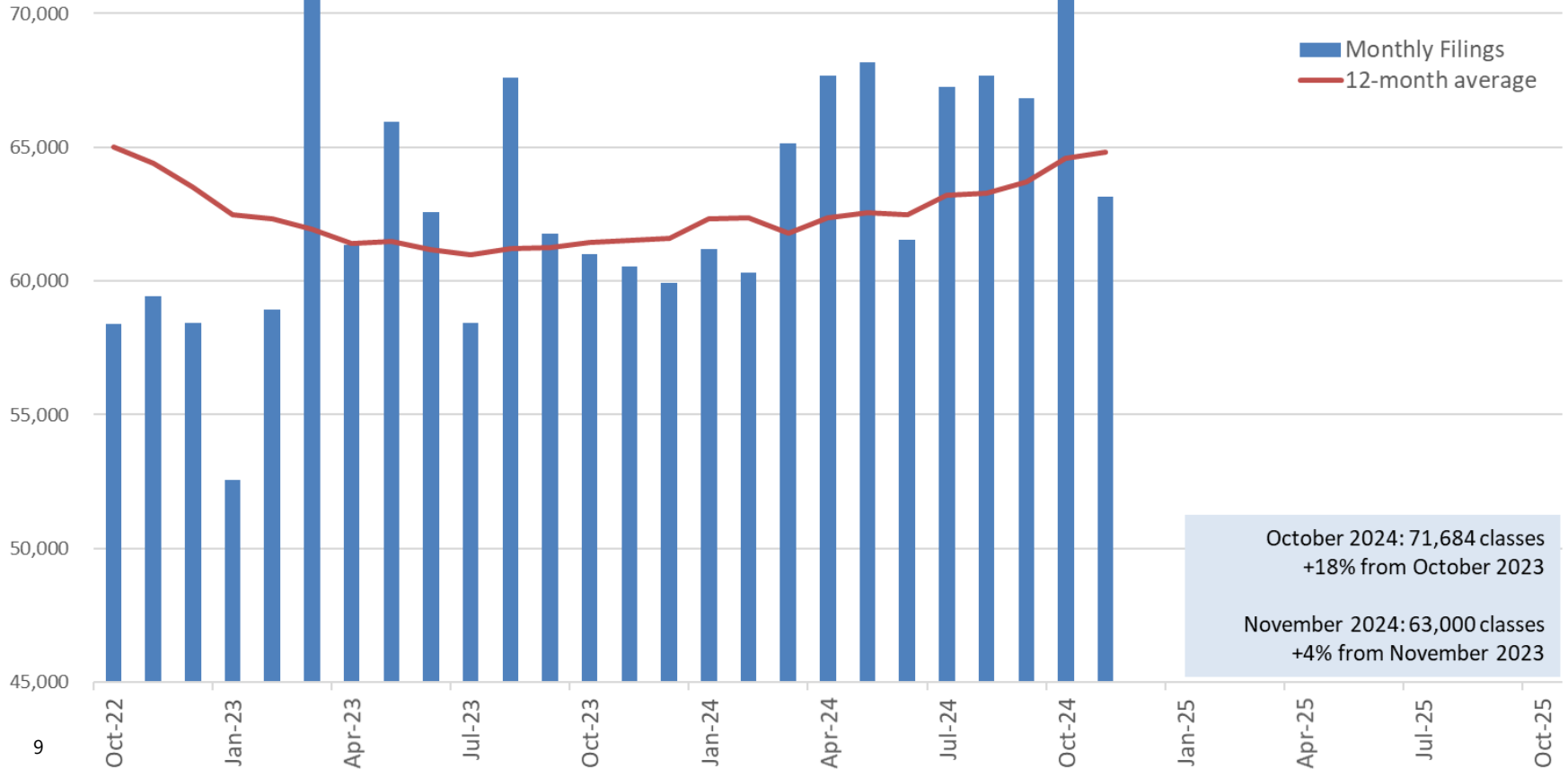
- Grown 642%
- CAGR 7%



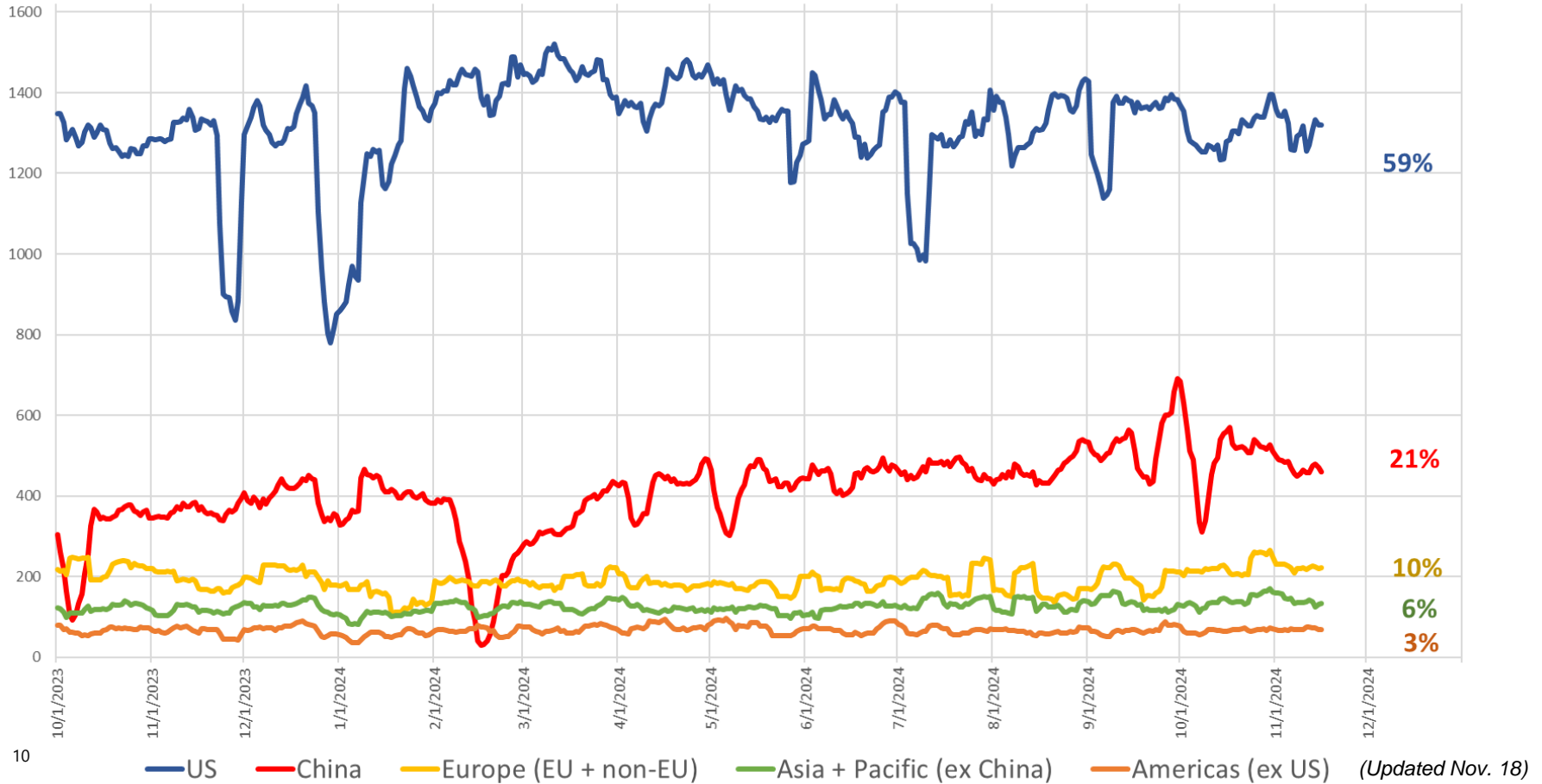
(Updated Oct. 29)

Monthly application filings (classes) since FY23

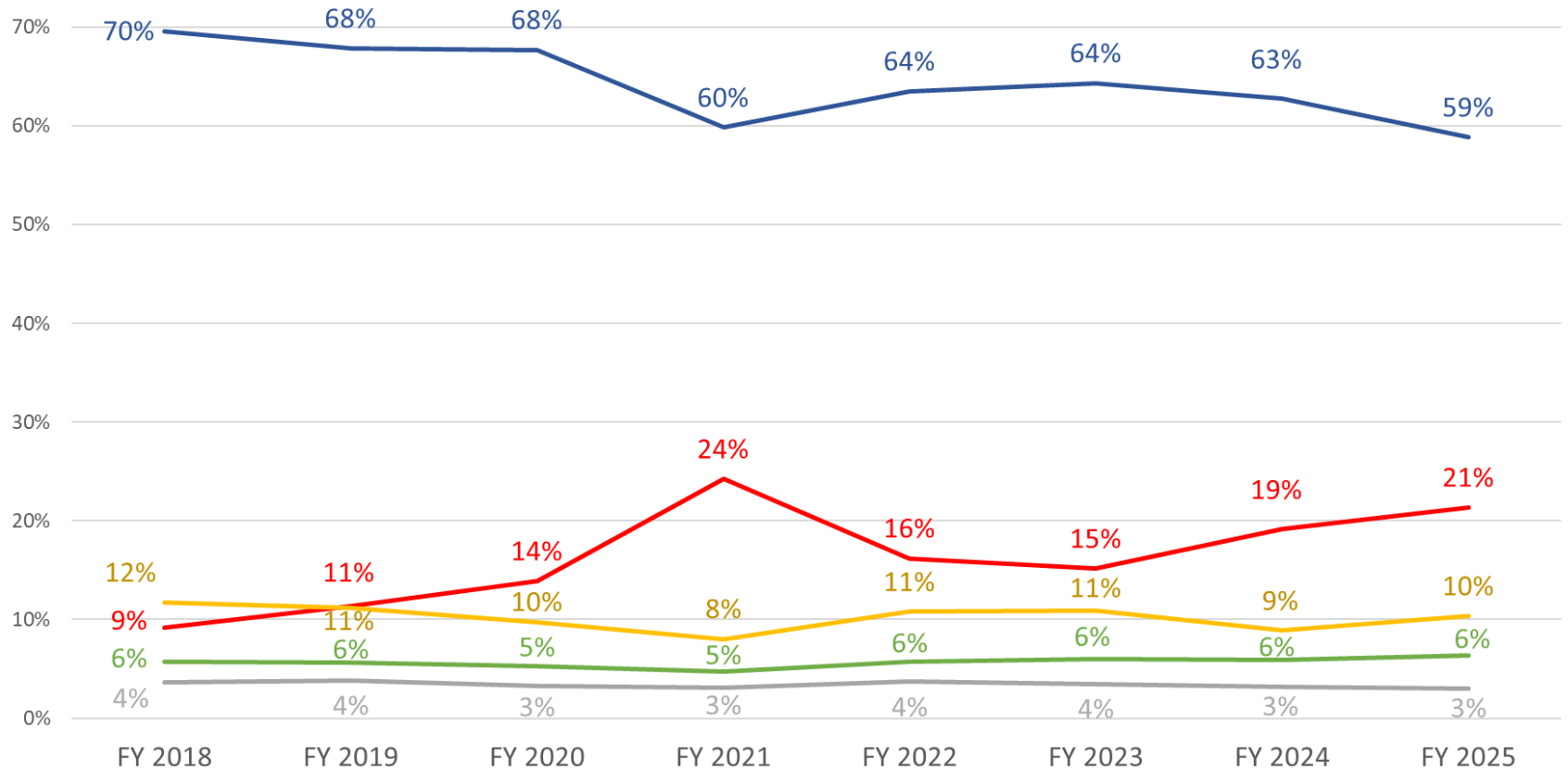
(Updated Nov. 18)



