

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, July 13, 2012

1 PARTICIPANTS:

2 TPAC Members:

3 MAURY M. TEPPER, III, Chair

4 DEBORAH COHN

5 JAMES G. CONLEY

6 ANNE CHASSER

7 LINDA MCLEOD

8 JODY HALLER DRAKE

9 SHARON MARSH

10 KATHRYN BARRETT PARK

11 TERESA STANEK REA

12 GERARD ROGERS

13 ANTHONY P. SCARDINO

14 RAY THOMAS, JR.

15 RANDALL P. MYERS

16 JOHN OWENS

17 RAJ DOLAS

18 MARCIE LOVETT

19 Union Reps:

20 HOWARD FRIEDMAN

21

22 * * * * *

P R O C E E D I N G S

(10:00 a.m.)

1
2
3 CHAIRMAN TEPPER: I'd like to call to
4 order this public meeting of the Trademark Public
5 Advisory Committee. Glad to see so many
6 representatives from VIP community. We appreciate
7 the time that representatives of the Patent and
8 Trademark Office have taken to come and update us
9 on some issues. We will be introducing them as we
10 go throughout the day, but I'd like to take just a
11 moment to introduce our committee members who are
12 present.

13 And I am not sure how best to this. If
14 you are viewing online this will probably make a
15 little less sense, but I'll work my way around the
16 table starting to my right. I suppose that is
17 stage left. Linda McLeod is here. She is with
18 Finnegan, Henderson. Kathryn Barrett Park, who is
19 with General Electric. Ann Chasser, who is famous
20 in her own right. She has been with the
21 University of Cincinnati as a former commissioner
22 and I think may have recently celebrated a very

1 eventful day. I'll say no more about that. James
2 Conley; James is from Northwestern University.
3 Howard Friedman; Howard is our representative for
4 NTAU. Cheryl Black from Goodman, Allen in lovely
5 town of Richmond, Virginia, which I plan to drive
6 through later this afternoon. Deb Hampton; Deb is
7 with Elizabeth Arden, has come down from the big
8 city and I mean the big city of New York.

9 And over here we have Jody Drake; Jody
10 is Sughrue Mion. She is one of our local
11 commuters, as is Ray Thomas. You are your own
12 boss, right? It's law offices of --

13 MR. THOMAS: Ray Thomas.

14 CHAIRMAN TEPPER: I like that. And
15 Harold Ross I see is not currently with us. Randy
16 Myers is also our representative from the Patent
17 Union.

18 We've got a pretty good amount of ground
19 to cover today, but we're going to do our best to,
20 notwithstanding my late start, keep the trains
21 running on time. I would like to mention for
22 those of you who are online, if you have questions

1 or comments for us I will try after each
2 presentation to provide some time for questions
3 first from committee members and from the public.
4 So please do feel free to email those to us. I
5 learned last time that we have a very good system
6 here, so you're comments, your questions will be
7 brought to us and we'll try to address those as we
8 go throughout the day.

9 We typically do start with a back to
10 back update. We'll have some information from the
11 CFO's office. And then we typically go through
12 legislative issues. I will mention in advance
13 Dana Colarulli is not able to be with us today.
14 He's actually at an opening of one of the PTO's
15 satellite offices in Detroit today. It is
16 fortunately a relatively quiet time on the Hill,
17 so I have other plans for part of that time slot,
18 but we may be a bit early. So if you are
19 following the agenda or the schedule online just
20 be aware that given that time we may be able to
21 run the rest of the meeting just a little bit
22 ahead of schedule.

1 Why don't we begin with an update from
2 the CFO. I think we have some information about
3 our timelines and budgeting process. And see who
4 is with us this morning? Great. Yes, thank you.

5 MR. SCARDINO: Good morning. Thank you
6 for having me. Not exactly a quiet time in the
7 finance world, as much as it is up on the Hill a
8 little bit. You know, this is the point in time
9 where we are engaged in three fiscal years. We're
10 living fiscal year 2012. We are waiting for
11 Congressional action on fiscal year 2013. When I
12 say waiting that House has passed a bill, which
13 would provide almost the entire amount of funding
14 for USPTO short \$20 million from the President's
15 Budget Request, but it's over \$2.9 billion. And
16 then fiscal year 2014, which would start 'til in
17 October 2013, we are in the midst of developing
18 our budget estimates to go the Office of
19 Management Budget this fall, which I'll go through
20 in a little more detail.

21 So anyway you've got three fiscal years
22 and then oh, yeah we have this little thing called

1 fee setting that is right in the middle of all
2 that, which we are working to produce an NPRM for
3 that, a proposed rulemaking.

4 So there is a lot going on, but I'll try
5 to give you the highlights over the next, let's
6 see here, couple of minutes. Just trying to get
7 to the next page.

8 All right. So for trademarks
9 specifically we're going to go through the fiscal
10 situation as is right now 2012 as the screen shows
11 we're basically running a pace with what we
12 thought would come in and what we thought we'd be
13 spending. So there's no surprises. Fee
14 collections are pretty much where we thought they
15 would be and spending to date is pretty much where
16 we thought we would be. So that's all good. This
17 are very stable.

18 I can give you more details. The next
19 page here kind of gives you the breakout of where
20 we were last year at this time versus where we are
21 today and where we thought we would be this year,
22 but again, not a lot of differentiation, except

1 for the fact that we are collecting more money
2 than we did last year, which is as we expected.

3 So you'll see that actuals and plan, the black
4 line versus -- I don't know what even to call it
5 -- a really, really light blue line, they're
6 really similar. And the darker blue line is last
7 year where we of course collected less money and
8 we knew we would.

9 Of course collections mirror production,
10 so we've got more people on board. We're
11 producing more, collecting more. So outlook is
12 very good for 2013. Also as a mentioned,
13 president's budget is being supported up on the
14 Hill. The Senate hasn't officially passed the
15 budget yet for 2013, but the subcommittee has
16 marked it up and provided what we asked for. Now,
17 nobody knows what will happen by October 1st, when
18 fiscal year 2013 starts.

19 Having said that, everyone's expectation
20 is that we'll be under a continuing resolution
21 once again. Now how long that continuing
22 resolution will be, will it be 'til just past the

1 election? Will it be the first quarter of fiscal
2 year 2013, or even later? No one knows. You
3 know, election years are always challenging for
4 budget managers. These days of course continuing
5 resolutions have become status quo almost. I
6 mean, it's not the exception, it's the norm these
7 days. So I'm not trying to tell you anything that
8 no one doesn't already know, but again we don't
9 know anything for sure until it happens, but we
10 think we'll be under a CR.

11 Living under a CR you usually live with
12 last year's money. Fiscal year 2012 dollars
13 continues and authorities continue until the next
14 year. When we were planning for that. Trademarks
15 has an operating reserve or carryover funding of
16 roughly \$100 million. So that money is also
17 available under a CR. So, you know, Debbie and
18 her crew are just managing, you know, they're
19 planning to manage to the plan actually. You
20 know, what we would normally do with production as
21 well as hiring or whatever is needed we have the
22 fiscal resources to do so.

1 So that would means TMG and the
2 president's budget is \$14.5 million for 2013. We
3 are actually in the process of revalidating '13 as
4 we build the 2014 budget. What I mean by
5 revalidating is, last year at this we were
6 building a 2013 budget. Okay. That's over a year
7 before the fiscal year starts. So we always go
8 through a revalidation period and make sure, hey
9 is this what we really need? How many people are
10 on board? How much money do we need? Where are
11 we with any systems development? Overtime needs,
12 awards and the such?

13 So my office is actively engaged with
14 the Trademarks Organization to do that, but again,
15 things that are looking very good. It's kind of a
16 steady state approach in the sense of there aren't
17 huge enhancements for 2013, just a continued
18 development of TMNG.

19 So as I did mention though there are
20 things that are going to happen over the next few
21 months. The election being one of them.
22 Sequestration, you've probably heard of. I don't

1 think it's just an inside the beltway term, but
2 Congress and the administration are working very
3 hard to kind of meet the budgetary requirements of
4 the sequestration. Nobody knows what's going to
5 happen. So we're sitting tight like every other
6 federal agency to see if there will be any impact
7 or effect, but again on the Trademark side due to
8 the, I'm going to call it the operating reserve,
9 usually can manage through most challenges like
10 that. I don't like to give any definitives
11 because we don't know what's going to happen.

12 And then the last thing is fiscal year
13 2014 as mentioned, internally we are in the
14 process of developing our budgetary requirements.
15 We'll be meeting with Director Kapos shortly over
16 the next few weeks to get some final decisions for
17 building and then presenting the budget to the
18 Office of Management and Budget. I think it's
19 September 12th, whatever that second Monday in the
20 month is. Budgets due to OMB then and then
21 they've got the fall to kind of chew on it and
22 review, ask us questions and then eventually the

1 president will submit a budget to Congress the
2 first Monday in February.

3 Before that, of course, you will see our
4 budget requests in late August before it goes to
5 OMB and then you'll see it again in late December,
6 early January, before it goes to Congress. And we
7 always appreciate the input we get. So please
8 anytime you have any questions or thoughts please
9 share them.

10 CHAIRMAN TEPPER: Tony, thank you. I
11 think obviously it's always good to hear that
12 things are proceeding as planned. Just a couple
13 of comments I'd like to underline before we take
14 questions on the presentation, but do remember at
15 any given time, the PTO is always working with
16 three different years of budgets. And we are
17 tracking performance under the current fiscal
18 year's budget. We're looking for approval of the
19 next year's budget and as you've heard, we don't
20 know about that one yet.

21 So although we had some very positive
22 changes with the America Invents Act, we still are

1 subject to Congressional authorization and
2 appropriation. And every year the office will be
3 unable to spend until the budgets are passed and
4 we have the spending bills in place.

5 So operating under a continuing
6 resolution, I think you heard, obviously means we
7 will continue spending at current budgeted levels
8 until we can approve next year's budgeted levels.
9 Those of you operating a business and looking to
10 plan for long term growth and for capital spending
11 can appreciate how difficult that can be.

12 So I think as we go through and hear
13 about performance of the office, you know, keep in
14 mind the additional challenges that they have
15 given this process. Revalidation was a new term
16 for me and so I hope you all caught onto that too.
17 It is such a long lead time in budgeting approval
18 that, you know, planning out a couple of years
19 going back to look at how those projections
20 stands, is I think, a worthwhile exercise.

21 Are there any questions from the
22 committee for our CFO? You were apparently very

1 thorough and complete, Tony, thank you.

2 Any questions from the public? Do we
3 have any comments this morning?

4 All right. Well, thank you very much
5 then. We will look forward to continuing to work
6 on budgets planning as they come through.

7 I did mention and I will exercise my
8 prerogative to sort of detour from the published
9 agenda since we do not have an update from the
10 Office of Legislative Affairs this morning. I
11 would like to take just a moment to recognize a
12 couple of people. We have two members who have
13 been serving very faithfully. Their terms will
14 officially expire in September. We will not have
15 another meeting before then. So while we are here
16 I wanted to publicly recognize and to thank
17 Kathryn Barrett Park and James Conley.

18 You see the big smiles on their faces
19 because they think they're getting away. I
20 mentioned there terms continue through September.
21 We will be working on our annual report and they
22 are still members so they will be working behind

1 the scenes for you, but if you guys would come up
2 for just a second. I would say these are suitable
3 for framing, but they're already framed.

4 MS. PARK: Thank you.

5 MR. CONLEY: Thank you, Maury.

6 MS. PARK: Thank you, Maury.

7 CHAIRMAN TEPPER: I will say we have an
8 excellent group, but in particular we will miss
9 James' wit and expertise. He is sharp with
10 numbers. Has helped us to understand part of what
11 he understands, but he has done an excellent job
12 of sort of going through and helping us to
13 understand financials and working with our budget
14 subcommittee.

