

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, January 13, 2017

PARTICIPANTS:

TPAC Members:

DEE ANN WELDON-WILSON, Chair

WILLIAM G. BARBER

JODY HALLER DRAKE

LISA A. DUNNER

JONATHAN HUDIS

TIMOTHY J. LOCKHART

MEI-LAN STARK

ILENE B. TANNEN

BRIAN J. WINTERFELDT

Union Members:

HOWARD FRIEDMAN, NTEU 245

TAMARA KYLE, POPA

USPTO:

DANA COLARULLI, Director, Office of
Governmental
Affairs

AMY COTTON, Senior Counsel, Office of Policy
and International Affairs

JOHN OWENS, II, Chief Information Officer
GERARD ROGERS, Chief Administrative
Trademark
Judge

ANTHONY SCARDINO, Chief Financial Officer

PARTICIPANTS (CONT'D):

MARY BONEY-DENISON, Commissioner for
Trademarks

ROBERT HARRIS, Acting TMNG Portfolio
Manager

GREG DODSON, Deputy Commissioner for
Administration

* * * * *

P R O C E E D I N G S

CHAIRPERSON WELDON-WILSON: Hi

everyone. If everybody could get settled in we can get started with our meeting today. I am Dee Ann Weldon-Wilson and I am Chair of TPAC. We're delighted to be here for our first meeting of this fiscal year.

I wanted to take a minute to introduce our members of TPAC. Over here to my left is Bill Barber. He's just been appointed for a second term and we're very pleased to have him back. He is Vice Chair of TPAC and he's founding partner of Pirkey Barber in Austin, Texas. He focuses mainly on litigation and policing. He is also a former president of AIPLA. And by the way, I'm not mentioning every credential of everyone here because there are too many. We would be here all day.

Over here to my right is Jody Drake. She is a partner at Sughrue Mion, and she comes and trades on all aspects of U.S. and international trademark law. She was actually at the PTO for seven years as a senior

attorney and an examining attorney. She has served as a chair of the Trademark Relations Committee for AIPLA, and has chaired INTA and D.C. Bar Association trademark committees.

Then we have Lisa Dunner over here to my right. This is her first term. She is founder and managing partner for a D.C. firm called Dunner Law. She practices trademark, copyright, and unfair competition. She is immediate past Chair of the ABA Section on IP Law.

Jonathan Hudis over here is also in his first term. He is a partner at Quarles & Brady here in Washington, D.C. He focuses on being a litigator and also is a domain name panelist for WIPO and the National Arbitration Forum. He has held several leadership roles in the AIPLA, including being on the Board of Directors. He also just completed his three year term as the CLE Chair of the ABA IP Section, and now serves as a member of its Council.

And Tim Lockhart, to the right. This is just to keep it interesting; we're

going back and forth. (Laughter) He is in his second non-consecutive term on TPAC. He's a member of Wilcox Savage and leads the IP group there. He's in Norfolk, Virginia. He is or was recently a Board member of the Virginia State Bar IP Section. He works with the Old Dominion University Research Foundation and the Technology Hampton Roads. I need to know more about that someday. But very interestingly, he's also a retired captain from the U.S. Navy Reserves.

Mei-lan Stark, just a couple of people down, is also in her first term. She has recently started working with NBC Universal Media. She's also a former president of INTA. She has previously worked at other places including FOX and Walt Disney, as I recall.

We are very pleased to have a new member here, Ilene Tannen. This is her first term on TPAC. She is of counsel to Jones Day in New York. She practices trademark, copyright, and unfair competition law and has been very active in INTA. She has a large

number of credentials that will make her just a perfect member for TPAC. So, we are glad to have you on board.

I think it's very interesting that alphabetically they came together -- another new member. We have Brian Winterfeldt over here, who is a partner and co-leader of the Global Brand Management & Internet Practice at Mayer Brown in New York and Washington. So, he's one of those commuter types that goes between the different cities. He advises clients on trademarks and brands including internet governance and domain name issues. He has also been very active in INTA over the years. We're also really happy to have you on board. I know you'll add a lot to TPAC and we appreciate that.

We also have with us today Tamara Kyle, who is a Union representative from POPA, the Patent Office Professional Association. And we also have Howard Friedman, who is a Union representative from National Treasury Employees Union, Chapter 245.

So, we have a rather full contingent

today, really pleased to have everyone here. I think we'll have a lot of interesting content. First upon our agenda is Dana. Welcome, Dana Colarulli. We are pleased to have you here today. Are you going to give us a nice update on all legislative and government affairs matters?

MR. COLARULLI: I am, to the extent I can.

CHAIRPERSON WELDON-WILSON: Wonderful. Thank you. We look forward to it.

MR. COLARULLI: Good morning, everyone. It is still the beginning of the 115th Congress, and the Congress is just really getting organized. So, I'm going to give you a sense of some of the leadership changes that we're looking at, some of the work that my team is doing to identify new members, get in and talk to new members about what the PTO does, even before they get into our issues so we can start developing some relationships. And I'm also going to review some of the activity that happened over the last 114th Congress.

It's tough to predict what may happen with this coming Congress. We do know that there will be a number of issues unrelated to IP that the Congress will want to address in the very beginning. And then they'll likely pick up some of the IP related issues raised in the last Congress.

There are also some Supreme Court cases that are looming on patents and on trademarks and on other issues that might cause the Congress to react and at least discuss if not propose legislation. A lot of unknowns, but we're doing our good work, at least in the beginning, to reach out to members of Congress and make sure they know what it is that we do.

So, let me start out there just as a primer for the new members of TPAC and just as a reminder of things that my office does. As you expect, we're the liaison between the Office and Congress, but there are a lot of other things that we do as well. Certainly, we represent PTO and the Administration's legislative agenda, prepare testimony and

brief staff. Often times they'll come to us and ask us for technical advice on legislation that they're looking at.

A good example of that is the various legislative proposals on Cuba and the Havana trademark last year in the Appropriations context. Staff from both sides, came and said what would be the impact if we did this? So, very neutrally, we provided technical assistance on the impact of the provision on the Office, and I think in a few cases they understood, this was not the intent. So, often times we're asked for technical advice and we provide that with the help of many people here at the PTO.

We also are the entity that facilitates inter-agency clearance for a lot of documents related to various different IP issues. Those documents often make their way to the Hill, so my office and colleagues of mine throughout the government run that clearance process.

We'll also address a lot of constituent issues. There are a number of

members that come in with a constituent that's having difficulty with a trademark, and they don't really understand their options. So, we are another resource for that constituent - to communicate: here are your options, here are what the next steps are. We suggest you always consult legal counsel, certainly, but we can be a guidepost to helping a constituent that goes to his member of Congress because they just don't know what to do next.

And then lastly is building good will and building relationships. It has been an especially interesting time with our regional offices. As we've opened up those offices we've had a brand-new communities that have been very excited about what PTO has to offer, what role we're going to play in their community. The Office has also been a great meeting place, gathering point, for those who are innovating or trying to understand the IP system. So, we've been able to build some great relationships, not just with the federal members but with state and local too.

As a snapshot, that's some of the

things that we do. Organizationally, we've now been able to fully build an OGA staff that I think has been able to both hit the House and the Senate and all local folks during the last couple of months. So, I'm happy where we are.

I think you all heard me say this at the end of last year, we had a very busy 114th Congress. We testified a record amount of times since I've been sitting in this seat. Twice during the first session, once on the Patent Act in front of the House, and the second confirmation hearing for Director Lee. Can you go to the next slide?

The second session, we had a record of five hearings. Here are three. One where Mary testified on Cuba issues, counterfeiting, and then anti-trust and enforcement issues. Next slide, please.

Two more, one the General Oversight hearing with Michelle Lee in front of the House Judiciary Subcommittee, Darrell Issa was the Chairman for that hearing. That's General Oversight, every issue under the sun could be

asked. At this hearing, they focused on some of the workforce management issues in the IG report. They focused a lot on the patent quality issues, and they rightfully should, and many things that we're doing here at the Office. That was in September.

In December Russ Slifer, our Deputy Director, went up and testified in front of a different committee, not a committee of our substantive jurisdiction: the House Oversight and Government Reform Committee, Subcommittee on Government Operations. That subcommittee has oversight over the Department of Commerce Inspector General. They, in particular, called the hearing to talk about PTO and talk about the IG report on time and attendance at PTO. They saw this as a follow up from the hearing when Peggy Focarino, former commissioner of patents, had testified on similar issues a couple of years ago. And they wanted to focus on the IG report. So, we provided testimony. I expect that they'll continue to look at time and attendance issues as we move forward.

But I'm happy that our written testimony provided many of the good arguments that I think folks on the outside who also looked at what the IG found had made, and that helped us to get the good story of all the things that we've been doing over the last couple of years out. The hearing itself was a great forum for that, but I think the written story will be able to highlight all of the good things that we have done, certainly, to address these issues and not get mired down on some of the politics.

I included this slide just to give a sense that we're currently in a continuing resolution. Our appropriations -- this is very common, and certainly in an election year with a new president as they come in. This is a bit longer than other CRs we've seen in recent history, about 210 days. I think that leans towards probably having a full year continuing resolution at the end. It's hard to conceive that the incoming president would then pass a full budget in that remainder. I think they'll look and spend their effort on

proposing a budget for the next fiscal year.

But, this just gives you a sense of where we are. The last time all Appropriations bills were passed individually was 1994. So, Congress continues to try to work back towards that but they've been unable to achieve that.

Leadership changes in the 115th Congress. Not much in the House of Representatives. Darrell Issa, the Chairman of our IP Subcommittee, had a tough race, a very borderline race that continued -- his count continued for quite a long time, so it was unclear whether he would be re-elected. He was. So, no changes at all in the House leadership on the Judiciary Committee.

On the Senate side, after having the opportunity two or three times, Patrick Leahy from Vermont, the ranking member of the Senate Judiciary Committee, opted to become the ranking member of the Senate Appropriations Committee, leaving space for Senator Feinstein from California to take the ranking slot. Many of you have probably seen her during some

of the hearings on the nominees, already playing that role. She has been on the Committee for many years and knows our issues. She certainly has a constituency that's interested in IP issues. Patrick Leahy continues on the Committee but just not as the ranking member anymore.

So, that's the Senate Judiciary changes. There are also some changes that come along with that, changes in staff. So, we're still trying to get a handle on the staff that will really be taking the lead on our issues and trying to create some of the relationships there. It's critically important for us because we put a lot of effort and time into helping the previous staff understand our issues, so we'll continue to do that now with the new staff.

On other committees -- there are certainly some changes in the Appropriations side. So, those are still both being announced and coming together, so we'll be keeping an eye open for those changes.

I'll end out with a little bit of

speculation on IP issues likely to be addressed in the 115th Congress. As I've said, there are a number of issues that were discussed particularly on the patent side, a lot of time on copyright issues as well, a little bit on trademark issues and reaction to the Supreme Court cases.

I expect patent litigation reform to come up again, the question is when. Copyright issues, we expect will come up again, the question is when, although we have some indication that both the House and the Senate committees have some interest in moving forward sooner on copyright issues than later. In particular, as the new Library of Congress replaces the register of copyright. She is going through a process right now where they are looking to replace that position. Congress certainly wants to have some say into that process. Depending on how much say they have, I think will depend on how soon they act.