USPTO application filing origins: US, China, EU and the rest of the world



Share of application classes filed by applicant's domicile since FY 2018



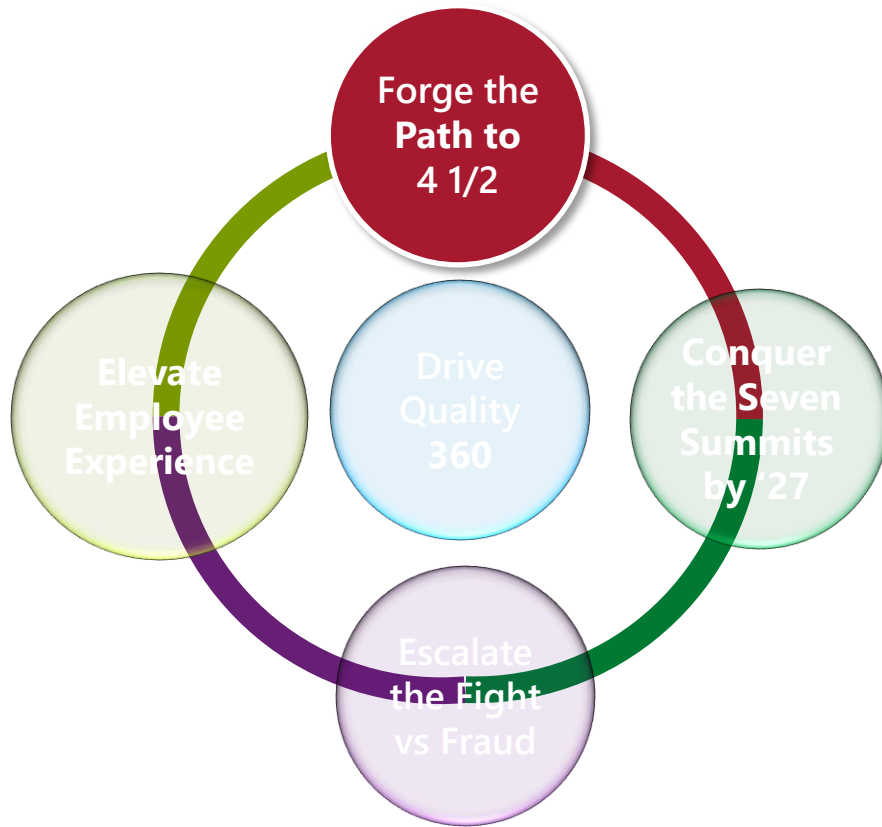
The Trademark Office's

FY25 Priorities

Trademarks Priorities – FY2025



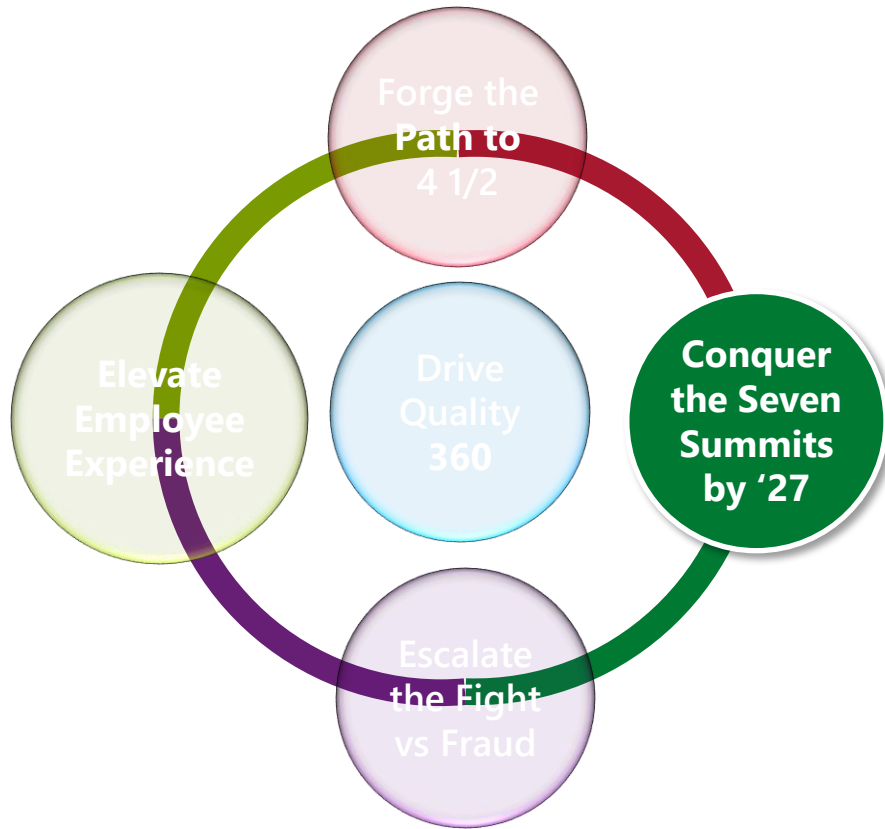
Trademarks Priorities – FY2025



Forge the Path to 4 1/2

1. Lower first action pendency
2. Decrease disposal pendency
3. Boost total balanced disposals

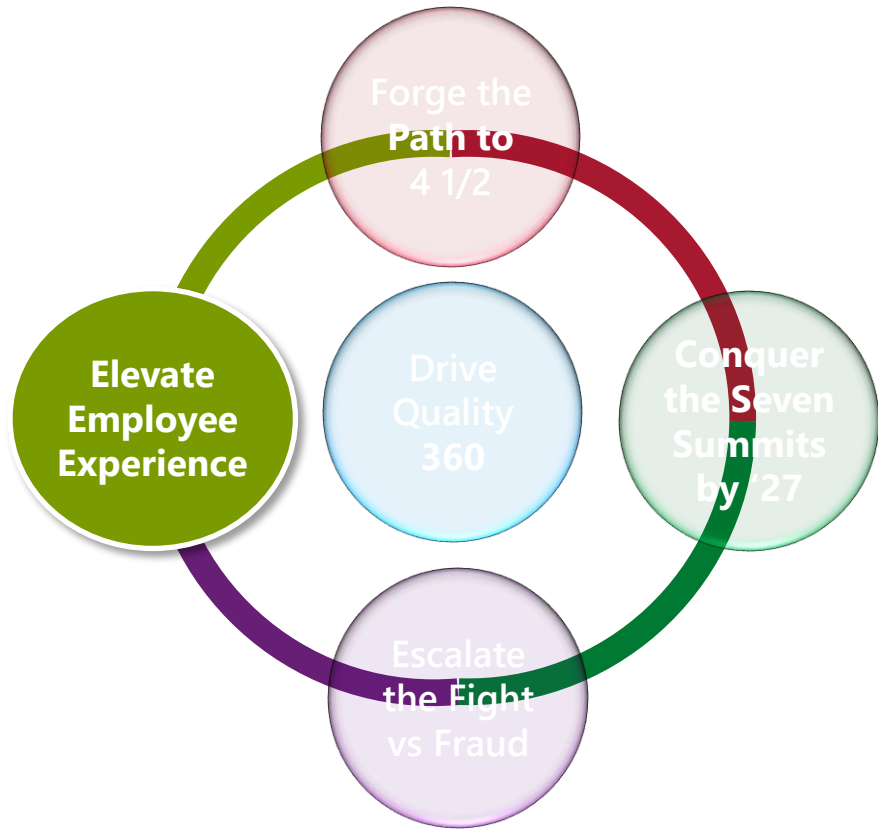
Trademarks Priorities – FY2025



Conquer the Seven Summits by '27

1. Build secure and resilient systems
2. Accelerate migration to the cloud
3. Intensify/continue modernization
4. Integrate AI