15 Kathryn has been a jack of all trades.
16 She started with operations. She has taken on
17 sort of working on our TTAB Subcommittee and I
18 know has been, you know, working very well with
19 that group. And we just appreciate all the time
20 you all have put in. We appreciate the service
21 and I especially want to thank you publicly in
22 advance for all the drafting you're planning to do

1 on the annual report before September.

2 I have one other item I'd like to
3 mention and this is especially important for those
4 of us on the Advisory Committee. It takes a lot
5 of work to get everyone here to get the agendas
6 organized to find the rooms at the PTO, to help us
7 arrange for travel and formatting of reports, and
8 Patricia Back works a lot behind the scenes with
9 us. Today is Pat's birthday and I want to wish
10 her a happy birthday. And Pat we want to thank
11 you and lots of other folks of the staff here for
12 making our jobs so much more easy and pleasant.
13 Thank you.

14 All right. Well, we are little bit
15 ahead of time and I am going to challenge our
16 commissioner to keep us that way. But we are
17 always fortunate and glad to have Commissioner for
18 Trademarks, Debbie Cohn. And Debbie is going to
19 update on performance and talk about a couple of
20 other issues too.

21 MS. COHN: Thank you, Maury. Thank you,
22 Pat. Happy Birthday. And I do want to echo

1 Maury's comments about Kathryn and James and thank
2 you both for all of your service and your
3 wonderful contributions to the TPAC have been
4 tremendous, as everybody's is but really
5 particularly yours, so thank you.

6 Okay. So let me get started with the
7 usual run through on the statistics and as always
8 it's impossible to read on the screen so luckily
9 you have it with you in your books. And the first
10 page that you should be looking at is the
11 Trademark performance measures for quarter three.
12 And that first page actually is our examination
13 quality and production e-government filing
14 statistics and they have been updated as of the
15 end of June, which is the end of the third
16 quarter. And so they're really hot off the
17 presses now we have just updated them within in
18 the last day or so.

19 So as you can see looking down, we
20 really pretty much on target for everything.
21 We're slightly below our target for first office
22 action quality, but that is sort of a moving

1 target and really not statistically significant
2 until we get to the very end of the fiscal year.
3 We're ahead of target on final action compliance.

4 And for our exceptional office action
5 measure we are ahead of target by a whopping 15
6 percent. And I think, I've gone over this in past
7 TPACs, I think everybody knows what the
8 exceptional office action measure is. It's a
9 comprehensive measure of various aspects of the
10 office action, not just the legal decision making,
11 but the searching, the evidence and the writing as
12 well. So we're very happy about that measure and
13 we're also extremely happy to see that it is
14 moving in the right direction.

15 For e-government, we've moved up to 76
16 percent and that reflects the percentage of
17 electronic filing and processing throughout the
18 process from the beginning to end. And so our
19 goal is of course to get a 100 percent at some
20 point in the future, but that means that people
21 are going to have to change their behavior quite a
22 bit and as I've talked about in past TPAC

1 meetings, you know, we've had a variety of
2 initiatives to try to improve things from our side
3 to get people to file subsequent communications
4 electronically. We already have just about
5 everyone, more than 98 percent of our applicants
6 filing electronically in the beginning of the
7 process, their initial applications.

8 I'm going to just skip over examiner
9 production. You can look at the figures. We're
10 ahead of target on that one. Application filings,
11 we are continuing to move in the right direction
12 for application filings. We're expecting a 3.6
13 percent increase this year over last year. We are
14 currently at 5.3 percent. So that's a very good
15 sign and we're hoping to keep going in a positive
16 direction on that. So for the last, since 2010,
17 we have been moving up. We've been increasing our
18 application filings.

19 And as you probably know, last year 2011
20 at the very end of 2011, we began hiring again for
21 the first time in three years. We hired, this
22 fiscal year including that September hire of last

1 year, we hired 34 examining attorneys. So we do
2 plan on hiring in fiscal year '13, but as I've
3 said many times in the past, we always reevaluate
4 our plans in light of production, pendency,
5 inventory, filings, economic conditions, you know,
6 we take a lot of factors into consideration before
7 we make that final decision to move forward with
8 the hiring, but right now it looks like we will be
9 in place to hire a group of 26 examining attorneys
10 in 2013.

11 Moving down to pendency. We are on
12 target. We're at three months action pendency,
13 which is right on target in our 2.5 to 3.5 target
14 range. For disposal pendency, again, we are doing
15 better than our target, both targets. One is
16 where you include the suspended and interparty's
17 proceedings and we're at 12.6 months average
18 pendency for those cases. And then if you exclude
19 suspended and interparty's proceedings, we move
20 down to 10.6 months total pendency.

21 Okay. So moving on to the next page,
22 which talks about some of our other measures

1 everything from our amendment processing, to our
2 post registration and intent to use processing.

3 And I do want to mention that those figures have
4 not yet been updated. We won't have final
5 information on that data for the next few days.
6 So that information is updated as of the end of
7 May.

8 And as you can if you look to the last
9 two columns, which is the targets and our current
10 situation, you'll see we are doing quite well.
11 We're either ahead, just ahead or just behind on
12 most of our targets.

13 If you look down and I just want to
14 point out one area that's been an area of concern
15 in the office in recent months and that was the
16 post registration amendment and correction
17 pendency, which was really quite out of whack for
18 a while. It was a lot worse than it should have
19 been and I really want to compliment the post
20 registration employees and management for really
21 pushing to move that number to where it should be.
22 Where right now it's 16 days pendency. The target

1 is 15 days. And they have made some great efforts
2 to get things back to where they should be. So I
3 want to congratulate Tiffany Huntley and Rodney
4 Makel on all the post registration folks,
5 including Susan White, who is the director of
6 Trademark Services, because they did that in a
7 relatively short amount of time considering what
8 they had to do.

9 So I want to stop for a moment and ask
10 if anybody has any questions about the statistics
11 before I move on? No. Okay.

12 So let me move on now and talk about my
13 next topic on the list is outreach initiatives and
14 we're moving in really two directions on outreach.
15 And the first is stakeholder outreach and as you
16 know we do a fair amount of speaking in different
17 venues and we've also started working with INTA to
18 do INTA USPTO roundtables throughout the country
19 to try to engage our stakeholders in smaller group
20 settings in discussions about various issues and
21 more advanced practice issues, if you will. So
22 rather than us just standing up and speaking, we

1 really have a conversation and it's worked out
2 very well.

3 We started it in January. We did
4 several sessions in New York City. We had a
5 session here at the PTO, Wilmington, Delaware,
6 Boston, Raleigh and next week we're going to
7 Chicago. We also have plans to go to Seattle and
8 to Charlotte, North Carolina, which will be in
9 conjunction with the Trademark Administrators
10 Conference which should be a great event.

11 And so we have other areas we're
12 starting to plan for the next fiscal year. If
13 anybody has suggestions on areas that they think
14 would be a good place for us to have these joint
15 roundtable sessions we would love to hear about
16 them. So that's, you know, sort of the direction
17 we're going in stakeholder outreach.

18 And then the other area of outreach is
19 sort of the other side of the coin, people who
20 know nothing about Trademarks, our sort of general
21 public. We want to increase the knowledge of the
22 importance of trademarks and how to get trademark

1 protection of starting in the beginning of the
2 process when entrepreneurs and independent
3 inventors and people who are starting businesses
4 really need to know about trademark protection.

5 And some of you know we've started an
6 initiative, which is being led by Craig Mars, who
7 has been doing speaking in a variety of different
8 settings focusing on those groups that need sort
9 of the basic information. And he, just going to
10 name a few of the places he's spoken; the National
11 Veteran's Small Business Conference and Expo; this
12 week he spoke at North Carolina State University
13 for the North Carolina Small Business and
14 Technology Development Center; next week Craig
15 will be speaking at the Small Business
16 Administration's Annual Conference. So as I said,
17 we're trying to get to people who ordinarily
18 wouldn't hear that and I think it benefits
19 everybody to have people have the knowledge about
20 trademarks before they get started and invest in
21 what's sometimes turns out to be a bad decision on
22 the trademark side. So Craig, thank you for all

1 your efforts in this area.

2 The next item is the identification
3 manual. And we hosted a roundtable in February of
4 this year to talk about different ways to improve
5 the ID manual and different ways to improve our
6 practice in IDs. And one of the suggestions that
7 came up was to try to get better information into
8 the manual, more current information from industry
9 groups, so examining attorneys really have the
10 latest cutting edge terminology at their
11 fingertips. And so we're now working with INTA
12 through the USPTO Subcommittee and we've started
13 that process and we're going to try to start the
14 process. It will be ongoing. It won't be a
15 one-time deal. So we'll have this mechanism of
16 getting this input, of updating our manual and of
17 having better information for everybody, for the
18 public and for our examining attorneys.

19 We're also looking at restructuring the
20 actual manual itself and we have gotten some
21 suggestions. We're working internally with
22 examining attorneys, through the law offices to

1 try to gather suggestions on how to better
2 structure our manual so that it's more usable for
3 everybody, both internally and externally. It's a
4 fairly long term project because it is an IT
5 related project, but one of the things we're doing
6 now for this fiscal year is trying to restructure
7 the suggestions that come in so that you, as the
8 user, can filter out the public suggestions and
9 only see the things that were initially in the
10 manual, if you know what I'm saying.

11 So that we get a lot of suggestions. We
12 put them all in the manual and then when you look
13 through them, you often get quite a bit of
14 information that you don't necessarily need. And
15 so we're going to give you the ability to filter
16 that out. We're working on that now and we expect
17 to have that done by the end of fiscal year 2012.

18 The other topic on your agenda has to do
19 with improving the use space register and we had a
20 final rule on post registration specimens that
21 allow us to do a pilot in the post registration
22 area that we have just started. In fact, we've

1 started it this week and Sharon is going to speak
2 to you more about it just a few minutes, but I do
3 want to say that the pilot is being conducted by
4 senior examining attorneys so we're paying very
5 close attention to the results and to how the
6 pilot is actually underway. So you'll be hearing
7 more about that in a few minutes.

8 A few other items that I wanted to talk
9 about. At our last meeting I talked about the
10 third party solicitation issue, which I know is of
11 great concern to everyone. As you know we have a
12 warning posted on our website. We had sent a
13 cease and desist letter to the United States
14 Trademark Registration Office, who was sending out
15 just multitudes of notices to folks. My husband
16 even got one for his business. Came home waving
17 it one day. And we were very pleased that they
18 were extremely responsive to our cease and desist
19 letter and we believe they told us they had
20 stopped sending those notices out. I have not
21 heard any complaints in recent months. They had
22 represented they stopped in March. So, you know,

1 certainly let me know if you've had different
2 experiences, but that organization which was
3 responsible for so many of those notices appears
4 to have stopped that practice.

5 We also started the practice of
6 including the warning notice similar to what's on
7 the website with every registration certificate
8 that's sent out to trademark owners. So you may
9 have seen this. You may have gotten one of these.
10 And so we've gotten great feedback that people
11 appreciate getting this because it stands out.
12 You can't miss it. And often people get the
13 registration certificate with this at the time
14 they were getting their notices from these other
15 organizations. So it was a good thing.

16 Are there any questions about the
17 solicitations, or does anyone want to tell me that
18 they're still getting them? No.

