

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, June 3, 2011

1 PARTICIPANTS:
2 TPAC Members:
3 JOHN B. FARMER, Chair
4 JAMES G. CONLEY
5 TIMOTHY J. LOCKHART
6 KATHRYN B. PARK
7 ANNE CHASSER
8 DEBORAH HAMPTON
9 MAURY M. TEPPER, III
10 Union Members:
11 HOWARD FRIEDMAN
12 RANDALL P. MYERS
13 Also Present:
14 DEBORAH COHN, Commissioner
15 MARY BONEY DENISON, Former TPAC Member
16 MARK OLECHOWSKI, Deputy Chief Financial Officer
17 DANA ROBERT COLARULLI, Director, Office of Government Affairs
18 KEVIN SMITH, Deputy Chief Information Officer
19 GERARD ROGERS, Chief Administrative Trademark Judge, TTAB
20 PARTICIPANTS (CONT'D):
21 CYNTHIA LYNCH, Administrator for Examination Policy
22 MARK DONAHEY

1 RAJ DOLAS

2 ANTHONY SCARDINO, Chief Financial Officer

3 TERESA STANEK REA, Deputy Director of USPTO

4 JOHN OWENS, Chief Information Officer

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN FARMER: Sorry, I was a little behind. Normally I'm the one that's excoriating everyone to make the trains run on time, and here I am violating it in the beginning, so much for that. And also, I can tell you already that we're going to get a bit off track today simply because it's a different meeting than usual.

By the way, Terry, I'm going to have a little longer than normal opening comments. Would you like to go before me or would you like to --

MS. STANEK REA: I think (off mike)

CHAIRMAN FARMER: Okay, that's fine then. I think what we'll do then, I'll just get the stuff organized and I'll turn things over to you and then I'll come back and, since it's my last roundup, I'll have a few words. We're going to handle it that way then.

Well, welcome to the TPAC public meeting. Thank you to everybody for coming, we really appreciate that. This meeting is being

1 webcast, and so just be aware that you might show
2 up on a video, a recorded video. It's also being
3 transcribed, and so maybe your comments will show
4 up in the transcript. That's not to chill you in
5 any way. It's just that some people like to know
6 they might be recorded. You can watch this at
7 home. Now, of course, if you're at home, you've
8 already discovered that or you wouldn't have heard
9 me say that. But it is being webcast, and for
10 those who are watching at home, to the extent that
11 time permits, we will receive your questions and
12 try to ask them to our interlocutors as we go
13 through our schedule today.

14 The way you can do that is to send an
15 e-mail through asktpac@uspto.gov. That's
16 asktpac@uspto.gov. The way we handle questions
17 here, and those of you who have been at previous
18 meetings are tired of hearing me say it, but we
19 will let our friends at the PTO who are visiting
20 with the state give a brief presentation, and
21 normally that proceeds to questions and answers
22 between the champion for that issue on TPAC and

1 that person. Then we open it up to all of TPAC in
2 case there are any other questions or comments,
3 and then to the extent time permits, we open it up
4 for questions and comments from both and our live
5 studio audience because if you show up, you're
6 special, and we want to give you the chance to do
7 that. And then if we have time left after that
8 and we get any questions from cyberspace or maybe
9 even comments from cyberspace, we'll give you a
10 little bit of editorial control there, we'll get
11 those in, too, because it's not just for show,
12 it's a meeting, and we want to be able to do those
13 things.

14 And so without further ado, we are
15 thrilled to have a new Deputy Director here at the
16 office, Teresa Stanek Rea, to my immediate right. I hear
17 you're already working incredibly hard, and so I
18 thought I'd just turn the floor over to you for
19 some opening comments.

20 MS. STANEK REA: Excellent, John, thank you so
21 much. And good morning, everybody, and many
22 thanks to Debbie Cohn, John Farmer, and all the

1 TPAC members for their dedicated leadership and
2 all of the time and the commitment that you have
3 made with TPAC. You are very, very important to
4 the U.S. Patents and Trademark Office. Your
5 contributions and comments are valued, and we
6 appreciate all that you have done.

7 Unfortunately, as with most things in
8 life, we are all unsung heroes, both those of us
9 at the table, those of us who are spectators, and
10 those of us who are webcast, but it takes every
11 one of us to keep the trains running.

12 Now, in the past several years, TPAC has
13 offered the trademark community its key insight
14 and invaluable guidance, and over time, they've
15 sort of become an extended family of the USPTO, so
16 getting to know each and every one of you is going
17 to be very, very nice for me. I've met many of
18 you today for the first time, several of you are
19 already good friends I have known for a very long
20 time, so to get closer to each one of you and
21 closer to TPAC is very important.

22 For those of you who don't know me, as

1 John indicated, I'm Teresa Stanek Rea, the Deputy
2 Director of the USPTO. And while I've spent most
3 of my professional career navigating the IT
4 terrain, never before has the power of the
5 trademark held such importance. So what you do
6 day in and day out during your day jobs is
7 extremely important to the U.S. Government and the
8 U.S. economy because, as you know, by building
9 brands that allows us to build industries and
10 create jobs, and that is truly job one in
11 everybody's mind right now.

12 As America works every day to live
13 within its means under the cloud of harsh economic
14 times, trademarks are what we consider to be the
15 badges of creativity. They can represent the next
16 wave of new jobs, the next trusted brand relied
17 upon by families, and the next steps small
18 businesses take in protecting their enterprises
19 and leveraging their products. Not only do
20 trademark submissions help sustain this office,
21 but they're actually essential tools for small and
22 large businesses alike to build brand equity and

1 establish their products in the marketplace,
2 thereby, directly impacting the growth of our
3 economy, and that makes all of your cooperation
4 vital and your advice more instrumental now than
5 ever before.

6 By collaborating closely with TPAC,
7 thoroughly assessing the work that's been done,
8 and having a candid conversation about what's left
9 to do, we continue to build a stronger, more
10 robust Trademark infrastructure here at the USPTO
11 that smartly invests in our country's path and the
12 businesses of tomorrow.

13 We consider this to be a partnership.
14 We want to work with each and every business that
15 uses our services. We want to better understand
16 what you do. We want to more efficiently use our
17 resources. So I want to sincerely thank each and
18 every one of you for your dedication and
19 unrelenting ethic of public service that is on
20 demonstration today.

21 Just as much as it is a chance for the
22 USPTO to clarify the wisdom of its processes, it's

1 also a sincere chance to learn from each one of
2 you, ultimately empowering all of us to weigh a
3 variety of perspectives. Let me tell you about a
4 couple of things we're currently doing here at the
5 USPTO.

6 Currently, as part of our overall IT
7 effort, we're working to modernize the TMEP
8 system. I was just given a slight demo yesterday
9 of what to expect in the future. I think that you
10 will find that our use of that technology to be
11 awe inspiring and impressive and will improve the
12 work and efficiency of not only our examiners here
13 in the PTO, but eventually it will be launched to
14 those outside of the PTO, to the private sector.
15 So it's a very, very good use of our resources and
16 helps bring us into the 22nd century.

17 So changes and addendums to the TMEP
18 manual can be done much more consistently and
19 uniformly. Right now we're provisionally
20 considering updating the TMEP approximately every
21 quarter so people will know when modifications are
22 being made, and I think that that awareness, that

1 transparency and that efficiency should help
2 everybody, and ideally things will become more
3 streamlined over time. We want to minimize
4 redundancies in anything in the TMEP and we want
5 to draw your attention to pivotal legal changes
6 that required modifications of the TMEP.

7 Also, in the name of improving external
8 communications, on April 28th, we hosted a
9 trademark e- filing seminar with the managing
10 attorney at the Trademark Electronic Application
11 System, and we explored best practices and
12 answered questions about the filing process. Now,
13 these efforts are part of an ongoing dialogue
14 aimed at better understanding and meeting
15 applicant's needs, understanding that such an
16 effort is a two-way system. And, therefore, on
17 June 21st, we're also going to hold an additional
18 roundtable discussion on disclaimer policy. And
19 on June 23rd, we're going to host a focus group on
20 the effectiveness of authorizing e-mail
21 communications.

22 So we're constantly making modifications

1 and changes within the U.S. Trademark and Patent
2 Office, and we are doing it with all of your
3 talent behind us, making sure we're as efficient
4 as possible, and making what we do more efficient
5 for the user community.

6 Now, in all of these efforts, we look to
7 evaluate current communication practices with
8 stakeholders and determine the viability of new,
9 more efficient ways to bridge our office directly
10 with the applicant or user community or
11 shareholder community, and with those attorneys
12 and other interested parties. So we think of this
13 as a bridge, it's a two-way communication. And
14 the ongoing effort to study and respond to
15 existing trends was also recently codified in a
16 report that was submitted to Congress last month.
17 I think most of you are well aware of that. In
18 compliance with the Trademark Technical and
19 Conforming Amendment Act of 2010, the USPTO and
20 the Department of Commerce determined that the
21 trademark system could be further strengthened in
22 part via engagement even more with the private

1 sector in the manner of perhaps providing free or
2 low-cost legal advice, providing continuing legal
3 education programs, and enhanced federal education
4 outreach to small businesses. So we want
5 businesses of all sizes to understand what they
6 can do and what their trademark rights bring to
7 them.

8 Moreover, Congress considers patent
9 reform legislation right now, and while that might
10 not directly relate to your day job, that is
11 something that I'm sure you are all keenly aware
12 of. And the USPTO is continuing its outreach to
13 key Hill staff members to build bipartisan support
14 for a bill that will accelerate innovation and
15 create new jobs, new industries, and new economic
16 opportunities for Americans.

17 Now, not only will it streamline the
18 processing and examining of, in this case, patent
19 applications, but both the bill that passed the
20 Senate and the version currently under
21 consideration in the House contains language to
22 create a revolving fund for the USPTO fee

1 collections. It will allow the USPTO to set both
2 trademark and patent fees. And this essential
3 provision will allow the agency to engage in
4 something very important to everybody in the real
5 business world, multiyear budget planning, which I
6 don't think is an unreasonable request, and will
7 allow us to adjust our fees, subject, of course,
8 to oversight, to reflect changes in cost, demand,
9 and work load. We've got to be more flexible,
10 more fungible, so we can anticipate shifts and
11 changes. And this improved funding structure is
12 very critical to enable us at the USPTO to better
13 meet the needs of America's innovators.

14 Let me be clear, however, that for all
15 of these efforts, we're working to implement at
16 the PTO and to further improve our trademark
17 application processing. Debbie Cohn and the
18 Trademark team have met and exceeded their goals
19 once again in areas of pendency, quality, and
20 e-government with a steady increase in filings of
21 four percent over the last fiscal year. So on the
22 Trademark side of the house, they are meeting and

1 even exceeding goals, and each one of you here on
2 the TPAC should be very pleased that you are part
3 of that effort. Now, none of this would be
4 possible without the public's input and TPAC's
5 excellent support and hard work behind the scenes.
6 Now, your consistent communication and
7 collaboration is what helps us craft the best
8 policies, and that's why the conversation that
9 we're able to have today is essential in shaping
10 the best vision and future for this country's
11 trademark system.

12 So while I look forward to participating
13 in today's conversation, I am also eager to
14 collaborate with each one of you in strengthening
15 our most essential intellectual property rights,
16 trademark rights.

17 But before we go on, there is someone
18 very important that I would like to acknowledge
19 for their unrelenting commitment to the trademark
20 community. So I hope not to pull away from the
21 microphone too far, but I think at this moment in
22 time, it would be appropriate to thank John Farmer

1 for his heroic efforts, for the amount of time he
2 has put in, for all of his corralling of the stray
3 cats who are currently here present at the table,
4 and while perhaps from time to time he deserved to
5 be frustrated, he did very, very well under
6 stress, he maintained composure at all times. He
7 added to the efficiency of the TPAC, and even
8 beyond that, the USPTO is very, very pleased to
9 have had him as a colleague, especially with his
10 position as leading the TPAC. So in that light, I
11 would now like to present a certificate to John
12 Farmer for all of his efforts. (Applause)

13 CHAIRMAN FARMER: Thank you very much.

14 MS. STANEK REA: And I do hope that when this
15 record is transcribed, the duration of the
16 applause is accurately recorded. The room has a
17 great deal of affection and appreciation for all
18 of John Farmer's work, and to those of you that
19 it's webcast to, I think you can appreciate the
20 enthusiasm and how proud we are in this room to
21 have had this leadership. So, with that, John,
22 how about if I turn this back over to you?

1 And I do want to tell you that I am just
2 as proud to be here in this room and sort of a
3 quasi part of the TPAC. I guess I could have a
4 seat at the table. And I am proud to be part of
5 this effort. Right now we have a lot more to work
6 on with the Patent side of the house. Debbie Cohn
7 has done a marvelous job with the trademark world,
8 but I think the fact that we're still continuing
9 to push forward in the trademark side of things to
10 improve things and make it yet more efficient, and
11 that maybe on the Patent side of the house, we
12 could try and catch up with the trademark side.
13 So, with that, I'll turn it over to John Farmer,
14 and thank you so much.

15 CHAIRMAN FARMER: Thank you, Teresa,
16 very kind of you. That's extraordinarily kind,
17 and also thank you for coming to the USPTO and for
18 your time. I know you've been working
19 extraordinarily hard, and it's a public service,
20 and it's because of a genuine desire to try to
21 contribute to making the system better, and so we
22 really appreciate that, and for spending time with

1 us. We always love it when the folks from the
2 front office can come on down and visit with us
3 for a little bit.

4 I'm going to say some thank-yous in a
5 second, but before I do so, one thing I forgot to
6 mention for the folks listening at home is, in
7 case it's not obvious, the documents that are
8 public for this meeting should be on the website,
9 so if you want to see the documents that we're
10 actually handling here at the meeting, you should
11 be able to do that.

12 I want to thank a member whose service
13 recently ended, but she's not here quite yet, so
14 that might be kicked back a little bit in the
15 meeting for between speakers. To continue to get
16 us horribly off track, I'm now going to make us
17 even slower by saying thanks to a few folks. I
18 want to start off by saying that I have a horrible
19 memory. I mean, I'll have people walk down the
20 street in Richmond, Virginia, that like I went to
21 high school with and stuff, and they'll say, hi,
22 John, and I have no idea who they are. And so if

1 I leave out any names here today, it's not because
2 I didn't think highly of your service, it's just
3 because I've got a lousy memory, and so I
4 apologize in advance.

5 I'd like to start off by thanking my
6 fellow TPAC members, all the members that are
7 presently on TPAC, and also those who I spent a
8 lot of time serving with, particularly former TPAC
9 members Elizabeth Pearce, Jim Johnson, Jeff Storie
10 and Bob Anderson. It's a little tough because I
11 think we all remember Jeff Storie right now, and
12 he's a great member.

13 Thanks for putting up with my pushing, I
14 appreciate it. And thank you for our strong
15 friendship. What I would say about TPAC is that
16 we have built a strong friendship based upon the
17 mutual respect of hard work, and that's been
18 tremendous.