But at least on the House side we've seen over two years of hearings, lots of

written comments and discussion of both structural changes and substantive changes to the copyright system and identifying things that should be done and things that shouldn't, things that should be left to the business community. I think that conversation will continue. I think that also indicates that they've put in enough time and effort and energy that they're going to want to do something. So, we'll be watching that.

The last two things under copyright, Small Claims Court. That was proposed in two pieces of legislation at the end of the last Congress and we expect them to start off with that in any package that they move forward on in copyright. And then two treaties that this Agency helped to negotiate in WIPO have been sitting there. We've sent up implementation legislation last Congress and seeking the Senate to take action on ratifying that treaty and then our judiciary committees to introduce and enact the implementing legislation.

As I said in the very beginning, we might see some reaction to Supreme Court cases

on trademarks depending on what happens there. And certainly, I think we'll continue to see oversight on our workforce issues.

There is a good story to be told about the actions that USPTO has taken to make sure that we're managing our workforce. I think, certainly, if you look at the scope of the IG's report, I think it says some good things about the extent to which we're able to create physical digital footprints of all of our employees.

And we need to continue to say, and certainly my team is, that telework is a great business option for PTO. It's working for PTO, it can work for other agencies. And that certainly is not causing problems that the IG is pointing out. So, we'll continue to herald that as a success as we move forward.

Certainly, we'll see what happens with TEAPP. TEAPP expires in December of 2017. We've started discussions. We're unclear whether Congress will be able to pick up legislation and extend it, but we're making preparations here at the Agency for either

situation.

I think that's all I have. I'm happy to answer any questions that you have. I apologize for my stuffy nose, I'm fighting a cold.

CHAIRPERSON WELDON-WILSON: Well, we hope you feel better soon.

MR. COLARULLI: Thank you very much.

CHAIRPERSON WELDON-WILSON: I believe Lisa Dunner has a question.

MR. COLARULLI: Hi Lisa.

MS. DUNNER: Hi Dana. Just wondering if any names have been publicly discussed for the new register of copyrights. Are you aware of any?

MR. COLARULLI: I'm not aware of any. I know that a number of the associations have been creating lists. The librarian took a unique move of asking for comments both on the characteristics and names as well. So, that process is still ongoing. Otherwise I haven't heard any specific names, but I know that there is an active discussion with a lot of our stakeholders.

I also know that -- I think she did reach out to Congress. As I said, unclear as to what role she's asking Congress to play in her selection, but it seems as if she's moving forward and likely would move forward before Congress is able to act.

CHAIRPERSON WELDON-WILSON: Thank you. And Jonathan Hudis has a question.

MR. COLARULLI: Hi Jon.

MR. HUDIS: Hi Dana. Looking at your slides, one piece of testimony I remember from the last Congress was the independence of the Copyright Office from the Library. That wasn't among the bullet points in your slides. Is that effort going to continue?

MR. COLARULLI: I think it will. I included kind of a vague mention of Office structure. There are at least three distinct options on the table. One is to keep the Copyright Office exactly where it is but give it a little bit more independence. And that's the option that I think at least the Congressional staff have discussed most thoroughly. The House Judiciary Committee

came out with a set of principles at the end of the Congress, mirroring in many ways principles set up by the Senate. Both said keep it where it is but let's look at some autonomy.

A second option would be to make it an independent agency, either within the legislative branch or the executive branch. A third option would be to combine it with the executive branch. And certainly, one option would be to create a US IPO and put all three types of IP protection under one roof in the executive branch.

So, I think those conversations do continue. I think the most likely legislation to move forward is the most minimal option, depending on how Congress responds to the Librarian of Congress and the selection that she makes in the new register. I think that could fuel interest in looking at other, broader proposals.

So, that's where we are right now. But to answer your question, I think it will continue. And I think it is certainly a

viable option and models other countries around the world which have one government entity that looks at all these IP rights. So, I think both Congress and the stakeholders are keeping that open as a potential move for the U.S. long- term.

CHAIRPERSON WELDON-WILSON: Thank you very much. If there are no other questions, then we'll thank Dana for his time and move on with our agenda. Thank you so much, we appreciate you're coming to us today.

MR. COLARULLI: You got it. Happy to be here.

CHAIRPERSON WELDON-WILSON: Thank you. Our next presented is Amy Cotton, who is Senior Leader of the Office of Policy and International Affairs. You have some interesting things to tell us as well, don't you?

MS. COTTON: Hopefully. They're interesting to me. I hope they're interesting to you as well. Shira couldn't be with us today so I am filling in for her.

I know that I have shared in the

past -- Shira and I have both shared -- OPIA's multilateral policy work with TPAC, such as the WIPO geographical indications issues, and other food labelling law issues. BBut today I wanted to focus more on our regional work. Each member of the OPIA Trademark team, and there are seven of us, are assigned to a specific region of the world. We have a primary person assigned and then a partner assigned. My colleagues John Rodriguez and Helene Liwinski -- where did Helene go? Oh, there. They prepared for you today a tour of Latin America, starting with Brazil then Argentina, Paraguay, Chile, Peru, Columbia, Central American, and the Caribbean.

John and Helene work with our three IP attachés in the region. We have Todd Reves in Mexico City, who covers Mexico, Central America, and the Caribbean. We have Ann Chaitovitz in Lima, Peru, who covers the Andean region. And we have Laura Hammel, posted in Rio de Janeiro, who covers Brazil and the rest of Mercosur. Laura was formerly in the OPIAOPIA Trademark group, so we

certainly know we have a trademark expert around there.

I'll start with Brazil and Mercosur and work north. Over the years in Brazil we've developed a very strong relationship with Brazil's IP Office. We have collaborated jointly in many areas including trademark examination training, examination quality issues, as well as sharing experiences on initiatives such as teleworking or trademark IT systems. In fact, we do have a memorandum of understanding on office to office cooperation with INPIINPI.

Our efforts have been mainly focused on helping INPIINPI address the serious issues that have been plaguing it for the last few years, and particularly the large backlog of applications. Reports have the backlogs from about three years from filing to initial examination. The INPIINPI has stated that it's planning to ultimately get the backlog down to 18 months or less by the end of 2018.

In November 2016, the INPIINPI hired 40 additional examiners. That will bring the

total number of examiners to 150. Certainly, they are incentivized to get to 18 months because they plan to join the Madrid Protocol. We don't have a timeline yet, but they certainly are positioning themselves for that.

Moving on to Argentina. We're pretty excited about this. A new opportunity for engagement has emerged with Argentina. A change of government has recently taken place and we find now that they're much more ready to collaborate with us than they have been in the past. Our attaché, Laura Hammel, has already met with Argentina IP Office (INPI) officials including its director general to discuss future possibilities between our offices.

Areas of future cooperation with INPIINPI include trademark examination training as well as working on WIPO issues such as geographical indications. We plan to enter into a memorandum of understanding on office to office cooperation with INPIINPI this year.

In Paraguay, Laura has been

instrumental in engaging with IP officials at Paraguay's Office (DINAPI).). We have provided trademark examination training on certification marks and collective marks to DINAPI trademark officials. And all this has been in due part to efforts by Paraguay to update and modernize its trademark regime to accept these new types of trademarks, at least new to them.

In addition, we're planning to work with DINAPI on additional trademark examination training, specifically on trade dress and other types of non-traditional trademarks this calendar year. Actually, in February.

In Chile, we have a great relationship with the IP Office (INAPI) and have worked with the head of their Office, Max Santa Cruz, for many years. INAPI is actively participating in the TM5 ID List Project reviewing the proposed identifications, making suggestions for new identifications to be used by applicants who are filing in TM5 countries or TM5 ID list participant countries. They've

been very interested in how USPTO handles non-traditional marks, including sound and scent. They don't know how to handle the non-visually perceptible marks, so we're helping with that.

However, on a less positive note, a troubling issue in Chile that I wanted to flag for you is a recent food labeling law that affects trademarks in Chile. Chile issued regulations concerning the labeling of nutritional composition of food products. Under the law, when a food product exceeds the specified limits of sodium, sugar, calories, saturated fats, then such products cannot be advertised in a way that targets children under 14 years of age, such as advertising on products in schools and certain forms of media or through children's products. Due to the ambiguous implementation of the regulations, images and characters that were being used as trademarks--Tony the Tiger, the M&M guys--they're being caught up in this advertising ban.

The regulations have now resulted

in the producers of these goods being required to alter their packaging by removing the trademark characters. If not removed, those goods cannot be sold and they are blocked on importation.

CertainlyCertainly, we are alarmed by this. This is very much in line with the infant formula discussion that we had several meetings ago. We're currently working with the U.S. government interagency--this is USTR, State, HHS, and others, and the U.S. Embassy in Chile--to seek clarification on implementation of the new food labeling regulations. We're raising concerns about the negative impact on trademarks.

In Peru, we have a new attaché posted in Lima covering the Andean region, that's Ann Chaitovitz. She also was from OPIA. Similar to other IP offices, we have an MOU with Peru on office to office cooperation. We'reWe're currently renewing it for another three years. We're focusing on this increased office collaboration. We've done IP roadshows in Peru, and we've shared information on

trademark examination quality initiatives.

In Columbia, we have had a great relationship there for a long time. They've been an active participant in the TM5 ID List Project. And, by the way, we're also extending invitations to Peru and Brazil for the TM5 ID List. Columbia was of course one of the first Latin American countries to join the Madrid Protocol. We've provided a lot of expertise in that process as they were acceding to it. Other areas of collaboratingcollaborationcollaboration included providing training on examination of non-visual marks and certification marks.

Now, let's turn to Mexico, Central America, and the Caribbean. In Mexico, Todd Reves is our attaché. We have a positive relationship, of course, with Mexico. We renewed the MOU on cooperation with INPI, the Mexican IP Office, last year. You may have heard that Mexico recently established a trademark opposition system. We were in close consultations with them on that. We had indicated to them how the TTAB operated and we

participated in various seminars in Mexico. We provided information to INPI on the U.S. experience in Madrid when Mexico was in the middle of its own implementation. Mexico has been an active participant since 2011 on the TM5 ID List Project. They've been voting on proposals and making submissions.

And, of course, bad faith filings continue to be an issue, not only in Mexico but everywhere. We're continuously sharing information as to how we handle such matters and are raising concerns with the relevant IP government authorities as appropriate when cases are brought to our attention.

In Central America, we've been dealing a lot with geographical indications issues because there was a recent trade agreement between Central America and the EU. That has raised a lot of concerns for our dairy industries. For example, in Costa Rica we've been working with USTR colleagues to get clarification on how Costa Rica will treat geographical indications consisting of compound names. An example, Provolone

Valpadana. We want to make sure that any individual generic component, like provoloneprovolone, remains freely available for all producers to use.

But, of course, we know overly broad protection for GIs has resulted in loss of export markets for U.S. producers, and for the dairy industry in particular. They're no longer able to export goods to those countries that are implementing the EU's version of GI protection, this overly broad protection. But, of course, we're continuing to work to keep our export markets open.