19 Couple of other items. You're going to
20 be hearing a little bit later from OCIO from Raj
21 Dolas about the paperless OG. I want to say that
22 we are talking about and we are pretty certain

1 that the paper OG will be eliminated as of the end
2 of this calendar year. It's published by GPO,
3 Government Printing Office, so we don't actually
4 publish it, but it's become a very costly
5 proposition for them considering the number of
6 subscriptions is below 150. And I think we have
7 three of them unfortunately.

8 So they're going to be stopping that
9 practice, but the great thing about that is it
10 allows us to move forward to actually change the
11 way we present our electronic OG. And so rather
12 than having a PDF, which is done that way
13 primarily because of the paper OG that we have to
14 present the way we have to format it, we'll be
15 able to do something in completely different
16 format, make it searchable, you know, it's really
17 we have a lot of possibilities and we're going to
18 be seeking input from our users on what you want
19 the electronic OG to look like. So you can look
20 forward to hearing from us on that and if people
21 have suggestions now that they want to send us,
22 please do that, TMfeedback@uspto.gov.

1 The other thing I wanted to mention with
2 respect to the OG is, in the meantime, before we
3 make those big changes to the electronic OG
4 format, we're planning on changing the way the

5 link is received in the notice of publication. So
6 today when you get your notice of publication
7 electronically, you get a link and it goes to the
8 OG and then you have to page through to find your
9 mark. What we're planning on doing is we're
10 calling it the direct page link. So your link
11 will go right to the page, rather than having to
12 page through the OG. So we have heard from people
13 that that's a much preferred option and we're
14 working on that and it's not as big a lift IT wise
15 so we expect to have that done by the end of the
16 fiscal year, by the end of September we're hoping.

17 One other item, TSDR 2.0 deployment,
18 we're planning to release another version, version
19 2.0, of our trademark status and document
20 retrieval site. And that will make some changes.
21 It will provide direct links to application and
22 registration data that functions more like TAR and

1 the static links displaying TAR information today
2 will be redirecting to TSDR after the deployment.
3 So I know that's been a big concern and we are
4 working on making sure that that goes smoothly.

5 And then I wanted to mention the
6 Intellectual Property Industries and Focus Report
7 that was released in April of this year and this
8 was done by the Economics and Statistics
9 Administration of DOC and our own Office of the
10 Chief Economist here at the USPTO. And the reason
11 I'm mentioning it is this is the first
12 comprehensive analysis using our data to identify
13 U.S. industries using intellectual property most
14 intensively and what the economic impact of that
15 is. And the report shows that the industry's most
16 intensively using trademarks accounted for a large
17 share of direct and indirect employment in the
18 United States economy in 2010.

19 So it was really a good report from the
20 trademark perspective. It was very interesting.
21 It presented a lot of new information and data
22 that had not been collected before and the report

1 is accessible on our website if you go to the
2 Office of the Chief Economist section you can find
3 the report. And I encourage you to take a look at
4 it. And Stu Graham, who is the chief economist,
5 is working on some other trademark related data
6 and reporting for this fiscal year. So we're
7 looking forward to seeing more of that.

8 And then the last item I'd like to
9 mention is our Trademark Expo, which is being
10 planned for October 19th and 20th of this year.
11 And I think it is our premiere educational event.
12 Last year we had 15,000 visitors walk through the
13 Expo. We had around 34 or 5 exhibitor. This year
14 we have 37. It's a very exciting event. We have
15 some seminars planned. And I encourage you, I
16 know that some of you here have your clients
17 participating, I encourage you to come if you're
18 in the D.C. area. And if you have any questions
19 about it, please let me know and I'd be happy to
20 provide more information. It's available on the
21 website. I don't recall the exact link so I can't
22 give it to you, but I'm sure you can find it or

1 ask me and I can get it for you.

2 So, Maury, I think that's it for me.

3 I'd be happy to answer any questions that anybody
4 has. And I think --

5 CHAIRMAN TEPPER: Doing well.

6 MS. COHN: -- open time wise.

7 CHAIRMAN TEPPER: Excellent.

8 MS. COHN: Yeah, we're going to have to
9 take a long break, aren't we?

10 CHAIRMAN TEPPER: Probably no one will
11 object. Are there questions, comments for
12 Commissioner Cohn? I know it is becoming an
13 increasing challenge for our committee in
14 reviewing, it's a little bit like when you watch
15 someone at the top of their sport. We have come
16 to expect the numbers to be spot on. They
17 continue to be spot on and we are going to find
18 something to focus on or ask them about one of
19 these days, but I do want to commend Debbie and
20 her entire group and Trademark Operations for
21 keeping things running so well and for continuing
22 to, as you've heard about the, I believe it's now

1 the exceptional office action standard, when
2 things are working for continuing to raise the bar
3 in trying to further stretch the delivery of
4 service.

5 I'd like just to make two brief
6 comments. I also would like to encourage anyone
7 out there, you heard a little bit about Craig
8 Mars' outreach effort right now. And I commend
9 the Office and in particular Craig for his efforts
10 to reach beyond the legal community. We all
11 benefit from business people making better
12 decisions and entering out with a better
13 understanding of trademarks. You can help do that
14 if you have contacts with sort of business
15 roundtables, entrepreneurial groups, universities
16 who are training MBAs. I would ask that you
17 please provide those to Craig. You can submit
18 them to the Office, but he is diligently following
19 up on all of those leads.

20 Debbie mentioned a presentation he made
21 to the Small Business Technology Development
22 Center in Raleigh this week. I know that took a

1 whole lot of effort and pushing on his part to
2 find the right group and to get down there. So
3 please do help out if you have any contacts, any
4 suggestions, we'd like to receive those. I think
5 this is a really tremendous effort. It will
6 benefit all of us in the long run. And we want to
7 make sure that we do what we can to support it.

8 I'd also like to issue a request and
9 challenge. Debbie mentioned the action that the
10 Office was able to take in sending a demand letter
11 to the U.S. Trademark Registration Agency. That
12 is not likely to be the last group who will try
13 this. Yeah, and it is great that the PTO was able
14 to step in and to respond in that situation.

15 As practitioners and companies we need
16 to be diligent out there to keep an eye out.
17 These surface from time to time. There are other
18 groups who will send these types of notices. When
19 you see them, please do make people aware of them.
20 Forward them, notify the PTO, obviously they
21 cannot take action if they don't know what's going
22 on, but more importantly, you want to be proactive

1 in continuing to monitor this and warn your
2 clients. When you get one notice from a client
3 saying does this look legitimate? Remember,
4 probably lots and lots of other people have
5 received that notice too.

6 So I think it's an area that we can all
7 sort of continue to monitor, try to keep the word
8 out there to watch for these. I wish that were
9 the only scam in life. I mentioned that I won the
10 UK lottery three times last week, without even
11 buying a ticket, which was pretty good. And I had
12 three PayPal accounts shutdown and since I don't
13 actually have any PayPal accounts I'm not sure how
14 that happened. So there are of course all sorts
15 of misleading emails, communications out there and
16 sadly emails and letters relating to trademarks
17 are just sort of part of what we need to contend
18 with and deal with. But I think it's helpful for
19 all of us to recognize we need to play a role in
20 keeping on top of that issue and making everyone
21 aware of what we're seeing in trends out there.

22 Are there any other questions, comments

1 from the public? All right.

2 We're going to turn briefly then to an
3 update on international and policy developments.
4 I think Debbie gave you one precursor. We're
5 happy to have Sharon Marsh with us. Sharon, I
6 apologize if I'm going to butcher your title.
7 Sharon is deputy commissioner for Trademark
8 Policy. Did I come close? All right.

9 MS. MARSH: That's close enough. Thank
10 you.

11 CHAIRMAN TEPPER: And I know for sure
12 we're going to hear a little update on the pilot
13 program that has recently commenced. Thank you
14 for that, Sharon.

15 MS. MARSH: Thanks, Maury. Yes, as
16 Debbie mentioned, the final rule that allows us to
17 start the post registration pilot took effect on
18 June 21 and this week actually group of five
19 senior attorneys started the pilot. It's going to
20 be conducted in the way that's described in the
21 final rulemaking notice.

22 In response to the notice of proposed

1 rulemaking we took the public comments very
2 seriously and you can read the entire response in
3 the final rulemaking notice, but the pilot will be
4 limited. It will a review roughly over the next
5 six months of about 500 randomly selected Section
6 8 affidavits. And this constitutes probably less
7 than 1 percent of the Section 8s that are normally
8 filed in a six-month period. So I am sure that's
9 small consolation for those who are selected for
10 the pilot, but it is a tiny fraction of the
11 Section 8s that we receive in a six-month period.

12 As Debbie mentioned, the pilot is being
13 conducted by five senior attorneys who are working
14 very closely with the post-registration staff to
15 ensure, you know, consistency and normal
16 application of the Section 8 rules. They will be
17 reviewing the Section 8 to see if it meets Section
18 8 requirements and then in addition they will be
19 requiring proof of use for two additional items in
20 each class.

21 So in those cases the registrant will be
22 required to submit proof of use for the two

1 additional items that are required by the senior
2 attorney. The registrant has six months to
3 respond, just like any post-registration office
4 section. And if the response is ultimately deemed
5 insufficient to show, you know, that the mark is
6 being used on the additional goods, those items
7 will be deleted from the goods and services in the
8 registration. If the registrant fails to respond,
9 then, you know, as is the case anytime you fail to
10 respond to a post-registration office action, the
11 registration will be cancelled.

12 We have a mailbox that is up. I have it
13 here somewhere. TMPost-regpilot@uspto.gov for
14 anybody who has general questions about the pilot.
15 Cynthia Lynch told me before the session that we
16 have received a few questions and we've responded
17 to those.

18 I think that's about it right now. We
19 will be collecting this data. Again, our goal is
20 to just assess the accuracy of the register and
21 when the data is collected and we have some
22 results to share with the committee, we will be

1 doing that.

2 CHAIRMAN TEPPER: Thank you, Sharon.

3 Does anyone have questions about the pilot?

4 Comments?

5 I have heard, you know, in various
6 settings some expressions of concern and I'll
7 simply put it this way, we all need to sort of
8 take a look and remember the goal. We are a use
9 based country. We have use based register and the
10 Office is trying to help make sure that that
11 register has integrity and is reliable for those
12 of us who regularly search PTO records trying to
13 make determinations for our clients on trademark
14 availability, trademark infringement, all sorts of
15 things.

16 So it is to everyone's benefit that the
17 register be accurate. I'll compare it to the IRS.
18 I like knowing that everybody is paying their
19 taxes. I obviously don't want to be the person
20 that is audited, but I recognize that that's, you
21 know, one of the ways we can sort of check in and
22 ensure compliance and attention is going through

1 and exercise like this. So if you are one of the
2 less than 1 percent, you certainly have my
3 sympathy or empathy, but I'm hopeful that you and
4 your clients all paid attention and only
5 registered for goods and services you're using
6 anyway so this will be nothing more than an
7 inconvenience for all involved.

8 Sharon, are there other issues you wish
9 to address for us this morning?

10 MS. MARSH: No, not today. Thanks.

11 CHAIRMAN TEPPER: Okay. Does anyone
12 from the public, any of our other guests have
13 questions or comments for Sharon? All right.
14 That being said, we are in the enviable position
15 of being well ahead of schedule. I think we were
16 scheduled to take a break at 10:25. So I'm going
17 to be generous and give you all 15 minutes. We'll
18 plan to recommence, and I want to make sure that
19 we can get out speakers, I know Chief Judge Rogers
20 was planning to be down at 10:35 I'm going to try
21 to hope that --

22 SPEAKER: He's here now.

1 CHAIRMAN TEPPER: Oh, good. Didn't see
2 you back there I'm sorry. Good. I'm going to ask
3 if you could be back here before quarter after.
4 And so we'll plan to recommence in about 15
5 minutes.