19 I'd also like to thank the Trademark
20 operation, especially Lynne Beresford, who I see
21 here today, and Debbie Cohn, and their key
22 lieutenants, including, but not limited to, Sharon

1 Marsh, Karen Strohecker, Craig Morris, and Cynthia
2 Lynch. The thing about working with the Trademark
3 operation is that it's made being on TPAC such a
4 pleasure because they just do such an absolutely
5 fabulous job.

6 I will confess that when I came to TPAC,
7 I had a very cynical view sometimes of government
8 employment. I know it's a bad thing to say in
9 this room, but I just had a feeling that if you
10 weren't under a lot of pressure, that possibly
11 being tired tomorrow, that maybe the pressure for
12 excellence might not be so strong, and they've
13 proven me flat wrong.

14 They are responsible, they are
15 responsive, they are accessible, they are
16 communicative. There is no arrogance in the
17 organization whatsoever, no sense whatsoever that
18 we're just TPAC and we should stay in our corner
19 at all. They have kept TPAC in the loop. They
20 have sought our input and seem to genuinely want
21 it. And above all, they constantly strive to do a
22 better job. And when they are confronted with

1 obstacles, they don't see them as something to
2 rest on, but something to get over as soon as
3 possible, and that's tremendous, and we are --
4 that's made the TPAC job vis-à-vis the Trademark
5 operation, so each, because Lynne, then Debbie,
6 and their lieutenants just constantly strive for
7 excellence, and they are the paradigm of how a
8 governmental organization can run.

9 I'd also like to thank the USPTO staff
10 people who have been the key infrastructure behind
11 the scenes to make things work so well. I mean
12 these meetings look easy, but there's a lot of
13 work that goes on behind the scenes.

14 I want to especially recognize Ann
15 Farson, who's here today, but also Pat Beck, Letra
16 Dennis, Clarie Clemons, and Lesley Morris.
17 They've done a lot of stuff to help me out, and
18 it's not all been obvious to you.

19 I'd like to thank some people who are
20 not here today and would not be here today. I was
21 appointed by Commerce Secretary Carlos Gutierrez.
22 I'm sure he has no idea who John Farmer is, but,

1 Carlos, wherever you are, thank you for the
2 opportunity.

3 Also to a former commissioner or a
4 former director, Jon Dudas and Eleanor Meltzer.
5 I've met -- Eleanor Meltzer called me three and a
6 half years ago to ask if I wanted to be on TPAC,
7 and I said what's TPAC? I didn't know, and I was
8 shocked that they would have confidence in someone
9 who -- I mean, it's not like I was super active in
10 INTA or anything. I wasn't even a member of INTA.
11 But for whatever reason, they plucked me out and
12 asked if I would come do the job, and it's been a
13 tremendous opportunity, and a career changer, and
14 I'm thankful to them. So Jon and Eleanor,
15 wherever you are, thank you.

16 I also want to thank some of the folks
17 that we've frequently interacted with here other
18 than with Debbie's operation. And here I'm going
19 to be on very thin ice because I know I'm going
20 to leave out some names.

21 We recognize that we on TPAC have pushed
22 you hard, and we appreciate that you have worked

1 with us in such a spirit of collegiality in
2 recognition that we're all working to better the
3 organization. And you haven't stonewalled us or
4 run away from us, but you've worked with us, and
5 we really appreciate that, and it's made it very
6 rewarding for us and it has been our pleasure to
7 work with you.

8 And so at the TTAB, Judge Rogers, Judge
9 Sams and their assistant, Cindy Greenbaum, who I
10 see over here, we've really enjoyed working with
11 you. As we'll find later in the meeting, you all
12 are really starting to make some great strides and
13 we appreciate that, especially getting that TBMP
14 launched. We know that took a Herculean effort,
15 and that, Judge Rogers, you inherited quite a
16 catch-up job there, and we're really glad that
17 it's out there, and we look forward to seeing it
18 in HTML soon.

19 To the OCIO operation, particularly John
20 Owens and Scott Williams, we're thrilled that TMNG
21 is coming along. That was one of the great things
22 when David Kappos became director of the agency,

1 that we knew the focus was going to be on patents.
2 And I told them up front when I chatted with them
3 that I realize that part of our job is to kind of
4 stay out of your hair so you can focus on patents,
5 but he still stepped up right away, recognized the
6 need for TMNG, and has said that it shall be so,
7 and we're very grateful for that.

8 And to the OCFO offices, particularly
9 our regular interlocutors, Mark Olechowski,
10 who's right down here, and Michelle Picard, who I
11 see right over here. You all have made such great
12 strides. It won't surprise anyone to let out of
13 the bag that there wasn't a great a relationship
14 with the Trademark operations several years ago,
15 and you've continuously improved it. And the
16 transparency and the cooperation between those
17 organizations has become very good, and the
18 information that's now coming out of your offices,
19 particularly the fee study and cost analysis
20 information, is extraordinarily helpful and
21 extraordinarily illuminating. And so thank you
22 for all of your hard work in that, we really

1 appreciate it, all good.

2 And also, for the international folks,
3 especially Amy Cotton -- and I'm not sure if I see
4 Amy here today -- you know, Amy is just so
5 incredibly easy to work with, there is no drama
6 with Amy. She just gets it done. She keeps us
7 apprised of what's happening on the international
8 scene, and she always does it with great humor
9 because we realize those things tend to go a
10 little slower since they're not entirely within
11 the control of the United States, but she does a
12 great job there. And so if I've left your name
13 out, it's my fault, not a lack of effort by you,
14 and so I just thank the entire office.

15 Now I get to do one more person while I
16 hold it together up here. Mary Denison, I just
17 saw you walk in. I hope you'll come on up here
18 with us. The thing about Mary Denison, for those
19 of you who don't know, Mary's term was to complete
20 in October, but Mary resigned I guess about a
21 month or so ago because she's going to be taking a
22 position at the PTO very soon, and we on TPAC are

1 very thrilled about that. But I want to talk
2 about Mary's time on TPAC, and it can be summed up
3 in this one sentence: Mary Denison gets it done.
4 When she takes on a task, she just goes after it,
5 she gets it done. She is a doer, not just a
6 talker, and so when she decides that something
7 needs to get done, she goes after it, and she's
8 been a tireless worker on TPAC in that regard.

9 Her primary area of responsibility was
10 the TTAB, and she's worked very closely with Judge
11 Rogers and Judge Sams before then. And while it
12 is the TTAB that deserves the credit for the work
13 that they have accomplished such as getting up the
14 new TBMP, it's Mary's work with them that I think
15 had some contribution to that. And she's been a
16 great TPAC partner with them, and so we really
17 appreciate that.

18 She stayed on top of all of her
19 championed issues and she set the example of how
20 to be an issue champion. The way that the current
21 TPAC is run, how future TPACs run themselves is up
22 to future TPACs. I tried to basically run away

1 from responsibility, and so we would hand out
2 issues to individual members, then I would just
3 lift up my hands and say go to it, I hope it comes
4 out well for you, try to keep me in the loop if
5 you don't mind.

6 And Mary did just that. She just picked
7 up the ball and she ran with it and did a great
8 job with it, and so we are very much thrilled that
9 Mary will be here. And so, Mary, thank you for
10 your nearly three years of service on TPAC. We
11 have a couple of things here for you today. I am
12 assured within this box is a plaque recognizing
13 your service here.

14 MS. DENISON: Thank you.

15 CHAIRMAN FARMER: And I signed it myself
16 so I'm pretty certain it's there. And so, Mary
17 Denison, thank you very much for your service on
18 TPAC, you did a great job, I'll give you that.
19 And I also have one other small thing for you.

20 MS. DENISON: Thank you.

21 CHAIRMAN FARMER: And so as the Eagles
22 said, "You can check out any time you like, but

1 you can never leave." We're thrilled that you're
2 going to be back here at the PTO doing some more
3 fine work, and we will all admire it from our
4 present and former TPAC perches. So thanks for
5 your service.

6 MS. DENISON: Thank you so much. May I
7 take a moment?

8 CHAIRMAN FARMER: Go for it.

9 MS. DENISON: Okay.

10 CHAIRMAN FARMER: We have the schedule
11 out the window today.

12 MS. DENISON: Okay, thank you.
13 I'm honored to have served on TPAC, it was a real
14 pleasure for me. The members of TPAC are a
15 wonderful group and I consider each of you and
16 those who have gone before, including our dear
17 departed Jeff Storie, to be good friends, and,
18 John, thank you for that.

19 I've been constantly impressed by the
20 dedication of this group. Everybody has worked
21 really hard and has the best interest of the USPTO
22 in their hearts and minds at all times. And it's

1 been not only a pleasure to work with TPAC, but
2 it's been a real pleasure to work with the people
3 at the PTO. And it's given me a real renewed
4 faith in the government of the United States to
5 work with the people here and see how impressive
6 the public servants are.

7 I come from a family of public servants,
8 and this was my first foray into limited public
9 service, and I loved it. And so, as John said,
10 I'm now going to be full-time, so I'm very excited
11 about that.

12 And as David Kappos said, you come from
13 this family of public servants, and,
14 I've known your brother, what took you so long
15 to get here? So thank you so much for
16 this privilege that I've had working here, and I
17 look forward to working with you guys in the
18 future. Thank you. (Applause)

19 CHAIRMAN FARMER: We have one other
20 piece of housekeeping, and that is one of the
21 things that I was very concerned about was to make
22 certain that the next chair who came into TPAC

1 would be someone who's experienced and knew how to
2 run it, because I was just making it up when I got
3 here, not having known what TPAC was. And the
4 office responded, and I am pleased, in case you
5 didn't know this already, to let you know that our
6 next TPAC chair will be our very own Maury Tepper.
7 (Applause)

8 For those of you who don't know this,
9 Maury has been at TPAC far longer than I have. He
10 was originally appointed by President Jefferson
11 during the inception of TPAC and has served
12 several terms since then and knows more about TPAC
13 than I did. As a matter of fact, he was on TPAC
14 when I joined TPAC as chair. He was just headed
15 out the door for one of his various terms here,
16 and helped me learn the ropes, and I've been very
17 thankful for that, and now I see he's back to
18 guide very capably. His term I think actually
19 starts on, what, the 26th of June, Maury, and so
20 there's technically a little bit of gap, but
21 there's no real gap. And so, you know, if there's
22 anything you'd like to see TPAC address or issues

1 you want to bring up going for him, dump them on
2 Maury's lap, I'm done.

3 But Maury is going to do a great job,
4 I'm glad we have that experience leading the
5 office, it's going to be in great hands, and so,
6 Maury, thanks for answering the call once again,
7 and I look forward to watching you distantly from
8 Richmond via webcast as you lead TPAC, so thank you
9 for doing that. I think we've got all the
10 preliminaries out of the way right now unless I've
11 committed a social faux pas and forgot something,
12 and I usually do.

13 MR. FRIEDMAN: No, you didn't, but if we
14 could -- if you could indulge us for one more
15 presentation.

16 CHAIRMAN FARMER: Go for it.

17 MR. FRIEDMAN: Thank you. Well, to
18 borrow a few of John Farmer's favorite phrases,
19 this is his last rodeo. And so before he turns
20 into a pumpkin, I've been championed -- and, yes,
21 this goes off my list when I finish this, John --
22 I've been championed to undertake the singular and

1 final messianic honor presenting on behalf of all
2 TPAC members a small token of our appreciation for
3 all your services as TPAC chair for the past three
4 years. I don't know for sure, but I think John's
5 ready to move on, because yesterday he was
6 dropping lines like when it came to TPAC in the
7 late '70s, and do anything you want, I'm leaving.
8 But what we all really know and saw for the last
9 three years is that John Farmer has given his all
10 to TPAC and the Trademark Office.

11 Words that come to mind to describe his
12 leadership, and indeed, John as our leader,
13 include hard- working, driven, and
14 detail-oriented. But I think one quality that
15 best describes John and his leadership of TPAC is
16 that he always led TPAC with the utmost integrity,
17 and it was that integrity that always caused him
18 to do what he thought was best for the office.

19 On a personal level, I know all of us
20 now call John a good friend, and I know we will
21 all miss him. So with your permission, I cross
22 this off my champion list, and I want to present

1 you with a gift from your TPAC peers, current and
2 former, and thank you for your wonderful public
3 service. (Applause)

4 CHAIRMAN FARMER: All I can say is thank
5 you. I'm going to turn back into old John Farmer
6 now and start driving the train. And so we're 20
7 minutes behind, that's okay. That will actually
8 put us in where we normally finish TPAC meetings,
9 and so let's go ahead and get started, especially
10 since all the folks who tuned in at home to see
11 what's going on in Trademarks, they're probably
12 wondering, when are they going to get on with it.

13 Dana Colarulli, I see right down here,
14 the director of the Office of Governmental
15 Affairs, to tell us about what's going on in
16 legislative matters. Dana, thanks for being here.
17 The floor is yours.

18 MR. COLARULLI: Thanks, John. I'm not
19 sure how to follow up on the various
20 presentations, but I'll do my best to get
21 us started. And you can think of me a little bit
22 as a bridge between our Deputy Director and the

1 CFO report. What I'm going to do is talk a little
2 bit about pending legislation, highlight a couple
3 of bills quickly that are pending that we're
4 watching, give an update on the legislation that's
5 passed recently and what we're doing, and then
6 talk a little bit about funding.

7 So let me just highlight the three bills
8 that I think you all might be interested in.
9 Deputy Director Stanek Rea mentioned the patent reform
10 bill. The key provision there for the
11 entire agency really is getting us to sustainable
12 funding and stable funding. I'll talk a little
13 bit more about that when we get there.

14 Patent reform legislation we expect to
15 reach the floor of the House in June. The House
16 is in session this week, and this is the last day
17 they're in session. Next week they're in
18 recess, so the bill could be taken up as soon as
19 they get back from recess, which is the week of
20 June 13th, so we're watching that closely.

21 There's been a number of activities on
22 the Hill, a number of questions that folks have as

1 the bill goes to the floor, questions about the
2 effect on small businesses, the effect on
3 universities, those are very active discussions.

4 There's been an active discussion about
5 the constitutionality of some provisions. So
6 those conversations will work their way out over
7 the next couple weeks.

8 There has not been yet, although I think
9 we're likely to see a lot more discussion about
10 moving the USPTO to a revolving fund and including the fee
11 setting authority that Deputy Director Stanek Rea had
12 mentioned. The two of those really work together
13 to put PTO on good, solid footing so we
14 can do multi-year budget planning. Traditionally,
15 congressional appropriators have had concerns
16 about moving to this model, I think we'll still
17 see that conversation moving forward, and you all
18 have heard me talk about that before.

19 Two other bills I'll highlight briefly,
20 one is the Protect IP Act. This is a follow-up to
21 Senator Leahy's rogue websites bill last year.
22 Actually it had two other names, rogue websites

1 and a much longer acronym which I won't try to
2 remember or mention right now.

3 The Protect IP Act really
4 attempts to increase the tools available to
5 crack down on online piracy. That bill
6 was reported out of the
7 Senate Judiciary Committee, and is now essentially
8 being held in the Senate, and it could be ready for
9 floor time this year. I don't think there will be much more
10 action until the House moves forward with their
11 legislation. They also want to address this area,
12 so right now it's pending in the Senate, not
13 scheduled for floor time yet, but we're watching
14 it closely.