Also in Costa Rica, we provided trademark examination training on geographic signs to try and help with this effort. We've had similar exchanges on GI issues with the IP offices and trade officials in Honduras, Guatemala, El Salvador, and Nicaragua.

Now, in the Caribbean we've provided trademark examination training to countries like Trinidad and Tobago, Jamaica, and the Bahamas. In addition, this is kind of interesting, we've been collaborating with

WIPO providing guidance on efforts to develop a regional trademark examination manual. They don't have one. WIPO is devoting some time there and asking for our help in developing a regional one. The manual will be a first step to harmonize trademark examination and policy in the region with these small offices.

Of particular positive news, we began to engage with Cuba and their IP office, OCPI, this past year for the first time in 50 years. These engagements were mainly to establish an initial contact and begin preliminary and informal exchanges of information, mainly on office organization and general examination procedures. While limitations on full engagement and collaboration still exist, we hope that these preliminary engagements will lay a foundation for additional and more fruitful exchanges.

So, that concludes your tour of Latin America for today. But one final point I wanted to emphasize, we have a very close collaboration between our IP attachés on the

ground around the world and the OPIA trademark team members. The IP attaché does not work on a trademark matter in the region without someone from the trademark team here directing or scripting the attaché's engagement with a foreign government. We collect information from our IP attachés about problems that U.S. companies are having in various regions, and then we devise and implement regional action plans for addressing those systemic problems in foreign trademark regimes.

So, we would encourage you to consult with us here at headquarters or with the attachés regarding problems that you're having around the world so we can get a better sense of where we should be focusing our efforts. Now, we are looking more at systemic issues, not individual office actions or individual cases. But if there is a pattern of behavior that represents a particular problem in a region, we need to know about that and devise a plan to address it. And certainly, there are various ways we can escalate it depending on how significant the

problem is, whether a treaty is implicated, or anything like that.

So, with that I'll leave it, and I'm open to any questions. I've got my colleagues here as well if you have any country-specific issues.

CHAIRPERSON WELDON-WILSON: Well, thank you very much, Amy. We appreciate that. We appreciate you taking us on the first leg of what I understand is going to be a world tour this year. So, that's terrific. It may be the only world tour I get, so I'm very excited to have it. (Laughter)

Does anyone have any questions for Amy on any of the material she presented or otherwise? Bill Barber.

MR. BARBER: Hi Amy. I was just curious, you said Brazil is planning to join the Madrid Protocol. I'm just wondering where they are in that process and what you think the timing might be.

MR. RODRIGUEZ: Hi, good morning. I'm John Rodriguez. For Brazil, they are very close to joining the Madrid Protocol. From

what we understand, they have prepared all of their implementing legislation. It's at their different houses of congress currently. But it's all on hold obviously until INPIINPI gets a better grasp of its pendency. But all the signals that we've received tell us that they have already decided to join but they are just delaying the actual joining, so to speak, until they lower their backlog to at least 18 months or ever lower. The reports we received is that they expect to get to that point sometime in 2018.

So, that's what we're focusing on. We're trying to help them achieve that goal by sharing information on how we handle issues here. So, we're very hopeful that that will be the case.

CHAIRPERSON WELDON-WILSON: Thank you. I believe Jonathan has a question as well.

MR. HUDIS: Is Brazil still one of those countries that only allows one class of goods or services per registration? If so, they would need to take that into account

with their backlog and their implementation.

MR. RODRIGUEZ: Absolutely. That's something that they are planning to address as well. That is not an uncommon practice unfortunately in South America, but they are aware of that necessity.

CHAIRPERSON WELDON-WILSON:

Wonderful. Are there any other questions for either Mr. Rodriguez or Ms. Cotton?

Well, thank you very much for your presentation today. It was very informative and we appreciate this starting out on our world tour. Thank you.

We'll next turn to trademark operations and Mary Boney Denison, our Commissioner of Trademarks, is going to provide us with an update today. Thank you, Mary.

COMMISSIONER DENISON: Thank you, Dee Ann. This is the first meeting of our fiscal year and I want to join Dee Ann in saying how pleased we are with the new members. We are delighted to have Bill back, and we're delighted to welcome Ilene Tannen

and Brian Winterfeldt and we look forward to working with you both.

So, as Dana mentioned, the continuing resolution is passed through late April, so we don't need to talk about that. So, next I'm going to go on to filings and staffing.

If you look at this chart, you will see that filings have been up for quite a while. We started the fiscal year a little more slowly than previous years, but they have perked up and we are still predicting about a 7.5 percent increase for this fiscal year in filings. We have had an average over the last 30 years of 7 to 8 percent increases, and that includes the years that we were down. So, it is consistent, this year is consistent with the pattern that we have seen over the last 30 years. And, in fact, I believe it's only 4 years out of the last 30 when we have had a downturn in filings.

We have completed our hiring for the year in order to keep up with filings and to maintain pendency. This slide shows you where

we are as of today, with about 800 Trademark employees, the majority of whom are examining attorneys.

I thought it might be interesting for people to understand the structure of the examining attorneys and the law offices. Traditionally we have split up the new hires to fill in slots of law offices that are already in existence. And law offices, as a general rule, in the past have had about 25 lawyers grouped together and they are supervised by a senior attorney and a managing attorney.

Traditionally when we would hire, we would hire to fill in gaps where somebody had been promoted or someone had gone to retire. Recently we started piloting training offices where all the new examiners were put into one law office. So, law offices 120, 121, 122, and 123 were created this way.

We also have been trying another experiment which is having virtual law offices. So, law offices 118 and 119 have been created as virtual law offices and that

means that they all telework. We are now going to be creating two more virtual offices. We are splitting up law office 102 next week or the week after into separate virtual offices. So there will be law offices 102 and 124. And then we will be welcoming new examiners next week, and some of them will be going into 125 and some of them will be filling in holes in the existing law offices.

Now, I wanted to mention TEAPP.

Dana touched on that briefly. The Telework Enhancement Act of 2010. It was a seven-year program and the seven years ends at the end of 2017. Dana and his staff have been helping us with Congress. The original sponsors of the legislation are no longer in Congress, so it's a bit of an educational project for us on the Hill. We, of course, would like to make TEAPP permanent or extend it further. We consider it to have been very successful for trademarks. We have 95 employees in the Trademarks group and 29 different states as part of the program. We've added Puerto Rico. I don't think we've sent anybody from

Trademarks to Puerto Rico yet, but I'm sure that's coming.

SPEAKER: I'll go. (Laughter)

COMMISSIONER DENISON: All you have to do is apply to be an examining attorney, Tim.

SPEAKER: I'm sure I'm not qualified.

COMMISSIONER DENISON: There is a lot of competition. We have a very strong application pool.

One thing I wanted to touch on today was the customer experience. We worked with Deloitte, they came to the Agency and they reviewed our customer experiment, which is of course more than customer service. It's the entire experience that a customer has with the Agency. And they gave us a report last summer and we want to be clear, intuitive, and consistent. So, those are sort of the key words that we're going for in our customer experience vision.

So, what we're doing is we are starting now to implement the customer service

experience improvements. So, what we've done recently is that we have a significant number of applicants who don't have lawyers, and of course, most of the employees in Trademarks are lawyers, so we have to do a gut check on our website and make sure that it is communicating to people who are not lawyers as well as the lawyers. So, we've hired two plain language writers and they will be starting later this month. So, we are going to be working on the website and they're going to also be helping us with forms to make sure that they're understandable and still meet our legal requirements.

In addition to improving the website, we're also going to be working on making searching more understandable and making ID selection easier, simplifying the filing process. So, those are some of the things that we are really looking forward to.

So, in addition to the two plain language writers, we have also just hired a chief customer experience officer who will be coordinating our vision on this. So, we're

really, really excited about this initiative. It will take us a little bit of time, but we are thinking that it will be of great value to our customers. So, stay tuned for more on that. We're excited about it.

People are always interested in pendency. And as you know, you can see a quarterly report that's up on our website. As of the end of December, we were at 2.9 months, which is right where we want to be, between 2.5 and 3.5 months for a first action pendency. And overall disposal pendency is quite good as well, it's at 9.9 months, if you exclude suspended cases or TTAB matters.

Of course, we very much care about quality as well and we are meeting all of our goals. First action compliance and final action compliance, look at whether we got the right answer. The Exceptional Office Action goes way beyond that and looks at whether we got the right answer, what the quality was at the evidence, how the writing was, how the search was done.

So, when I've got here I think that

percentage was, I don't know, 12 or 15 percent, and we have been moving that up significantly, and I'm very pleased with that number. Our examiners are doing a great job.

E-government, as many of you know, is one of my favorite topics. We started off with a goal to push people to file their applications electronically. We're at 99.7 percent of the applications being filed electronically. But when we got over 99 we kind of shifted our goals from filing electronically of the application to getting people to go through the whole process electronically. We've been trying to encourage end-to-end electronic users.

As of December 31st, we are at 85.6 percent going through the process fully electronically. We are hoping that that will go up more because -- oh, here is the chart showing that. You can see since the beginning of Fiscal Year 15, we have gone from a little over 80 percent to 85 percent. So, we are pleased with the progress that we're making on that front.

This slide shows you the filings by type. So, as you can see, TEAS Plus is up a little bit but the vast majority of our filings coming in are either TEAS Plus or TEAS RF. Regular TEAS is dramatically down and we expect it to go down further as we implement some fee changes.

So, let me talk for a second about the fee changes. TPAC held a public hearing November of 2015, and we then followed up with a proposed rulemaking. We got comments from a lot of different groups, and we took those comments very seriously and made some changes to our proposal. The final rule came out on October 21st and it will be in effect tomorrow.

The fee change is going to further our strategic objectives and we are looking forward to it better aligning fees with the costs and helping to incentivize more timely filing or examination and more efficient resolution of appeals and trials.

So, this is a chart of just some of the things that have been changed. I know

that Gerry Rogers has some more information on the TTAB changes in his slides, so I won't really talk about the TTAB phase except to say they were long overdue for a fee increase. As you can see, it's going to cost significantly more to file on paper or to file a regular TEAS application.

So, a paper application is now \$375.00, and as of tomorrow it will be \$600.00. That does not reflect our full cost because it is so much more expensive for us to process paper. The regular TEAS application which, again, costs us much more is going to be going from \$325.00 to \$400.00. So, right now there is going to be a large difference between the method that you choose to file. If you go with TEAS Plus you're paying \$225.00 a class, and if you go with paper you're paying \$600.00. So, we hope that that will encourage people further to go fully electronic.

TMNG. We have a lot of IT projects on our plate. Since coming on board as Commissioner, I've mentioned that one of my

goals is to put our IT house in order. With this in mind, I created a new position entitled the deputy commissioner for trademark administration. I've introduced Colonel Greg Dodson at a prior meeting, and he's been working with us since June. He's making great strides and working very collaboratively with the CIO's office. We're working on new and better software products and we believe that they will benefit everyone both internally and externally.

We call this TMNG, for Trademarks Next Generation. The goal of TMNG is to create a modern, separate -- as in separate from patents -- and stable system. We first separated and virtualized our servers from the rest of the Agency because when Patents had an outage we didn't want to have an outage just because Patents had an outage. So, that was done.