6 (Recess)

7 CHAIRMAN TEPPER: Well I will take
8 advantage of the silence to indicate you all must
9 be interested in getting back under way. We're
10 still ahead of schedule and I'm going to try to
11 keep us that way. So, Gerry, you've heard those
12 commercials where they give the legal disclaimers
13 at top speed. I want to see if you can manage
14 that for us. But we will recommence our meeting
15 here. I'm very happy to be joined by Chief Judge
16 Gerry Rogers, from the TTAB, who although he is
17 very distinguished and very tall, I somehow
18 managed to not notice sitting all the way at the
19 end of the row there earlier. But we have a fair
20 number if things going on. Some new staff to
21 introduce, some new developments underway. So
22 Gerry, I'll turn it over to you.

1 JUDGE ROGERS: Thank you, Maury. It's
2 really not your fault, and I know I'm normally on
3 the other side of the table and I guess they're
4 just mixing things up. We actually had a
5 presentation here at the PTO not too long ago
6 where one of the instructors said to foster
7 innovation, we should put our watches on our other
8 hand every once in a while. So when you go to
9 look at the time, you will all of a sudden realize
10 that it's okay to change and change is good. So I
11 guess we're trying that out with seating here
12 today.

13 So on the agenda, the first item is as
14 Maury mentioned, new staff additions and
15 responsibilities. And I will just quickly remind
16 everybody that at the last meeting we let you know
17 that Cheryl Butler had started with us as the
18 senior attorney and the editor of the TBMP. She's
19 paid immediate dividends because we now have out
20 the revised version of the TBMP. It's posted up
21 on our website. It's been out there for about a
22 month now, so hopefully everyone has had an

1 opportunity to take a look at that. Cheryl is
2 also going to be working with myself, and our new
3 managing attorney, who I'll get to in just a
4 minute, on keeping up our issuance of presidential
5 decisions and she'll work with me on things like
6 motions to disqualify council in particular cases.
7 They don't come up very often but they are an
8 issue from time to time. We also have Cheryl in
9 place to help with potential rulemakings and
10 things like that.

11 We also brought onboard Deborah Decker,
12 who is our senior administrator and the
13 subcommittee met with Debbie yesterday. She's
14 onboard to help us out with IT issues and budget
15 issues, contracting, travel, all of those things
16 that take up a lot of time in government practice
17 and I'm glad to have someone else to do those
18 things for me. And then Ken Solomon is here
19 today, he's our new managing attorney and I'll ask
20 Ken to stand up and take a bow.

21 MR. SOLOMON: Well, I'm not going to do
22 that.

1 JUDGE ROGERS: When the TPAC tells you
2 to bow, we'll bow.

3 MR. SOLOMON: How far?

4 CHAIRMAN TEPPER: I'd like to point out
5 that I am all of feet tall and most people don't
6 really pay much attention to what I ask, so thank
7 you, Gerry.

8 JUDGE ROGERS: Ken has been with us for
9 what, a month now? About a month and is learning
10 the ropes with Cindy Greenbaum, who you're all
11 very familiar with. And so Ken is learning our
12 systems, learning our timekeeping, learning the
13 government culture. Cheryl Black and Ken and I
14 were just talking about the kind of culture shock

15 it is coming from outside the government into the
16 government. And so he's doing a great job
17 learning everything and of course learning the
18 substance of what the interlocutory attorneys do,
19 too. And Ken will be working closely with me to
20 help get out precedents in inter partes cases on
21 issues of first impression that come up those
22 cases and in the motion practice in those cases.

1 And his experience in private practice was many
2 and varied. He was a trademark instructor at a
3 law school and a partner at a law firm and so it's
4 great for us to have the diversity of experience
5 that Ken brings to the table.

6 So that's it for new staff additions,
7 but the next item on the agenda will actually
8 result in further additions which we can probably
9 talk about at the next meeting. And the next item
10 on the agenda is vacancy announcements and
11 staffing and we have applications now before me
12 for review. I'm in the process for reviewing
13 applications for administrative trademark judge
14 applicants. We received about 45 applications in
15 response to our most recent announcement for
16 administrative trademark judges and the cert list
17 of the best-qualified candidates was sent to me
18 and I've started reviewing them. Some of the
19 names are familiar and it's not atypical for us to
20 have in-house candidates or outside candidates who
21 have been interested in the position in the past.
22 And then there are some new candidates so we'll be

1 looking through the applications, doing interviews
2 as necessary for the candidates who are new to us.
3 And I hope that we'll get that process wrapped up
4 quickly in the next few weeks and get
5 recommendations to the director and deputy
6 director for consideration and forwarding on to
7 main commerce. Kathryn, you had a question?

8 MS. PARK: Just, Gerry, could you say
9 how many people you're planning to hire. You said
10 how many applications you've got, but just so
11 we're clear.

12 JUDGE ROGERS: Well, we have
13 authorization on the government-hiring plan to
14 fill two positions, but we have a pending request
15 to fill additional positions, so as soon as I get
16 the authorization, we'll go beyond two and hire
17 what we can.

18 We also have a vacancy announcement that
19 went out yesterday and that was for attorneys,
20 interlocutory attorneys at the board. And as
21 you'll see when we go through some of the
22 statistics in a little bit, filings are starting

1 to increase in oppositions and cancellations as of
2 a result of the increased filings that trademarks
3 has seen over the last couple of years. And while
4 the growth in the backlog of motions is not very
5 significant at this point in time, inevitably more
6 oppositions will beget more motions and so we'll
7 end up having more motion practice. And we have
8 one attorney who's just started a maternity leave
9 and it's possible that one of our attorneys will
10 be promoted to a judge position and so we are
11 looking ahead and trying to stay on top of the
12 staffing level for the attorneys, too, and
13 therefore we've got an announcement out to hire a
14 couple of attorneys and so that announcement is
15 open now and closes July 25th and we'll look to
16 work through those applications that come in, in
17 response to that announcement as quickly as we can
18 later this month when that announcement closes.

19 And then the last area where we'll be
20 doing some additional hiring, too, is something I
21 believe I've mentioned in the past and that is
22 we'll be issuing some vacancy announcements in the

1 near future on some quality review positions.
2 It's in the budget plan for this year and as many
3 of you know, consented motions and uncontested
4 filings are pretty common in a lot of the board
5 inter partes proceedings and our staff of
6 paralegals review and process all of these filings
7 except for those, of course, that you file that
8 are automatically approved by the ESTA system.
9 But many are not contested motions that require
10 the attention of interlocutory attorneys, but
11 they're necessary to keep your cases on track or
12 to have those cases resolved in a way that the
13 parties have agreed to. And so we have these
14 quality review positions coming onboard to review
15 the work done by the paralegals and our customer
16 service representatives. So that's something that
17 we're looking forward to and Deborah Decker, the
18 senior administrator, I mentioned earlier, is in
19 charge of that and she's taking care of that and
20 so we'll be moving forward with that in the very
21 near future.

22 So that brings us to our statistics and

1 our performance measures and proposals to address
2 backlogs, but we'll get through the statistics
3 themselves first and then I'll talk about the
4 proposals. On the first slide here we have
5 incoming filing levels and as I mentioned earlier,
6 we're starting to see increases emanating out of
7 the increase in filings from the trademark
8 operation. And so you see here the FY '11
9 incoming figures and the first three quarters of
10 this year and in the parentheses in the third
11 quarter column is essentially my prediction about
12 where we will be at the end of the year, if the
13 fourth quarter matches the average quarter or the
14 average for each of the first three quarters. So
15 appeals will be pretty much even with Fiscal '11
16 but perhaps up a little bit and if we get a more
17 significant increase in appeals in the fourth
18 quarter, then we will be above FY '11. Extensions
19 of time to oppose, again running up higher than FY
20 '11. By the end of the year, oppositions will be
21 up from FY '11 and cancellations, for whatever
22 reason, are the most significant of the increases.

1 Again, none of these increases or what we expect
2 to be increases at the end of the year are
3 particularly large but we do expect increases by
4 the end of the year.

5 Final decisions. Final decisions is an
6 area where we're facing some challenges. These
7 are the cases -- this is a slide that covers both
8 ex parte appeals and inter partes trial cases and
9 for whatever reason, the number of cases maturing
10 to ready for decision on a quarterly basis, and
11 again these are mixed appeals and trial cases, is
12 remarkably consistent. You can see from these
13 first three quarter numbers and so I am predicting
14 by the end of the year we will have had nearly 660
15 cases, either appeals or trial cases mature to the
16 point where they're ready to be decided by a panel
17 of three judges.

18 The number of issued decisions, the
19 second line down on this chart. For the last two
20 years we were at about 450 decisions. So anyone
21 could do the math and see if you're issuing about
22 450 decisions or deciding 450 cases a year, but

1 you're getting 660 maturing to ready for decision,
2 you're not keeping up. And so that's why, of
3 course, the hiring is going to be so important to
4 us as will be other initiatives that I'll talk
5 about in a minute, that will help us try and boost
6 up the number of cases that are decided during the
7 year and if the cases maturing to ready for
8 decision continue on this apparently very
9 predictable pattern, then at least we know what we
10 have to strive for and we have to try and move up
11 too, to keep pace with what's coming in. But
12 there is some light at the end of the tunnel, I
13 think in addition to the anticipated hiring. I'm
14 predicting that we will have decided more than 500
15 cases by the end of this year which is going to be
16 a 10 percent increase over each of the last two
17 years. And so then again for Fiscal '13, we'll be
18 looking for another significant increase, and I
19 would say a minimum of 10 percent and hopefully
20 more like 20 percent next year with the additional
21 hires. But maybe that would mean another hundred
22 cases decided next year over this year, over what

1 we plan to decide this year. And when I say that,
2 this is not necessarily, and I have to be clear on
3 this, this is not necessarily 100 additional
4 decisions because sometimes we have multiple cases
5 decided by one decision. But this is the number
6 of cases maturing to ready for decision that we're
7 talking about and the number of cases decided.

8 As a result of trying to reach further
9 onto the docket shelf and work off some of those
10 old cases, the pendency number average time to
11 issuance from when cases are ready for decision
12 has crept up and unfortunately that's going to be
13 a byproduct of working off of cases, until we work
14 them off and are keeping pace with the cases
15 maturing to ready for decision. The pendency
16 number is going to be a concerning figure but in
17 some respects it's actually a good sign when you
18 see the number going up a little bit because it
19 means you are working off some of those older
20 cases. And then we'll reach a tipping point and
21 it'll start going down. It's hard for me to
22 predict when that's going to be yet but perhaps by

1 the next meeting or sometime early in the next
2 fiscal year, we'll have a better sense once we
3 have got additional people on board and we've
4 engaged in some of our other efforts to bring down
5 the backlog, we'll have a better sense of where
6 that tipping point is going to be. I'm hoping
7 that by the end of the year we will be right
8 around 300 cases awaiting decision which has been
9 pretty steady for the last few months where we
10 have months where judges produce a lot of
11 decisions and it goes down below 300, another
12 month it might go back up around 300 but it's
13 staying pretty steady which again is a good sign
14 that it's not increasing dramatically over the
15 last few months.