15 Another bill that we're watching that
16 came along parallel with the Protect IP is
17 legislation on streaming. That still is pending
18 in front of the Judiciary Committee, and we'll have
19 more discussions about that potentially on June 9th,
20 when the Senate actually is in session next week.
21 So we'll be watching both of those, and at a
22 future TPAC meeting I can report on the status of

1 those.

2 So those are the pending bills. Of the two
3 pieces of legislation that have passed, one
4 required the PTO to do the trademark litigation
5 report that we mentioned earlier this morning. We
6 completed the report, sent it to the Hill, and
7 included some good recommendations to ensure that
8 resources are available to the Federal
9 government to allow especially small businesses to
10 effectively enforce their rights, effectively
11 manage their trademarks, and ensure those resources were
12 readily available.

13 We also discussed increasing education
14 around this area. I think it was a good product.
15 We haven't heard too much reaction from the Hill,
16 but as you all know, it was a long
17 process of getting to recommendations that we all
18 felt comfortable with and are things that we
19 should be doing, ensuring that the resources that
20 are available to small businesses are actually
21 accessible by them.

22 The second piece of legislation may be

1 even more important for this agency is taking
2 advantage of the additional flexibility the
3 Telework Bill Public Law 111 292 had provided to
4 the agency. Groups here have been meeting in the
5 bunker. I'm looking at Howard because I know he
6 spent many hours there attempting to come up with
7 an agreement, and I think they're making some real
8 progress there. So, hopefully, there will be a
9 report on how the PTO is going to move forward
10 using that flexibility soon to expand our award
11 winning program.

12 So last but not least, and this is
13 really the bridge, I won't spend too much time on
14 funding because I think Mark will be able to
15 provide a little bit more detail. But our current
16 spending is limited to 2.09 billion. That
17 essentially, from our own prediction that we sent
18 up much earlier this year, means that we'll likely
19 collect in excess of our spending authority
20 this year.

21 Focus on the 85 million, I had
22 included in the slide 85 to 100 million as the

1 range as a result of some of the cuts,
2 particularly delaying the track one accelerated
3 exam proposal on the Patent side.
4 And Mark will correct me when he does his
5 presentation, it's closer to around 85 million that at
6 this point we'd expect to collect over our
7 spending level. You know, I think the
8 Trademark activities were unaffected by the recent
9 cuts, again, we're really looking towards patent
10 reform legislation to get us to a place that we
11 have stable funding. We can engage in a process
12 which we set fees on both the Patent and the
13 Trademark sides of the house that allow us to
14 recover costs and actually run an operation. So,
15 again, that's, the focus for all of us
16 right now, and, hopefully, there'll be some good
17 news to report here in the next month or so on
18 whether that legislation moved forward, and
19 we're positive that it's moving in a good
20 direction. Some challenges still, some good
21 discussions to have, but we're remaining hopeful.
22 John, with that, I'll end my report, and I'm happy

1 to answer any questions.

2 CHAIRMAN FARMER: Any questions or
3 comments from fellow TPAC members? I've said this
4 so many times, I'll try to keep it to the readers
5 digest version, and that is, just as you know, we
6 100 percent support the office being able to keep
7 all its fees. It's nonsensical that it shouldn't
8 be able to because people pay that money to do
9 something. And that we also support you all in
10 having that fee-setting authority, once you get
11 the ability to keep all of your fees, and we just
12 hope it happens soon. And, you know, I know it's
13 tight times right now, but you can see in real
14 terms the effect of the office not having enough
15 money because you all were about to launch that
16 patent fast track where you could pay that \$4,000
17 if it meant enough to you and get your patent
18 through fast, and you all had to put that on ice.
19 I realize we're not the Patent Committee. We're
20 the Trademark Committee, but we still care about
21 IP, because what happened to your funding.

22 And so, you know, IP is being slowed

1 down because of the way funding is currently
2 handled vis-à-vis the PTO, and we just hope that
3 it changes soon. And if there's any way TPAC can
4 help you get there, while I'm leaving, as Maury
5 said or Howard said, I'm sure TPAC will back you
6 up because they want you to get there.

7 So with that, I cut off -- does anyone
8 in the audience have any questions or comments for
9 Dana? And we didn't get any e-mail. So, Dana,
10 thank you for your time, thanks for being here.

11 We're now going to turn to the OCFO's
12 office. I don't think Tony Scardino is here, but
13 I think Mark Olechowski, who's a regular friend
14 and visitor of ours here, is here to chat. And
15 so, Mark, I'm going to turn the floor over to you,
16 and thanks for being here.

17 MR. OLECHOWSKI: Thanks, John. Good
18 morning, everybody. After the comments by the
19 deputy director and Dana, I'll try to add a little
20 more detail, but I think you've got the gist of
21 everything that's going on in the financial world,
22 but I'll try to add some comments and answer any

1 questions that I can. So, Dana, are you still --
2 do you want to -- there we go.

3 So, as usual, the way we do our
4 presentations, we try to talk about fiscal years
5 in the world of government finance. We're always
6 working on three fiscal years at one time, so it
7 could be quite confusing.

8 But 2011, several people have mentioned
9 we are in a little bit of financial difficulty.
10 Our spending authority has been limited to \$2.090
11 billion. That's somewhat less than what the
12 President submitted earlier in the year, which was
13 about \$2.3 billion.

14 As a result of that, as Dana mentioned,
15 we expect to still collect more than we're
16 authorized to spend. We're looking at probably
17 over collecting around \$85 million by the end
18 of the year, Patents and Trademarks, but we
19 continue to spend the money we do have. I'll talk
20 about a little bit some of the cuts we've had to
21 make so live within the spending authority, but
22 our current rate of expense is roughly about what

1 it has been, about a 90/10 split between Patents
2 and Trademarks.

3 The next page, the \$2.090 billion level has forced
4 the PTO to reduce its spending in certain areas to
5 live with the authority. Everybody here is
6 familiar with it because we've had the
7 conversation many times about the difference
8 between what we collect and what we're authorized
9 to spend. But the \$2.090 billion level has placed some
10 pressure on the PTO to cut its spending.

11 Some of the things we've had to curtail,
12 we're currently under a hiring freeze, we're not
13 hiring patent examiners, nor anybody for the
14 support organization, CFO, CIO. There's Tony,
15 good morning, Tony.

16 The discretionary training, budgets have
17 been cut from everybody's operating plans. John
18 Owens, I'm sure, will talk about what plans he has
19 for the remainder of the year, but we've had to
20 curtail spending in IT development. Our PCT
21 outsourcing, we've cut back to about 50 percent of
22 what we would like to do. There's no overtime,

1 not even for patent examiners. And then we've
2 also had to postpone the opening of our first
3 satellite office in Detroit.

4 MR. SCARDINO: Track one.

5 MR. OLECHOWSKI: Right, track one has
6 been, I think Dana mentioned, as well, we had that
7 ready to launch early May, and we put that on, as
8 I think John's words, put it on ice until our
9 funding situation is resolved. So 2012, once
10 again, we're hopeful. The President submitted a
11 budget on behalf of the director and the PTO.
12 Just a little clarification on our first line up
13 there, the President's budget request for 2012 is
14 actually \$2.7 billion. This number, the 2.599, is
15 what we actually expect to spend if the Congress
16 authorizes us our full budget submission.

17 However, as we go into 2012, I'm not so
18 sure anybody thinks that we're going to have a
19 budget passed on October 1st, if we do, that's
20 wonderful, if we don't, the PTO is required to
21 live at the 2011 level, which is the \$2.090 billion. That
22 presents additional difficulties that continue

1 from 2011 into 2012 just in order to pay our bills
2 and everything. So all the cuts that we've talked
3 about that I just mentioned that are in place now,
4 no hiring, no overtime, reduced IT spending, et
5 cetera, will continue into 2012.

6 Living at 2011 levels in 2012 will be
7 especially challenging just because of the amount
8 of people we have on board, inflation, salaries,
9 et cetera, et cetera, so we'll continue to keep
10 you updated on 2012 as things change. But we list
11 down here the possible scenarios. They go from
12 good to bad to terribly bad. So I guess maybe we
13 could go in the opposite direction. We are
14 encouraged. I think both the Deputy Director and
15 Dana mentioned that the patent reform bill, which
16 has passed the Senate and is
17 expected to be on the House floor, does
18 incorporate some financial tools to allow the PTO
19 to operate more like a business. The most
20 significant one is a revolving fund, which I'll
21 talk about in just a second.

22 So the American Invent Act that Dana

1 gave us a little status on does have some
2 significant financial sections to it. Terry
3 mentioned that it allows for fee setting authority
4 with the associated oversight that would go along
5 with that. It establishes a public enterprise
6 fund, in other words, that's a revolving fund.

7 For those not familiar with that term, a
8 revolving fund simply means that the money that
9 goes into it, the money can come out of it. The
10 PTO, it essentially takes us out of the
11 appropriations process where all the fees we do
12 collect, we're allowed to spend, so that's a
13 significant change to the way the PTO has operated
14 in the past, so that all funds deposited in that
15 account become available to the PTO and they're
16 directed to spend to manage our operations.

17 The trademark fence obviously is not
18 impacted by that. The bill itself passed the
19 Senate by a 95 to 5 margin, which is a significant
20 boost for the bill. It passed the House Committee
21 I believe 32 to 3, so we're encouraged. The bills
22 are quite similar in most respects, but we won't

1 know the final answer until it gets to the House
2 floor to see what the differences might need to be
3 worked out in conference, but I think we're all
4 encouraged by the strong support the bills have
5 received in both the House and Senate to date.
6 And I'm sure Dana, myself, Tony, the director and
7 deputy director keep everybody informed on the
8 progress of the bill as it moves through.

9 So subject to your questions, Mr.
10 Farmer, that concludes the brief.

11 CHAIRMAN FARMER: Please call me John.

12 MR. OLECHOWSKI: It's been two years and
13 I haven't done so yet.

14 CHAIRMAN FARMER: Yeah, I keep meaning
15 to bring my dad so we'd have someone to call Mr.
16 Farmer, but he just won't come.

17 Just one quick question that occurred to
18 me while you were talking, and I don't know if you
19 will know this, if this bill gets passed, how
20 quickly do the financial changes for the office
21 kick in? In other words, is it right away you
22 start living off your own money or is there a lag

1 before you convert to living off your own money?

2 MR. SCARDINO: I'll take that. Good
3 morning. I'm sorry I'm tardy this morning. I was
4 meeting with Director Kappos on something that
5 couldn't wait.

6 But the way the bill is written, it
7 would become enacted -- become a revolving fund, a
8 public enterprise fund the October 1st after it's
9 enacted. But if this is enacted before October
10 1st, boom, Fiscal 2012, we would be a mandatory
11 account, a revolving fund, instead of an
12 appropriated account. If it passes October 3rd, we
13 wait until the next October 1st.

14 CHAIRMAN FARMER: Can we help you get
15 that fixed if it passes on October the 3rd?

16 MR. SCARDINO: It would be challenging
17 for us, to be honest with you, to have two sets of
18 books during a fiscal year.

19 CHAIRMAN FARMER: Really.

20 MR. SCARDINO: We do support having it
21 start in a fiscal year. We're just really pushing
22 to have it done for October 1st of this year.

1 CHAIRMAN FARMER: I hope it happens. By
2 the way, for those listening at home, this is Tony
3 Scardino, our CFO, so thanks for making it down to
4 visit with us. Any questions or comments from
5 members of TPAC? From members of the audience?
6 In that case, gentlemen, thanks for visiting with
7 us, we appreciate it.

8 MR. SCARDINO: Can I just add one thing,
9 John?

10 CHAIRMAN FARMER: Go for it, yes.

11 MR. SCARDINO: As you saw today, with me
12 not being here, we really didn't skip a beat, and
13 that's because Mark Olechowski is a wonderful
14 deputy CFO. And he leaves in two weeks, he's
15 going on to other pastures, I'm not even calling
16 them greener because it's a great place to work,
17 but I just want to thank Mark publicly for being a
18 great asset to the USPTO, and most especially the
19 CFO.

20 (Applause)

21 CHAIRMAN FARMER: Well, Mark, we'll miss
22 you, and thank you very much for your service, and

1 I can't wait to see what the next thing holds for
2 you.

3 We didn't schedule a break now, but
4 because I've blabbered on for a long time, we are
5 going to take a five- minute break. But you know
6 me, I mean five minutes, and so we'll start back
7 up right in five with our visit with Debbie Cohn.

8 (Recess)

9 CHAIRMAN FARMER: All right. Well,
10 we're going to start off anyway. Our next
11 presenter is Debbie Cohn, the Commissioner of
12 Trademarks. And I am going to do something I
13 rarely do, and that is restrain myself by handing
14 the floor over to our co-champions for the
15 trademark operations, Kathryn Barrett Park and Deb
16 Hampton. When I put the agenda together, I didn't
17 bother to think to try to line up the issues so
18 we'd have all of one person's and all the others,
19 but they'll work it out between themselves. And
20 so, Kathryn and Deb, the floor is yours.

21 MS. PARK: Thank you, John. And it's
22 always a pleasure to conduct this part of the

1 meeting because it's so easy. And so, Debbie, I
2 thought what would be a good idea is to go sort of
3 over the agenda that we all have. And we heard
4 Deputy Director Rea mention in passing the
5 disclaimer roundtable that's going to be on June
6 21st, but I thought maybe you could spend a minute
7 or two to talk about what that will do.

8 COMMISSIONER COHN: Thanks, Kathryn.
9 Yes, we're -- and, in fact, we have just posted a
10 notice on our website, so you can get the
11 information about the disclaimer under our
12 Trademark News and Notices, and it will be
13 webcast. It's June 21st at 1:30. And the purpose
14 of this is to really just have a discussion about
15 disclaimer process, disclaimer practice, it's not
16 to initiate any changes. We want to hear about
17 whether disclaimer practice as it currently is in
18 the USPTO is useful to stakeholders, whether you
19 think there might be any changes that could be
20 made. And the reason we're doing this is,
21 disclaimers take up a lot of our attention and
22 your attention. I think it's around 29 percent of

1 the office actions in the past 2-1/2 years contain
2 a disclaimer requirement, and that's not even
3 including those requirements that are made by
4 phone and handled by examiner amendment, so it's a
5 big topic.

6 And, in addition, several other
7 countries have actually made changes to their
8 disclaimer practice, Australia and Canada in
9 particular, both of which have likelihood of
10 confusion examination prior to registration,
11 similar to our system. So we thought it was a
12 topic worthy of discussion, but that said, it's
13 just an information- gathering session, it's just
14 a discussion, I don't want anyone to think that we
15 are going to leave that session and go ahead and
16 make changes because that won't happen. It may
17 lead to further discussion, it may not, we'll have
18 to see what happens.

19 MS. PARK: Thank you, Debbie. And I can
20 say that TPAC will be, hopefully prior to that
21 roundtable, sharing sort of our consensus views on
22 the issue. We turn next to something else that

1 Deputy Director Rea alluded to, which is review of
2 your speed and quality performance metrics, which
3 you, I think she said, are meeting and exceeding
4 in all categories, and there's a lot of good news,
5 so we can briefly go over some of those
6 highlights.