Then we have been working most heavily on the replacement of the system that our examiners use to issue Office actions. We call it FAST 1, and it is being replaced. We

have been working collaboratively with the Union to have beta testers who are looking to improve the product, and managers and supervisors, and members of our quality review team have also been trying to work out the kinks. We hope to have further law office deployments later in this year.

There is something that I would like to encourage people to use, it's called my.uspto.gov. It's a personalized collection of widgets and links. It gives you lots of information. It is in beta version. And you can enter into it a docket to track the status of up to 20 applications or registrations. So, I would urge you to please sign up for that and give us feedback because this is a great time, it's in beta version. So, this is the perfect time for you to give us some feedback on that.

Next, I wanted to talk about some of our initiatives. In the past, I've talked about post-registration amendments to IDs due to the technology evolution. So, we started this pilot on September 1, 2015. We had

originally launched it for a year. The idea behind the pilot was to allow under limited circumstances amendments to the identifications of goods or services in registrations that would otherwise be beyond the scope of the current ID.

So, the amendments are permitted upon petition to the director, where it is deemed necessary, to protect the registration. And you have to declare that you are still using the mark on new goods but the content is the same but the goods have changed. And if you're not allowed to make the change you'd be forced to delete the goods and services.

This is something that was user-driven. We got a number of requests from users expressing concerns about being unable to maintain their registrations where the technology for the goods or services had changed. And, in fact, we had a roundtable back in 2014 to talk about that. So, the result was starting this pilot in 2015.

We have been trying to encourage people. We have had 97 petitions filed. We

decided not to end the pilot on September 1, 2016 as we had originally thought because we didn't feel as if we had had enough experience. So, we are continuing to encourage people to look at their portfolios and consider whether there are registrations that will be coming up that this would help people maintain their registrations.

So, we have some information up on our website. There is a link up on the slide. We have received, as I've said, 97 petitions and 37 have been granted. 16 have been dismissed but generally that is for some kind of a procedural issue, perhaps sometimes people didn't even need to file the petition but they misunderstood.

So, we are encouraging people to go through the process. For now at least, probably for the rest of this fiscal year, this pilot will remain open so we do urge people to look at their portfolios and see if they can use this.

Another one of our indicatives is the proof of use initiative. We call it the

Deadwood initiative. In the past, we conducted a post-registration pilot to assess the accuracy and integrity of the Register. We required, at random, additional specimens or other evidence in connection with the Section 8 or Section 71 Affidavit of Continued Use for 500 lucky users.

What we found in more than half of the cases, the owner was unable to verify the actual use of the mark for the goods and services queried despite having recently sworn to ongoing use for everything. So, we issued a report, we held a roundtable, and we talked about this with quite a few users, and decided upon a three-pronged approach.

The first thing was increasing the readability of the declaration. That is a change that you will see starting tomorrow. We hope that that will encourage people to read the declaration more carefully. And here is just -- it's hard to read, but you can see the one on the left is the January 13th version and the one on the right is broken up. So, we hope that you will like that and it

will encourage people to actually read the declaration.

The second initiative that the Bar has been particularly enthusiastic about is making the pilot program for random audits permanent. This means that in up to 10 percent of the filings we can pull them and ask for additional specimens. Now, we have been working very hard and we have tried to get this out, but the matter is at the Federal Register and it's unclear whether this will actually be published because there is a backlog at the Federal Register and it's very much unclear whether this will be published before January 20th. And, of course, when the new administration comes in we do not know what impact that will have on things sitting at the Federal Register that have not yet been published.

So, we'll just have to wait and see. We have not abandoned this. We will continue to push forward and there will just likely be a delay on implementation of this.

The third part of our approach to

improve the integrity of the Register is to have some streamlined proceedings to address non-use. We considered four options initially. We got a lot of feedback from user groups. And right now, what we have decided to do is two options required statutory changes and two options required rulemaking. So, obviously, it's easier to proceed with rulemaking than a statutory change.

So, what we've decided to do is focus our efforts initially on the two that just require us to make regulatory changes. So, that means that it's two of the proposals at the TTAB, nothing within Trademark operations. So, we will be focusing on abandonment and no-use as of the 1A filing date or no-use as of the date of the AAU or SOU. So, we're still very interested in this project, but we're focusing on two to start.

We also issued a proposed rulemaking in October relating to a revival of abandoned applications and reinstatement. The comment period ended in late December, so we believe we got comments from three trade associations

and one individual, so we are reviewing those comments and deciding on our next steps there.

On the international front, as many of you know, the TM5 is the five largest trademark offices in the world, and we meet twice a year. It's the European Union, the Japan Patent Office, the Korea Intellectual Property Office, SAIC from China, and us. The idea is to focus on the exchange of information and collaboration and harmonization projects that can be of benefit to our users.

So, some of our projects, for example, are the ID list, which Amy mentioned in her remarks, and that is trying to get people to agree on terms that will be acceptable in many countries around the world, not just in the TM5. So, we're making progress on that. We have over, I believe it's 16,000 terms that now are agreed upon, and there are of course many more to go. But we're very pleased with that.

Last summer I attended the TM5 midterm meeting in Beijing, and I recently

went back to China to Kunshan city for the TM5 annual meeting in the fall. And this was the first time that China had hosted the TM5. So, we are delighted that they stepped up to do that.

I wanted to mention one thing of interest. People probably have noticed these on TSDR. This is a TM5 project that we have implemented, and it is universal symbols so that if someone came to our website and knew the number but they didn't read English very well they would be able to recognize these symbols. I'm pleased to mention that the EU has now implemented these. So, if you go to the EU IPO website you will see them. JPO is still testing them, but they have been working on this since March. KPO and SAIC from Korea and China are currently in the process of implementing them. So, stay tuned. Everyone has agreed to these and it's just a matter of the IT implications of getting them up and running.

We are very interested in bad faith trademark filings and we are continuing to

work on exchanging best practices. We've held seminars, there were two last year. One in Tokyo and then as part of the TM5 there was one in Kunshan city in October. We are expecting a report from JPO who heads this project in this coming spring.

So, as I mentioned, SAIC, the Chinese, were the host last year, and this year it is the EU IPO. So, our midterm meeting will be held at the same time as the INTA meeting, which will be in Barcelona, so it's going to be May 22nd. There are plans to be a user session there. We thought we had a date for the annual meeting which will be held in Alicante, Spain for the fall, but that date didn't work so we think we still don't have a final date for that. But we are continuing to push to get a final date so that we can notify our users as early as possible. But we do hope that our users will attend the user session that is being held during the INTA meeting in Barcelona on May 22nd.

Outreach. So, we continue to have a robust outreach program. The Basic Facts

Video which is about 45 minutes has surpassed 600,000 views, and so we're very pleased with that because we're reaching a lot of people. You just can't reach 600,000 people as easily in person. So, a lot of people are finding that and using it.

We are continuing to travel around. Craig Morris and Jason Lott are focused on this. As you can see, they've been in San Antonio, they're going to a couple places in California coming up. And then we've had some other members of our team travel to Europe to talk about Madrid and work on WIPO seminars. So, we have a very active outreach program and plan to continue that.

The final thing is fraudulent solicitations. Recently I did a blog on that and we are doing our best to raise awareness of the schemes. There is a USPTO webpage on this. We have planned to have a link to that when we send out Office actions. We also have updated a list of fraudulent entities that we've identified. We include a bright orange paper with registrations with information on

it to try to discourage this.

We also have been working with the Department of Justice. Two men recently pled guilty to stealing over \$1 million from U.S. Trademark applicants and registrants in California. There was a third person who has been accused and that person is going to be tried, I believe, later this month. So, the PTO is involved in that. So, we are very interested in this and are working informally with other government agencies to address this significant problem.

And that's all I've got.

CHAIRPERSON WELDON-WILSON: Well, that's a lot. Thank you very much. I appreciate it. Does anyone have any questions for the Commissioner? Yes, Jonathan.

MR. HUDIS: A very comprehensive report. None of what I'm going to say now should be a surprise to you. We discussed all this yesterday. It's very laudable. We've monitored the Office's rate of increase of getting outside users to file electronically, and you've gotten up to around 85 percent

end-to-end processing electronically. WeWe now will be implementingimplementing, as of Tuesday of next week, a new fee structure part of which is to encourage behavior.

It would be great if later this fiscal year we could see the results of that fee increase, the part that is intended to change behavior on end-to-end electronic prosecutionprosecution, and that we then put our heads together and see if it at some point the Office may have to change its regulations for mandatory end-to-end filings of not only applications but response to Office actions, et cetera.

We've also noticed when we spoke yesterday that the processing end-to-end of applications up until the point of allowance has been very good. You're staying within your set goals for the issuance of first Office actions, and the quality of the Office actions is getting much better.

What we have been seeing isbacklog of the issuance paper registrations and amendments to registrations under Lanham Act

Section 7. It's showing a problem with, again, the Office having to deal with paper.

So, we brought up yesterday, like the experience in Canada, that the Office issue electronic registrations. And we were told that as the statute currently reads the Office is not allowed to do that without a change in the law because the interpretation of the statute is that the issuance of those registrations have to be on paper.

So, as part of our next legislative package that the Office intends to bring to Capitol Hill, you might want to marshal your resources and information of what it costs the Office in terms of delay and processing times and costs to the government of issuing paper. It's now time for us to join the other nations and regions around the world who issue electronic registration so that backlog is taken off your plate. Thank you.

COMMISSIONER DENISON: Thank you very much, Jonathan. Appreciate your excellent recommendations of the possibility of mandatory electronic filing and making the

registration certificates electronic. We will be talking to Dana's team about the possibility of changing legislation if that's needed.

With regard to how long it will take to see if the fee changes have any impact on pushing people, since it is fully end-to-end electronic processing we won't really know that answer for probably at least a year. So, we don't expect immediate results with that, but we do hope that this time next year we will have a marked increase. So, thank you very much for your support.

MR. LOCKHART: I've got just one question about the paper registration certificates. I understand that the statute currently requires the PTO to issue paper certificates. Have you looked at the possibility of whether you could ask an applicant to opt out of that? And that way you would still issue paper if they wanted paper, but if they said no, I don't need paper, electronic is fine, would that be a violation of statute?

COMMISSIONER DENISON: I have to get an opinion from the General Counsel's office, sorry. (Laughter) I can't answer that just off the top of my head. We will talk about it afterwards.

MR. LOCKHART: You might want to take a look at that because a lot of people probably would opt out. But as long as you're still willing to issue the paper maybe that's in compliance.

COMMISSIONER DENISON: Thank you.

CHAIRPERSON WELDON-WILSON: Bill Barber has a question.

MR. BARBER: Just one really quick question. I was confused about one of the numbers on slide 5 that indicated you have 517 examining attorneys today, I think, and it says that all examining attorney hiring has been completed for the fiscal year. Does that 517 number include the examining attorneys that are starting later this month, I think?

COMMISSIONER DENISON: No.

MR. BARBER: So, there will be 44 additional ones starting later this month?

COMMISSIONER DENISON: Correct.

MR. BARBER: Thank you.

CHAIRPERSON WELDON-WILSON: Are there any other questions for Mary?

Well, thank you for the very thorough presentation. We will turn next to Tony Scardino who is going to give us an update on the finances.