16 The next slide covers end-to-end
17 processing and appeals cases and what we see here
18 is essentially a chart that tries to report the
19 raw figures about how long it takes us to decide
20 appeal cases from the time they are commenced
21 until the time they're finally decided. But also
22 tries to weed out some of the outliers or explain

1 why some quarters may be radically different than
2 other quarters. And so for example in the second
3 quarter you can see that the average for
4 end-to-end processing of appeals was much higher
5 than in the first quarter or the third quarter and
6 that was because in the second quarter we decided
7 six cases that were first appealed to the board in
8 2000, but they were suspended for various
9 cancellation proceedings. There was another case
10 that was appealed in 2000 that was remanded to the
11 examining operation but then suspended. And so
12 when you weed out some of these aberrations, you
13 get a sense of what the average figure is. And so
14 the bracketed figures on average end-to-end
15 processing for appeals are pretty consistent and
16 actually been coming down a little bit since the
17 first quarter, which is a good sign when you
18 ignore those aberration cases. And the median
19 again has been pretty steady over the last few
20 quarters, too. Any questions on final decisions
21 or end-to-end processing of appeals, before I go
22 on to trial cases? Okay.

1 Trial cases. We again have had
2 end-to-end processing times that have been pretty
3 consistent over the course of the year. The third
4 quarter, again, was one where the figure looked to
5 be higher and looked to be more in line with what
6 it was in FY '11, but the average at the end of FY
7 '11 has actually come down some, trial cases in
8 the first, second and third quarters. The third
9 quarter figure was up, but that was because of a
10 case that was commenced in 1995 and which was the
11 subject of numerous and lengthy suspensions, and
12 which finally got decided in the third quarter of
13 this year. So that one case ends up throwing off
14 the average by a significant number of weeks and
15 so when you throw that out, again, the numbers are
16 looking pretty steady and hopefully will come down
17 as the staff increases.

18 The next slide is accelerated case
19 resolution. And we didn't have any cases get
20 decided through any form of ACR in the third
21 quarter. A little disappointing but not
22 particularly because we've had quarters in the

1 past where we've had no ACR cases, so this is not
2 the first time that that's happened. And that
3 could be as simple as some of the four cases
4 decided in the second quarter, if they had been
5 decided a few days later, they would have been
6 third quarter cases, but that's just the way it is
7 sometimes. And people are trying to rush out
8 decisions at the midyear, so their production is
9 where it needs to be at the midyear and so maybe
10 some of those ACR cases that would have gotten
11 decided in the third quarter got decided in the
12 second quarter. And I can tell you that we do
13 have a number of cases which are pending now and
14 which will soon be submitted for final decision on
15 the merits that have gone through some form of ACR
16 and so since we've decided seven ACR cases already
17 this year, I expect that we will be at 10 to 12 by
18 the end of the year, which is double each of the
19 last two years, which were only six ACR cases.

20 So the bar has been a little slow to
21 adopt ACR and I think from what I hear when I'm
22 talking about it with practitioners and

1 representatives of companies, it's sometimes a
2 selling job that has to go on. You have to
3 convince your adversary that it's an efficient and
4 economical way to achieve a just resolution on the
5 merits, maybe not the ultimate resolution that
6 favors your side, but at least a fair and just
7 resolution with less time and less expense. And
8 what we've seen in our ACR experience is that
9 there are some parties who are early adopters and
10 who will discuss it as a possibility in the
11 settlement and discovery planning conference, who
12 will revisit it from time to time and who will
13 think about and perhaps agree to restrictions on
14 discovery, a more efficient means for introducing
15 evidence at trial, that sort of thing.

16 But we also have parties that go through
17 more traditional disclosures and discovery and
18 then don't agree to ACR until after they figure
19 out either on their own because they get their
20 motion for summary judgment denied or because one
21 of our attorneys contacts them and says their
22 motion for summary judgment is not likely to

1 result in this position of the case and would they
2 like to consider ACR, then they adopt it later in
3 the case. So end-to-end processing of ACR cases
4 is lower than that of traditional trial cases.
5 It's not as low as it could be if we had more
6 early adopters. But even so, the numbers are
7 better than they are for regular trial cases and
8 it saves parties the time and effort of going to
9 trial even if they wait to elect ACR until after
10 they've filed motions for a summary judgment. So
11 there are still savings to be had for the board,
12 which doesn't have to review a trial record as we
13 can do it on a summary judgment record and for the
14 parties, if they can get their case decided on a
15 summary judgment record rather than a full trial
16 record.

17 And we are going to continue to promote
18 ACR. We'll talk in a minute in the outreach
19 portion of the agenda about some of the things
20 that we'll be doing on ACR, but before we get to
21 that, let me just talk about the contested motions
22 for a minute. And on contested motions, we're

1 doing pretty well here. On this chart you can see
2 my prediction is that by the end of the year we
3 will have issued almost exactly the same number of
4 decisions on contested motions as we issued last
5 year. And we will have decided a few more motions
6 by those decisions than we did last year. So the
7 motion practice hasn't really spiked just yet, but
8 again we talked earlier about the increase in
9 oppositions and so eventually we expect the motion
10 practice to increase a little bit. But the
11 attorneys are doing a good job staying on top of
12 it. You can see that they've increased the
13 percentage of decisions that involved a phone
14 conference before issuance of the decision, which
15 is always good. I think the parties like to be
16 contacted and to have their motions discussed by
17 phone with the interlocutory attorney before
18 they're decided. And so we're seeing an increase
19 in the use of the phone.

20 And the only figure, again which we're
21 kind of keeping an eye on is the one at the bottom
22 of the chart, awaiting decision. We ended Fiscal

1 '11 with 150 motions awaiting decision and, which
2 if you think of the size of our staff, that's
3 about 12, 13 contested motions per attorney that
4 we're awaiting decision at the end of the last
5 fiscal year. So it's up about 200 at the end of
6 each of the last two quarters and we're aware of
7 that but it's not a particular concern right now.
8 But we will certainly stay on top of that and
9 that's why we're also hiring a couple of attorneys
10 to make sure that it doesn't get out of hand.

11 So that's it for the statistics
12 themselves. Let me talk for a moment about some
13 of the proposals that we're working on to address
14 some of the backlogs and to make sure that others
15 don't become backlogs. And of course we've talked
16 about hiring judges and hiring attorneys. A
17 couple of other things that we're doing is, we
18 have a project that some of the judges are working
19 on with Cheryl Butler, the senior attorney I
20 mentioned earlier, to develop templates that will
21 be used in issuing decisions. These will be
22 particularly useful, I think, in ex parte cases

1 where a lot of what we see coming out of the
2 examining operation is more predictable.

3 We see a lot of 2d cases; we see a lot
4 of very similar arguments raised in various
5 appeals. And in talking with the head of the OHIM
6 Board of Appeals where they make great use of
7 templates for deciding some of their appeals.
8 We've decided that we're going to be developing
9 some templates of our own. It helps in various
10 ways. It helps with new judges coming onboard to
11 have stuff that they can turn to. Cheryl Butler,
12 the senior attorney, can make sure that the cases
13 and the material in those templates is kept up to
14 date. When she's working on revisions of the
15 manual, she can update templates. We now have
16 people, and this is quite expected, attorneys and
17 judges who have essentially their own templates
18 based on work they've done in the past, but we
19 want to try and standardize some of the templates
20 that will be used in deciding at least the final
21 decisions on the merits which follow particular
22 formats.

1 We're also going to be using examining
2 attorneys who have applied for -- just his past
3 Monday was the application deadline for examining
4 attorneys to apply for a work project at the
5 board, where they would come over and work with
6 judges on the inter partes cases. They would be
7 able to review the pleadings and essentially
8 assess for the judges prior to cases being
9 assigned to them. The pleaded issues in the
10 cases, the extent of the evidence in the record in
11 the cases, the evidence in the record that was
12 subject to objections or motion to strike and they
13 could prepare memos for the judges to let them
14 know what it is they are facing in a particular
15 case when it gets assigned to them. And so a lot
16 of that ground work that the judges normally have
17 to do on their own because they don't have clerks
18 and they don't have secretaries, will be done by a
19 team of examining attorneys that will be working
20 for them. So we have really great hopes that this
21 will be very productive. It'll be great for the
22 examining attorneys who want to come over and get

1 exposed to board practice and work with some of
2 the judges and we hope that it will result in some
3 standard operating procedures and some additional
4 ways of processing the trial work that will be
5 very helpful and make us more efficient and help
6 us increase the number of cases that are decided
7 in a more efficient manner.

8 So it's going to be a work in process,
9 work in progress. We haven't done this before but
10 again we have high hopes for it and I'm sure that
11 it's going to work out very well. And so we'll be
12 in touch with Debbie and Sharon to make sure that
13 we have a good pipeline of examining attorneys
14 coming over and that it works for them and that it
15 works for us. So that's something that we're very
16 excited about. Also if we get the additional
17 attorneys onboard and we are on top of the backlog
18 of motions or we are at a point where we don't
19 have a backlog of contested motions, under their
20 performance plans, the interlocutory attorneys who
21 are already at the board can be tapped to aid the
22 judges by writing up drafts of decisions in ex

1 parte appeals for judges to consider and then
2 adopt, if they're appropriate. And so that's
3 something that we can also think about doing but
4 we certainly don't want to embark on that unless
5 we are sure that we're on top of the contested
6 motions because we know how sensitive those of you
7 are who are involved in inter partes proceedings
8 are to the pendency of motion. So, it's an option
9 for the future and we can look at that if we need
10 to during the coming year. It's another option we
11 can consider.

12 Another thing that we're going to be
13 doing is essentially reviewing the performance
14 plans for the attorneys and the judges, to make
15 sure that they are in line with the kind of work
16 that we're getting and the kind of goals that we
17 have for the business unit and what we need to
18 achieve. We have a performance plan that's been
19 in place for the attorneys for three years now and
20 we always expected that we would be doing some
21 tweaking and discussing that with 245 to see how
22 we can make it better for them and better for us.

1 And I will also be, of course, reviewing the
2 judges' performance plans, as we would have to do
3 from time to time, in part because our working
4 conditions change. We get larger record cases; we
5 get different kinds of cases and so we have to
6 make sure that the performance plans reflect the
7 kind of work that we have.

8 Any questions about any of that? I'm
9 sorry, that was a lot. And then I have a couple
10 more statistics for you before we wrap up that
11 section.

12 CHAIRMAN TEPPER: Jody.

13 MS. DRAKE: Gerry, just a quick
14 question. In connection with the templates that
15 are being developed for the ex parte appeals, when
16 would you think those templates would be ready to
17 go? As far as -- I mean I just don't know what
18 sort of timing or process you have to go through
19 sort of like a foreign paragraph kind of thing, I
20 guess.

21 JUDGE ROGERS: I can't really say
22 because we haven't done it before. I know that

1 the six or so judges, who volunteered to work with
2 Cheryl Butler on it, have had a number of meetings
3 and they've started to develop them. I have to
4 try and strike a balance there where I think they
5 will be useful to have going forward, but I also
6 don't want them to spend so much time on templates
7 that we're not going to hit that 500 cases decided
8 figure by the end of the year. But I expect that
9 we will have them out and in place sometime during
10 Fiscal 2013.

11 MS. DRAKE: Okay.

12 JUDGE ROGERS: But we're certainly not
13 going to try and focus on getting them out this
14 quarter which is the last quarter of the fiscal
15 year.

16 MS. DRAKE: Yeah, I didn't expect. I
17 have one more quick question, too. On the
18 percentage of the cases awaiting decision, what is
19 the percentage, the breakdown if you happen to
20 know on ex parte versus inter partes, of that
21 number? I just was curious about that.