7 COMMISSIONER COHN: Okay, great. And we
8 have the chart that we normally hand out, which is
9 the quarterly results, and so this is as of the
10 second quarter which ended March 31st. I think
11 it's probably a little difficult for people to see
12 the chart, you have it in your materials,
13 hopefully people can see it at home. I'll just go
14 over a couple of the key highlights that I think
15 people would like to hear about, and the first, of
16 course, is quality.

17 And regarding the quality of
18 decision-making, correct decision-making, which
19 has always been our traditional quality measure.
20 We are on track to exceed our targets, so you can
21 see that in front of you.

22 The first office actions, we are at 96.4

1 percent compliance, and for final actions, we're
2 at 97.9 percent compliance, so we're looking
3 forward to having another good year for both of
4 those measures.

5 This year we have in place a new quality
6 measure, it's for excellent office actions. We
7 had run a pilot last year and put a baseline in
8 place, and that was 15 percent target for
9 excellent office actions, and I'll remind people
10 what that is in just a moment, although I know
11 we've gone over that in the past. We've done very
12 well at that this year. We're at 21.1 percent so
13 far as of the second quarter.

14 So the excellent office action, just to
15 refresh your memory, focuses on the entire
16 communication, not just the correct
17 decision-making, although correct decision- making
18 is very important and that's included in the
19 measure. We also look at the search, we look at
20 the quality of the evidence, whether it's
21 appropriate and on point, whether it's the best
22 evidence.

1 We also look at the quality of the
2 writing and the communication itself, whether it's
3 properly geared to the recipient, and, you know,
4 whether it contains appropriate formed paragraphs,
5 all of the things that we think go into making an
6 excellent communication, in addition to the
7 correct decision-making. So we are on track to do
8 very well in that area.

9 And then our e-government measure, and
10 as I've said in the past, we don't measure any more
11 the percentage of initial applications filed
12 electronically, just about everybody does that
13 now. So where we're headed now is trying to have
14 complete electronic processing from start to
15 finish, from the beginning of the process, filing
16 the application, to the actual registration or
17 abandonment. And so that means that no paper gets
18 exchanged, no paper gets sent out from us, and no
19 paper comes in from the applicant.

20 And we are currently at 71 percent as of
21 the end of the second quarter, which is exceeding
22 our 68 percent target. And just for some

1 perspective, a couple of years ago we were in --
2 we were about 52 percent, so we've made some great
3 efforts in that area.

4 I think applicants -- the stakeholders
5 have gotten on board and trying to increase their
6 use of electronic systems, but we've also tried to
7 make improvements and tweaks to our forms and
8 things to make them easier for people to use, so I
9 think we're headed in the right direction there.

10 Moving down now to application filings,
11 as Terri mentioned, we're on track for a 4 percent
12 increase in application filings for this fiscal
13 year, and that was our second quarter result, as
14 well. So we're looking to meet that 4 percent
15 and, hopefully, see an even further increase as
16 the next fiscal year approaches. Examiner
17 production, I'm not really going to go through all
18 of the production and FTE numbers, you can see
19 that for yourself.

20 I will -- now I'm going to switch to
21 another slide. I'd like to talk about pendency.
22 As of the end of the second quarter, our first

1 action pendency was at 2.7 months, which is within
2 our target range of 2.5 to 3.5 months, so we're on
3 track in that area. Our disposal pendency, also
4 on track, 10.9 months excluding inter-partes and
5 suspended cases. And let me see if I can read
6 this number, and we're at 13.1 months if you
7 include the suspended and inter-partes cases, so
8 both of those numbers are well within our target
9 range.

10 Moving on to the -- outside of the law
11 offices, all of the other functions that are
12 necessary to get mark's examined and
13 registered, and post-registration, we are actually
14 on track in all of those areas to meet our goals.
15 Our service organizations are doing really, really
16 well. Our Trademark Assistance Center has been
17 doing extremely well in making sure they answer
18 the calls within the prescribed period of time.
19 So I'm just going to move along and let people
20 look at the statistics at their leisure.

21 MS. PARK: Thank you, Debbie. I just
22 wanted to follow up on one thing that you alluded

1 to, which is the e-government, and first to
2 congratulate the office on being really a leader
3 for the government on the e-initiatives, and then
4 to mention that I know you're going to be having a
5 stakeholder roundtable or discussion in June,
6 also, June 23rd, with some of the users of the
7 office who don't do end to end electronic
8 processing, to try and find out why not. So I
9 think that's a wonderful initiative and hopefully
10 you'll get some good insights from that.

11 COMMISSIONER COHN: Yes, thanks for
12 mentioning that. Craig Morris, our TEAS project
13 manager, is holding an invitation only focus group
14 for certain select stakeholders who do not yet use
15 e-mail communication. And so we're hoping to find
16 out some good information that will help us maybe
17 make some even additional improvements and
18 actually share some best practices with them so
19 that maybe they can venture into new territory and
20 actually let us send them an e-mail or two.

21 MS. PARK: That's terrific. The next
22 item on the agenda sort of dovetails nicely with

1 the performance metrics, and that is the Dashboard
2 that you all have worked so hard to do, which is
3 now, for those of you who haven't seen it, it is
4 on the website. It's a very helpful overview of
5 statistics presented in a very easy to understand
6 fashion, but maybe, Debbie, you'd like to say a
7 few words about that.

8 COMMISSIONER COHN: Yes. And first of
9 all, I want to thank TPAC for their active
10 contributions in reviewing the Dashboard before it
11 was published in prime time and giving us some
12 very helpful suggestions on the presentation and
13 the look and feel. We were really grateful for
14 your participation in that, and especially you,
15 Kathryn, I know you led that effort.

16 And I also want to mention that you can
17 give us comments about the Dashboard at
18 tmdashboard@uspto.gov, and it's at the end of the
19 Dashboard you'll see it. And so if you can think
20 of suggestions or changes that you would like to
21 see in the future, please let us know, because we
22 have the ability to change it and update it,

1 obviously, and we will be making some changes
2 based on the comments. We won't be doing it every
3 week, but we're going to collect them, and
4 possibly on a quarterly basis or so, make those
5 changes.

6 And the other thing I wanted to mention
7 which I think is really cool about this Dashboard
8 is that it breaks some of the information down by
9 filing method. So people have asked us that in
10 the past, so I think that's great information.
11 You can see the pendency by filing basis and also
12 the application filings themselves.

13 MS. PARK: Thank you. And there's also
14 good historical comparison data in there which is
15 very helpful, as well. And I think we're going to
16 turn over the agenda to Deb Hampton for the next
17 few items.

18 MS. HAMPTON: Good morning, Debbie.
19 Before I get started, I just wanted to say, John,
20 in the short time that I've been here, it's been
21 an absolute pleasure working with you, and we'll
22 keep you active. And, you know, now that I've met

1 you, I'm not going to let you go, so just keep
2 that in mind.

3 And, Debbie, I'm going to get you up to
4 the hot seat in about five minutes or so. I just
5 wanted to know if there's any updates as far as
6 communication practices with trademark examining
7 attorneys, if you want to report on that.

8 COMMISSIONER COHN: One of the items
9 that we had been talking about was to ask our
10 examining attorneys to include e-mail addresses on
11 their office actions. Some of them had done it in
12 the past, some of them hadn't. And we actually
13 went ahead and made that requirement, and as of
14 April 14th of this year, all examining attorneys
15 are including their e-mail addresses on their
16 communications. So we hope that that facilitates
17 public contact with the office and helps expedite
18 matters even more so than they've been done.

19 The next item was the status of making
20 it possible for a second e-mail address. And we
21 are going forward with that, we're going to change
22 the TEAS forms to have that available. As I've

1 mentioned in the past, this is a more involved
2 effort in the technology area, more involved than
3 we thought, so we're moving ahead with it. It
4 should be done by the end of the calendar year, so
5 you can expect to see that.

6 MS. HAMPTON: Okay, thanks, Debbie.
7 That's it for me, John.

8 MS. PARK: The next item, Debbie, on the
9 agenda was, just to give us an update, we've
10 talked over the past couple of meetings about the
11 dead wood on the register problem, and discussed
12 the pilot program that you've been working on to
13 sort of take a look and see if we can assess the
14 extent of that problem. Can you give us an update
15 on that?

16 COMMISSIONER COHN: Yes. And just by
17 background, we -- in order to put any pilot in
18 place, we need to have a rulemaking, and so we're
19 planning on going out with a proposed rulemaking,
20 you know, probably very soon which will give the
21 post-registration examiners the authority to
22 request additional information and specimens when

1 they're examining Section 8 affidavits.

2 So the plan is to have a short pilot,
3 maybe 6 to months, involving a small number of
4 cases -- I emphasize small -- to actually gauge
5 the nature and extent of the problem. And the
6 problem being, are there items included in an
7 identification of goods and services that are not
8 being used on the goods?

9 So we're going to have attorneys handle
10 the pilot. And we're working right now on
11 figuring out how those cases would be selected,
12 and we're also working with a statistician so we
13 can make sure that the results are meaningful.
14 And we don't have any of that in place just yet,
15 but we are actively working on it.

16 MS. PARK: Thank you. And I think our
17 next item was on -- the next couple items I think
18 are really ones that I think will fall into --
19 well, let's go one by one. We've discussed in the
20 past sort of trying to -- whether there would be
21 any fee changes contemplated to sort of drive
22 behavior, so that may be -- if there's something

1 new on that front.

2 COMMISSIONER COHN: You know, we had --
3 we started having discussions some time ago about
4 the possibility of charging extra fees for paper,
5 anytime somebody submits paper. And during our
6 discussions we realized that the administrative
7 cost of that requirement could be fairly high. So
8 that's something we -- we don't want to create a
9 system that is, you know, not cost-effective and
10 that just is a burden to us, so we haven't moved
11 forward in that area, but we are actively talking
12 about ways to create incentives for authorizing
13 e-mail communication because that's really key
14 during the examination process. So that's where
15 we are now, no news on that yet.

16 MS. PARK: I think the next issue is one
17 that I suspect is really going to be part of
18 Trademark's next generation, which is getting the
19 official Gazette published in a form other than
20 PDF. We know we have been able, because of some
21 improvements made, that it's much faster to
22 download, and that has made a big difference to

1 the user community. But am I correct in that,
2 that this goal of having it in HTML is somewhat
3 down the road?

4 COMMISSIONER COHN: Yes, that's correct
5 for that item. And actually for the next item on
6 the list, the electronic certificates of
7 registration we still have those on our wish list
8 and we still plan to do that, but realistically
9 we're looking at Trademark's next generation.

10 MS. PARK: Thank you. And we heard
11 Deputy Director Rea mention that there is some
12 discussion of trying to update the TMEP quarterly
13 based on some of the new IT infrastructure that's
14 going in, and that, I assume, is sort of what
15 you're working towards at this moment.

16 COMMISSIONER COHN: Right, that's really
17 moving into that next item. The frequency of the
18 update, I know that Patent's plans would like to
19 do it on a quarterly basis, I think that would be
20 great for us if we can do it. We still have to
21 work out, you know, the -- how that would work in
22 our area. So we're not ready to go out and make a

1 definitive statement yet. Certainly that would be
2 an idea, so we're going to work toward that and
3 see where we end up. It'll be more frequently
4 than once a year, I can tell you that.

5 MS. PARK: Good. And the last item on
6 my list was, I know that you've had Section 1200
7 of the TMEP up with IdeaScale to receive sort of
8 public comment and stimulate some discussion, and
9 I'm wondering if you can give us an update on how
10 that's been received and what kind of comments
11 you're getting.

12 COMMISSIONER COHN: Yeah, that's been
13 well received. We haven't gotten a flood of
14 comments, but we've gotten a number of comments on
15 different areas. And, you know, even though it's
16 Section 1200, people feel free -- and we're happy
17 about that -- they feel free to comment on just
18 about anything and everything.

19 And so we got a comment, for example, on
20 the format of the TMEP, about adding hyperlinks.
21 We got a comment about a certain decision on unity
22 of control. We've just gotten lots of different

1 types of comments, and we're looking at all of
2 them and we're discussing all of them, and the
3 plan is to consider them when we do make updates
4 to the TMEP. So we're, again, not -- we're not
5 responding to the commenters. We're just, you
6 know, but we are reviewing them continually.

7 MS. PARK: I have to say, knowing the
8 legal community as I do, I'm not surprised that
9 given an opportunity, they'd comment on anything.
10 That was all I had, Debbie, and I don't know if
11 there were other things that you wanted to mention
12 or if there are any questions from either the
13 audience here or from the web audience.

14 CHAIRMAN FARMER: This is just one small
15 thing that's -- this is in the category, we know
16 it, but just so everyone else does. I think,
17 Debbie, just to confirm with the IdeaScale, the
18 ultimate plan is to open up the whole TMEP to it,
19 but it's a walk before you run thing, right?

20 COMMISSIONER COHN: Yeah, definitely.

21 CHAIRMAN FARMER: Great.

22 MS. PARK: And I just want to say one

1 more thing, that, Howard, in your remarks about
2 John, you forgot walk before you run.

3 COMMISSIONER COHN: And, John, I just
4 want to add --

5 MR. FRIEDMAN: I did.

6 COMMISSIONER COHN: John, I just want to
7 add my voice to everyone else's thanks for just an
8 incredible job well done, and all of your
9 wonderful support and guidance for the Trademark
10 organization, we are much better because of you,
11 so thank you.

12 CHAIRMAN FARMER: Well, that's very kind
13 of you. But as I said before, you know, it's easy
14 when you work with an excellent organization, so
15 you make it easy for us and we appreciate it, and
16 Trademark operation gets it done, there's no doubt
17 about it. Thank you, Debbie.

18 Any questions or comments from other
19 TPAC members of the Trademark operations? Any
20 from the folks here in our audience? And we
21 didn't get any e-mail.

22 We are not going to take the break we

1 planned earlier. We had that break earlier, and
2 so we're going to dive right ahead. Cynthia
3 Lynch, if you would step on up to the mic.

4 Cynthia is coming to talk with us about
5 an issue that we've had on our champions list for
6 a while, which is just keeping an eye on trademark
7 filings being made by online non-attorney services
8 and concerns that TPAC has had about that. So,
9 Cynthia, I'm just going to give the floor to you.

10 MS. LYNCH: Sure. On that subject, I
11 think I can just reiterate what we've reported at
12 recent meetings, which is that the Trademark
13 operation continues to work closely with the
14 Office of Enrollment and Discipline to address any
15 potential or actual instances of unauthorized
16 practice in trademark cases, to the extent that
17 the USPTO has authority and ability to address
18 those. So I can recap briefly what we're doing,
19 which is certainly sharing information that either
20 office receives through reports from examining
21 attorneys, from third parties, or from applicants
22 themselves who are complaining about experiences

1 that they've had. And OED takes the lead in
2 following up with the suspected individuals, and
3 educating them if necessary about unauthorized
4 practice before the office, and clarifying their
5 status to practice before the office.