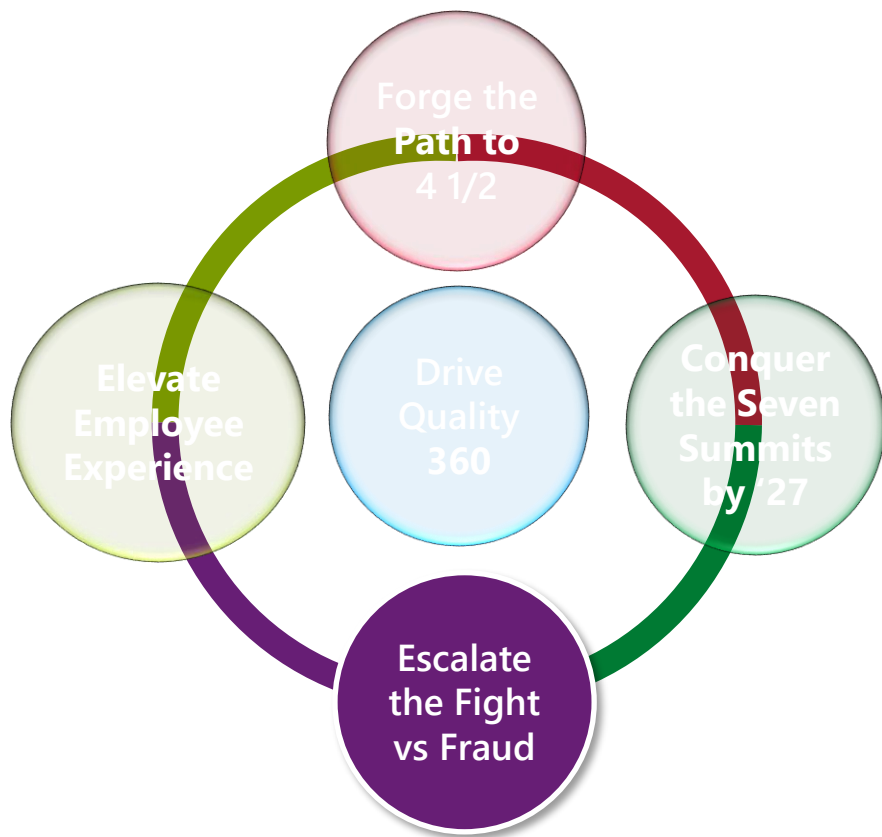
Trademarks Priorities – FY2025



Elevate Employee Experience

1. Cultivate a positive work culture
2. Invest in professional development
3. Create a supportive work environment

Trademarks Priorities – FY2025



Escalate the Fight against Fraud

1. Clear the inventory
2. Spread the word
3. Increase efficiency

Trademarks Priorities – FY2025



Drive Quality 360

1. Inculcate an ethos of quality in everything we do
2. Revalidate quality review system for trademark applications
3. Fortify and improve application quality



Other Items of Interest

Other Items of Interest

- Fee setting and adjustment
 - January 18 + Madrid

Latest trademark fee setting information

Setting and Adjusting Trademark Fees During Fiscal Year 2025 Final Rule and Supplemental Materials

On November 18, 2024, the USPTO issued a final rule to set or increase certain trademark fees as authorized by the AIA, as amended by the SUCCESS Act. The fee adjustments are needed to provide the agency with sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on current projections) and to allow the agency to continue progress toward achieving its strategic goals.

The supplemental materials in support of the final rule are below:

[89 FR 91062 Final Rule: Setting and Adjusting Trademark Fees During Fiscal Year 2025](#) 

[Final Rule: At-a-Glance](#)

[Table of Trademark Fees: Current, Final Trademark Fee Schedule, and Unit Cost](#)

<https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting?MURL=FeeSettingAndAdjusting#tmfee-info>





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Trademark Public Advisory Committee (TPAC) financial management update

Sean Mildrew

November 2024



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Agenda

- FY 2024 recap
- FY 2025 status
- On the horizon

FY 2024 financial recap

Operating reserves remain above minimum despite lower than forecasted revenue

<i>\$ in millions</i>	Patents	Trademarks	USPTO
USPTO FY 2024 appropriation level	\$ 3,696.1	\$ 499.7	\$ 4,195.8
Update to fee revenue estimate from FY 2025 PB	(37.5)	(39.0)	(76.5)
Subtotal (FY 2024 fees from FY 2025 PB)	3,658.6	460.7	4,119.3
Update to aggregate fee revenue ^{1/}	(1.7)	10.9	9.3
Total FY 2024 fee revenue	3,656.9	471.6	4,128.6
Operating reserve and other revenue ^{2/}	1,001.3	208.6	1,209.9
Total FY 2024 funds available	4,658.2	680.3	5,338.5
Total end of year spending	(3,677.8)	(518.8)	(4,196.6)
End of year operating reserve	\$ 980.4	\$ 161.5	\$ 1,141.9

Disclaimer: The numbers presented in this table may not add up due to rounding.

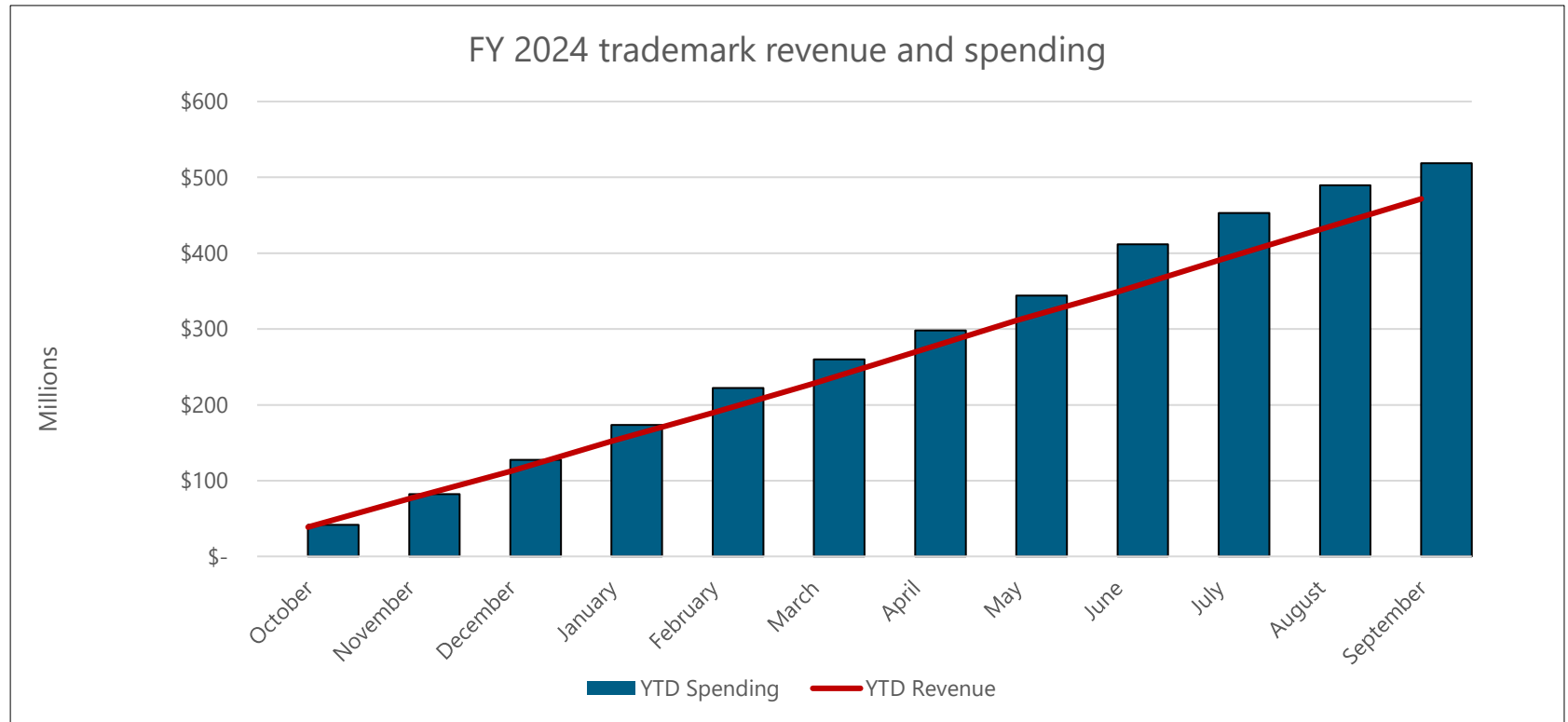
^{1/} Update to revenue includes in-transit revenue and prior years refunds.

^{2/} This line reflects the beginning of year operating reserve balance plus actual other revenue and deducts the OIG Transfer. The OIG Transfer of \$2.45M is required per our appropriation. Other revenue includes recoveries, parking fees, reimbursements, and expenditure refunds.