22 JUDGE ROGERS: Yeah, I can tell you that

1 and it's generally about when we've been at about
2 300 cases at the end of any given month, it's
3 generally been about 220 or so ex parte appeals
4 and about 75, 80 inter partes cases. Yeah, so the
5 majority of the cases are ex parte appeals that
6 are waiting to be decided, however the majority of
7 the cases with really large records are the inter
8 partes cases. And so that's why the examining
9 attorney work project will be particularly helpful
10 to us because the judges can turn around decisions
11 in the ex parte cases pretty quickly but when they
12 get a room full of evidence for one opposition,
13 that's a case that can take them months to work
14 through unless they have assistance. So that's
15 why we're going to get the most bang for our buck
16 if we have the examining attorneys on the work
17 project help us with those really large record
18 cases.

19 MS. DRAKE: Great, thank you.

20 CHAIRMAN TEPPER: Gerry, I'd like to
21 follow on to Jody's question because I was
22 interested in the idea of a work detail. I think

1 this is something that came up at our last
2 meeting. So I'm really pleased to see there's
3 some follow up and trademark operations are
4 supporting this as well. How many people are
5 going to be involved in this? I'm sort of just
6 trying to match up -- will most judges have an
7 examining attorney available to assist them? Or
8 do you feel you've got the numbers there to make
9 this meaningful in terms of helping you?

10 JUDGE ROGERS: Well, we discussed this
11 to some extent in the subcommittee meeting
12 yesterday. And I'm thinking that we're going to
13 start the first rotation with three examining
14 attorneys, because we're just working it out. We
15 want to make sure that the system is going to
16 work. We have three judges who are in-house every
17 day, who are here, who can work with the examining
18 attorneys. I also don't -- some of them have
19 expressed preference, some of the examining
20 attorneys, that they not be part of the first
21 rotation because of their own family
22 responsibilities or their own home

1 responsibilities. And so we'll have to meet with
2 those who we ultimately select as participants for
3 the project and figure out how many of them are
4 available at different times during the year. But
5 we can start with three who can work with our
6 judges who are onboard and on campus and kind of
7 develop what is right now a skeletal approach to
8 how they would review these cases and what kinds
9 of documents they would prepare for the judges to
10 review.

11 But then as we get more experience with
12 it, we can increase the number of attorneys who
13 are working at any given time and we may be able
14 to, at some point in the future, then -- I mean
15 not in the distance future, but in the near
16 future, have a greater number of them working at
17 the same time. We might only have two or three of
18 them working with us in our office but we might
19 have some of them who are working at home who have
20 come in and been trained for a while. And then
21 once we know that they can do the work, then they
22 can continue doing it at home. And so I can

1 easily envision that we would have more than three
2 at any one point in time, later in the fiscal year
3 once we've gotten the first group trained. And
4 that group can help train the second group and we
5 can expand the program as we move forward.

6 CHAIRMAN TEPPER: Thank you. Thank you
7 for that clarification. I hope that this -- I
8 suppose then that this is a pilot of sorts but
9 certainly hope that it will prove to be quick and
10 successful and will -- what do we say these days,
11 go viral?

12 JUDGE ROGERS: Yes, well we hope we
13 won't be spreading viruses around to the examining
14 attorneys. I don't think John Owens like to hear
15 that term. But we do hope that it's going to be a
16 very successful program and one that we'll be able
17 to continue. And of course if it gets to the
18 point where we've worked through most of the
19 applicants for this go-around, we can always
20 re-announce it next year and get another group in.
21 And they can talk to their examining attorney
22 peers and tell them how much fun and how

1 interesting it's been when they've been working at
2 the board and we'll get more applicants in the
3 future.

4 So just two more quick statistics I
5 wanted to mention. And one is we've been talking
6 from time to time in past meetings about reducing
7 the old cases, the cases that are pending at the
8 board that are proceeding under the old set of
9 rules because it will be wonderful if the board
10 can, at some point, get rid of the earlier
11 editions of the TBMP and the older editions of the
12 rules, because we won't have any cases proceeding
13 under those rules. I'm happy to report that we're
14 at the point where we've only got about 200 cases
15 left that are proceeding under the old rules.
16 Half of those we can't really do anything about
17 because they are either have been submitted for
18 final decision, so there's nothing really to be
19 done to expedite them. They've been decided and
20 they're on appeal or they're suspended because of
21 a civil action which might be dispositive of the
22 case.

1 So we're really talking only about 100
2 cases where we can actively manage them to try and
3 push them through. And so that's great progress
4 and about 2/3 of those, again parties involved in
5 board proceedings often like to have time to
6 discuss settlement of their proceedings and they
7 like the fact that we are liberal with suspensions
8 for settlement and a certain portion of those 100
9 cases are suspended for settlement discussions.
10 But we've been pretty vigilant about making sure
11 that parties either make progress in their
12 settlement discussions or move on and get the case
13 on track to be decided. So we will continue with
14 that effort for those 100 cases that we have some
15 control over. And again the other 100 cases we
16 don't really have much control over.

17 And the other thing, the other statistic
18 I wanted to mention was precedents. We're on
19 track to hit our goal of 45 or more precedents by
20 the end of the year. And so we expect that, that
21 will be very helpful for the bar and helpful for
22 Cheryl, giving her fodder for future revisions of

1 the manual of procedure. And then quickly just a
2 few minutes on outreach and proposals. We have an
3 ACR webinar that we're going to be doing with the
4 ABA in just about 10 days. I think it's the 26th;
5 I'm not sure. But we have that coming up and
6 we're also going to be doing another best
7 practices webinar with the ABA IP section in
8 October. We have traditionally participated in
9 Boston Patent Law Association; the TTAB comes to
10 Boston program that they call it. Although this
11 year it's scheduled for Manchester, New Hampshire
12 because the former Franklin Pierce Law School, now
13 the University of New Hampshire Law School will be
14 hosting it and it's close enough to Boston that
15 the Boston Patent Law Association was willing have
16 the program up there. And we will actually be
17 hearing a case there and making additional
18 presentations on board practice.

19 And then we've been talking with AIPLA
20 about participating in their meeting in October.
21 So we continue to be open to participating in
22 programs that any of the IP organizations want to

1 have with the board and feature board practice.
2 And then we are developing dashboards. They're
3 really not in shape yet for public viewing so to
4 speak, but we discussed them in the subcommittee
5 yesterday. Got some input from the subcommittee
6 and we'll be getting some dashboards up on the
7 website in the near future and they will then be
8 there for public comment. And we will try and
9 create as many dashboards and as many visuals as
10 we can, to get up on the website, in addition to
11 the charts that we've gone through today, which
12 are already up on the website. And that's where
13 we stand. Any other questions?

14 CHAIRMAN TEPPER: Thank you, Gerry. Are
15 there questions for Chief Judge Rogers? Well, we
16 appreciate -- I mean obviously thank you for
17 laying the numbers out for us and we're encouraged
18 that the board is in a position to start taking
19 some steps to address the backlog. I remember my
20 dad explaining the math when the store went out of
21 business, saying we lose 10 cents on every sale,
22 but we make up for it on volume. We obviously

1 cannot continue to have 100 more cases coming in
2 than we can put out year after year. So we're
3 very encouraged to see that you're getting some
4 additional staff and resource and taking these
5 steps. We, of course on the advisory committee
6 really to want to support and assist you in any
7 way that we can on acting as a sounding board for
8 some of these initiatives, providing any comments
9 that you may need. But we want to thank you for
10 having some news to talk about today and we look
11 forward to reaching that tipping point and
12 watching these numbers sort of start to come in
13 the other direction. I know you do more than us,
14 Gerry.

15 JUDGE ROGERS: Yes, yes.

16 CHAIRMAN TEPPER: Are there any other
17 questions for Chief Judge Rogers from the public?
18 All right, well thank you very much. And I am
19 pleased to report; we continue to be ahead of
20 schedule. I should have looked up and noticed and
21 I want to thank our Chief Information Officer,
22 John Owens for coming down early to address us.

1 Of course, right when I mention the word viral, he
2 is in the room, but I'll see if I was okay in that
3 context. We're going to hear now from John Owens,
4 our Chief Information Officer and from Raj Dolas.
5 Raj, I will apologize, I had to do this for
6 Sharon, if I slightly mangle your title. Raj is
7 the Project Manager for Trademarks Next
8 Generation. Did I come close?

9 MR. OWENS: Portfolio.

10 CHAIRMAN TEPPER: Portfolio Manager.

11 MR. OWENS: It is the full scope of the
12 programs and the subsequent projects under that.

13 CHAIRMAN TEPPER: Wow, thank you, that
14 is a lot more highfalutin and so I'll make note.
15 But gentlemen, thank you.

16 MR. OWENS: Well, good morning, thank
17 you, everyone. It's my pleasure to talk to you
18 all again. So I'm going to give you a brief
19 update on where we are with the deployments and
20 various issues we have had with legacy systems.
21 We're going to start off and I'm sorry to say that
22 the good news portion of this conversation is

1 going to be had with Raj and not really myself,
2 unfortunately. The UL Deployments, as they are,
3 for the entire agency have gone very well.
4 Unfortunately for trademarks, it has been less
5 than fully successful. We have deployed all of
6 the other laptops ahead of time and ahead of
7 schedule for reduced costs below where we thought
8 we would be. However several applications that
9 are on the trademark platform, that are extreme
10 legacy applications have caused some issues. A
11 couple of them are X-Search, Outlook, which
12 trademarks is a different animal, they use it
13 differently than patents did and we found some
14 issues that if Outlook wasn't set up in a very
15 particular way, we had problems, including
16 problems delivering office actions of course which
17 would affect us all. And various smaller
18 application launch issues.

19 I'll tell you a little bit about the
20 solutions for those. Our X-Search issue is the
21 largest one, is the one that we currently are
22 trying to test solutions for. Now, I'm going to

1 describe the X-Search issue on a very high level.
2 I am not trying to demean its issue. It is a
3 serious issue for ourselves and the examining
4 attorney. But it might sound trivial but it's
5 not. It's really not and I just wanted to put a
6 caveat out there. Basically what we're seeing is,
7 the old examination system, the user saw a video
8 stream from our servers of the searches. Today
9 the searches are happening on the laptop itself,
10 over the Internet. The video stream basically
11 showed them a picture of a computer screen that
12 was actually housed in the data center. It was
13 faster in some instances than a user who is
14 experiencing what's called latency on the
15 Internet. And that's a bunch of people on the
16 Internet basically using it, cluttering up the
17 Internet and things get slower. We've all
18 experienced this at home, some days we browse very
19 quickly, some days we do not.

20 Now, when you do a search and then it
21 comes back and says, okay, we found your search
22 results, how many would you like to see at a time?

1 It defaults to 200, but the user can choose 50,
2 they can choose 1,000, whatever they'd like. We
3 download a list and then we start allowing them to
4 flip through them. And if you are in a situation
5 where your Internet latency is elevated for
6 whatever reason, because little Timmy's next door
7 downloading whatever, you get a fraction of a
8 second, on average between a quarter and a half a
9 second slower for each transaction. Now at the
10 surface you might think a quarter and a half a
11 second doesn't seem like too much, but you times
12 that by thousands of requests and it adds up. It
13 adds up to real minutes and we understand this is
14 a real problem.

15 So the issue is with the latency of the
16 Internet, and its variable, some days for our
17 examining attorneys at home, the issue is
18 nonexistent and they are very happy. And then
19 when they had experienced these latency issues,
20 they are very displeased. So what we have done is
21 we are attempting to use a technology that was
22 built way back in approximately the '95 era called

1 cache. All of your web browsers do this. If they
2 already have a piece of information they don't try
3 to download it again, thus not going through the
4 entire transaction, which saves bandwidth, it
5 saves time. So literally, all of the examiners in
6 this solution are going to get an upgrade to their
7 hard drives and the entire 150- gigabyte
8 repository of trademark repository will be on each
9 and every laptop, the pictures. It's not a huge
10 deal for me because they are open and free to the
11 public, otherwise we couldn't protect our
12 trademarks, so there's no security implication
13 there whatsoever.