6 If they deem it appropriate, they follow
7 up with the state bar where the individual is
8 located so that they can pursue potential
9 unauthorized practice enforcement. And, you know,
10 if there is any involvement of a registered
11 practitioner or an attorney over whom OED has
12 jurisdiction, then they can look into potential
13 disciplinary investigation or proceedings.

14 Then once the status of the individual
15 is clarified, if they are engaging in unauthorized
16 practice, then in some instances they may
17 proactively remove themselves from the cases,
18 which is ideal, and if not, then it comes back to
19 the Trademark operation, and the Commissioner will
20 then issue a show cause letter, where we are, you
21 know. We certainly can go ahead and remove them
22 from the attorney field once we've established

1 that they are not an attorney, but sometimes these
2 people are just appearing as the correspondent in
3 cases or the domestic representative, and to take
4 care of that situation, we do the show cause
5 letter requiring them to demonstrate any
6 legitimate purpose they might have for serving in
7 those capacities; and if not, letting them know
8 that we're going to remove them. And then, you
9 know, if no showing is made, then we go ahead and
10 take action to remove them from continuing to be
11 the correspondent or domestic representative in
12 any cases where they appear in that status, and
13 then we also prospectively tell them that we are
14 not going to recognize them in any other cases as
15 the correspondent or domestic representative.

16 So we also, I think -- you know, we've
17 talked before about we continue to direct people
18 to make complaints also directly with the Federal
19 Trade Commission. I don't think they have pursued
20 any enforcement actions in this area, but they,
21 you know, do collect that, and, you know, I guess
22 could do so at some point in the future.

1 Because of the confidentiality of OED's
2 investigations, I think we're not able to really
3 give any information about the existence of or the
4 status of any OED investigations. But I'll just
5 end by saying that, you know, Trademark operation
6 and OED continue to focus attention on the issue,
7 and we recognize that it's, you know, very
8 important.

9 CHAIRMAN FARMER: Well, Cynthia, thanks
10 for staying diligent on it. One thing I think I
11 understand correctly, but just tell me if I get it
12 wrong, it is my understanding that the position of
13 the office -- and I realize this probably comes
14 from OED, not from your part of it -- that a
15 non-attorney preparing an application for
16 registering a trademark to be signed by the
17 applicant themselves is still engaging in the
18 unauthorized practice of law. Do I correctly
19 understand the office's view of what that is?

20 MS. LYNCH: That's my understanding,
21 also, yes.

22 CHAIRMAN FARMER: Okay. So let that

1 word ring throughout the land to those who may be
2 engaged in that. Some have asked why I kept this
3 on the agenda, and the reason is not because we
4 know -- we know that you're on top of the issue.
5 It's not an indication that you and the OED is
6 not, but just to let the trademark community know
7 that the TPAC continues to believe that this is a
8 very important issue and one that requires
9 continual vigilance. And it's not just a lawyers
10 looking out for lawyers thing. I will tell you
11 that three of the seven TPAC members sitting at
12 the table right here right now are not lawyers.
13 They're trademark professionals, but they're not
14 lawyers. From my personal point of view, it
15 continues to be a consumer protection issue. I
16 just have a concern that people may get the
17 impression that more will be provided from such
18 services or that things will happen more
19 automatically or more quickly than is really the
20 case, and so we're just concerned about the
21 public. And while I realize you are powerless to
22 cause this by the force of your will, we just

1 really hope that the FTC will take interest in
2 this issue some day, because, again, it's a
3 consumer protection issue.

4 Were there any other questions or
5 comments from anyone on TPAC to follow up on mine?
6 Any from anyone in the audience?

7 Okay, Cynthia, thanks for being here, we
8 appreciate it.

9 MS. LYNCH: Okay, thank you, and I'll
10 echo everyone else in saying it's been a pleasure
11 working with you on TPAC and we'll miss you.

12 CHAIRMAN FARMER: Well, thank you,
13 Cynthia, I greatly appreciate that and the same
14 here.

15 Judge Rogers, is it okay if we just keep
16 rolling?

17 MR. ROGERS: Sure.

18 CHAIRMAN FARMER: Okay. In that case,
19 we're now going to visit with the TTAB and with
20 Chief Judge Rogers. And Kathryn Barrett Park is
21 our Champion there, so I'm going to kind of
22 turn the floor over to you all and try to sit here

1 and behave myself.

2 MS. PARK: Thank you, John. And it's my
3 great pleasure to sort of start the discussion on
4 the next part of our agenda. I am stepping into
5 Mary Denison's shoes, so to speak, with respect to
6 being the champion for the TTAB, and I was quite
7 excited to be asked to do that because I admire
8 the TTAB and I have enjoyed working with Chief
9 Judge Rogers and with Cindy.

10 And so I think there's a lot of good
11 news today, Judge Rogers, to talk about, and so I
12 don't want to steal your thunder, so I'm going to
13 let you just take the floor.

14 MR. ROGERS: Thank you, Kathryn. I
15 guess we should probably start with the really
16 good news before we even get into the statistics,
17 and, of course, that is our posting on the web of
18 the revised manual of procedure for the board
19 which has been alluded to earlier in the meeting.

20 And it's up, it's only in a PDF form,
21 but it's a more accessible version of PDF than the
22 previous manual was. It's also one which, because

1 of the way we reformatted it, is more easily
2 updated in the future. Even in its present PDF
3 form, we will be able to update sections
4 individually and not have to do a complete
5 revision of the whole manual all at one time as
6 we've had to do in the past, so we've made a lot
7 of progress there.

8 And then we'll be following on the lead
9 that Patents and Trademarks have established.
10 They're working much more -- on a much more
11 involved basis with the CIO and the development of
12 the RDMS system. And because we are committed to
13 presenting a manual to our stakeholders that has
14 the same user interface and the same functionality
15 that trademark stakeholders have, we will
16 certainly just follow the Trademark's lead and
17 eventually make the board's manual available on
18 the web in multiple formats and eventually have
19 the IdeaScale application deployed, too, and
20 receive comments on the manual.

21 In the meantime, we make it clear in the
22 introduction to the new manual that we're

1 certainly willing to take comments by an e-mail
2 address that has been set up, TBMP comments that
3 at uspto.gov.

4 MS. PARK: I just want to say, and I
5 know I speak for all of TPAC, to thank you for
6 your leadership on getting the manual revised and
7 up. I know it was a Herculean task and involved a
8 lot of manpower and a lot of, you know, not just
9 manpower, but a lot of really deep thinking and
10 really careful writing and editing and crafting,
11 and it is a great benefit to the trademark user
12 community. We waited for this, and I think I
13 speak for not just TPAC, but probably for most of
14 my peers in the trademark world to say it's really
15 a great product and thank you very much.

16 MR. ROGERS: You're welcome. And I
17 would be remiss if I didn't point out that it was
18 a real collaborative effort. And I think it was
19 -- the production of this edition of the manual is
20 an illustration of how well the judges and the
21 attorneys at the board worked together on a
22 project like this, because we did have eight or

1 nine judges and four or five attorneys and our
2 supervisors of our paralegals and customer service
3 reps all contributing to the revision effort in a
4 very substantial way.

5 And Angela Lykos, Judge Lykos, is to be
6 commended because she worked really tirelessly on
7 it for many months. So it's really her Herculean
8 effort and not mine. I'm just sitting here
9 getting the benefit of all the hard work that she
10 did.

11 So we can go into the statistics if you
12 like. And I guess one thing I should note is that
13 we've put these not in the same format. These are
14 here in PowerPoint slides for the audience members
15 here and those who might be viewing the web cam.
16 But we've taken essentially the same information
17 and we've now put it up on the TTAB website.
18 Previously we hadn't put this information on the
19 TTAB website, but it's now on the -- for those who
20 are looking for MapQuest directions, it's kind of
21 on the right hand side in the column that says:
22 Board New Receipts and Decisions.

1 And so you can click on a link there and
2 you can get to all of the same for -- the
3 information that's in these charts on the website
4 now.

5 MS. PARK: Jerry, before you go into the
6 actual statistics, I want to just, again, commend
7 you and congratulate you for putting these up on
8 the web. I think, again, this is really good news
9 for the user community and it creates a sense of
10 transparency. It gives people some opportunity to
11 understand a little bit more about the TTAB, so
12 this is really fabulous that this is up and
13 available.

14 MR. ROGERS: Thank you. And I think it
15 is kind of a precursor for what we expect to issue
16 later in the year, which will be a second Notice
17 of Inquiry or Request for Comments on performance
18 measures. That's alluded to, it's discussed in
19 the strategic plan, so it was something we always
20 planned to do. And I'm hoping that getting some
21 of this information out now will get people
22 thinking about the subject in addition to having

1 judges and attorneys go out and talk about that
2 part of the strategic plan at conferences and CLE
3 programs and committee meetings.

4 We can now get -- the non-visitors to
5 those programs can go to the website and get this
6 information and start thinking about it. So when
7 we do roll out that Notice of Inquiry, hopefully
8 we'll have a robust dialogue with stakeholders
9 about what kinds of information we should be
10 posting, and what kinds of information are useful
11 for stakeholders in terms of assessing whether
12 we're living up to expectations or not.

13 And I would say that this is not the
14 only information that we'll put up there. We
15 will, again, follow the wonderful lead of
16 Trademarks, and we'll be developing a Dashboard of
17 our own, too, to put up there. And we've already
18 had some discussions, Cindy Greenbaum and I, with
19 Deputy Director Rea about what kinds of
20 information we should add to the website. So this
21 is a start, and as John says, we'll walk before we
22 run, but this is our start.

1 So where we stand, I wanted to give you
2 a sense of just what's coming in the front door so
3 you can see what kind of -- what filing levels are
4 like. And from my point of view, looking at the
5 incoming filings over the last year or so, it's
6 kind of like the economy, where we're getting
7 mixed indicators, and some things go up and some
8 things go down, and then you try and look for
9 explanations.

10 So essentially, at the midyear point, at
11 the end of March, you can see from this slide that
12 our appeal filings were down about 300 from the
13 previous fiscal year. On the other hand, we were
14 up in extensions of time to oppose, and we were up
15 a couple of hundred in new oppositions coming in
16 the front door, but then we were down a little bit
17 in cancellation. So it's kind of a mixed bag.

18 And part of the increase on extensions
19 of time to oppose and oppositions might be that
20 they were somewhat larger OGs a few months back,
21 and so I don't know whether that will continue,
22 whether people are feeling a little more flush and

1 willing to finance more oppositions or whether
2 it's just a function of slightly larger OGs. So
3 that's kind of where we stand in terms of what's
4 coming in the front door.

5 Looking -- oh, let me go back one.
6 Looking at the other end of the process, what goes
7 out the back door when we finally decided cases on
8 the merits, the key information I think on this
9 slide is the pendency to issue decisions as
10 measured from the ready for decision date until we
11 get the final decision on the merits mailed.

12 And as you can see, while we were
13 working and having so many judges work on the TBMP
14 revision, the pendency figure crept up, and it was
15 16.4 weeks in the first quarter, it was up to 18.1
16 weeks in the second quarter. And these, again,
17 are average figures and they are mixed, so they
18 are both appeals and inter-partes cases measured
19 from the time any of those are assigned to judges,
20 well, actually from the time they're ready for a
21 decision and then subsequently assigned to judges
22 for writing.

1 Significantly, though, we reached a high
2 water mark of about 19 weeks in February for cases
3 that issued in that month, but we brought it down
4 to 17 in March, and April we were down to 15.2.
5 And I just did the May report last night, and
6 we're at 15.6. So we seem to be holding and
7 bringing the figure down, and so I'm very hopeful
8 that as we have more judge time spent on issuing
9 decisions, we will keep the pendency figure moving
10 downwards towards where we want to be. And the
11 goal for this fiscal year is a range of 12 to 14
12 weeks, so we're certainly within striking distance
13 of that.

14 The one thing that does concern me a
15 little bit is the number of cases awaiting
16 decision. It was at 152 at the end of the second
17 quarter, but as of the end of April, and I don't
18 -- these came after these slides were prepared, so
19 I'll just read them to you, but we were up to 170
20 decisions or cases waiting to be decided at the
21 end of April, and then 180 in May. So while we're
22 making progress on the pendency and we're getting

1 them out quickly, or quicker than we were, we know
2 that there's a backlog there and we have to remain
3 vigilant about bringing that backlog down.

4 Any questions about either what's coming
5 in the front door or what's going out on the other
6 end of the process before I go on to the other two
7 slides?

8 MS. PARK: I do have one question, and I
9 know it's on the agenda, but it seems maybe a good
10 place to raise it. And I do know that you have a
11 couple of vacancies right now for judges, and I'm
12 wondering what your -- if you have some sense of
13 timing as to when those will be filled, because
14 obviously that might help address some of the
15 backlog and the pendency issues.

16 MR. ROGERS: Yes, I'm sure if we fill
17 those positions, and I hope that we will fill them
18 in the very near future, that it will certainly
19 help a good deal with bringing down the backlog.
20 Those are the two positions: The one that I used
21 to hold and the one that Judge Walsh, Jim Walsh,
22 held before he retired. I think about all I can

1 say is that we received applications from many
2 attractive internal and external candidates, and
3 the process is underway.

4 As you know, judge positions, too, have
5 to work their way through the front office and
6 through the Commerce Department, and so it's a
7 more involved process than hiring a new examining
8 attorney or even for us hiring a new staff
9 attorney at the board. But we certainly want to
10 fill those positions as quickly as we can.

11 Another slide, and this one, again,
12 these are all -- this is all information that's on
13 the website, this is one which we've kept. This
14 slide shows various categories of information that
15 we've kept on our internal balanced score card,
16 but I felt it was important to get it up with the
17 other slides on the website, because I know we've
18 often talked here at the TPAC about end-to-end
19 processing.

20 Our traditional performance goals focus
21 on the work that is within the control of the
22 board's judges or attorneys. The final decision's

1 when they are submitted and ready to be decided
2 and the party's work is done. And we're only
3 measuring judge time spent on the decisions, so
4 that's been one thing that we've traditionally
5 focused on. And with attorneys, we've
6 traditionally focused on the contested motion
7 pendency, again, because it's within our control.
8 It's after the motion is briefed.

9 But nonetheless, many stakeholders want
10 to know how long is it going to take me to get
11 that case into and out of the board, they want the
12 overall commencement to completion processing
13 time. And so I put this information up there on
14 the web, again, because it will help generate that
15 dialogue that we want to have when we engage
16 stakeholders in a discussion about effective
17 performance measures.

18 And you can see from this slide that for
19 appeals, they tend to be pending at the board for
20 under a year from the time the appeal is filed.
21 That includes time with a request for
22 reconsideration being considered by the examining

1 attorney, so a Notice of Appeal may be filed, but
2 we'll remand it so that the request for
3 reconsideration or a remand can be considered.

4 So this is -- this average of say 46 to
5 51 weeks for us to get an appeal decision out
6 includes all of that activity, everything related
7 to it, not just the judge time on the end, but all
8 of the activities that lead up to it being ready
9 for a panel of judges to decide. And the third
10 row down, Average Total Pendency on Trial Cases,
11 you can see that we range on average from 173
12 weeks to 183 weeks, so we're talking, you know,
13 between 3 and 4 years. Again, these are average
14 figures, and we all know that there are cases that
15 linger at the board for longer than three years,
16 and there are inter-partes cases that get off the
17 board's docket sooner than that.