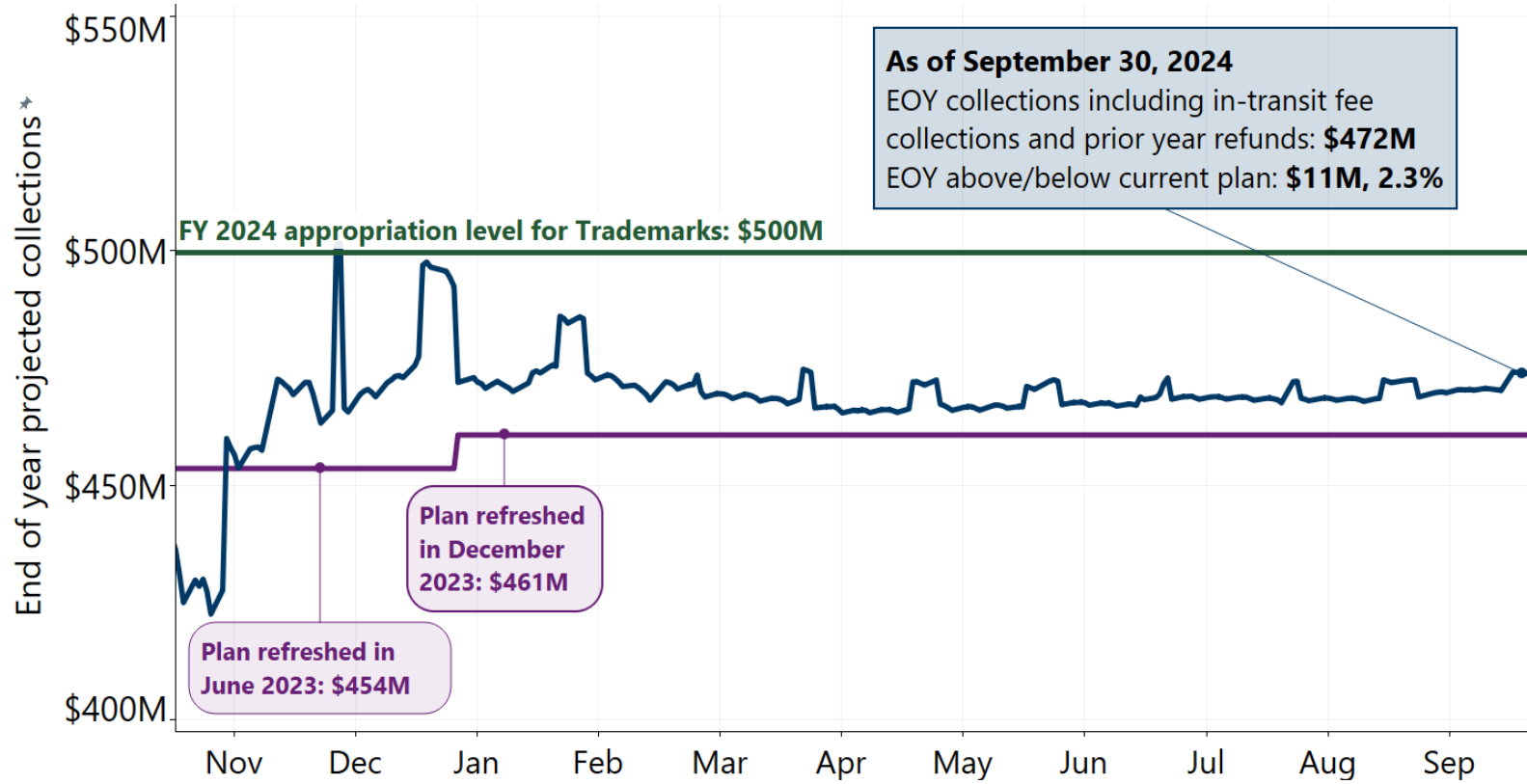
FY 2024 monthly spending vs. fee revenue

As anticipated, spending levels exceeded fee collections throughout most of the year



*Spending includes commitments and obligations.

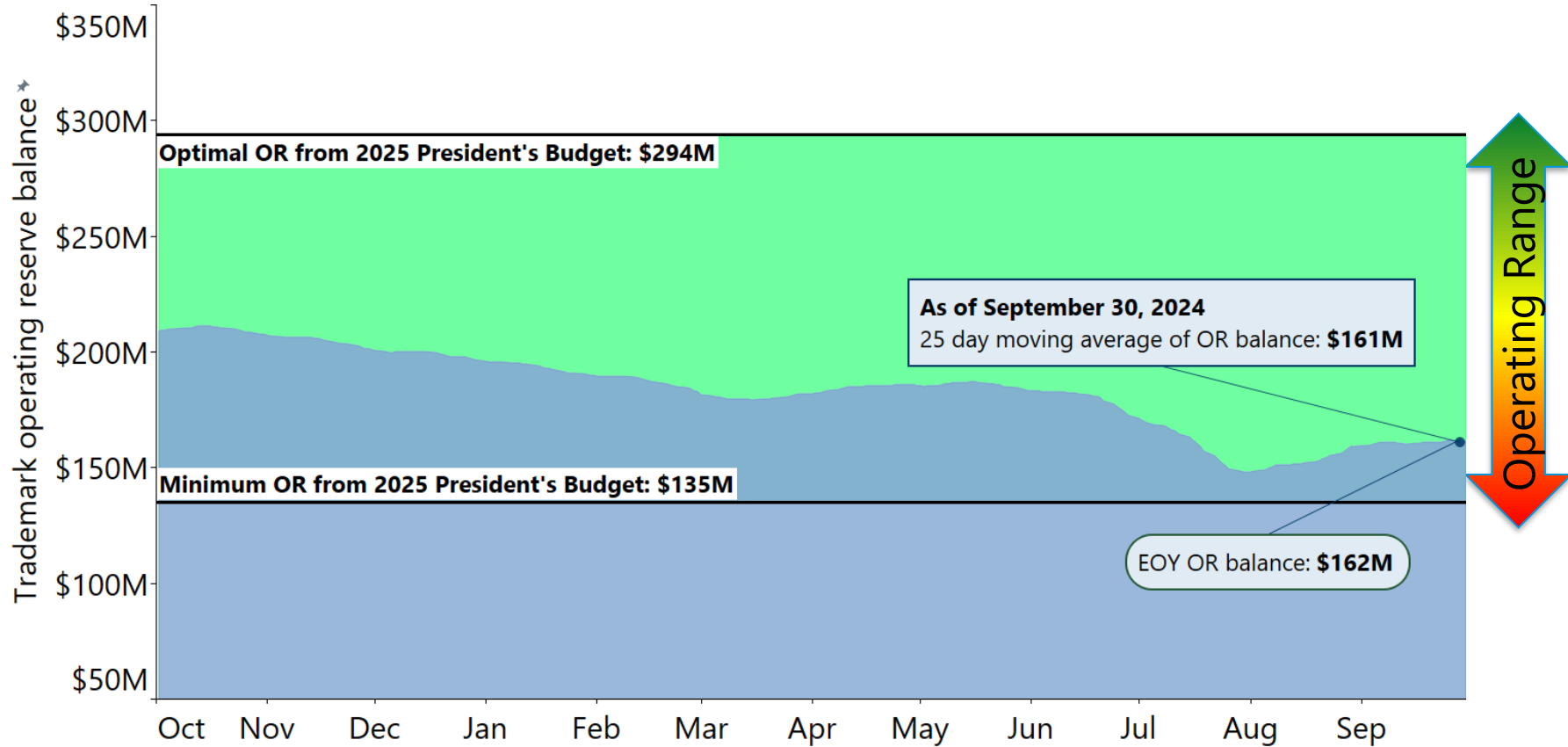
FY 2024 trademark fee revenue



The plan was the FY 2024 working estimate refreshed in December 2023.

FY 2024 trademarks operating reserve

The operating reserve balance ended \$27M above minimum levels



FY 2025 status

- The Continuing Resolution (CR) expires on December 20, 2024
 - The CR limits USPTO spending to a pro-rated portion the FY 2024 appropriated level of \$4.196B
 - FY 2025 appropriation is \$359M more than USPTO's FY 2024 request
- The USPTO is authorized to spend its operating reserve
 - If there were an appropriation lapse on December 20th, the operating reserve is available and will sustain the USPTO for several months during a federal government shutdown
 - Current estimates project that carryover funding will fund both the patent business line and trademark business line into Q2



On the horizon

- USPTO submitted the FY 2026 budget request to OMB in September 2024
- USPTO anticipates a delay in the submission of the FY 2026 President's Budget request to spring 2025 due to the change in administration
 - The President's Budget is typically due in February each year
- Trademark fee rule status update



Thank you!