14 The trick is knowing which ones to
15 update if there's an update to them. And what it
16 does is it allows you to flip through the graphics
17 very rapidly and only download the new or changed
18 ones. So instead of, out of a group of 200,
19 needing to download all 200, you only have to do a
20 fraction and that's somewhere around 10 percent.
21 So the difference of, logically and
22 mathematically, this would mean if I have to take

1 200 trips from here to the Washington Memorial and
2 it takes that amount of time, if I only have to do
3 it 20 times that obviously takes less. Right,
4 because it's a matter of physics. So we are
5 testing that solution. Unfortunately the product
6 is well past its useful life cycle. The software
7 that it's engineered upon has not been supported
8 in at least five years and it has proven to be
9 challenging, to say the least.

10 Let's talk a little bit about TICRS.
11 TICRS earlier this year experienced a hardware
12 failure. This is another legacy application well
13 beyond its useful life expectancy. We could not
14 replace the server hardware, we could not buy that
15 hardware anymore, which means we had to upgrade
16 the hardware and the operating system and all the
17 associated software with that, which took some
18 time. It was --

19 CHAIRMAN TEPPER: John, I'm sorry, I
20 just, I did want to pause for a second. I hate to
21 interrupt, but it occurs to me that for some
22 listening, who are outside of the office, you may

1 want to just briefly mention what X-Search is, who
2 uses it and also TICRS, just so everybody's got
3 the acronym as you're sort of putting these in
4 context.

5 MR. OWENS: Debbie, would you like to
6 mention that just so I don't screw it up, if you
7 don't mind.

8 MS. COHN: Sure.

9 MR. OWENS: I know my better half in
10 this instance here.

11 MS. COHN: So X-Search is our internal
12 search system. You all on the outside use TESS,
13 examining attorneys and others in the office use
14 X-Search, so that's what that is. And TICRS is
15 our internal document retrieval and display
16 system. So you all have TSDR, and internally we
17 have TICRS, it's our electronic file essentially.

18 MR. OWENS: So the good news on this
19 was, as soon as this failure occurred, the
20 examiners switched to the public system.
21 Unfortunately, the public system was housed on
22 Google, and we took the normal -- the front end

1 for it, as I told you before, is hosted in the
2 cloud and you buy the cloud by the drink. We had
3 allocated resources for the public of X amount,
4 and within a matter of hours, the examining
5 attorneys used all those resources, and we had to
6 purchase more. So there was a momentary hiccup.
7 You could have seen in that system, but that was
8 just about the logistics of paying Google for
9 their time. TICRS is an internal system, but this
10 is an example of the volatility of the system and
11 how server and hardware failures can be difficult
12 to recover from, because the servers in the
13 software are well beyond their life expectancy.

14 This led to a couple of other things
15 happening, which I'll talk about a minute and I
16 guess they're out of a different order. But first
17 we'll talk about FAST. FAST is the main tool that
18 all examiners use. There was a bug in a recent
19 deployment that would allow the new form
20 paragraphs to populate blank documents. That's
21 bad. We fixed that bug and are redeploying. It
22 wasn't an all the time thing, it was actually a

1 fairly rare incidence, but it was a bug that we
2 had to fix. Bugs like that are normal.

3 Performance degradation issues with
4 TICRS. We narrowed it down to the fact that the
5 new system architecture, based on the new
6 hardware, was trying to access the database.
7 Obviously once you do these upgrades. Things
8 change and the database actually was 4 terabytes a
9 little too large on a single server connection.
10 So we're looking at breaking that up, thus
11 improving the performance for the examiner. And
12 then TEAS and TI outages. We updated code
13 specific to TAR, which broke our backups. And I
14 know it's not funny, but basically we had to
15 reorganize those to get the system to perform at
16 the way it was before. All I'll say on this is

17 the basics. The trademark systems, the legacy
18 systems, as I have been telling you for years, are
19 aging. They were well beyond maximum life
20 expectancy when I got here. It takes time, a lot
21 of duct tape and bailing wire to keep them active
22 and working. And that's important because the

1 gentleman to my left, who I have hired to handle
2 the portfolio of trademarks, is focusing not only
3 on helping me keep those systems alive, but what
4 it takes to really replace them, which is quite a
5 challenging effort.

6 I would also like to introduce Marcie
7 Lovett. Marcie, why don't you come over here?
8 She is now the new development manager for the
9 division of trademarks development, under my
10 application engineering and developments team.
11 And I thought it was important I try to bring
12 folks by as we hire the best talent that we can
13 possibly find. Marcie is in charge of managing
14 all development, both legacy and future
15 development, working with Raj, under David Chiles.
16 And she recently joined our team 4 months ago?

17 MS. LOVETT: Yes.

18 MR. OWENS: Yeah, would you like to say
19 something?

20 MS. LOVETT: Good morning. (Laughter)

21 MR. OWENS: All right, so if I could
22 then hand it over to Raj.

1 CHAIRMAN TEPPER: Great, thank you.
2 I'll pause just for a moment at that point. And
3 Marcie, thank you for those comments. No, I'm
4 kidding, (Laughter), we're very pleased to meet
5 you and thank you for joining us today. Before we
6 sort of move on to sort of the longer term
7 solution and where we stand, are there questions
8 for John? And issues on the scale? I know that
9 today you've heard a lot about internal systems
10 and some work that those of us in the public and
11 working from the outside may not see or
12 appreciate. Please do keep this in mind and
13 understand. I know how I feel when something is
14 not working with my machine at the office, so you
15 may want to at least acknowledge and understand
16 when you are hearing from examining attorneys, if
17 they seem just a tad grumpy and I'm not saying I
18 have experienced that, but understand that they
19 are continuing to work through these issues. Our
20 CIO has quite a difficult challenge; I know it's
21 impacting our examiners. I am grateful to both,
22 sort of both groups for just sort of continuing to

1 work through what we all know and acknowledge to
2 be a difficult situation. We're moving to a more,
3 as we'll hear from Raj in just a minute, we're
4 moving hopefully to a more permanent and stable
5 solution, but it's certainly not easy in the
6 meantime to try to keep everything up and running
7 at this point in time. So we'll continue to
8 obviously hear from you and do what we can to help
9 that situation. And we do want to thank and
10 understand how we hope you'll relate to the tier
11 groups. Our appreciation that they're continuing
12 to work through what is not an optimal situation.
13 Raj, I always wonder, one of these days, John's
14 going to trade places with you but you do get the
15 better side of the equation, sort of some updates
16 on longer-range developments, Trademarks Next
17 Generation, I think you heard a little bit earlier
18 in the CFO's report. They're very fortunate to
19 have budget and they are putting that budget to
20 work. We have, I think, a few new developments to
21 report to you, and Raj, I'll turn it over to you
22 at this point.

1 MR. FRIEDMAN: Yeah, Maury. John, is
2 there a -- if the cache program doesn't work, is
3 there a backup plan? Or what is the backup plan?

4 MR. OWENS: Don't have another plan
5 right now. I got to be honest. We think it
6 should work, I will tell you that our first round
7 of testing was not good. But we have to do some
8 analysis and figure that out. This is why I
9 wanted Marcie actually to be with me, in case you
10 asked any difficult questions that I wasn't quite
11 familiar with. Do you have a backup plan? I
12 don't know.

13 MS. LOVETT: I don't -- well at this
14 time we don't have a backup plan, but we certainly
15 want to do some analysis of what we have done thus
16 far and investigate why the testing results didn't
17 reap the gains that we saw when we tested here.
18 And then we will definitely look at some other
19 alternatives so that we can provide a complete
20 solution that will be a viable option for the
21 attorneys. We don't want to roll something out
22 that's not going to be beneficial to the users.

1 MR. OWENS: Unfortunately our choices
2 are limited. The software itself, being beyond
3 the useful life expectancy because the software
4 development language it's built in is no longer
5 supported by Microsoft, hasn't been for 5-plus
6 years. The server backend is in a similar
7 situation. The virtual machines that are being
8 used by those that have received the laptop to
9 date go defunct and unsupported, no security level
10 patching to Windows XP, come midyear this year.
11 The virtual environment costs us \$14,000, plus I
12 see upgrading it to Windows 7 would cost us more.
13 And that's because of the process intensive nature
14 of the applications that we have, that were not
15 designed -- I mean these applications were
16 designed to be run on desktops and on the local
17 LAN, not to be run either over the intranet nor
18 virtual environment.

19 So unfortunately that would put us in
20 quite a pinch. The best solution if this does not
21 work would be to quickly shift resources to a
22 massive rewrite but we wouldn't get that done in

1 time. It takes years to rewrite these systems,
2 they seem simple but they are really not and they
3 are all intertwined. You make a change here; that
4 means you make a change there. That means you're
5 not just modifying one system, your modifying 10.
6 And that's what makes Raj's job so complicated.
7 Because as he's looking at next gen, he's looking
8 at a way to migrate over that data off of the
9 server that it's on and in the various places that
10 it is and to reorganize it while keeping the plane
11 in flight. At the same time he's building new
12 user interfaces and at the same time he's handling
13 those data migration issues. He's got to deal
14 with all the applications security and backend.

15 And I believe, and I can bring this back
16 if you like, I had chart at one point that was
17 simplified that showed this massive diagram of the
18 current systems with all these lines all over
19 them. And it is an incredibly complicated
20 environment. So it is not -- there are no other
21 simple solutions unfortunately that we have been
22 able to think about, but that doesn't mean we're

1 going to give up. Mathematically speaking it is
2 what I said before, it should work. If you don't
3 have to make the connection to download the data
4 every time, it should be faster. Unfortunately
5 our first round of tests did not show that, once
6 it left this facility. So I'm wondering if I've
7 got this anti-technology bubble over the laptop we
8 gave somebody or it's possible that someone on my
9 staff or contractor misconfigured something, but
10 we're going to have to look.

11 CHAIRMAN TEPPER: Just as a follow up
12 with you, John, we will readily acknowledge these
13 are very complex systems. But I think I'll get
14 full agreement with everyone here, having them not
15 work is not an option for any of us since probably
16 yesterday would not be too soon to have a
17 contingency or backup. We're going to hope too
18 that testing works well, but I'll leave it at
19 that. Does anybody else from the committee or the
20 public have a comment or question about that?
21 Okay, Raj, I think we're ready for you.

22 MR. DOLAS: Good morning. A classic IT

1 portfolio usually contains multiple programs and
2 every program usually contains one or more
3 projects. I put this slide up in here in this
4 deck because we want to show you how many programs
5 that are currently being tackled simultaneously
6 and all the projects that are underneath these
7 programs to where it's fulfilling our vision of
8 Trademark Next Generation. What this also does is
9 brings consistency with the way we discuss the
10 portfolio with a variety of organizations as well
11 as the committees, because this is a slide we use
12 everywhere that we talk, OMB wise, DOC wise and
13 this is the slide that gets represented to show
14 all the work that is being done in Trademark Next
15 Generation.

16 I'll talk about each program and the
17 projects underneath that in the next slides. But
18 before we get into the projects, the thing that I
19 want to mention is architecture which is the
20 foundation for every IT portfolio. Last time I
21 was here, I mentioned that our business architects
22 finished the architecture that was necessary for

1 Trademark Next Generation. At the same time they
2 were continuing to work with TTAB to ensure that
3 TTAB is folded into the architecture for Trademark
4 Next Generation, because our intent is to have a
5 consistent single user interface as well as a
6 single system for both trademarks and TTAB. So
7 this work is very important to ensure that
8 capabilities and value streams, which is the
9 business architecture and lingo now, includes TTAB
10 in the mix. We are taking the work that is being
11 done and enhancing our architecture for databases,
12 the data architecture or the data model, as we
13 call it, to include TTAB related capabilities.