MR. SCARDINO: Good morning, again, and welcome to the first meeting of the year. Happy New Year. We are going to go through finances as usual. A summary of where we ended up in Fiscal Year 2016 which ended on September 30th of last year, and we'll talk about where we are in '17. We'll talk a little bit about the President's budget for 2018, how with the next administration it's different this year. And then the fee review and a fee rulemaking.

Next slide. Summary. So, in 2016 we collected \$277 million which was roughly according to what we thought we would collect. It left us with an operating reserve at the end of the year of almost \$107 million. This

is approximately four months of an operating reserve, which is about where we want to be, four to six months is where we like to be. And you'll see we're going to try to stay consistent with that.

Because in '17 right now we're under a continuing resolution. Through April 28th all federal government agencies are, so it's almost seven months into the fiscal year. Now, a couple things could happen after April 28th. We could have more continuing resolutions; they could do as many as I've seen two day, three day, five day. Or they could do what's called a full year continuing resolution. Basically, what a continuing resolution does, for anyone that may be new here, it funds you at the prior fiscal year's funding level. So, for some agencies that's good if you were going to get some cuts in the next year, and for some agencies it's not so good if you were going to get increases. Most agencies increase just from a simple cost of living. PTO is a little different because, again, we can only spend what we collect. So,

any appropriation is just the cap and then we have the fee reserve fund that I can go into.

So, as of right now the CR goes, like I said, until April 28th. We could also get -- I'm hopeful that the Congress will appropriate for every agency what the President submitted as a budget; they've been reviewing that for several months now. Couldn't come to any kind of definitive clarification or agreement, so that's why we have a continuing resolution for seven months.

The continuing resolution included rescission. It's across the board for all federal agency spending. It's 0.19 percent. For us it didn't really mean anything, it just meant that our cap over the first seven months was a little bit lower, but because we had an operating reserve of \$106 million we've got plenty of money to operate throughout the CR period.

Specifically, in terms of fee collections, right now we're running 4.4 percent above what we were collecting last year at this time. And, of course, after

tomorrow's fee increase we anticipate that we will collect at a greater rate. That's all planned in our estimates for collections for the year. So, things are pretty much going according to plan.

Sorry about the technical difficulties. All right. Spending for 2017 is, again, according to plan. And if we do spend as we think we'll spend, you'll see the operating reserve -- we started with 106 million in change, 998,000, and we would end with \$106 million in change, which is not coincidental but it's also not that common to spend almost exactly what you think you're going to collect. And it's not by plan that we would actually say, well, how much are we going to collect, that's how much we'll spend. What we spend, as a reminder, is what the operating requirements call for, which is mostly salaries, IT spending in terms of development as well as maintenance of our current systems, associate travel, training, et cetera.

Did you break this?

SPEAKER: I think we'll have to ask the control room.

CHAIRPERSON WELDON-WILSON: It was likely my karma, my electronic karma.
(Laughter)

MR. SCARDINO: Thank you, Steve. 2018 budget. Here things are a little off from a normal year. By statute the President is required to submit a budget to Congress the first Monday of every February. With the new administration coming -- and this is no knock on the next administration, this always happens every time we have a new administration because the new incoming president doesn't take office until January 20th, it doesn't give him or her enough time to submit a budget by February 5th, 6th, whatever the first Monday is. So, there is always a bit of a lag there.

We anticipate that a budget will be submitted to Congress in the March/April timeframe. We've been working with the Office of Management and Budget, like all federal agencies are at this time of year, to put

together a draft budget, but, again, the policy aspects of any budget will be reviewed by the next administration.

So, we anticipate we'll get a summary to TPAC later this month. And that's our best guess. Anything can kind of happen after January 20th with new leadership. But we will certainly keep the Committee apprised of any changes in the budget. We've already put together our spending requirements, our operating requirements, and we know what our fees are going to be. Of course, the fees go in place tomorrow. We know on the revenue side what will happen, or we think. So, it's just a matter of finalizing the budget with this administration's blessing. So, we will get you something in coming months on that.

Steve? Last one. Finally, the fee review. As I mentioned, fee changes become effective tomorrow. Most of the changes have to do with electronic communication, filing and communication. Either try incentivize behavior or kind of costing things out somewhat equally so that electronic filers

don't subsidize the cost of paper filing.

And believe it or not -- this may be hardest for me to believe -- we are about to start engaging in our next biannual fee review. We do this every two years. I know it sounds crazy. But we committed to do a biannual fee review when we got fee-setting authority back in 2011. Now, again, a fee review it just that: We review all of our fees. We may end up not touching fees at all, sometimes we reduce fees, sometimes we increase fees, sometimes we add new fees, eliminate fees.

So, it doesn't mean that you'll see something soon saying that you have to act on it. All it means is internally we'll be looking at our fees and if something bubbles up that we do need to reduce or increase or add -- specifically add an increase is when you would get involved the most. Usually we don't get too much scrutiny if we're suggesting that we should eliminate a fee or reduce a fee, but we still, of course, will bring it to your attention.

And I think that's all I've got today.

CHAIRPERSON WELDON-WILSON: Are there any questions for Tony? Well, if not, thank you so much for your obviously very thorough presentation. We look forward to hearing how your biannual fee review is going since it feels like you're just coming off one. (Laughter)

MR. SCARDINO: Absolutely.

CHAIRPERSON WELDON-WILSON: But I thank you very much for all of your help today.

MR. SCARDINO: You're welcome.

CHAIRPERSON WELDON-WILSON: The next item on our agenda is a short break. So, let's still try to get back at 10:25 a.m. We're just a couple of minutes late for the break.

(Recess)

CHAIRPERSON WELDON-WILSON: Okay everybody. Let's start gathering back to the table if you don't mind, so we can get back to the meeting. Excellent, thank you. We're

pleased to have our next presenter who is Chief Administrative Judge Gerard Rogers with the TTAB, who is going to provide us with an update. Who last had the clicker? Just a moment.

(Pause)

COMMISSIONER DENISON: Dee Ann, may I take a moment while you're looking for the clicker just to make a clarification? When I had talked about the new rule we're trying to get issued on the random audits, the final rule will give us authority to pull in 100 percent of cases but we're anticipating pulling in about 10 percent of the cases. So, I just wanted to clarify that. Thank you.

CHAIRPERSON WELDON-WILSON: We appreciate that clarification, thank you so much.

And now we have found the remote for the slides and so I think we can move forward now, thank you, Gerry.

CHIEF JUDGE ROGERS: Thank you, Dee Ann. It's a pleasure to be here as always. I just wanted to run through the usual slides

that we always cover and then we'll talk about the momentous rule changes that will be coming this evening and into tomorrow, and other things.

Of course, the first line on this slide here is staffing. And, as you know, Trademarks has done a lot of hiring recently. We have not done nearly as much, but we did add another judge. We promoted one of our interlocutory attorneys, Robert Coggins, to judgeship. We also essentially stay where we were in terms of judge staffing because Ellen Seeherman, unfortunately for us, retired at the end of the year. Many of you who worked with her know what a wonderful judge Ellen was. I dare say anyone who wanted to write a decision on any substantive or procedural matter could probably do it relying solely on precedents previously authored by Judge Seeherman. She was such a veteran and so prolific in her authorship of decisions. So, we will certainly miss Ellen, but we're confident that Robert will do a great job as a judge.

And based on the filing levels and the inventory of motions and cases awaiting a final decision, we will not at this point in time replace or fill Robert's position. But if we need to that is a backfill, and if we're allowed to in the future then we will have that position and also there are a couple of judge positions. And given the possibility that in the future the Board will play host to expungement proceedings we may need to think about staffing levels at the Board. But we'll save that for another day.

So, apart from staffing, this first slide covers filings. Since we met prior to the end of the fiscal year for our last meeting, we didn't have final figures at that time. But this column that shows a fiscal 2016 end of the year result, I will point out to you that the incoming filings for notices of appeal, extensions of time to oppose, notices of opposition, and positions to cancel, all were up 4 to 11 precedent last year. Of course, that's not unexpected given the significant and persistent increases in

application filings at the Trademark examining operation. So, all of those numbers were up last year.

And on the far right on the bottom of this one, you can see that we seem to be pursuing increases again in filing. So, those application filing increases are definitely meaning more work at the Board for the foreseeable future.

I think we skipped a slide there. Now, this slide covers kind of what we've done in the first quarter in terms of decisions being issued, presidential decisions, contested motions, et cetera. I can tell you that every first quarter meeting will show that these numbers are down compared to a quarter of what we did last year. But that's because the first quarter is always a slower quarter. There are holidays, there are people on vacation, taking use or lose leave. It is not anything to be alarmed about. This is typical of every fiscal year that the production numbers are lower in the first quarter, and they tend to spike in the second

quarter and the fourth quarter. So, that's just kind of par for the course I think at the PTO for many operations.

In terms of contested motions, these are our three performance measures on contested motions. And at the end of Fiscal '16 you can see on the left-hand side we met all three of these goals. We had our average pendency to disposition of contested motions within the target range. We had no contested motion older than 12 weeks, which is an aspirational goal for every quarter when we take the snapshot and the inventory of contested motions. The 117 actually was below goal even for last year, but the inventory goal for this year, which is shown in the middle column, has actually been -- actually I'm not sure if that one changed from last year, the final decision goal. But the inventory goals are going to change the target that we want to maintain depending on staffing level.

But last year's inventory at the end of the fiscal year was below the low end of

the range, so that was very good. And this year, of course, it's right in the target range. The only goal for the contested motions that we didn't make at the first quarter was we had one motion that was older than 12 weeks. But that's not bad when you have hundreds of contested motions being worked on at any point in time.

And as I've said before, we would rather have this goal and be focused on keeping track of every motion and its age, even if occasionally we're going to find one that gets a little bit older or somehow gets kind of lost in the cyberspace of our electronic filing system and ends up in the wrong person's queue or on the wrong electronic shelf and someone doesn't notice it until we take the snapshot at the end of the quarter. But that gives us an opportunity to make sure that anything which has been electronically mislaid, if you will, gets captured at that time and then can get worked off.

And the other thing to point out was

we had four attorneys working on revisions to the TBMP which will come out tomorrow, hits the store tomorrow, because we wanted to have a revised manual in place for the amended rules which take effect tomorrow.

Judge performance measures are average pendency and, again, inventory control, they were both met at the end of last fiscal year. And they have been both met at the end of the first quarter. We think that these measures fluctuate from quarter to quarter, so I can't promise you that they're going to continue at this rate throughout the year, but that's why we take the snapshot every quarter to see how we're going.

I will point out also that in terms of the pendency to final decision, on our webpage we have some additional information in the kind of charts and dashboards that we post there. And there we actually break out the pendency between appeal pendency and trial pendency. And at the end of the last fiscal year we were within this 10 to 12-week goal, both in trials and appeals. So, here it's all

merged in one. But in the other measure we report on the website, even if you split it out while there is some disparity between the two they were both within goal. And they were both within goal for the first quarter of this year as well.