Sean Mildrew

Deputy Chief Financial Officer

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Trademark Operations update

Dan Vavonese

Deputy Commissioner for Trademark Operations

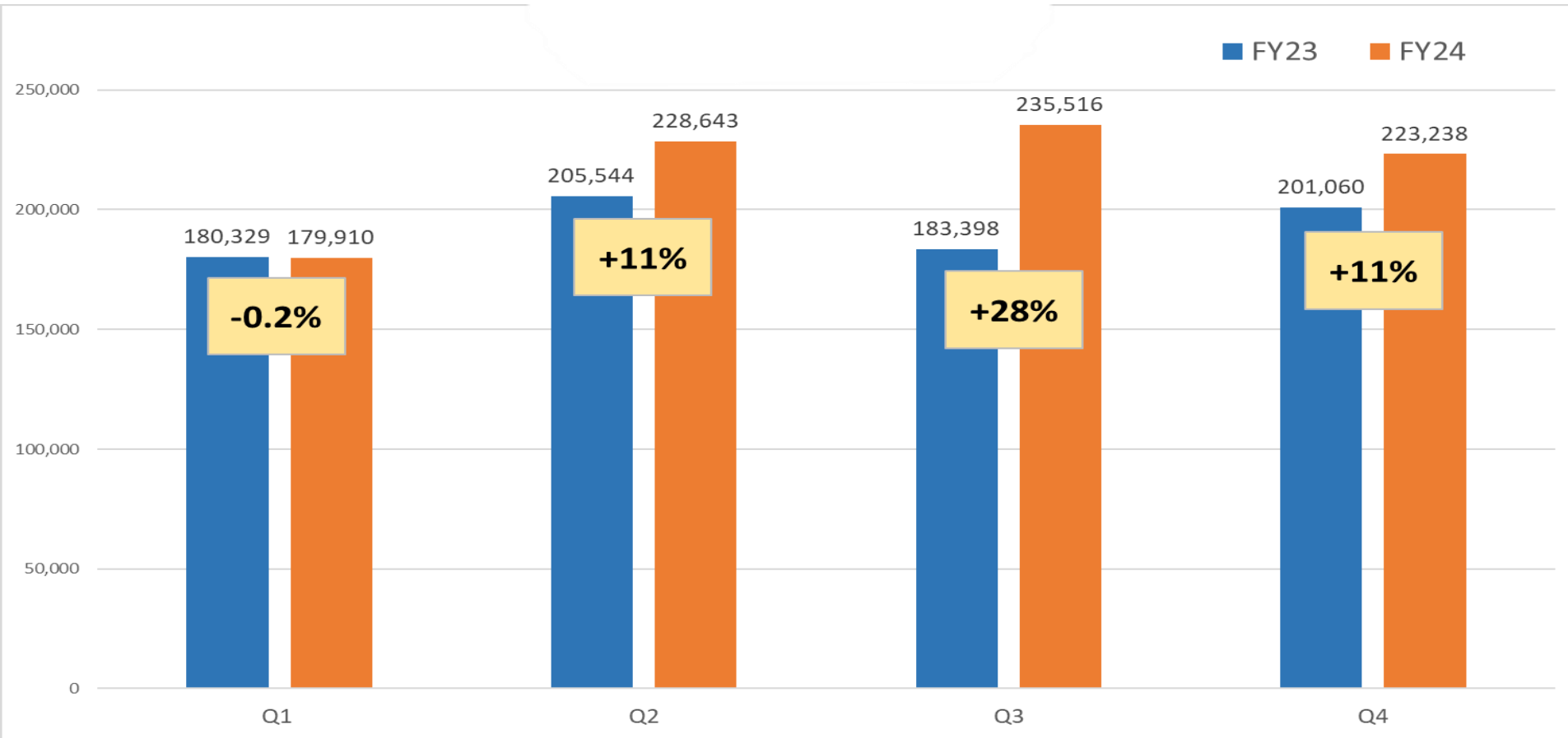


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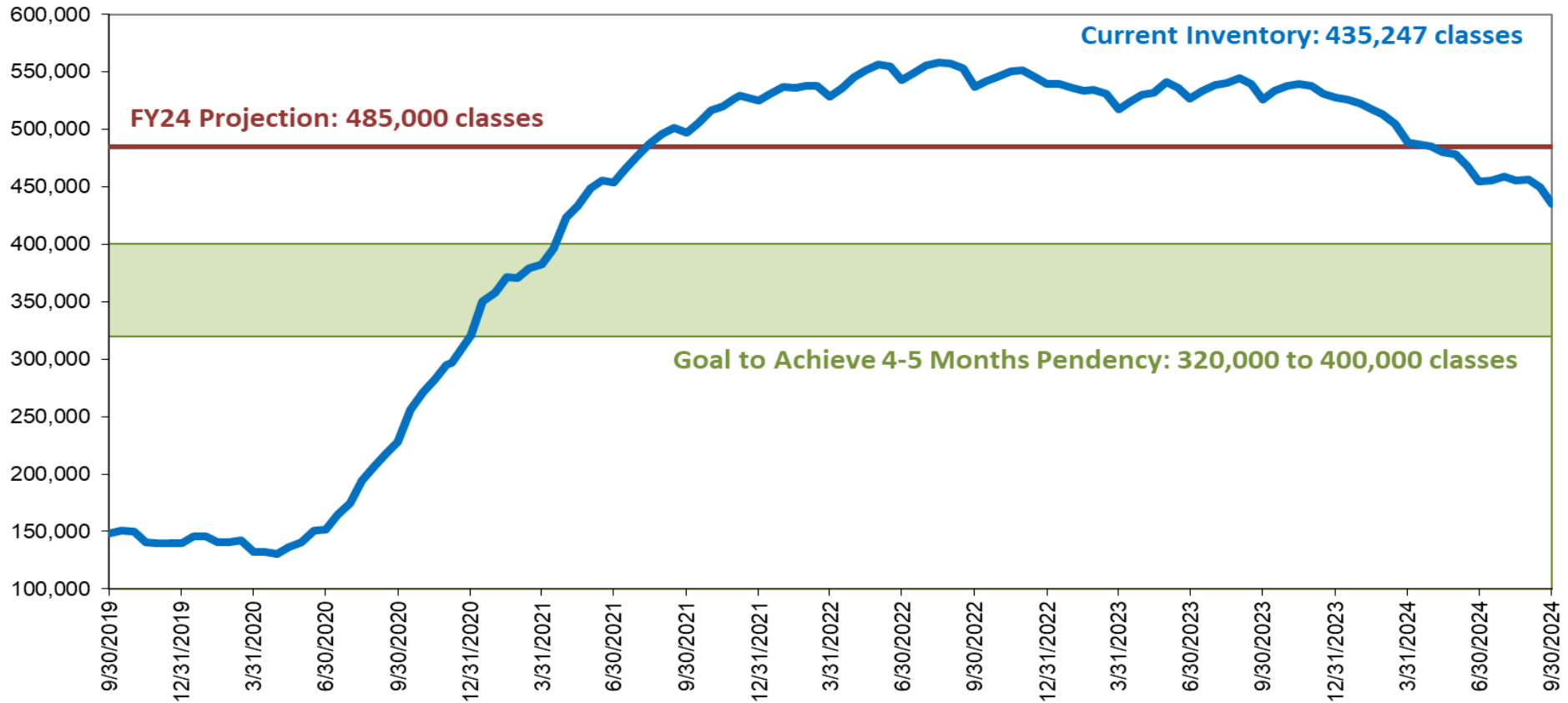
FY24 final numbers

First Action Pendency	7.5
Disposal Pendency	14.1
Quality First Action Compliance	96.2%
Quality Final Compliance	98.8%
Total First Action (Classes)	867,058
Total Balanced Disposals	1,712,478
Total Filings (Classes)	767,138

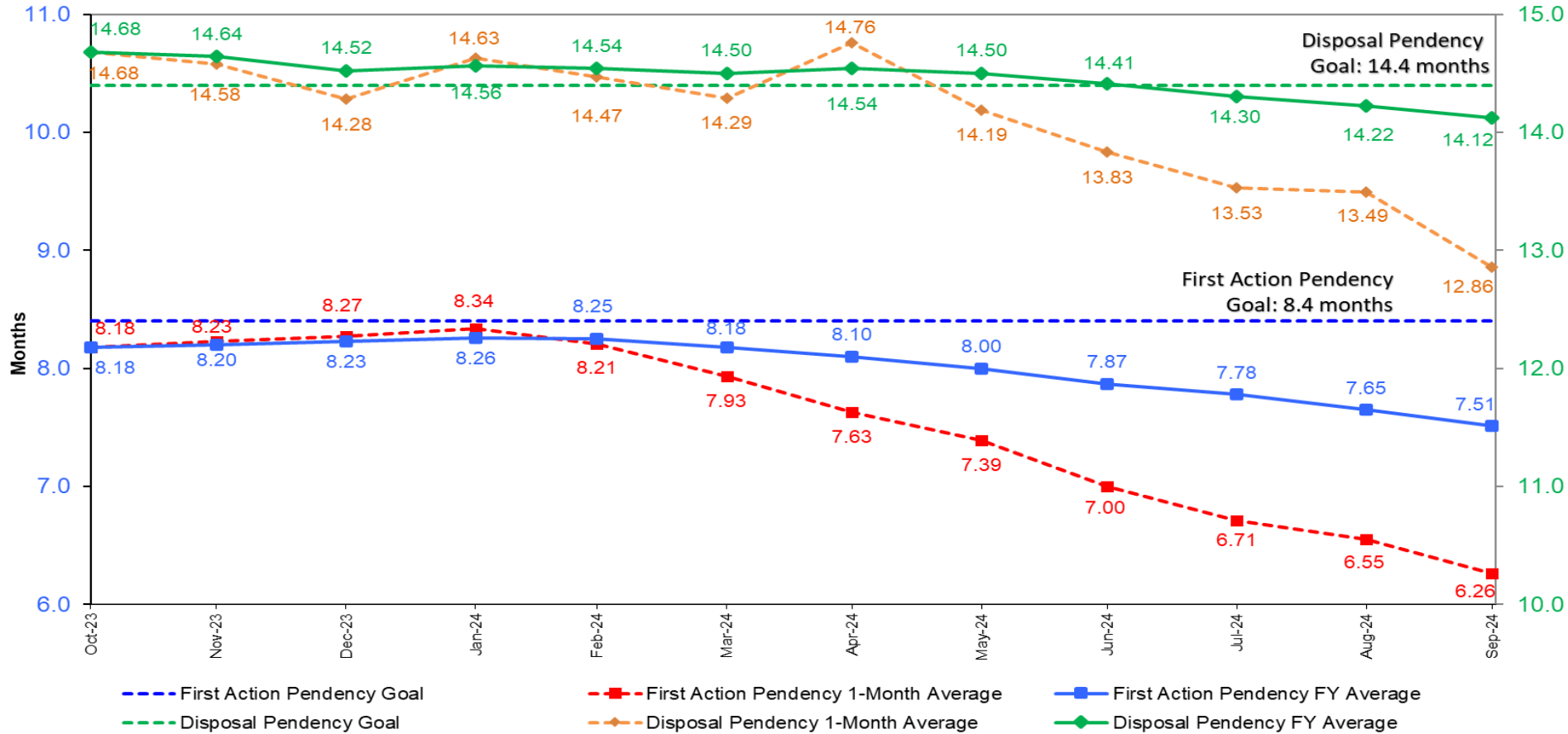
FY24 Total First Actions – increased by almost 100,000



Unexamined Application Inventory – lowest since 2021



FY 24 Pendency – 7.5 and 14.1 months



Maintaining quality in decision-making

Trademarks performance measures	FY 2024 targets	FY 2024 Results
First action compliance In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the first office action	95.5%	96.2%
Final action compliance In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the examining attorney's approval or denial of the application	97.0%	98.8%

FY25 Targets

- 6.7 months first action pendency
- 13.0 months disposal pendency
- 1.72 million Balanced Disposals
- 95.5% First action compliance
- 97.0% Final compliance

FY25 Goals

- Reduce Amendeds, Pre-exam, and Post Registration Pendency
 - Amendeds backlog reduced from 24,000 to 8,000, now below 90 days
 - Renewals reduced from 150 days to 70 days
- Implement new Fee rule
- Implement TM Center
- Continue to evaluate Quality key performance indicators
 - Following shift of excellent office action standard from first action to final action





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Trademark Examination Policy

Amy Cotton

Deputy Commissioner for Trademark Examination Policy



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FY24 key accomplishments

Decreased petition to director pendency by 70%

Implemented excellent office action standard shift to decrease first action pendency

Created 5 new data visualization dashboards

Improved TM Search, TM Exam and TM Center through outreach, comms and customer experience efforts

Increased capacity to intake TMScams reports and to review and dispose of suspicious filings through sanctions

Improved scam awareness and outreach efforts

Provided guidance and training on virtual services

FY25 key action items

Improve incoming application quality through implementation of the fee rule and TM Center