18 But these figures, too, are cases that
19 actually go through the whole process, I want
20 everyone to understand. These are cases that are
21 commenced and go all the way through to final
22 decision on the merits and measures everything

1 that's involved. It does not factor in cases that
2 are settled or defaults or anything like that,
3 because those cases are not measured in this. So,
4 again, just a new set of measures that we can
5 focus on in our coming discussions.

6 And we've also added the ACR average on
7 trial cases, because it's something we're
8 continuing to push under the strategic plan. But
9 as we discussed in the Subcommittee meeting
10 yesterday, the case numbers are few, and so the
11 average figures are not particularly useful at
12 this point in time. When we get more ACR final
13 decisions, I think they'll be more useful. But
14 just the example of the two cases that went out in
15 the first quarter being decided in 76 weeks, so
16 that's a lot faster than our usual trial case
17 completion time of 173 to 183 weeks.

18 So if parties agree to ACR early on,
19 they can get a final decision on the merits pretty
20 quickly. If they wait and agree to it at the end
21 of discovery or on the eve of trial, then they're
22 not going to realize as much in terms of savings.

1 And the last slide that we have is
2 contested motions. We're within goal on contested
3 motions. There is one correction here. The first
4 quarter of Fiscal '11, it actually should be 8.3
5 weeks, not 7.6 weeks. But the rest of the figures
6 are accurate, and the 9.5 week figure on average
7 for decisions issued on contested motions is under
8 our goal for this year of 10 weeks.

9 And as you can see, the number of --
10 from the bottom row on this table, the number of
11 motions awaiting decision at the midyear is pretty
12 much where we were at the midyear last year, in
13 fact, a little bit below. So I think we're doing
14 okay on motions, but we have had Judge Lykos and
15 Judge Wolfson join the judge ranks from the
16 attorney ranks. And Cindy Greenbaum and I are
17 kind of monitoring the workload, and if it's
18 necessary, we will then fill those attorney
19 positions. But at this point, we're just kind of
20 in a -- we're meeting the goal and we're just kind
21 of on a monitoring approach to that docket.

22 MS. PARK: Thank you, Jerry. Does

1 anyone have any questions before we move on to the
2 other items on the TTAB agenda?

3 Well, you mentioned the -- in going over
4 some of the slides, ACR, and I thought it would be
5 useful to update -- for you to give an update on
6 some of the efforts the board is taking to promote
7 ACR.

8 I wanted to commend you for the recent
9 precedential decision, the SOLARIN case, because
10 it does talk about ACR, and I think getting that
11 out there will help make people more aware of it.
12 And I also think there's some developments on your
13 web page that are helpful in making people more
14 aware of what the options might be.

15 MR. ROGERS: Yes, as of today, if you go
16 to the TTAB website, you can -- our Policy and
17 Procedure section was getting a little clogged
18 with various versions of the manual and FAQ's and
19 other things, and the Notice of Inquiry, and so
20 what we've done is taken that box and sorted it
21 out, and we now have a separate box containing a
22 number of links that's just focused on ACR and

1 ADR. And within that box, you will -- so that
2 will, hopefully, highlight and make more
3 accessible all of the materials about ACR to
4 people. And the ACR/ADR box includes the ACR
5 frequently asked questions, the overview of ACR.
6 It also includes the stakeholder suggestions link,
7 which is essentially at this point the AIPLA
8 suggestions, because those -- that's the only
9 organization from which we've received
10 suggestions.

11 But what we did was take the narrative
12 presentation that they provided us in letter form
13 and we created a very detailed chart showing the
14 various options that were discussed in their
15 narrative presentation, what you get, what you
16 give up for each of the various options that AIPLA
17 suggests. And so you can go to the website and
18 you can look at the options and get a visual
19 overview in chart form.

20 And then there's a link to the narrative
21 presentation that they provided, so you can read
22 the details if you want to. And we've included

1 some commentary and some notes indicating that we
2 don't endorse any particular approach. And we're
3 willing to post any additional stakeholder

4 suggestions that come in, and we provided
5 additional comments on how some of the suggestions
6 made by AIPLA would actually work in practice.

7 MS. PARK: And I know in the
8 Subcommittee meeting yesterday you mentioned that
9 the Board itself is undertaking an effort perhaps
10 to develop some ACR options, as well, that it
11 could put up, is that correct?

12 MR. ROGERS: Yes. So that will be
13 another link that will go in that ACR and ADR box,
14 which will be Board suggestions, and those are
15 being developed by Judge Cataldo with some of the
16 attorneys. We've had some meetings and we got a
17 lot of very useful suggestions from the
18 interlocutory attorneys, who are the ones who are
19 on the front line of ACR in the sense that they
20 are having the conferences with the parties to
21 discuss what will work for them, what won't work
22 for them, and so their suggestions were very

1 useful, and Judge Cataldo is working on those
2 options now. So we'll probably be vetting those
3 and discussing those in- house over the next month
4 or so, and then eventually get them up on the web.

5 And as we also discussed in the
6 Subcommittee meeting yesterday, it would be very
7 useful if we can have set schedules that you would
8 follow if you adopt one model or another, whether
9 it's an AIPLA model or a board model, and then
10 parties could essentially sign off on a consented
11 scheduling order for a particular kind of ACR,
12 just as we now have our standard protective order
13 that the parties can sign off on, the one
14 difference being the standard protective order is
15 applicable whether the parties agree to it or not.
16 It's a default in terms of trying a case. The
17 default is the normal discovery and trial
18 schedule, but if you want to adopt something else,
19 we will, in the long run, have information up
20 there in these standard scheduling orders for the
21 various ACR options.

22 MS. PARK: Let me just say, we think

1 that's a really terrific idea, and if there's
2 anything TPAC can do to help develop those, we
3 would be pleased to do it. Because I think you're
4 right, it would help parties really focus on what
5 they are signing up for and maybe encourage more
6 participation.

7 MR. ROGERS: I'm sure we will seek the
8 TPAC's input on the board-developed proposals
9 before we post them, because we're obviously going
10 to take stakeholder suggestions as they come to us
11 and post them, but our internally developed
12 proposals, we would certainly like to get comment
13 on before we post them.

14 MS. PARK: Sure, absolutely. I'm just
15 going over our agenda here. I know that -- maybe
16 you can give us a brief update. I know there is a
17 pending Notice of Inquiry on whether or not there
18 should be board involvement mandated in some form
19 and settlement discussions, if you can just say a
20 few words about that.

21 MR. ROGERS: That notice is out and
22 comments can be received until -- I don't recall.

1 I'm getting confused with the Trademark
2 roundtables and focus groups. I think it's also
3 the 21st is our deadline for receiving comments to
4 that Notice of Inquiry. I checked this morning
5 with Judge Kuhlke, who helped author that notice,
6 and we have not received any comments yet either
7 by e-mail or through the regulations.gov website.
8 We know that there's talk out there on blogs, and
9 we know that various stakeholder groups are
10 working on submissions that they will make, so we
11 expect to receive comments, but to date we haven't
12 received any.

13 One thing I would point out is that the
14 notice seeks responses to questions that we pose
15 in the notice. And, of course, we have the TPAC
16 to thank because we worked through various
17 revisions of this with the TPAC, this Notice of
18 Inquiry. And so some of those questions seek
19 comments on whether board judges or board
20 attorneys or some mediators that the office might
21 hire in a revolving fund kind of world, where we
22 would have nobody to do that, whether they should

1 be involved more intimately in the settlement
2 negotiations of parties.

3 But there are other questions that are
4 posed by the notice which don't focus so much
5 about -- or on whether the board should be
6 involved, regardless of who would be involved, but
7 whether there should be more triggers and
8 essentially more opportunities or more forced
9 opportunities for the parties to discuss
10 settlement.

11 So, for example, one of the questions
12 asks whether the parties should be required to
13 have a second round of settlement discussions
14 after their initial settlement discovery planning
15 conference before any motions for summary judgment
16 could be filed.

17 There's another question that asks
18 whether the parties should have a forced
19 settlement discussion. I say "forced," but
20 basically just be required under the schedule to
21 at least meet and decide whether there's any
22 possible grounds for settlement after discovery

1 and before trial. So even if stakeholders think
2 that the board shouldn't be involved, they may
3 want a schedule that will include more
4 opportunities for settlement discussions. And so
5 I don't want anyone to lose sight of the fact that
6 this is a very open-ended Notice of Inquiry and
7 we'll take all suggestions that relate in almost
8 any way to settlement talks and board proceedings.

9 MS. PARK: That was an important
10 clarification, thank you for making that. I think
11 another item on our agenda, and we're getting
12 close to the end, is if you could give us an
13 update. I know you've made some progress in
14 cleaning up some of the old cases, but it would be
15 good to hear where we stand now.

16 MR. ROGERS: Yes, and where we stand is
17 there are still -- they're hanging on for dear
18 life, but there's about 400 cases that are pending
19 at the board, 400 inter-partes cases that are
20 still "proceeding," to the extent that they are
21 proceeding under the old rules.

22 We, of course, have as vested an

1 interest as anybody does in getting rid of these
2 cases and getting them off our shelves so that we
3 can just have one manual on the web and one set of
4 rules that governs all of our cases. But the two
5 largest groups of these 410 cases, more than half
6 of them, are either on track, I mean, they're not
7 suspended for any reason. They may be held up by
8 contentious motion practice or the parties may be
9 taking a long time in trial, but they are
10 theoretically moving forward. And then there's
11 120 or so which are suspended for settlement
12 talks. And that's always been a rub with the
13 board where stakeholders have always told us they
14 like the fact that they can get many extensions
15 and suspensions for settlement talks and board
16 proceedings, but then it leads to cases lingering
17 for a while. And then there are 100 which are
18 suspended for civil action, and there's basically
19 nothing we can do about those because we just have
20 to wait and see what the courts decide.

21 But as we discussed yesterday, the rate
22 of decline in this volume, this docket of old

1 cases, has slowed a little bit. We were seeing on
2 a quarterly basis greater reductions in the first
3 quarter. We lost 100 cases in the second quarter,
4 or actually before that it was 80 cases. We lost
5 only 50 of these older cases in the most recent 3
6 months that we looked at.

7 So if the rate of decline continues to
8 slow, then we will pay closer attention to these
9 groups of older cases and see what we can do to
10 make sure the ones that are moving through trial
11 actually get through trial and get decided, and
12 that we perhaps limit any future suspensions for
13 settlement talks and require the parties to either
14 settle or get on track for trial.

15 MS. PARK: Thank you. You know, one
16 thing I wanted to follow up on, and this is
17 completely changing the subject, and then after
18 this I only have one other thing on the list, but
19 that is when we talked about the TBMP, we didn't
20 talk really in this public meeting, although we
21 talked in Subcommittee about your plans to keep it
22 updated. And I think it would just be useful to

1 tell the public sort of what the current thinking
2 is on that front.

3 MR. ROGERS: Absolutely. We are
4 thinking of, as we've discussed with the TPAC in
5 the past, semiannual revisions. No, I don't think
6 that we're really in a position to do quarterly
7 revisions, but semiannual revisions are our goal.
8 We already have a list of revisions that need to
9 be made, because we have to cut off content
10 updating as of last November, and then there were
11 many months just getting all of the content
12 rendered into the form that we could put up on the
13 web. And there were federal rules changes in
14 December, so we've got additional presidential
15 decisions, federal rules changes and other things
16 that we know need to go in there. We've even had
17 internal suggestions from some of our attorneys
18 who are now working with the manual about things
19 that should be tweaked or changed.

20 And so Judge Lykos, who rode herd on
21 this project for so long a period of time, is
22 maintaining that list. And we've encouraged both

1 external and internal users of the manual to send
2 all their suggestions to that e-mail address so
3 that we'll have them all in one place.

4 And what we hope to do is use one of the
5 various FTEs that we have at the board and
6 re-craft it into an editor position. Because
7 unlike Trademarks and Patents, we haven't
8 previously had someone who was dedicated to
9 keeping the manual up to date, and so we're going
10 to be moving in that direction and, hopefully,
11 getting someone in place in the near future who
12 can then take that list of needed revisions from
13 Judge Lykos, and that would be that person's first
14 task to put out our first revision of the manual,
15 which we hope will be later this year.

16 MS. PARK: Well, again, we really
17 support that development. And I think TPAC's
18 advocated for that for a while, that there be a
19 dedicated person who would own this kind of
20 process, and so that will be really a wonderful
21 change for you, and keep those judge resources
22 free to keep moving.

1 MR. ROGERS: Yeah.

2 MS. PARK: And writing those good
3 precedential decisions.

4 MR. ROGERS: Well, and that person will
5 probably also be working on all of the Notices of
6 Inquiry and Requests for Comments that the TPAC
7 wants us to issue, so they'll have plenty to do,
8 that person.

9 MS. PARK: All right. Well, and
10 speaking of what TPAC wants you to do, the last
11 thing on the agenda that I have is just to briefly
12 mention one of the ideas that we've talked about,
13 which is crafting potentially a Notice of Inquiry
14 or Request for Comments on an option for a fast
15 track for TTAB cases.

16 And I think this has come up, and in
17 practice, there are some instances. For example,
18 if you need your trademark registration because
19 you want to record it with Customs because you
20 want to stop counterfeit goods coming in, and yet
21 you're held up in an inter-partes procedure or
22 you've had some other thing happen to your

1 application, and you don't want to wait the 176
2 weeks if you haven't -- if the other party hasn't
3 agreed to ACR, so is there a way to sort of compel
4 a faster result? So I know TPAC will be working
5 with you, but I thought maybe if you had anything
6 you wanted to add to that.

7 MR. ROGERS: Only that I'm very happy to
8 work with TPAC on this and many other Notices of
9 Inquiry or Request for Comments. I think we can
10 safely dub this the John Farmer legacy Notice of
11 Inquiry or Request for Comments. I know it's
12 something that John has been strongly behind for a
13 long time, and so he will live on, at least at the
14 TTAB, for some months to come. And I'm sure we'll
15 get a comment from you.

16 CHAIRMAN FARMER: (off mike)

17 MR. ROGERS: But then you'll be free to
18 comment as a member of the private bar.

19 MR. LOCKHART: I predict he'll be in
20 favor of it.

21 MR. ROGERS: I predict he'll be in
22 favor. So the one cautionary note I would add,

1 though, is that I think we want to focus on the
2 settlement one and getting out the Notice of
3 Inquiry on performance measures now that we've got
4 the performance measure information on the
5 website. And so I think the fast track one will
6 be kind of third in line, but it's certainly
7 something on our list to do.

8 MS. PARK: Well, thank you very much,
9 Chief Judge Rogers. Does anyone have any
10 questions for Judge Rogers? Mary Denison.

11 MS. DENISON: This isn't really a
12 question, this is a comment. As you know, I
13 was previously working with the TTAB when I was on
14 TPAC, and I'm thrilled that Kathryn has agreed to
15 take this over because she's already doing a great
16 job and I know she'll continue to.