The other thing that we focus on, while not as assiduously as some of those other performance measures but it's in the strategic plan as something that's important for the PTO to focus on, is commencement to completion pendency or end-to-end pendency. The Fiscal '16 results were reductions from the previous fiscal years and the reduction in average end-to-end pendency for trial cases was the fifth consecutive year that we've brought it down. It was an incremental reduction, but nonetheless it was a reduction and so we were pleased with that. The fact that it's jumped up a little bit in the first quarter is, again, not surprising to me because these things fluctuate quarter to quarter.

And the same with the ACR trial

cases, having their end-to-end pendency go up a little bit in the first quarter. Again, not surprising to me. It was only three cases that were decided following the use of some form of ACR in the first quarter, so, it's a small number to begin with.

I will just kind of jump ahead a little bit on a new rules issue and point out that we actually may be talking about fewer ACR cases in the future anyway when it comes to measuring the end-to-end pendency of ACR cases. Because of our success at leveraging into the rules, many of the efficiencies that were typical of ACR cases, which were an exception to the rules, going forward the rules essentially enshrine ACR processes and procedures into all trial cases.

So, the ACR cases that we will be talking about in the future may be fewer in number and will probably be those cases where the parties agree to use the cross motions for summary judgment approach and submit evidence and arguments at the same time. Other cases that were previously considered as ACR cases

and went into this measure were cases in which parties did not agree to that approach but they did agree to shortened discover, limit discovery, stipulate to facts, stipulate to testimony by affidavit or declaration, stipulate to greater uses of notice of reliance, that kind of thing. But since a lot of those things that they previously had to stipulate to will now be part of the rules for all trial cases and available to anyone who wants to elect to use them.

We actually may see fewer ACR cases going forward. But that will not be a bad thing. It just means we took the lessons from ACR and leveraged them into the rules going forward.

So, next I will cover some of the issues on rulemaking. But before I actually touch on that, I do want to just say generally that I've been at the Board through three rulemakings now. We had rulemakings in 1998, in 2007, and now again. And I can say unequivocally that this rulemaking is the one that involves the greatest, as we refer to it

at the PTO, PDI, or pre-decisional involvement, from external stakeholders and internal stakeholders. Our attorneys, our paralegals, our judges were intimately involved in creating the suggestions and the basis for the rule package. The subsequent vetting and discussions with outside bar groups and groups of practitioners and the TPAC was tremendous in helping us to finalize the contours of the rule package. So, I think it's really been a product that we can all claim as our own, and we certainly thank the TPAC members and other trademark practitioners for their contributions to the successful creation of the rule package.

CHAIRPERSON WELDON-WILSON: Well, thank you. I know that we appreciate being involved and having that opportunity. Jonathan -- okay. Great, I appreciate that, thank you so much.

CHIEF JUDGE ROGERS: Thank you. And I'll just cover a few things. We've talked in previous meetings about the content of the package and what to expect from it so I won't

belabor that. Plus, at this point, there is not much more to talk about other than to say if you haven't read the rule package you can read it today because it takes effect tomorrow. And as this slide points out, unlike the last rule package that we had, this rule package will be applicable to all cases pending at the Board, whether they are already pending or whether they are commenced on or after tomorrow. To avoid having to have two sets of rules or three sets of rules depending on when cases were commenced, we decided that we will just make every case be under this new set of rules, and we will leave the attorneys and the judges with the discretion to figure out how to manage cases moving forward.

We have had many internal discussions among the paralegals, attorneys, and judges trying to anticipate as many issues as possible and figure out how we would address them when they inevitably come up. But we know that no matter how much we think about it there will always be some issues that we could not have anticipated and they will be

issues of first impression and we will just have to deal with them and issue precedential decisions and provide guidance at that point in time. Our attorneys and judges are skilled at that.

We do essentially the same thing on a regular basis when there are changes in the case law from the Supreme Court, the pleading cases of IQBAL and Twombly. When they came down we had to certainly adapt to new pleading standards and review for motions to dismiss and things like that when the federal rules were amended in 2015. We certainly had to amend to those because many of those became immediately applicable to us. A couple of our attorneys led the educational presentations at the Board to make sure that all attorneys and judges were aware of those changes. And I'm sure everyone will do a fine job adapting to these rules as well.

Again, this is a very sensitive clicker. Mary mentioned our focus on electronic filing, and one of the things that we believe it very important in this TTAB rule

package is mandatory electronic filing. It's mandatory with expectations required, it's the default mechanism, but of course, parties can petition to have us accept a paper filing of an ex parte appeal, an extension of time to oppose, a notice of opposition, or petition for cancellation. And those four filings would, if you filed on paper, require a petition and the fee. So, again, you can save yourself money and you can gain efficiency by filing all those things electronically.

During a proceeding, if you have to file on paper it won't require a petition. I mean, I should also add that the answer by any defendant in an opposition or cancellation would also require a petition. So, pleadings, notices of appeal, extensions of time to oppose, require a petition if you file on paper.

During a proceeding electronic filing is still mandatory but if you for some reason have to file on paper because of an extraordinary circumstance or a technical problem on your end or on our end, you don't

have to file the petition. That was a change from the Notice of Proposed Rulemaking, which by its terms would have required a petition for any paper filing ever. So, that's much more limited and focused on the pleadings and the notices of appeal and the extensions of time to oppose.

But we still will require of parties an explanation in their certificate of filing or their cover letter or their transmittal letter about why you did not file electronically if you don't file electronically. And then we will be assessing those submissions according to the same extraordinary circumstances or technical difficulty standard of review that will be applied to the petitions for the pleadings, extensions of time to oppose, and notices of appeal.

Along with electronic filing, there is a focus on electronic communication between the parties and the Board and between the parties themselves. So, typical of ACR cases and many non-ACR cases but the parties just

agreed to electronic service, email service, when they were involved in trial cases. That is now the default mechanism. And so we hope that everyone will do their part to help further electronic communication between the parties and the Board and among the parties themselves. We'll see how well that goes, and maybe this will be a precursor for the full mandatory electronic filing that Jonathan has suggested that Commissioner Denison pursue for Trademarks.

The next thing, well, we've talked about how the rules changes we think are in harmony with the BNB decision from the Supreme Court and do not in any way detract from these elements of Board proceedings which the Court found to be valuable and which could allow for the possibility of issuing preclusion in subsequent district court actions.

The fees I want to cover because those are significant. We don't raise fees very often. So as this slide shows you, we haven't raised appeal fees in 25 years. We haven't raised opposition or cancellation fees

in 15 years. So, it's something that people probably don't have much experience with at the TTAB. But we have had to raise them. They're pretty simple if you just keep in mind that per class filing fees for ex parte appeals and notices of opposition and petitions to cancel have increased by \$100.00 per class for ESTTA filings and \$200.00 per class for paper filings, plus of course, the petition fee when you make the paper filing. So, you don't want to do that if you can avoid it.

The extension of time to oppose fees are to be differentiated from the per class increases on oppositions and cancellations and appeals. Extensions of time to oppose are per application fees, of course, per opposer or protentional opposer, but per application. So, if you're filing an extension of time to oppose against a multiclass application you don't have to pay an extension fee for each class in that application or each class that you would think about opposing, but you would have to pay one fee to essentially get the

extension of time to possibly file an opposition against it.

And there is no charge for the initial 30-day extension. You would have a charge if your initial extension is for 90 days instead of 30 days, which is allowed under the rules. And there was some confusion about that when we first issued the notice of proposed rulemaking. I think we've made it clear in the notice of final rulemaking that we did not remove that option of filing for an initial 90-day extension, but because of the 60 days that are part of that 90 after the free 30, so to speak, you pay the fee for that next 60 days. And then for the final 60 days, which is on consent of the parties or extraordinary circumstances, there would be a further increased extension fee.

And the reason the fee schedule for extensions kind of ratchets up like this is because we did hear over the years from many applicants that there were essentially intermeddlers or people who were filing extensions of time to oppose which had no real

basis for doing so. And there was no charge or disincentive to keep them from doing so. So, we think this fee structure kind of strikes the right balance of helping us to raise some revenue to handle these 20,000 filings of extensions that we get every year. But also to disincentive anybody who is thinking about being an intermeddler and just filing extensions to slow down an application.

IT changes to allow the rule changes to occur and to allow for collection of the fees. These will all take place tonight after midnight, as will changes in the Trademarks systems. So, systems will be down starting at midnight. I think for Trademarks until 8:00 or 9:00 tomorrow morning. We hope that our systems which don't have as many changes will be back up sooner than that. But they will probably be down until at least 3:00 or 4:00 in the morning, something like that.

If you want to try and make an electronic filing in the morning you might be able to get it in. You might want to just want and see how it goes. But we will have

staff -- both Trademarks and the Board will have staff monitoring the implementation of the changes and we're confident that they've been thoroughly vetted and tested and they will work very well.

I do need to point out that we needed to make changes not just for the fees but also for the filings at least at the Board because, of course, one of the things that we required when filing a notice of opposition or a petition for cancellation was that you specify the method of service on the defendant. Since we no longer require that, we had to take that prompt out of the workflow for those filings. So, that's just one example of the kind of thing that we had to do to accommodate the rule changes.

CHAIRPERSON WELDON-WILSON: Judge Rogers, just to clarify though for people who may be confused, these changes are just to allow you to implement the new rules package? This is not the big TNMG changes that you will eventually hope for working with the TTAB?

CHIEF JUDGE ROGERS: No, they are

not the TMNG changes. We are essentially following the Trademark lead in TMNG and I'll just go off on a tangent for a second. I will point out that Barry and I have discussed, and I think that we agree, if we don't we can discuss it later. But I think we agree that from the stakeholder perspective, an end-to-end application filing system that would encompass anything related to those applications, whether it's letters of protest or ex parte appeals, possibly even extensions of time to oppose, anything that doesn't really become part of a trial proceeding might be better handles in a next generation system that is truly end-to-end for applications.

So, we're working very closely with Trademarks to try and help make that the reality for the future. And we would not then have our own electronic file system for appeal cases at the Board because it would be part of an end-to-end application filing system. And our attorneys and judges or paralegals as necessary would simply have permissions written into the system to allow us to get

into the application filing system and to review the appeal briefs and to decide the appeal and to enter the appeal decision in that application filing system.

So, for now we're kind of holding off on NG planning for TTAB until we see what happens with end-to-end electronic filing system for applications. We're also kind of holding off on an NG trial system for TTAB because we know that a lot of work is being done on the Patent Board's trial system and we may be able to leverage some of the work that they're doing there into a separate trial system for ourselves.

Sorry for that long explanation but I think that's where we stand on NG development of the Board.

CHAIRPERSON WELDON-WILSON: We appreciate the clarifications, so thank you. And I'm sorry to have interrupted the presentation.

CHIEF JUDGE ROGERS: That's fine. There are a couple of things that people need to think about who have been preparing and

saving potential filings for TTAB proceedings. If you have prepared and saved but not hit the send button or the file button on an extension of time to oppose, if you try to recover that session tomorrow you will not be able to. It will be locked. So, people who may have thought I'll start this extension of time to oppose now and then I'll finish it later and avoid the extension of time to oppose fee that will not work.

So, if you want to avoid the fee go back in for any saved extension of time to oppose and finish it today because if you don't finish any saved session on an extension of time to oppose before tomorrow you will have to redo it tomorrow.