Reduce inventory of filings held for administrative review and clear register of invalid applications and registrations

Revalidate quality review system for examination

Collect and disseminate data to measure and improve policy initiatives

Use customer segmentation data to target communications

Trademarks Register Protection Office

Attorney credential hijacking

Think like a scammer



Criminal syndicate's action plan

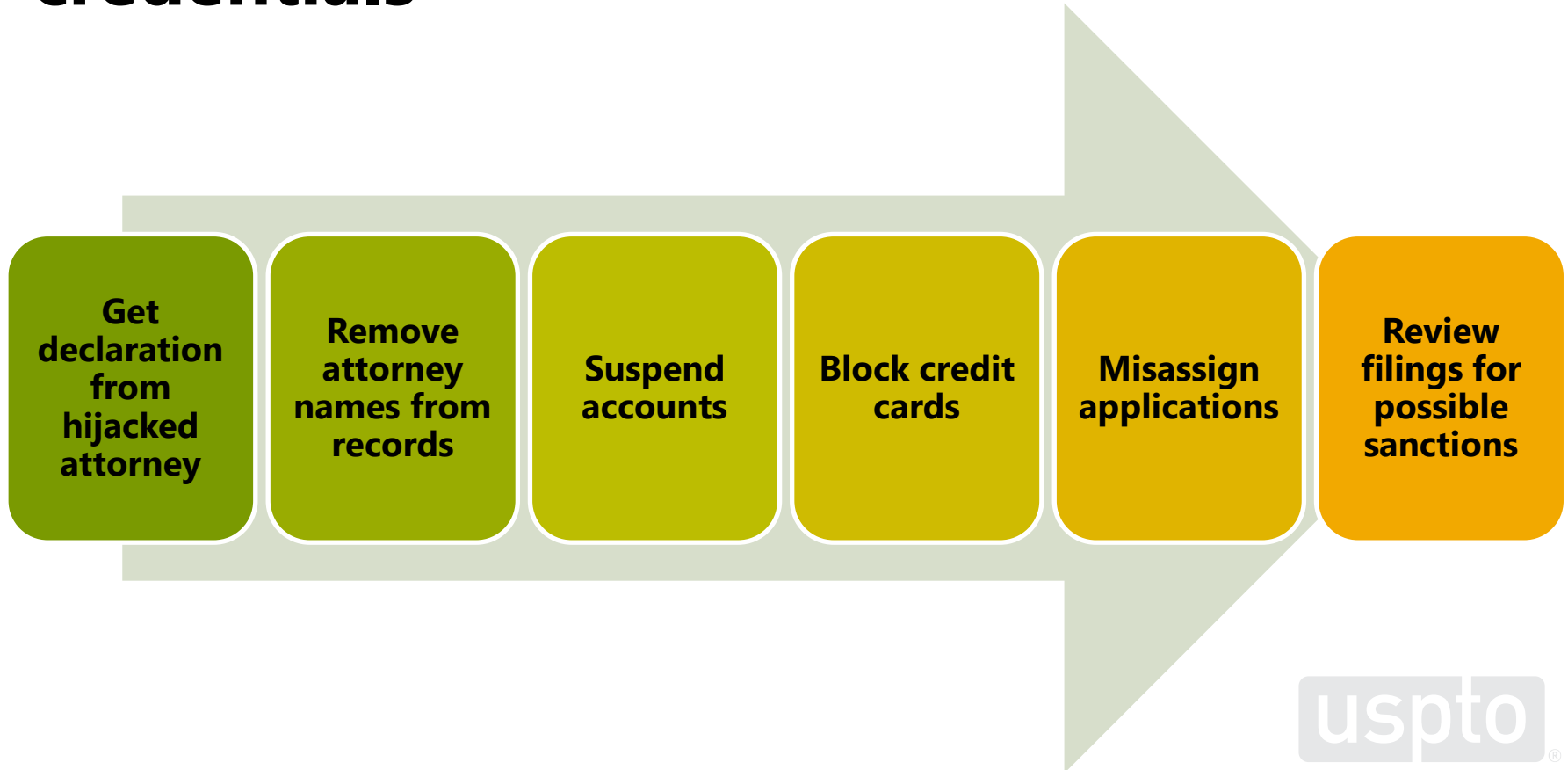
Action plan: Low cost filing websites with sponsored Google ads

Action plan: USPTO impersonation or misleading solicitations

Action plan: Hijacking attorney credentials



USPTO response to hijacking attorney credentials





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Trademark Administration updates

Greg Dodson

Deputy Commissioner for Trademark Administration



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FY24 Accomplishments

FY25 Plans

FY24 Accomplishments

- EFPWS
 - Transitioned ID.me to USPTO
 - TEAS Tier 1 support to TAC
 - TM Center beta
 - Data audit efforts
- GDIT
 - TRAM retirement
 - XSearch/Simple Search
 - PM contract
- IRDAVS
 - Videography/Photography
 - Collaboration tool governance
 - USPTO support (e.g., playing cards)
 - Creative team to ExPo
- PPFM
 - Budgeting and execution
 - Fee rule
 - EA planning
 - Operating reserve
 - IG audits/investigation support
- WFPP
 - FEVS/survey execution
 - Succession planning
 - Employee engagement efforts
 - HR liaison & personnel strategic planning



Tech Debt

TTAB

ExPo

International

TM Exam

TM Center

TM Services



FY25 Plans

- ❖ IT & employee engagement
 - OIG support
 - Transition personnel planning to WFPP
 - Complete hiring
 - Strategic planning
 - Transition/new leadership support
 - IT services integration



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Trademark Trial and Appeal Board

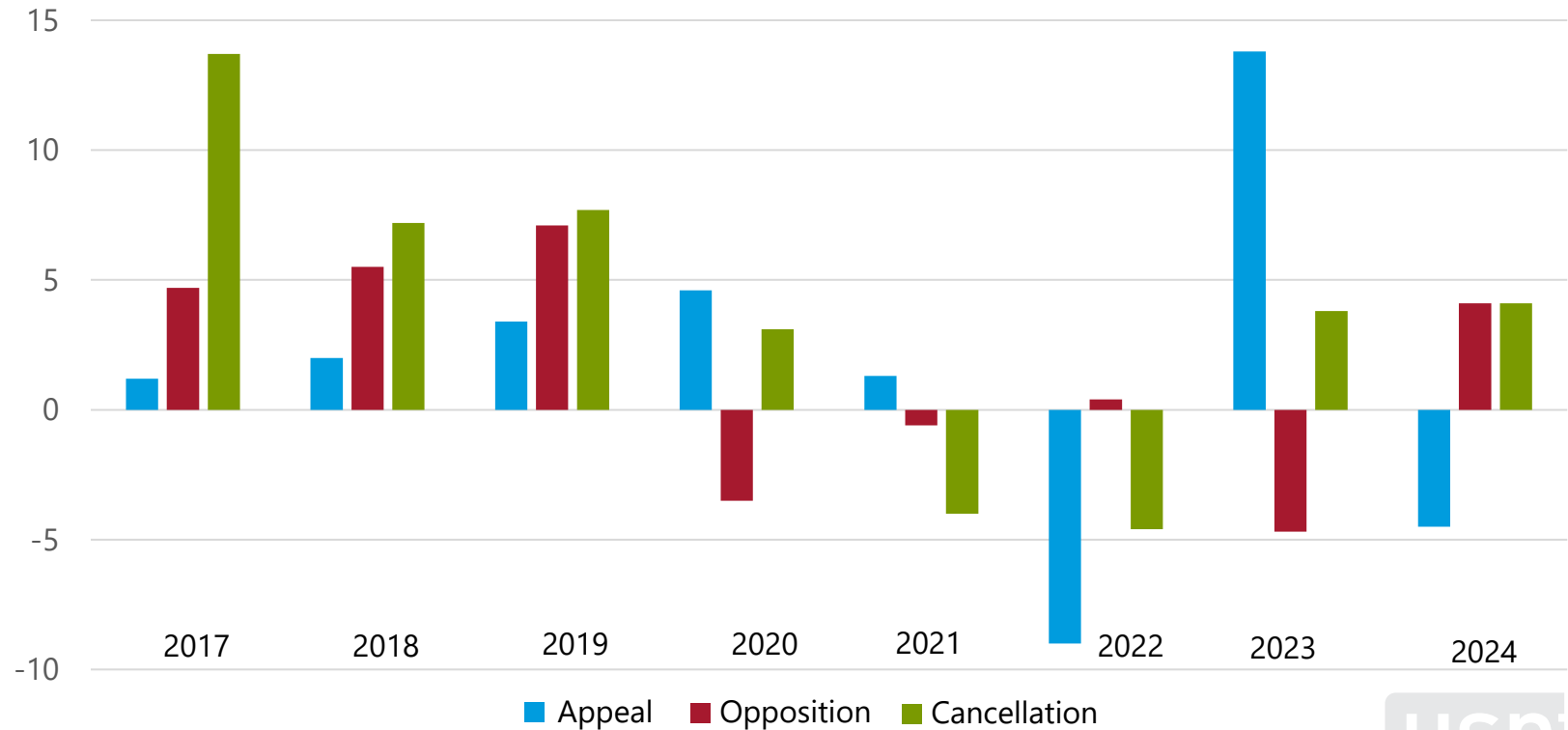
Gerard Rogers

Chief Administrative Trademark Judge



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Increase/decrease by % - annual new filings



Data trends

Type of Filing	FY21 (% +/- FY20)	FY22 (% +/- FY21)	FY23 (% +/- FY22)	1st Qtr FY24	2nd Qtr FY24	3rd Qtr FY24	4th Qtr FY24	All of FY24 (% +/- FY23)
Appeals	3,531 (+1.3%)	3,213 (-9%)	3,655 (+13.8%)	898	862	856	875	3,491 (-4.5%)
Extensions of time to oppose	17,200 (-9%)	16,814 (-2.2%)	17,221 (+2.4%)	4,408	4,318	4,734	4,305	17,765 (+3.2%)
Oppositions	6,669 (-0.6%)	6,702 (+0.4%)	6,387 (-4.7%)	1,524	1,651	1,666	1,809	6,651 (+4.1%)
Cancellations	2,400 (-4%)	2,290 (-4.6%)	2,378 (+3.8%)	561	581	656	677	2,475 (+4.1%)