17 But I just wanted to commend the TTAB,
18 Judge Rogers and Cindy Greenbaum, on a job well
19 done. I'm very, very excited about the TBMP
20 coming out, the progress on ACR, the notice of
21 settlement, putting up the information on the
22 website, the new Dashboard to be,

1 and I'm really, really excited about it, and
2 I just wanted to say hip hip hurray for the TTAB.

3 MR. ROGERS: Thank you.

4 MS. PARK: Here here. Oh, James.

5 MR. CONLEY: I just have one other
6 comment for Judge Rogers. On the finance side of
7 TPAC, you know, we are anxiously looking forward
8 to driving the ABI system into your operation, and
9 I know that sometimes this can be a little
10 invasive and distracting as it's rolling out, but
11 we really appreciate all of your cooperation with
12 Michelle and Steve and his team that has -- Steve
13 Porter, who are trying to make this -- actually
14 make it more efficacious and get you the resources
15 when you need them. And we know that this will
16 even lead to better things, so we thank you for
17 your cooperation.

18 MR. ROGERS: Right. I'm kind of a new
19 entrant into those discussions, as Cindy Greenbaum
20 and Julia Lee and Latoya Brown, Kim Goodwin from
21 the board have been going to these discussions for
22 a while. I've gone to them on and off sometimes,

1 but we find that the information is very valuable.

2 It's taking a while for us to tweak the
3 models and to get it working, as well, for us, as
4 it has been for Trademarks, but I think Trademarks
5 had a big head start on us and had some good
6 people working on it, but we're committed to
7 continuing with that effort, and we'll find out
8 where it leads in terms of indicating to us how
9 much time and effort is spent on certain
10 activities.

11 And it may lead to some uncomfortable
12 questions for members of the stakeholder
13 organizations about how much certain activities
14 drive cost at the board and whether those
15 activities should be funded in a different way
16 than just through a simple \$300 opposition fee.
17 I'm not suggesting any fee changes in this forum,
18 but at some point I think the logical outgrowth of
19 looking at what the costs are at the board and
20 knowing that our fees don't cover all of our
21 costs, and we have Trademarks to thank for helping
22 balance our budget every year, inevitably there

1 will be a discussion about whether costs are
2 fairly apportioned or not.

3 MR. CONLEY: We can already hear in your
4 response that you know the information is coming.
5 And whatever the questions may be, you know,
6 getting the model right so that we can address
7 those questions is what our objective is, so thank
8 you very much.

9 MR. ROGERS: You're welcome.

10 MS. PARK: I have nothing further.
11 Thank you, Judge Rogers.

12 MR. ROGERS: You're welcome.

13 CHAIRMAN FARMER: I want to jump in and
14 say it's really heartening. I mean, now that
15 you've got the TBMP put to bed, and I know you're
16 going to be keeping it up to date, it'll never be
17 entirely away from you. You all have really
18 started to make progress on the other issues, and
19 that jumped out at Kathryn yesterday, and at me,
20 and it obviously has to Mary this morning. And
21 so, you know, great job and stay after it. It's
22 just absolutely wonderful, it really excites me.

1 And just since -- I'm trying to come up
2 with a new happy phrase I can use so Howard can
3 add it to his list, and I'm struggling to get
4 beyond "last rodeo," but my one sort of just
5 general plea for the future is that when you all
6 do get around to a fast track, either Request or
7 Comments or Notice of Inquiry, I hope that the
8 future TPAC will look within its own resources,
9 but also maybe reach out a bit to try to make
10 certain that they get the experience of
11 experienced federal court trademark litigators,
12 and maybe even judges or magistrates or folks at
13 Customs. Because I think that if you haven't been
14 through the federal court fights on trademark
15 stuff, sometimes -- maybe sometimes you can't
16 fully appreciate that you can't always go to
17 federal court and leave the TTAB if you need to go
18 faster; that there's some sorts of cases you just
19 can't tee up in federal court because of lack of
20 declaratory judgment, jurisdiction, for example;
21 and so that -- when you all are looking to
22 understand the extent of the need, that you all

1 will just reach out to that community so that
2 maybe a fast track in cases where need is proven
3 will come to pass. And so that's just my one
4 little thought on that.

5 Any comments or questions from anyone
6 else on TTAB issues amongst the TPAC members?
7 From the members of our audience? We've obviously
8 put the folks on the webcast asleep, they haven't
9 had anything to say to us.

10 So, Judge Rogers, thank you,
11 congratulations, and keep up the good work.

12 MR. ROGERS: Okay.

13 CHAIRMAN FARMER: We are going to take a
14 five minute break now. And, miraculously, we are
15 now slightly ahead of schedule. And so we'll do
16 that, and then we'll come back and visit with the
17 OCIO folks.

18 (Recess)

19 CHAIRMAN FARMER: We're officially five
20 minutes ahead of schedule. I'm not quite sure how
21 we got caught up when I got us so far behind, but
22 I like that. And so we're now going to have our

1 visit with the Office of the Chief Information
2 Officer. And Tim Lockhart and Maury Tepper and
3 Howard Friedman are our champions on technology
4 issues, and so I'm going to turn it over to Tim
5 now to -- with his colleagues, Howard and Maury,
6 lead us through our technology section. So, Tim,
7 the floor is yours.

8 MR. LOCKHART: Well, thanks, John. I
9 know Kevin Smith is going to give us a good
10 briefing today, sitting in for John Owens, and he
11 and his colleagues have got a lot of good
12 information to put out about where the IT shop is
13 based on our Subcommittee meeting yesterday. But
14 before Kevin begins the briefing, I just
15 personally want to thank you, John, for all the
16 help and guidance that you've given me over now
17 almost three years.

18 You were never too busy to take a phone
19 call or sit down and chat, and I often ask you for
20 advice and counsel, which you always gave me, and
21 I always benefited from. And I very much
22 appreciate your leading, as we say in the Navy,

1 leading from the front, leading by example. And
2 so I wish you all the best in your post TPAC
3 career, and I know that you'll go on to find a way
4 to lead in other ways, in other organizations, and
5 I know they'll benefit from that leadership, just
6 as we have here on TPAC. Thank you.

7 MR. SMITH: Hi, good morning. The OCIO
8 would like to extend our thanks to you, as well,
9 Mr. Farmer, on everything you've done with us
10 working together. I know John, if he was here,
11 would be saying the same things, so we all
12 appreciate it, as well, and wish you the best.
13 It's a team effort always.

14 So I appreciate the opportunity to speak
15 in front of the Committee today. I'll just extend
16 that John Owens gives his apologies for not being
17 able to be here. He had another engagement he had
18 to be to.

19 I had been working with the Subcommittee
20 before. A little history on myself, I've got a
21 lot of industry experience within Fortune 100 and
22 1000 consulting, or to the IBM on a lot of

1 different things. I've managed organizations
2 similar in the mortgage industry to what's
3 happening here: A lot of paper, a lot of process
4 around paper, dockets, case managements, I've been
5 through that. And I'm focusing with John to help
6 move the OCIO forward and move the agency forward,
7 so it's an exciting time for us.

8 So I want to move to the second slide to
9 talk about Trademarks Next Gen and the progress
10 that's up there. My fault, first time here,
11 right, I didn't know. I thought the projector was automated
12 by voice.

MR. LOCKHART: (Jokingly) We could make voice activation a Next Generation requirement?

MR. SMITH: (Jokingly) That's coming up next, if its a
13 requirement, we'll do our best to fit it.

14 So first on Trademarks Next Generation,
15 the activities in the first year for this have
16 been a lot of planning for the program and some of
17 the implementation. I'm pleased to say that the
18 Trademarks organization, working with the OCIO,
19 has gone through the capital planning and
20 investment control process, which is the federal
21 process to go through, based on the Clinger-Cohen
22 Act, to make sure we're doing our due diligence on

1 all financial investments, dotting every I and
2 crossing every T to make sure we go forward with
3 the program in the right -- and did enough due
4 diligence up front to make sure we ensure success
5 down the road.

6 So this is handled within the agency on
7 something called a capital investment decision
8 paper. It goes between three different boards to
9 go through the process. It goes to the IT
10 liaisons on the 5th of May, as approved by the
11 CRB, the CPIC Review Board, which is the deputies
12 and the directors represented from each business
13 unit.

14 And in just a few weeks -- last week,
15 the 26th of May, was approved by the ITIRB, which
16 is basically the commissioners, the C levels, and
17 all the organizations representing looking at the
18 investment, making sure it's a good idea for the
19 agency going forward. And it was hands down a
20 good idea to move forward with, and we're going
21 forward with that.

22 And I wanted to give thanks to Gary

1 Cannon and Glenn Brown for their work, working
2 with the OCIO, to get that through the process.
3 We can start getting the work done. I'd like to
4 also introduce, based on some of the past
5 findings, we actually went through and got a
6 portfolio manager fully dedicated to the
7 Trademarks Next Generation platform, or the
8 portfolio. Sitting next to me to my left is Raj
9 Dolas. He's got years of experience in
10 large-scale developments with modern technologies
11 and modern approaches. He is the portfolio
12 manager, the point of contact, lead interface for
13 all of the programs and projects within the OCIO
14 that are going to make up what's going to be
15 moving forward in the next generation for
16 Trademarks.

17 And so he has direct reporting lines
18 within -- to the director, Mr. Kappos, as well,
19 within OCIO, and he works heavily within the
20 Commissioner of Trademarks, as well, making sure
21 all of the interests are met and we're moving
22 forward at the right level. I'm going to have him

1 actually go through the next couple of slides to
2 let you know where we are with the next generation
3 and what to expect.

4 MR. DOLAS: Thank you, Kevin, and thank
5 you for giving me a chance to speak in front of
6 you. Like Kevin said, I bring about 22+ years of
7 experience in private industry. I worked about 9
8 years in AT&T Bell Labs and about 12 years on Wall
9 Street in several different companies before I
10 joined here. I joined here in March, so I've been
11 here only for three months, and I've been drinking
12 through the fire hose. And the acronyms, I'm just
13 coming to terms with all the acronyms we love to
14 use around here.

15 So the best acronym that I would -- you
16 guys are interested in hearing about is TMNG,
17 which is Trademark Next Generation. So we can go
18 to the next slide. So the activities that we're
19 doing this year, Fiscal Year '11, are divided into
20 two distinct tracks: One track is associated with
21 platform and infrastructure improvements, and the
22 second track is associated with application

1 development.

2 So in the first track, we have three
3 programs, one is for separation and virtualization
4 of trademark applications from other applications
5 that run within the data center.

6 The second track we have -- the second
7 program we have in that is for cloud computing.
8 And by the way, trademark document retrieval is on
9 the cloud. It was published -- it's one of the
10 first things that's on the cloud right now for
11 PTO, that is.

12 And then our third program we have on
13 the first track is analyzing and evaluating
14 several business tools that we would like to use
15 in Trademark Next Generation.

16 On the second track, which is
17 application development, we have identified --
18 Trademark actually, they have identified a team of
19 managing attorneys and other members. And they
20 formed a business architects team that has been
21 working heavily to define the business capability
22 and the value streams that we will need to develop

1 the applications for TM Next Generation.

2 That work is going on track, and we
3 expect a lot of -- a lot of the work that they're
4 doing, we expect that work to be fed into
5 application development and application
6 architecture-related work.

7 If we skip to -- move to the next slide,
8 I can give you a rough roadmap of how things are
9 going and how things -- we are planning for those.
10 The first three bars on the chart show us how the
11 work of architecture is going. Business
12 architecture, data architecture, and application
13 architecture are planned out starting from March
14 onwards, and they go through 2012 for application
15 architecture.

16 The green bars are for infrastructure
17 and improvement, separation and virtualization,
18 and the Next Generation build out of the environments
19 that we'll need to start application development.
20 The four yellow bars that we have in there are for
21 our actual application development, the first one
22 being cloud computing, TDR 3.0 is planned for.

1 Work on that is going to start fairly soon. The
2 second, content management, a potential cloud
3 computing project is also planned for. Content
4 management is a question mark, we may do something
5 else instead of content management system there.

6 The next two bars are for myTrademarks,
7 which has been a heavily requested item from
8 internal as well as external users. So we're
9 planning for it right now. One of the main
10 important work item that's happening for that is
11 user-centric design that Marti Hearst is leading
12 right now, and that work will feed into the
13 myTrademark's application development.

14 All the bars that follow down there are
15 related to the capability mapping and
16 value stream development that the business architects are
17 working on. One of the things I would like to
18 point to is collection and payment management,
19 fifth or sixth bar from the bottom. Fee
20 processing next generation on the CFO side, we're
21 working very closely with them to make sure that
22 the needs of Trademark will be heard, and the

1 architecture of both the applications, the Next
2 Generation applications work hand-in-hand
3 together.

4 I'll give it back to Kevin, unless you
5 have questions.

6 MR. SMITH: All right. So as Raj was
7 saying, Trademarks Next Generation, Patents and
8 Fee Processing Next Generation are the next
9 generation of USPTO. And the architecture teams
10 and the business teams are working tightly
11 together to make sure we move things forward
12 appropriately.

13 And part of the reasons that the fees
14 are separate is based on the CFO Act. It's also
15 based on simple financial audits that we regularly
16 do, where that data needs to be separated. The
17 plans are working together with these three Next
18 Generation programs to make sure the end users
19 have a seamless interface to the USPTO, and it
20 doesn't show a difference for them, they should
21 see the best interface and the best experience
22 they can get, but we have to combine these at this

1 point to meet the best interests of the USPTO.

2 So I'd like to go back to the next
3 slide. So on the next slide, the accomplishments
4 ongoing. Trademark Document Retrieval 2.0, what
5 we like to call TDR 2.0, was deployed on
6 production on 4-7-11. As Raj Dolas mentioned,
7 this is actually a highlight that's been
8 highlighted by Vivek Kundra, the federal CIO, also
9 through OMB. There's a document here where
10 they've identified 78 agencies that have moved to
11 the cloud. We are on the first page. And when I
12 say "we," Trademarks is on the first page of the
13 document showing what they've done with TDR 2 and
14 put it out there into the cloud. And from a first
15 assessment of this document, it's out there. It
16 talks about cloud initiatives, but at the end of
17 the day, some of them were still in development.

18 DOC had five, Department of Commerce had
19 five out there, but only three of them actually
20 are out there on the cloud. The other three were
21 proposed to be there. So it just shows we're
22 moving the agency forward, as well as the

1 department, and it's a good sign.

2 Within Patent and Trademark Assignment
3 System, known as PTAS, and Assignment Historical
4 Data Base, AHD, has been stabilized. I know
5 at the last TPAC meeting in February, there were
6 some issues with the stability of the systems.
7 We've gone through and corrected the
8 infrastructure stability of those systems.

9 Debbie Cohn and John Owens are working
10 together to make sure that we do the best plan and
11 we develop the quickest and most effective
12 approach to the assignment systems going forward.
13 So there are going to be plans going forward of
14 how to handle these in the best interest of the
15 Trademarks organizations, and we're working on
16 that heavily.