That same process is in place for the consent motion filings. Of course, many people make significant use of consented motions to extend or to suspend. And also the correspondence address form that you can fill out to change your address for the Board in ESTTA. Those are two forms that because of the way in which we have to effect the change

to the screen that allows you to specify the method of service, we had to add email because that's now the default method of service between the parties. Because of the way we had to add that option in, again, any saved sessions for those kinds of filings, consent motions filings or change of correspondence address filings, will not be available for the parties to complete tomorrow. So, if anyone has saved them they should finish them today if they can or you'll have to start over again tomorrow.

So, I think this is the last slide on the IT changes. These are changes that basically are going to not really have as much immediate consequence as these transition issues overnight and tonight, but will allow us to really make greater use of electronic communication between the Board and the parties and between the parties in the future.

So, I wanted to give Jonathan time for his question, if he has a question now. I'm done with the slides. I've got a little bit more to say, but the slides are done now.

MR. HUDIS: Judge Rogers, thank you for your presentation. First, I want to say TPAC is very much in favor of an end-to-end electronic application record, including ex parte appeals and requests for extension of time to oppose, but not including the trial portions of the Board's work which would be concurrent use proceedings, oppositions, and cancellation proceedings.

I just want to thank you and your colleagues and the Board staff for the -- and we said this in our annual report from last fiscal year -- of the high quality of management and the metrics of the Board. Having worked with the Board through all three of the proposed rule change packages that you mentioned, we found the quality, thoroughness, and usefulness of this rules package's set of changes that are going into effect next week to be very high and very much appreciated.

We also want to say to you and your colleagues, Judge Rogers, we also very much appreciate the extent of the outreach to the Trademark bar, including the information on

the Board's portion of the USPTO's website, the roundtable discussions that you've held, and the CLECLE programs participated in by you, the other judges of the Board, and your interlocutory attorneys.

We also very much appreciate that hard work was put into an update to the TBMP that that will be going into effect the same time as the new rules package. So, from all members of TPAC, thank you very much for your very high quality -- it shows -- and the hard work you and your colleagues have done.

CHIEF JUDGE ROGERS: Thank you, Jonathan, and everyone at the Board who has had a hand in the rule package, whether it's an individual suggestion made by a paralegal or attorney or a judge, or whether it's the core members of the rule team who did all the heavy lifting on the drafting, or senior attorney Cheryl Butler who has spearheaded the revision of the TBMP.

We've also got on the webpage new frequently asked questions, charts summarizing the rule changes, a number of things that we

hope will ease transition into practice under the new rules. We will also have the U.S. Rules of Practice that are accessible either through the Trademark's page and the TTAB page, also will be updated as of tomorrow. So, it's not just the copies of the notices of rulemaking that are there, but the actual changed rules will be available to everybody tomorrow. So, we hope that all of these will smooth the transition.

The other thing that we have been doing is engaging in significant outreach, just as we have in the development of the rules, now to make sure that everybody understands them, has opportunities to ask questions and make comments. We had three presentations just this week on the new rules. I was in Boston, Judge Francie Gorowitz made a presentation in Los Angeles last night. Judge David Mermelstein was in New York along with Colleen Kearney from Trademarks to talk about Trademark changes and TTAB changes.

So, we're going to continue that outreach, we're going to participate in

roundtables that Commissioner Denison is scheduling and has been scheduling in the past. We'll continue to participate in those. We've got some hearing programs that are in the works so we'll be hearing arguments in a case in Los Angeles in February. We will make a presentation on the new rules during that program. We're thinking about and trying to finalize a joint Patent Board- Trademark Board program for Boston in early April. And I'm sure we'll be making a presentation about the new rules and how they're going there as well.

So, we don't view the implementation overnight tonight as the end of our discussion with stakeholders. We want to continue to collaborate with stakeholders on further improvements, including suggestions for possible precedential decisions on issues that have manifested themselves under the new rules.

So, I think that's it for me.

COMMISSIONER DENISON: Judge Rogers pointed out to me that there is a typo on my slide about the fee changes so I just don't

want people to rely on that. The ex parte appeal number in my slide is inaccurate. So, I apologize for that.

CHIEF JUDGE ROGERS: I think that was just a typo carried over from the previous line on 8 and 71 filings. But if you just rely on the fact that ESTTA per class filing fees have increased 100, paper filing fees per class have increased 200, then you'll be covered.

And of course, if you try to file electronically and you don't pay the proper fee the system won't let you. So, it's pretty failsafe. And that's another reason why electronic filing is always better than paper filing because the electronic system is set up to help ensure that you do things correctly, whereas you might do things incorrectly with a paper filing and you won't know until you get it rejected later on.

So, I think that's it for me. I will leave it to the CIO unless there are questions.

CHAIRPERSON WELDON-WILSON: Howard

Friedman had a question.

MR. FRIEDMAN: Two comments. One, particularly as we have new members that rotate on, sometimes it's helpful to remind people that there was a point in time not too many years ago where we did struggle together with the inventory and old cases. So, I want to commend Judge Rogers, Ken Solomon, and Susan, and Cheryl for continuing to work together with our bargaining unit. And collaboratively we were able to work down the inventory, particularly the contested motions, fall into or address the most important issues to the TTAB while making sure our people are rewarded for the hard work that they do. So, I wanted to pass on that. We really appreciate it.

If I may take liberties, only because it seems to be the right segue, and I don't want to alienate the other 98 percent of our bargaining unit, I will say that the work that the examining attorneys do, particularly in this public forum, is just extraordinary. There is a reason why pendency is at 2.9.

There is a reason why the exceptional Office actions falls into the 40 percent. There is a reason why our customer service is at such a high level. So, we really have so much to be thankful for when it comes to this group of currently 517 attorneys, soon to be 561, doing an extraordinary job for the people in TPAC and INTA and AIPLA and other people.

The other thing that I think it's important to note in this public forum is we've been meeting those goals for about a decade and we look forward to continuing to meet them. And our people, whether it's performance or conduct issues, just with very rare exceptions don't get in trouble. They just do a phenomenal and exceptional job of meeting the needs of all of you.

And in that regard, I just think it's very important -- what's most important is having people spend time working efficiently and effectively as opposed to, let's say for example, spending any or an inordinate amount of time documenting how much time they're working. I think that the best

service we can offer to the bargaining unit and to our customers is giving people the opportunity to work and work efficiently. So, thank you.

CHAIRPERSON WELDON-WILSON: Any questions or comments for Judge Rogers? If not, we will move on. Thank you very much.

We have coming up a double team, yay. The OCIO update we have both the Chief Information Officer, John Owens, and the Acting TMNG Portfolio Manager, Rob Harris. We appreciate both of you taking the time to come down here today and speak with us.

MR. OWENS: Good morning and Happy New Year, if I haven't spoken to you before. It's a pleasure again for another year to be before this Committee. That being said, I'm going to hand it right over to Rob Harris who is Acting Portfolio Manager, though I will be here to answer questions as well. Thank you.

MR. HARRIS: I'm here this morning just to give you an update since we've last met on our Trademark Next Gen efforts. As we have in the past, we'll start with an overview

of how we organize the work that we have before us and what's planned for the future.

It's by investment, and that's how we manage internally here within the PTO. The first of which is our initial TMNG investment which ran from FY11 to FY15. It has been closed. The scope of that investment was to delivery many infrastructure improvements and set the baseline for TMNG which were accomplished. What was not accomplished was a delivery of the TMNG examination capability for examining attorneys.

That scope was deferred to TMNG 2 which started in FY15. That is an active investment now that the work that we have been discussing over the past few TPAC meetings. The scope includes not only the deferred TMNG examination capability but also non-examination capabilities. Specific examples include docket management as well as petitions and processing of international applications.

In parallel, we've been working to develop products for our external customers.

The TMNG external investment includes primarily free products, the Electronic Official Gazette which has been delivered, the ID manual which has been delivered, and then lastly, e-filing capability which I heard some discussion on the tail-end when I just came in a few minutes ago. And we'll get into some details about e-filing in just a few minutes.

The last piece is a proposed investment starting right now for FY19 and that is TTAB Next Gen which we have just discussed with Chief Judge Rogers.

I will make a point that some of the capability and some of the work going on now within TMNG reflects the cooperation that we've had between the Trademark business and TTAB. An example being some of our foundational work. Nothing that users are seeing yet, but content management for example. There are over 2 million TTAB documents that have now been migrated from our legacy databases into our Next Gen database. So, we are setting a foundation to hopefully be better prepared and in a better position

once we turn our focus to developing TTAB capabilities.

Turning to our recent accomplishments. Obviously, our focus has been on delivering our examiner capability. Since the last meeting in September, we have deployed the TMNG Case Content Viewer which, in plain English, just gives easy access to examining attorneys and others to pull up any case content through TMNG.

We have deployed examination enhancements and defects to production. There have been several deployments since we last met in September. Those deployments have been focused on delivering that critical capability needed for examining attorneys to do their jobs, and also to incorporate feedback that we've been receiving from folks that have been testing the system and testing the capabilities for us. I do think it's important to note that that pool of beta testers has increased from about 20, when we were last together, to now over 70; examiner attorneys, managing senior attorneys, and

trademark quality review attorneys.

So, our last step here -- and we actually have a deployment scheduled for next week -- is to implement and address those critical defects and critical feedback that has been provided by those beta testers and put us in a position to give one final round of kicking the tires. And then being in a position to expand and use the examination product beyond the current beta testers and get in production for law offices.

Beyond TMNG examination, our trademark business has recently hired 2 dedicated product owners and five business analysts to help integrate and execute parallel efforts. The product owners' focus is primarily on our e-file capability and also our Madrid capability. With that being said, the big shift there, and certainly appreciate all of the hard work that our partners in the trademark business have done, is this now gives us a dedicated government staff focused on defining those high-level business requirements and then taking those for the

product owners and leveraging those business analysts to help decompose those into actionable requirements that our developers and testers can pick up and run with. So, we really feel like we're in a significantly better position now that we have a dedicated federal team ready to address the future of TMNG.

And the last piece is as we've increased beta testers we certainly have received more feedback, and that feedback required a more formal process. So, now we work through our helpdesk capabilities to manage all the defects being logged and feedback being logged to make sure that our focus is on the highest priorities that our customers make.

Beyond examination, we are continuing to work with our international application capabilities. We have developed six end-to-end transactions which, for context, is about 10 percent of the total for Madrid processing capabilities. And we fixed defects associated with that. So, as it

currently stands our number one priority is getting the TMNG examination project finished. Madrid is in a position to pick up the work that we have on pause now. We focused on examination and picked that up with a team that's knowledgeable of the Madrid product and ready to move forward.

In addition to Madrid, we are working closely with our customers in the Office of Petitions and documenting business requirements and as-is processes in that area.

Are there any questions on the internal phasing capability that I've covered?

Well, then turning our attention to our external accomplishments. We've recently deployed a printing capability through the Electronic Official Gazette, which has positioned us to retire two in-house publication systems. The Trademark In-House Photo Comp system known as TIPS and also the Official Gazette Review System, which, again, I mentioned yesterday wins the award for the best acronym of OGRES.