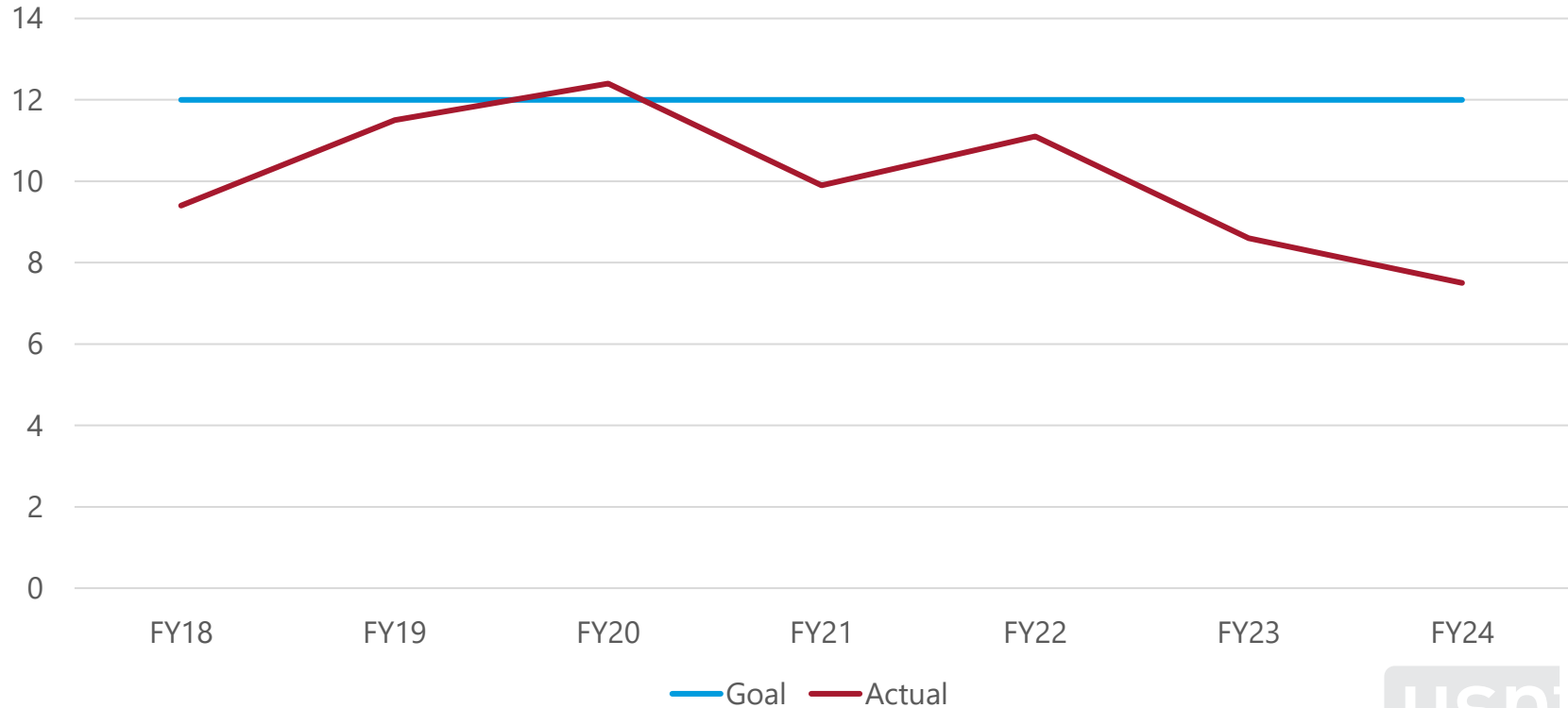
Data points – case types

- October 2024 incoming filings for both cancellations and appeals came in at a higher level than any month in FY2024; oppositions came in at a high level, but a bit below the highest few months in FY2024
- Approximately 60% of all pending cases are oppositions; the other 40% of cases are split almost 50/50 between appeals and cancellations

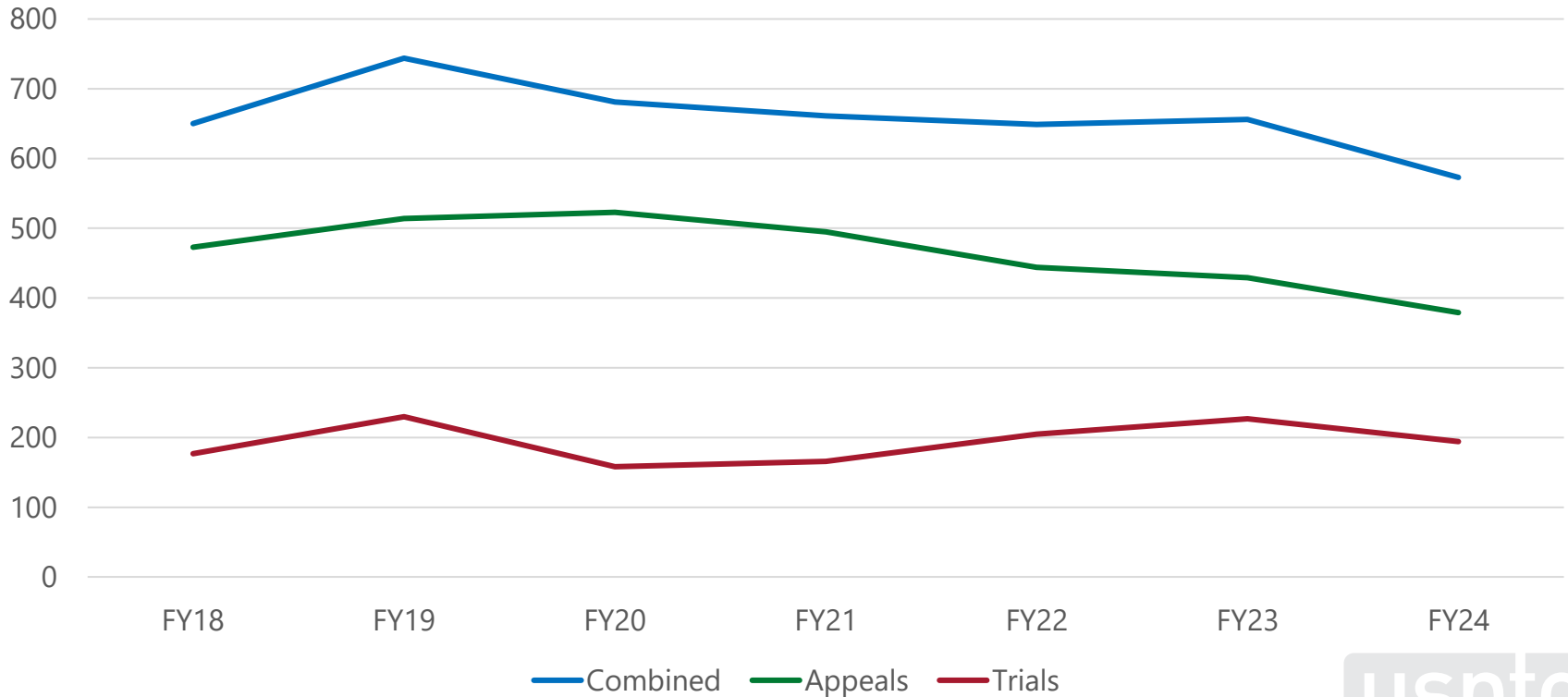
Fiscal year pendency goals

- Average time to disposition of **contested motions** – 12 weeks or less
- Average time to issuance of **final decisions in appeals** – 12 weeks or less
- Average time to issuance of **final decisions in trial cases** – 15 weeks or less
- As measured from ready for decision date