14 And we also have modified our solution
15 architecture which governs the way we're going to
16 develop the software for all Trademark Next
17 Generation to include TTAB as well as a commercial
18 off-the-shelf case management software. We have
19 two tracks as I'd mentioned last time, an
20 application development and an infrastructure
21 track. In the application development track, as
22 part of Trademark Next Generation, the user

1 interface is a key program that will ensure that
2 the user interface for Trademark Next Generation
3 is developed with input from our users. So what
4 we had done, probably around February time frame,
5 we had selected three vendors to build prototypes
6 of the user interface based on certain definitions
7 that were put out for them.

8 Based on that criteria, those three
9 vendors developed a user interface for Trademark
10 Next Generation. Trademark users voted on those
11 and to tell us which user interface they liked.
12 There were eight objective questions and two
13 subjective questions that they answered, gave
14 their input and comments, as well as which
15 prototype they liked the most. And what was nice
16 about the prototype. What did they not like about
17 the other prototypes? There was a survey that
18 collected all this user feedback. We evaluated
19 the survey last month and then we have finalized
20 the vendor that will be building the next
21 generation user interface. We're in the process
22 of finalizing the procurement process to complete

1 and bring the vendor onboard, so we can start
2 developing the user interface.

3 The next program, we call it Web and
4 Business Services. So if you look at any
5 application, you have a front end, which is the
6 user interface. In the middle layer, you have all
7 the business logic, the intelligence that the
8 program needs to execute. Then on the backend you
9 have a database or your data repository. So the
10 middle layer, which is Web and Business Services,
11 we have two projects in there, one is Web and
12 Business Services 1. It focuses on developing the
13 business logic and this is where we are going to
14 use a commercial off-the-shelf case management
15 product, as well as an open source content
16 management system. Web and Business Services 2
17 projects will focus on ensuring that we have the
18 right environments that are built out right from
19 development, all the way to production and a
20 disaster recovery site.

21 There is another project within this
22 program; it's called Trademark Reporting and

1 Datamart. What this will do is we'll focus on
2 building a Datamart, which is a backend system to
3 ensure that reports can be run off of this system,
4 so that our current systems that the trademark
5 attorneys use or trademark users use are not
6 impacted by report generation. We don't want load
7 on the main system to bring systems down because
8 someone is running a heavy-duty report. So we
9 kind of separated those things out. Reporting is
10 done separately, but it is still based on the same
11 data that is created by the trademark users.

12 So the third program is the Data
13 Services. Our system today is TRAM. The
14 challenge that we have is migrating TRAM to
15 Trademark Next Generation. We had a prototype
16 project that was completed, that project validated
17 the way we are going to migrate data from our old
18 system to the new system, as well as selecting a
19 solution to help us quote analysis and auditing of
20 the code which will ensure that the code from our
21 old system gets migrated faster into the next
22 generation system. The trademark records

1 management project, which is under new Data
2 Services is an actual data migration project and
3 is currently in the planning phase, which should
4 be awarded fairly soon and we should have a vendor
5 onboard fairly quickly.

6 Our cloud initiated trademark status and
7 document retrieval system, we talked about it just
8 a little bit before, that when TICRS closed down,
9 this is the system most folks go to internally as
10 well as externally to get the documents. Our goal
11 is to make TSDR a one-stop shop where you can get
12 all kinds of documents, all statuses, bibliography
13 that is associated with any mark. Has been very
14 well received the first release was out in
15 production December of last year. The
16 enhancements to that system will include documents
17 from assignments and TTAB. So that work is going
18 on right now. There are two separate releases
19 that we're doing for TSDR. The first release will
20 be in August and what it will do is allow us to
21 provide backward compatibility to our TAR system.
22 There are lots of bookmarks out there that folks

1 have kept on their desktop, their laptops, on
2 their own computers that point to TAR as the
3 location to go get data or documents. We want to
4 ensure that TSDR can be backward compatible and
5 provide all documents, all statuses that TAR used
6 to provide. Because TSDR is the future, this is
7 the next generation system that will provide all
8 statuses and documents going forward.

9 The second portion of that enhancement
10 is building out a services, classically called
11 web-based services, to where it's fulfilling our
12 vision for an electronic Official Gazette.
13 Electronic Official Gazette is a major project in
14 Trademark Next Generation portfolio for Fiscal
15 Year '13. What we're trying to do is provide all
16 the features that are in Official Gazette today in
17 printed format, in an electronic way. Not only
18 that, but add additional features like searching,
19 sorting, slicing and dicing of the data that
20 appears in a printed format today. Because of the
21 printed nature, you cannot slice and dice the data
22 that is out there. We want to provide our

1 external users the capability to sort the data,
2 slice and dice the data, generate reports, as you
3 would like to do.

4 We are starting that project very soon,
5 the planning phase of that project, very soon,
6 probably sometime in August, with the intent to
7 start development sometime in 1Q of Fiscal Year
8 '13.

9 We want user community to provide us
10 input into how the EOG user interface should be
11 developed. What features you would like to do?
12 We're going to do outreach sessions as well as
13 round tables sometime in the future. The dates
14 are unknown at this time, but we will definitely
15 decide on those dates very soon. I look to Debbie
16 for help on that one. Talking about outreach and
17 doing round tables, a quick plug for our CFO, they
18 are also going to be doing outreach sessions,
19 holding outreach sessions for the new fee
20 collection system. The new fee collection system
21 will provide self-service as well as better
22 integration with trademark. The outreach programs

1 will be held in the next few months and an eAlert
2 will be sent out in the next few weeks requesting
3 your participation. We would like you to
4 participate and help our finance department with
5 their new fee processing next generation
6 applications as well as portfolio as well.

7 Legacy enhancements. I wanted to point
8 out two things that we're doing with our current
9 systems. One is providing a -- in the e-mail that
10 goes out today for notification of publication, we
11 currently provide a link to a PDFY, which is
12 electronic Official Gazette, the PDF version of
13 the Official Gazette. What we're trying to do
14 with this project is provide you a link to the
15 page in the PDF file where your mark exists,
16 instead of having to flip through hundreds of
17 pages in there, the link will take you directly to
18 the page where your own mark exists. Our intent
19 is to do the development for this project in-house
20 and complete it as soon as possible. While our
21 stretch goal really is to finish this in this
22 fiscal year, with only two months left, so we're

1 really pushing ourselves to get this project done.

2 The second project for legacy
3 enhancements is providing some kind of a
4 validation feature on our TEAS basic forms, where
5 users can type in today, free text type the goods
6 and services there. We want to provide a
7 validation feature whereby a user can click
8 something, a button over there to say validate
9 everything I typed in. It will go to the ID
10 manual and validate which goods and services exist
11 in the ID manual and which do not and the user has
12 an option to fix the ones that do not exist, but
13 we won't force them not to fix them, because
14 that's in TEAS Plus. So in basic TEAS form, basic
15 validation is the main feature that we want to
16 develop. Again the time frames for this project
17 also are very, very short and it's an aggressive
18 time frame for us to complete this project.

19 Now moving over to the infrastructure
20 improvement track. Separation and virtualization
21 is the main program in there. Where we completed
22 a few systems, separation and virtualization wise

1 as phase 1, part 1 of Fiscal Year '11 project.
2 We're completing phase 1, part 2 of the Fiscal
3 Year '11 project as well. And we're in the
4 process of kicking off Fiscal Year '12 project,
5 which targets four systems as of now. It's quite
6 possible that may change, but current plan is to
7 have four systems targeted and that project will
8 end in Fiscal Year '13 sometime.

9 The second program is infrastructure
10 improvements in the infrastructure platform in
11 infrastructure project. One of the main things
12 that we're doing here is a pilot project to
13 evaluate a commercial case management software
14 against our core business capabilities. So if you
15 remember business architects have defined business
16 capabilities. We highlighted nine core
17 capabilities from those and our pilot for the
18 commercial case management product is to determine
19 whether this software will meet all our needs for
20 the nine core capabilities. We'll also evaluate
21 it and select a solution to manage the project
22 with agile project management methodology. The

1 tool also will help us manage requirements,
2 product backlog, spring planning, defects
3 management and release management. So, all the
4 things that are necessary for our software
5 development life cycle can be managed by this one
6 solution. It makes things very easy this way.

7 The last project in here is
8 authentication, authorization and single sign-on.
9 The goal here is to once a user logs in to
10 Trademark Next Generation, that's the only login
11 you'll ever be presented with. So that's a single
12 sign- on for everything that Trademark Next
13 Generation does. This is for internal users by
14 the way. Today they had to log in multiple times
15 to do their job. We'll take that and provide
16 single sign-on for that. The second thing is
17 authorization, which means role-based access.
18 Once you log in, the system will know who you are,
19 what your role is and the user interface that is
20 presented to the user will be dynamic in nature
21 and it will reflect what your role is and some
22 things will be available to managing attorneys and

1 some things will not be available to examining
2 attorneys, such is role-based access.

3 I shared with you a road map last time.
4 This continues to evolve. On the top portion you
5 will see we have technology applications platform
6 and this is the business architecture,
7 nomenclature, value streams, and capabilities. As
8 you see this goes out and as things change, we'll
9 make changes every time we create this document.
10 Datamart and Reporting, for example, started
11 slightly late and we think it will take longer
12 than what we initially highlighted it to be. But
13 that's the nature of IT projects and usually
14 things don't start on time, but we want to make
15 sure that we show you when things slip. And I
16 think that's all I have.

17 CHAIRMAN TEPPER: Thank you, Raj. Are
18 there questions? Comments? Obviously we are
19 pleased to see that TSDR is up and running. We
20 are starting, even if it's not apparent from the
21 outside; we are starting to see some of the
22 benefits of the next generation project. I know

1 it seemed for a long time like we were in planning
2 and I supposed in this instance, planning is a
3 good thing. We seem to be proceeding now. We'll
4 look forward to continuing to see these
5 developments sort of out there and in use,
6 obviously the sooner, the better for us. So
7 that's my only comment on the road map. I
8 recognize we're looking out a few years. We'd
9 like all of them next week; we know that's not
10 practical. But thank you for the update and we'll
11 look forward to continuing to see where we're
12 heading with this.

13 Are there any other questions from the
14 public for Raj? Okay, I want to thank you for
15 that, then. I'm also very proud to announce it's
16 11:30, we are 30 minutes ahead of schedule. I
17 think this may be a record for one of our
18 meetings. I'm going to take the chance to open up
19 the microphone to see if anyone has any final
20 questions, comments today.

21 In that case, I will adjourn this
22 meeting. I'll let you know that I believe it's

1 published on the PTO's website. Our next public
2 meeting is scheduled for Friday, October the 12th.
3 We will look forward to seeing all of you here,
4 since Trademark Expo begins the following Friday.
5 I don't know if the PTO can offer you a vacation
6 destination package but you may want to come, stay
7 in town for a week and see the sights and sounds.
8 So, thanks to everyone. TPAC members, I am going
9 to convene an executive session so we can discuss
10 just a couple of matters relating to personnel and
11 budget briefly. And for everyone else, thank you
12 for your attendance today.

13 (Whereupon, at 11:45 a.m., the
14 PROCEEDINGS were adjourned.)

15 * * * * *

16

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Stephen K. Garland, 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.

Notary Public, in and for the Commonwealth of
Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192