The last piece of this is e-file. I

mentioned it earlier and I'll go into a little detail now. We had in December '15 paused our e-file development efforts. We did that for two primary reasons. First, it would give us a chance to get our arms around the business requirements associated with e-file, and second, it gave us a chance to go back on the street to our vendors and re-compete the contract and get in to what we hope to be a more skilled and more efficient development team.

So, both of those are still in process. We expect development to pick back up in this upcoming spring when the ongoing acquisition process culminates and will award a contract. And that does push our estimate for delivering full electronic filing back to the end of FY18.

If there are no questions on external, then I'll flip to what lies ahead in the near-term horizon from TMNG perspective. Certainly, we're going to continue what we're doing now, which is collect and evaluate critical defects from our beta testers.

Training in law, and rollout of the TMNG examination product is expected to begin this quarter and continue through quarter 3 of FY17.

In parallel, from a technical and IT perspective, we have one or two remaining activities to be completed to fulfill our commitment to offer full and disaster recovery capabilities. We'll be in a position later this year to test and demo that capability.

Lastly in parallel, we will continue to be focused on defining, developing, and deploying our customers' highest business priorities, which right now revolve around Madrid and international applications, petitions, and also dockets.

From an external perspective, I already mentioned our focus will be on e-file through '18. And then on the last slide, from a legacy perspective, I think you've already heard this morning about this weekend's deployment of TEAS capability to be consistent with the new fee changes. And also, I just heard Chief Judge Rogers walk you through in

detail the changes coming this week and also to TTAB as in ESTTA.

The last piece is some near-term work around the need to enhance our Madrid capability. The three sub-bullets give an idea of those areas that we're focused on, and we're in discussions now as to whether or not those capabilities are going to be delivered through our legacy Madrid system or be a priority we set for our Trademark Next Gen system.

That's the end of my prepared remarks. I'll open it up for questions.

CHAIRPERSON WELDON-WILSON:

Wonderful. Tim, did you have a question?

MR. LOCKHART: So, John and Rob I want to thank you very much for another great presentation, a good overview of where you are and how things are continuing to move along. So, we're very heartened at that news.

Rob, I want to just touch on one thing briefly. You mentioned that the number of beta testers has gone from roughly 20 to 70 plus. As I understand it, those beta testers

sort of fall into two groups which would be roughly 20 examining attorneys and then you've got about 50 managing or senior attorneys and trademark quality review attorneys. I'm assuming, and correct me if I'm wrong, but I'm assuming that the examining attorneys are probably doing testing at a higher rate, higher number of cases, and these other 50 folks, while they're doing testing, they're probably looking at relatively fewer cases. Is that correct?

MR. HARRIS: I can get back to you with specific numbers. That's my understanding at the highest level, but I don't have data to --

MR. LOCKHART: I'm not really asking you to come back with hard numbers, but that was my sense of it. So, I just want to make sure that you and John and the rest of the team are comfortable that you've got enough beta testers, especially given that you've got about 50 folks there that might be doing testing at a somewhat lower level. But you're comfortable that you've got enough folks, as

you said, to kick the tires and get the product ready for deployment generally. I know starting initially with a core group to be determined by the end of March, and then going forward rolling it out to the law offices through the rest of the fiscal year.

MR. OWENS: So, I think the CIO and Trademarks is working together to make sure that the number of testers and the number of hours that they are spending testing is sufficient. Of course, we can provide you real numbers because we do track those. But it is certainly better than the 20 that we had doing less, so more is better in this instance. And the more use the system gets, the more bugs we find, the more fixes we can make, then the better the stability of the system.

So, all I wanted to say to that is we are working very closely with Trademarks and Mary's organization to make sure that is fulfilled to the best that we can.

MR. LOCKHART: That sounds great. I'm not asking you to go through the exercise

of computing all the numbers and providing those to the TPAC, although if any of my colleagues would like to see the numbers that of course is fine. I just want to make sure that you're comfortable you've got enough people doing that aspect of the work. And it sounds like you do. I just wanted to confirm.

This is in a way a minor point, but I think it's a significant point. And I notice Rob's comment about TIPS and OGRES. I recommend that you come up with a name, and acronym, for the new TMNG examiner tool, examiner product, whatever. We just keep calling it the examiner tool, the examiner product. We need a name for this thing because you've spent a lot of time and effort, and the Office has spent a lot of money on this thing. We ought to call it something I think.

MR. HARRIS: I have some colleagues -- there is a pool and a contest going on to come up with something similar to OGRES. But as far as we have now it's TMNG examination. There are references to -- I'm

trying to be consistent -- FAST 1 Retire, FAST 1 Replacement. But TMNG examination is the component of the overall one product we're delivering which is TMNG exam. But I'm open to any creative acronyms that anyone wants to help with.

MR. LOCKHART: How about TMNG Examiner Capability and you can call it TEC.

MR. OWENS: We will take that under advisement. (Laughter) We usually let our customers choose the names. We use our own internal code names for things because over time our customers do want to name their products and we're happy to work with Trademarks on selecting a suitable name for the product going forward.

CHAIRPERSON WELDON-WILSON: Thank you very much. Bill Barber had a question as well.

MR. BARBER: Hi Rob. I just wanted to get clarification on the timing of TTAB NG, the fourth aspect of TMNG. I think I heard you say that that is proposed to start in Fiscal Year 2019, if I heard you correctly.

And I'm just wondering, what would the timing -- the expected timing of that process -- would it start in 2019 and then end some fiscal year later? Or would it all be done in 2019?

MR. HARRIS: So, the current plan is to begin the work in FY19. I say current because I really am encouraged by the recent discussions of trying to integrate TTAB capability into what we're delivering as part of TMNG. The example that everyone uses is a docket management capability where the docket could be used by the TTAB as well as all business units across the trademark business.

So, if that's the case, then some of that TTAB capability is going to be moved up and delivered sooner. If we stay with the status quo, I'm a little nervous to throw out an end date because certainly we've got to get into and start to understand what those requirements are. But very clearly I would say that it is beginning in '19 and ending in the '20- '21 timeframe. That's what I would absolutely guesstimate now based on the fact

that we would hope to reuse as much capability as possible from the Trademark Next Gen products that we deliver, but realize there are some unique aspects of TTAB that we would have to develop.

MR. BARBER: So, at this point you're not anticipating that that process would end in '19. Is that correct?

MR. HARRIS: Correct.

MR. BARBER: Thank you.

MR. LOCKHART: But I would assume going forward as you continue to develop and roll out TMNG, you'd probably have more clarity about the TTAB portion and exactly what can be done by when. I realize because you're still in the throes of getting the examiner tool out there it's -- you're not really in a position at this point, I'm assuming, to think as much about the TTAB part.

MR. HARRIS: Absolutely. And that's why back on the slide that I briefed, it was shown as a proposed investment. The first thing we do is we sit down with our business

customers and identify and define what those requirements are, put together our first high-level estimate of schedule and cost. And that's something we haven't done yet. So, I think it was worth clarifying that right now it's kind of -- our rough guess is that it will take more than a year, but right now it's nothing more than a rough guess until we get to a position that we can sit down and define what those high-level requirements are and begin to decompose.

MR. LOCKHART: And I assume, and again, correct me if I'm wrong, but from Judge Rogers' comments regarding the integration of TMNG and the TTAB IT processes that the Office is still kind of thinking through exactly how much of that is going to be on the Trademark side, if you will, and how much is going to be on the TTAB side.

So, I appreciate that you're still sorting through those issues.

MR. OWENS: That would be accurate, yes.

CHAIRPERSON WELDON-WILSON: Thank

you. I believe Jonathan Hudis had a question as well.

MR. HUDIS: RajRaj, John, thank you for your presentation. I have a few metric items I'd like to go over with you.

On the slide that talks about training the law offices and rolling out the Examiners' tools, what's what's your confidence level about the timing of the training and the rolling out these tools to the law offices in the second and third quarters of Fiscal Year 17?

MR. OWENS: Well -- go ahead.

MR. HARRIS: I was just going to say, I see Greg stepping up more to Mary since the training rollout is truly one of our call of our business partners.

MR. DODSON: Thank you, Jonathan. That's a good question.

So, when we built the slides I kind of predicated the rollout and the training based on how many law offices we had to go and how many weeks we had to do it to get to the end of the third quarter of '17. So, it was

roughly in equivalence of one law office per week for the rest of the remaining weeks through the two quarters. So, we had about 24 weeks to go, starting in the middle of January, and we had 24 law offices to do as well. We've got a couple of new ones.

But we might have to mold and shape that a little bit. We could have caught up a little bit toward the end if we, instead of going on a one-for-one basis, one law office per week, we could have gone to two law offices per week once we got toward the end if we were on an accelerated pace and we could do that.

I think you might see that rolloutrollout maybe a little bit more into the fourth quarter now just because of where we are today. But I think it's a realistic goal to expect that early into quarter four, if everything goes according to plan, we're going to be complete. And I'm pretty confident to that.

MR. HUDIS: So, what I'm hearing from that is we're looking at a rollout of the

examiner toolstools in TMNG by the end of September 2017. Is that correct?

MR. DODSON: Yes. I would think on the course that we've charted right now that's an entirely reasonable goal. Unless we were to find that for whatever reason it just wasn't working to the level we expect it to be, that having it by the end of the fiscal year -- and, again, pending any -- those are decisions that have to be made in concert with 245 and the leadership in Trademarks outside of the IT world. But, yes, I think that the product should be available and ready to go, based on everything that we're planning, certainly by the end of the year. But I think you'll even see it before then. The fiscal year.

MR. HUDIS: Mr. Owens, would you agree with that assessment?

MR. OWENS: Yes.

MR. HUDIS: Okay. So, the other part of the presentation that caught my attentionattention was the TMNG e-file development that was paused because of a poor

performing development team. What is your confidence level now of rolling out the e-file capabilities to the trademark bar and public? What was your assessment there? Was that Fiscal Year 18?

MR. OWENS: Yes, by the end of FY18.

MR. HUDIS: All right. So, that would be -- we're looking at a rollout of end-to-end TMNG e-file by September 2018. Is that correct?

MR. HARRIS: Yes.

MR. HUDIS: All right. Mr. Owens, would you agree with that assessment?

MR. OWENS: As it's currently defined, yes.

MR. HUDIS: Thank you.

CHAIRPERSON WELDON-WILSON: Are there any other questions? If not, I would like to thank John Owens and Rob Harris and Craig Dodson for joining us. And appreciate all of your work in explaining to us where things are at this point so that we'll have our expectations in the correct place, and

have a better understanding of how things are moving along. Thank you very much.

MR. OWENS: Thank you.

CHAIRPERSON WELDON-WILSON: And I would like at this point to first ask any of the TPAC members if they have any other questions today. And if not, then I'm going to ask any members of the public if they have any comments or questions that they would like to make.

If not, thank you all for coming. We appreciate everyone listening on the web. We know that some of our examining attorneys, interlocutory attorneys, TTAB judges, other employees of the USPTO, as well as the public were listening. And we appreciate all of you participating. Thank you very much and we will see you next, I guess, in May.

Thank you. We are adjourned.

(Whereupon, at 11:30 a.m., the PROCEEDINGS were adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
Virginia**

My Commission Expires: August 31, 2017

Notary Public Number 122985