17 Something else that's coming up is the
18 Electronic Trademark Assignment System, which is
19 ETAS. The upgrades are in progress and they're
20 out there and they're being planned. Our plans
21 are to make the deeds available by the fourth
22 quarter of this fiscal year. What I mean

1 "available," the plans are to have them out there
2 on the web, available for PDF download, and
3 basically the deeds will be available, and all the
4 supporting -- the assignments will be available,
5 and all the supporting documentation.

6 MR. LOCKHART: One question on that.
7 Will that be everything that's in the historical
8 database or going back to a certain point or going
9 forward? Exactly what documents will that
10 encompass?

11 MR. SMITH: It's going to be, from what
12 I -- what we're working on is the cover sheet and
13 all the supporting documentation for assignments
14 that are recorded. Does that answer the question?

15 MR. LOCKHART: Perfect.

16 MR. SMITH: The other topic, well, it's actually the
17 topic on there, the other topic --

18 CHAIRMAN FARMER: If I could jump in
19 just real quick. I'm afraid I didn't quite
20 understand the answer. Tim, I understood your
21 question to be are we going to go back to things
22 previously filed in the past or are we just going

1 to pick it up going forward, was that what you
2 were asking? So what's the plan on that? Are you
3 all going to go back and reach into past
4 assignments and put up assignments documents or
5 just sort of say from this point forward in time,
6 assignment documents are going to go up? And if
7 you don't know, then you can say we'll get back to
8 you later.

9 MR. SMITH: We're going to get back to
10 you later.

11 CHAIRMAN FARMER: Okay.

12 MR. SMITH: I mean, I understand exactly
13 what you're requesting. I am fairly sure, but I
14 want to come back and --

15 CHAIRMAN FARMER: That's fine, wait
16 until you all know.

17 MR. SMITH: I appreciate it, thank you.
18 So the other mention here is, we are actually
19 still working, it is in the planning phases to
20 have e-mail notifications and e-mail responses
21 back instead of some of the ways things are being
22 communicated with assignments, and those are still

1 in the plans, they're just not on this slide going
2 forward.

3 So the ULP update, Universal Laptop,
4 what we've done is, we started deployment in
5 March. To date, there are 1,200 laptops that have
6 been deployed and we're going at about a rate of
7 50 a day. I actually looked today on the Intranet
8 here at the PTO, we have a running ticker, and
9 we're probably -- I think it said 1,347, so we're
10 even past this now. This is going on every day,
11 it's just a moving target as far as a number to
12 keep track of.

13 So far to date, though, the CAO office
14 and the Board of Patent Appeals has been fully
15 deployed, and we're actually working with the
16 director's office, as well as within the OCIO,
17 based on the schedule for deployment. Actually,
18 Mr. Kappos himself has had a laptop since the
19 beginning of this week, and everything is going
20 fine. There's always a small learning curve with
21 new technology. Some of the new office suites for
22 Microsoft, where did my button go, where is my

1 icon, we're dealing with a lot of those, but as
2 far as the data being there, the system being
3 stable, we're getting good responses back.

4 And also to mention with this, it's not
5 just the laptop and the software. Bundled into
6 this is also collaboration software and some
7 messaging, personal video conferencing, voiceover
8 IP communication phones are being swapped out for
9 a better, more stable platform. So as we're doing
10 the shipments, these things are included within
11 that to enhance the end user experience, as well
12 as a high- definition camera for that user
13 experience within the agency. And as it says up
14 here, two technology centers within Patents have
15 been completed, as well.

16 So currently from the ULP, what does
17 that mean to Trademarks and TTAB? Well, we have
18 34 -- actually it should be 34 up there, I believe
19 -- systems out to the end users within Trademarks,
20 and basically this is a very broad and diverse set
21 of people to get the most feedback we can from the
22 success of the ULP. People are testing

1 applications, making sure it works. We're getting
2 great feedback from the phone communications.
3 There are some issues we're still working on that
4 I'll address on the next slide.

5 Basically the legacy applications within
6 the Trademarks organization have been heavily
7 built within visual basic from Microsoft, which
8 is, it's based on a technology approach for client
9 server design, which basically means you have a
10 very large, heavy application on your laptop which
11 communicates to the data over the network, and so
12 there's a marriage there of the network and how
13 well it performs to make that application
14 successful.

15 When you're in this building, and the
16 USPTO owns the physical network, it's very fast,
17 very quick, the applications work superbly, from
18 the connectivity standpoint and the performance
19 standpoint. When you actually go out and separate
20 some employees and have them with a laptop working
21 from home, we've taken out the ownership of that
22 network, and we're now going over Internet service

1 providers such as Comcast and Verizon that own the
2 network connectivity.

3 There's latency, it's the laws of
4 physics. Data takes a little bit longer to reach
5 the laptop. Some of the applications from the
6 legacy standpoint, specifically Fast and X-Search,
7 are not able to handle that latency as well as we
8 were hoping.

9 Some of this is actually based on
10 underlying technology and protocols within Microsoft, that is
11 just the way the Internet communications work
12 between the client application and the database.

13 As soon as you separate the application and data, the protocol
used was never intended

14 to be fully capable to support that fully.

15 We've gone through working on solutions.
16 There is always going to be a solution to it,
17 it's the matter of what's the best one at the
18 time. We're actually working with solutions,
19 bringing in industry standard solutions to
20 basically stream that application to the end user,
21 not the whole desktop, but looking at Fast and
22 X-Search and saying, can we make the user

1 experience acceptable? Can we make the user not
2 know we've changed anything, where they would
3 actually still have the icon on their desktop to
4 go to Fast, and they think the application is
5 running on their laptop, but in a sense, it's not,
6 and it shouldn't matter to them as long as they're
7 getting the right performance.

8 The application might be running back in
9 the data center. It might be streamed to them
10 over the Internet in a much more forgiving manner,
11 and I'm going to say forgiving based on latency of
12 networks. Being able to take the fact that the
13 data might take a little longer, and that's the
14 approach we're looking at to basically solve this,
15 and in the gap, basically do a bridge until Next
16 Generation takes these over. Because it comes
17 down to what makes the most sense: Go into the
18 Next Generation, write those applications effectively to be
19 tolerant of latency, or go back and try to rewrite
20 something we know that's not in our best interest
21 necessarily at this point to do. We'll put the
22 best solution in place to make sure the end users

1 are getting what they need. But as I said, on
2 campus -- oh, I'm sorry.

3 MR. LOCKHART: I just had a follow-up
4 question. So is it the case then that you'll
5 begin or continue rolling out the laptops to the
6 Trademark employees once you've got your solution
7 for Fast and X-Search?

8 MR. SMITH: Yes.

9 MR. LOCKHART: Okay, fine.

10 MR. SMITH: The plans are within the
11 next few months to have this resolved and then
12 continue to roll out. Is that the right one? It
13 is, all right. The next topic I wanted to address
14 was basically, it's a contractual topic, these
15 things are out there in the public domain, so I'm
16 going to be very brief on it, but it's something
17 we wanted to advise to the Committee.

18 We're basically going through a contract
19 award that is being protested. The system
20 development and integration contract is basically
21 the contractors we use to do all application
22 enhancements and all maintenance of applications.

1 Currently this is not just affecting the
2 Trademarks organization, this contract is used in
3 Patents, it's used across the agency. Everyone is
4 feeling some of the delay within this.

5 What happens is that one of the offerors
6 have actually filed a protest with GAO. So
7 actually following the process, following what
8 needs to happen when a protest is filed, GAO is
9 due a response back to the USPTO. The response is
10 due back at the end of July, as it shows there,
11 for July 25th, but it says "by." We may get a
12 response tomorrow, okay, but the deadline as far
13 as their turnaround to us is another two months
14 basically if you count it from today, so we're
15 still waiting on that.

16 What we're doing is continuing to do
17 work with the existing contractors on the SDI
18 contract. The SDI Next Gen contract is the one
19 that's under protest. So we still have
20 opportunities to do work, but we're working with
21 Trademarks specifically to figure out which work we
22 want to continue, which we want to delay based on

1 the protest, when we get the answer back, to make
2 sure we're doing things at the right time.

3 So as it says here, they're currently
4 working on three discreet task orders to make sure
5 that Madrid and Fast and TEAS are -- we're
6 handling what we need to within those three
7 systems.

8 And that's all I've gone through for
9 today, so I'm trying to do everything early as
10 we're still keeping on pace.

11 MR. LOCKHART: Perhaps just one or two
12 follow-up questions. And, by the way, it was a
13 great briefing, and I appreciate, Kevin, your
14 coming in and sitting in for John. Raj, great to
15 have you on board. You've got, you know, a big
16 project there, but I'm sure you're up to it and we
17 look forward to continuing to get these updates
18 going forward. It looks like things are really
19 beginning to come together, you're starting to get
20 the system architecture in place and move forward
21 with these discreet projects, so I think that's
22 all good news, and I'm pleased to hear about where

1 you are with the laptop program. I recognize with
2 these legacy systems there are some problems, but,
3 hopefully, you can arrive at a solution.

4 One thing that John had mentioned, and I
5 just want to get some clarification on this, have
6 there been any problems? The new laptops have
7 Windows 7?

8 MR. SMITH: Correct.

9 MR. LOCKHART: Other than the two
10 applications you mentioned, have there been any
11 problems in terms of Windows 7 or any other
12 conflicts with the software?

13 MR. SMITH: There are minor problems
14 that are being fixed. There have been some issues
15 with the voice over IP connection to the laptop,
16 but these things are, you know, they're little
17 things that happen when users look at the laptops.
18 Overall, within Trademarks, the two major
19 applications are these.

20 MR. LOCKHART: Okay, very good.

21 MR. SMITH: Other than the nuances with
22 the new Office Suite.

1 MR. LOCKHART: Right.

2 MR. SMITH: It's just getting used to a
3 new interface.

4 MR. LOCKHART: Okay, very good. And you
5 mentioned that later this year we expect to be
6 able to see the actual assignment documents in the
7 database, and I know you're going to get us some
8 clarification about the exact time period that's
9 going to be covered there.

10 Also, yesterday we discussed sending out
11 the Notices of Recordation by e-mail, and is that
12 something you think you can turn to later in the
13 year, once some of these contracting issues and
14 other things have been resolved?

15 MR. SMITH: The e-mail is actually in
16 the planning. But as you said, with contracts and
17 everything else, it's in the planning, and we have
18 not lost sight of that, it's just a matter of when
19 does it make sense to put that in. And it's not
20 one of the long-term items. It's something in the
21 short term.

22 MR. LOCKHART: Okay. So that's not

1 something where we'll have to wait for full
2 deployment of TMNG, but we'll get that sooner, we
3 hope?

4 MR. SMITH: That is the plan.

5 MR. LOCKHART: Okay, fine. I think
6 that's all I had. I'll turn to my colleagues,
7 Maury and Howard, and see if they have any
8 questions.

9 MR. TEPPER: Thank you. I just want to
10 underscore, I think on behalf of everyone, the
11 importance of this project. I think we've already
12 seen the presentations today. We understand where
13 we are in the budgeting process, although we have
14 reason to hope the models may change at a time
15 where we are having to make cuts to do without
16 many things and many services.

17 I think it's an important investment
18 that, you know, we are moving forward with trying
19 to realize the goal of a separate unified sort of,
20 you know, singular trademark operating system. I
21 think it's testament to what Trademarks has
22 accomplished in the past with your help, and we

1 just look forward to working with you guys and
2 supporting you and being able to realize that
3 vision.

4 MR. SMITH: Absolutely, thank you.

5 MR. FRIEDMAN: And I would just add, we
6 look forward to continuing working with you and
7 the Trademark Office to iron out all the bugs with
8 the laptop and look forward in a few months,
9 hopefully, to a successful deployment.

10 MR. SMITH: Thank you very much. That's
11 the whole plan, find the bugs, fix them, so we're
12 working strategically to make sure that happens.

13 CHAIRMAN FARMER: Anything from any
14 other members of TPAC on technology issues?

15 Thanks for coming today. You all have
16 made a lot of good progress and we really
17 appreciate that. And I know that I don't need to
18 say this for it to happen, but just, you know,
19 keep after it with all deliberate speed.

20 There could be a change of
21 administrations in a couple of years, you never
22 know. I'm not here advocating for or against,

1 just noticing that it could happen. And you just
2 never know what a new regime would do if there was
3 a new regime brought into the office, if there was
4 a change in administration. So I just hope you
5 just get on as far down that road as you can so
6 that if someone who came in had a different mind
7 about how resources are allocated, then all of
8 your good work wouldn't fail to reach its full
9 potential, but keep it up.

10 Any questions or comments from members
11 of the audience on technology issues?

12 Okay, well, thanks for visiting with us
13 today. Now it's open mic night -- or morning;
14 it's still morning by 14 minutes. Anyone in the
15 audience have anything they wanted to bring up on
16 other stuff? Yes, sir. Why don't you step up to
17 a microphone so that we can make certain we
18 capture your stuff?

19 MR. DONAHEY: Good morning. I'm Mark
20 Donahey from Erik Pelton Associates, a trademark
21 attorney. Thank you, Mr. Farmer, for your
22 leadership all these years. I just had a question

1 about the trademark litigation study. I know the
2 study has been sent over to Congress. I was
3 wondering if there were recommendations in the
4 study that were made, is the Patent and Trademark
5 Office taking any steps to implement any of those
6 recommendations or are things just kind of on hold
7 waiting for Congress' response to that study and
8 what are the next steps?

9 CHAIRMAN FARMER: Thanks.

10 COMMISSIONER COHN: I think we would
11 first need to hear the reaction of Senator Leahy's
12 office and Congress to the study. And to the
13 extent that there are recommendations that the PTO
14 would be involved in taking the steps toward, we
15 would do that. Many of the recommendations are --
16 well, there were three distinct recommendations;
17 for the most part they involve the private bar and
18 practitioners. But again, to the extent that the
19 PTO would be involved, we will do so as soon as we
20 get some affirmation. Thank you.

21 CHAIRMAN FARMER: Okay. Thanks for
22 coming, by the way, and I appreciate the coverage

1 that you all have been giving to TPAC, we really
2 thank you for that, for your blog. Maury, is
3 there anything you wanted to add in since we are
4 now looking backward and you're looking forward?

5 MR. TEPPER: Big shoes to fill, John. I
6 think, you know, we have an excellent group of
7 people, we have an excellent agency to work with,
8 I'll simply try not to break anything. Do keep
9 your eyes on the website. Of course, it'll be a
10 time of transition, but we'll be scheduling our
11 upcoming meetings, and we'll look forward to
12 continuing the good progress that we've seen the
13 office making.

14 CHAIRMAN FARMER: That sounds great.
15 With that, we are done. What I'd ask is that if
16 the existing TPAC members would just huddle up
17 right up here just for a quick minute so we can
18 figure out what we want to do with lunch plans
19 since we got done a little earlier than we
20 anticipated. And thanks to all of you all at the
21 office for working with us, and thanks to everyone
22 who showed up today. A lot of life has just shown

1 up. Take care, everybody.

2 (Whereupon, at 11:48 a.m., the
3 PROCEEDINGS were adjourned.)

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