Motion processing, in weeks



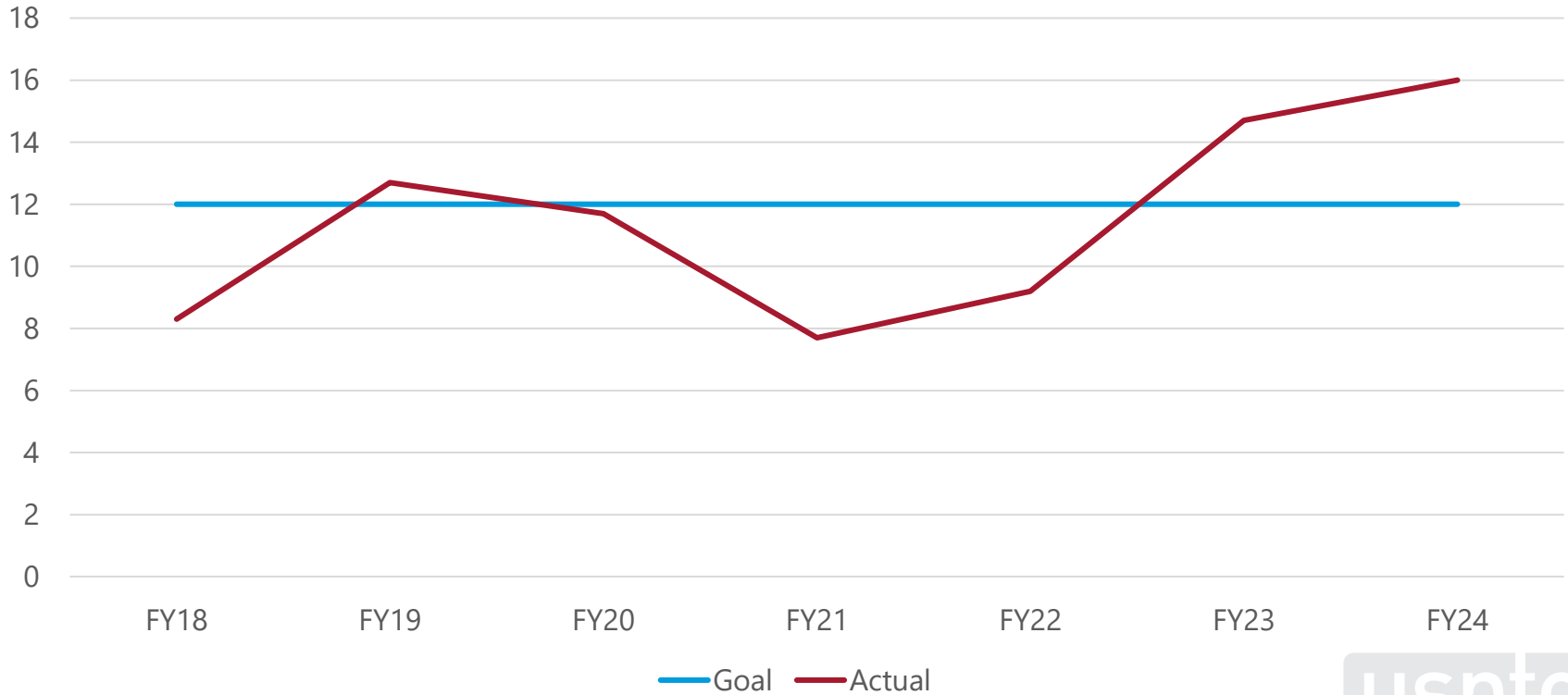
Cases ready for decision on merits



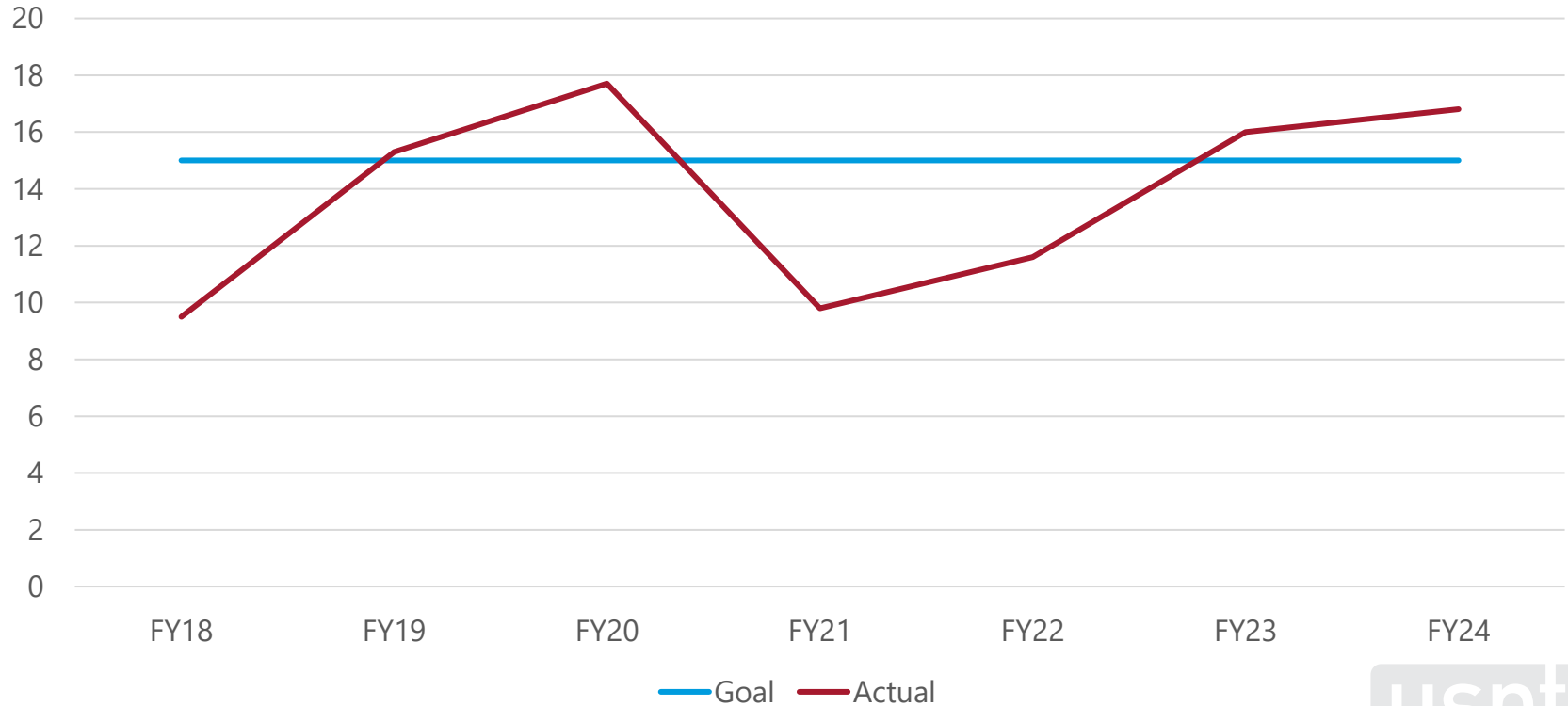
Data points-Final Decisions

- Significant FY2019 increases in both appeals and trials going to final pushed up pendency for two years from FY2018 levels
- After two-year slackening in trial cases going to final, last three years' average of 209/year continues to impact pendency
- Appeals going to final down for four years

Appeal processing, in weeks



Trial processing, in weeks



Impacting pendency-FY2024

- Five judge positions vacated in FY2024, but six judges added
- FY2024 decreases in both appeals (-11.7%) and trials (-14.5%) going to final
- Combined, these resulted in only slight increases in average pendency measures for FY2024
- Inventory at end of October 2024, below that at the start of FY2024

Next generation IT system

TTAB Center (1 of 4 slides)

- TTAB Center e-filing eventually will replace ESTTA
- Notice of Opposition the first function to deploy
- Filers must use their MyUSPTO.gov account
- TTAB Center can populate fields in opposition filing using MyUSPTO information and user's role

TTAB Center (slide 2 of 4)

- Will be able to access TTAB records for application, extension of time to oppose, pending opposition
- User email for extension of time to oppose limits who can access extension to create opposition
- Check mark on green background signals section of opposition filing completed; section completion noted in real time, showing what remains for completion

TTAB Center (slide 3 of 4)

- Your docket is protected through two-factor authentication
- Tabs allow user to maintain multiple opposition filings, completed or in process
- User does not need to complete and file within a single session
- Only one user at a time can work on an opposition; filing locked while in use; but others will know who to contact
- Will be able to share a draft opposition with other users

TTAB Center (slide 4 of 4)

- Prepared FAQs about using TTAB Center and a user guide and welcome input via TTABinfo@uspto.gov
- Now in fully open beta testing of notice of opposition filing function
- Customer input will aid improvements **and** development of petition to cancel function

Final Pretrial Conference (FPC) pilot

Final Pretrial Conference (FPC) pilot

- Trademark Alert email announced April 1, 2023 commencement of FPC pilot
- Pilot planning team has provided instruction to all TTAB interlocutory attorneys (IAs) and judges (ATJs); team includes IAs and ATJs
- Attorneys and judges may now recommend cases for possible inclusion in pilot; recommendations reviewed by planning team

Benefits

- Goals are to save time and resources of parties and the TTAB, and foster effective presentation of case
- Parties will be strongly encouraged to dispense with extraneous claims, defenses, objections; to enter into stipulations on exhibits, agreed-upon facts, presentation of evidence; trial plan subject to Board approval

Steps (slide 1 of 2)

- Pilot planning team receives recommendation
- Assesses bases for recommendation and whether inclusion of case likely would yield successful result
- Assignment order issues (after close of discovery); parties discuss dates for orientation conference with IA and ATJ
- IA and ATJ explain parties' joint drafting of proposed FPC order and preparing for FPC

Steps (slide 2 of 2)

- Parties exchange lists of witnesses, copies of anticipated trial exhibits, discuss trial plan
- Parties file proposed FPC order
- Board reviews and schedules FPC
- ATJ will lead discussion of edits, amendments for FPC order
- Once order is finalized, Board issues it and it governs trial

Preliminary results

- Five oppositions and four cancellations identified as pilot-worthy
- Three cases went to trial, one without FPC order but many stipulations, one via ACR, and one following bifurcation to try entitlement alone, before merits
- One case settled after orientation conference
- One case suspended for civil action
- Four cases have involved various conferences/orders

Case Citation pilot

Case Citation pilot

- Internal TTAB pilot focuses on how case citations are structured in TTAB opinions and orders
 - Goal is to provide usable options of citation formats
- Citation to federal court cases
 - Using Federal reporters
- Citation to TTAB precedent
 - Using Westlaw or Lexis
- No change for practitioners and parties
 - Continue to adhere to the guidance in TBMP § 101.03



Case Citation pilot: TTABVUE

- Limited search capability
 - Developed as a docket database, not as a research database
 - Extremely limited search functions: proceeding number, party, mark, correspondence address
- TTAB precedent is incomplete
 - Available: Precedential TTAB decisions since January 1, 2008
 - May be available: Precedential TTAB decisions between 2000 – January 1, 2008
 - Likely not available: Precedential TTAB decisions before 2000
 - Older precedent that may be available was scanned from paper copies
 - Not available: Precedential TTAB decisions before 1996 (i.e., between 1958-1996)



Case Citation pilot: TTAB Reading Room

- Developed as an Electronic Freedom of Information Act database (eFOIA)
- TTAB precedent is incomplete
 - The earliest decisions available are from October 1996
 - TTAB precedent between 1958-1996 completely unavailable
- **Searchable database**
 - More search fields and functionality than TTABVUE
 - Remains limited for robust legal research





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Updates from the Office of Policy and International Affairs (OPIA)

Branden Ritchie

Principal Counsel for Trademark Policy



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Questions

David Gooder

Commissioner for Trademarks



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Closing remarks

Adraea Brown

Chair, Trademark Public Advisory Committee



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