

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



# Introduction and welcome by TPAC Chair

Elisabeth Escobar

Chair, Trademark Public Advisory Committee

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Opening remarks

Andrei Iancu

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

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Operational news and updates

Meryl Hershkowitz

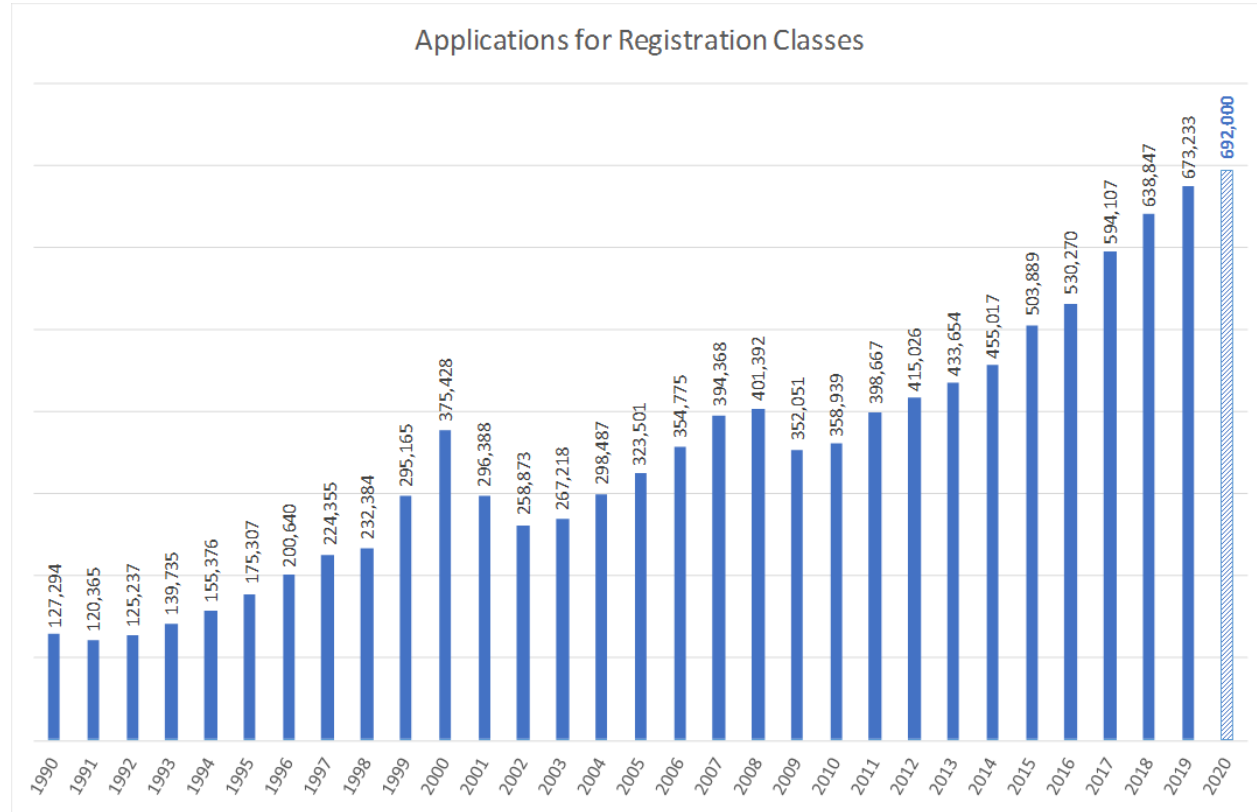
Acting Commissioner for Trademarks

February 7, 2020

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Filing trend: new applications (classes)



# New applications and registrations

Fiscal year	Classes filed	+/- %	Classes registered	+/- %
2014	455,017	+4.9%	279,282	+7.5%
2015	503,889	+10.7%	282,091	+1%
2016	530,270	+5.2%	309,188	+9.6%
2017	594,107	+12.0%	327,314	+5.9%
2018	638,847	+7.5%	367,382	+12.2%
2019	673,233	+5.4%	396,836	+8%

# Filing trend: applicant demographic

Fiscal year	Non-pro se applicant	Pro se applicant
2014	78%	22%
2015	77%	23%
2016	74%	26%
2017	72%	28%
2018	72%	28%
2019	71%	29%

Fiscal year	U.S. filings	Foreign filings
2014	78%	22%
2015	76%	24%
2016	73%	27%
2017	70%	30%
2018	70%	30%
2019	68%	32%

# Filing trend: filing basis

Fiscal year	Section 1(a)	Section 1(b)	Section 44	Section 66a
2014	36%	49%	7%	8%
2015	36%	48%	7%	9%
2016	37%	46%	8%	9%
2017	39%	44%	7%	10%
2018	40%	44%	7%	9%
2019	40%	43%	8%	9%



# Trademarks organization staffing

Fiscal year	Examining Attorneys — BOY	Examining Attorneys — EOY (inc. accessions, transfers, resignations)	Net change
2014	409	429	+20
2015	429	456	+27
2016	456	505	+51
2017	505	549	+44
2018	549	579	+30
2019	579	642	+63
2020	611	658	+47

# Trademarks performance: pendency

FY 2020 Trademarks performance measures	FY 2020 targets	FY 2020 First quarter results
<b>First action pendency</b> First action pendency from date of filing to the first office action in months	<b>2.5-3.5</b>	<b>2.8</b>
<b>Disposal pendency</b> Disposal pendency from date of filing to issuance of a notice of allowance, registration, or abandonment — <b>excluding</b> suspended and <i>inter partes</i> proceedings	<b>12.0</b>	<b>9.4</b>

# Trademarks performance: quality

<b>FY 2020 Trademarks performance measures</b>	<b>FY 2020 targets</b>	<b>FY 2020 First quarter results</b>
<b>First action compliance</b> In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the first office action	<b>95.5%</b>	<b>96.7%</b>
<b>Final action compliance</b> In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the examining attorney's approval or denial of the application	<b>97.0%</b>	<b>98.1%</b>
<b>Exceptional office action</b> Measure indicating the comprehensive quality of the first office action search, evidence, writing, and decision making	<b>50.0%</b>	<b>54.1%</b>

# Recent rulemaking and policy

# Case law and recent exam guides

- Supreme Court decisions
  - *Matal v. Tam* (2017)
  - *Iancu v. Brunetti* (2019)
  - *USPTO v. Booking.com* (pending)
- Examination guides
  - Exam Guide 1-19 (Cannabis)
  - Exam Guide 2-19 (post-Brunetti)
  - Exam Guide 3-19 (digital or mockup specimens)
  - Exam Guide 4-19 (U.S. counsel for foreign parties)

# Rulemaking: U.S. counsel requirement

- Requires foreign-domiciled trademark applicants, registrants, and parties before the Trademark Trial and Appeal Board to be represented by a U.S.-licensed attorney to file trademark documents with the USPTO
- Office actions issued with U.S. counsel requirement

	August FY19	September FY19	October FY20	November FY20	December FY20
U.S. counsel requirement	10,954	9,620	13,154	4,053	1,815

# Rulemaking: U.S. counsel requirement

- Chinese filings
  - June 2019: 4,874 filings
  - July 2019: 20,435 filings
- [August 2019: U.S. counsel rule implemented]
  - December 2019: 3,871 filings

	May FY19	June FY19	July FY19	August FY19	Sept FY19	Oct FY20	Nov FY20	Dec FY20
Chinese applications	5,475	4,874	20,435	7,817	2,821	2,625	2,904	3,871
Foreign applications (non-China)	6,622	5,779	6,938	6,297	5,428	6,495	5,738	5,810

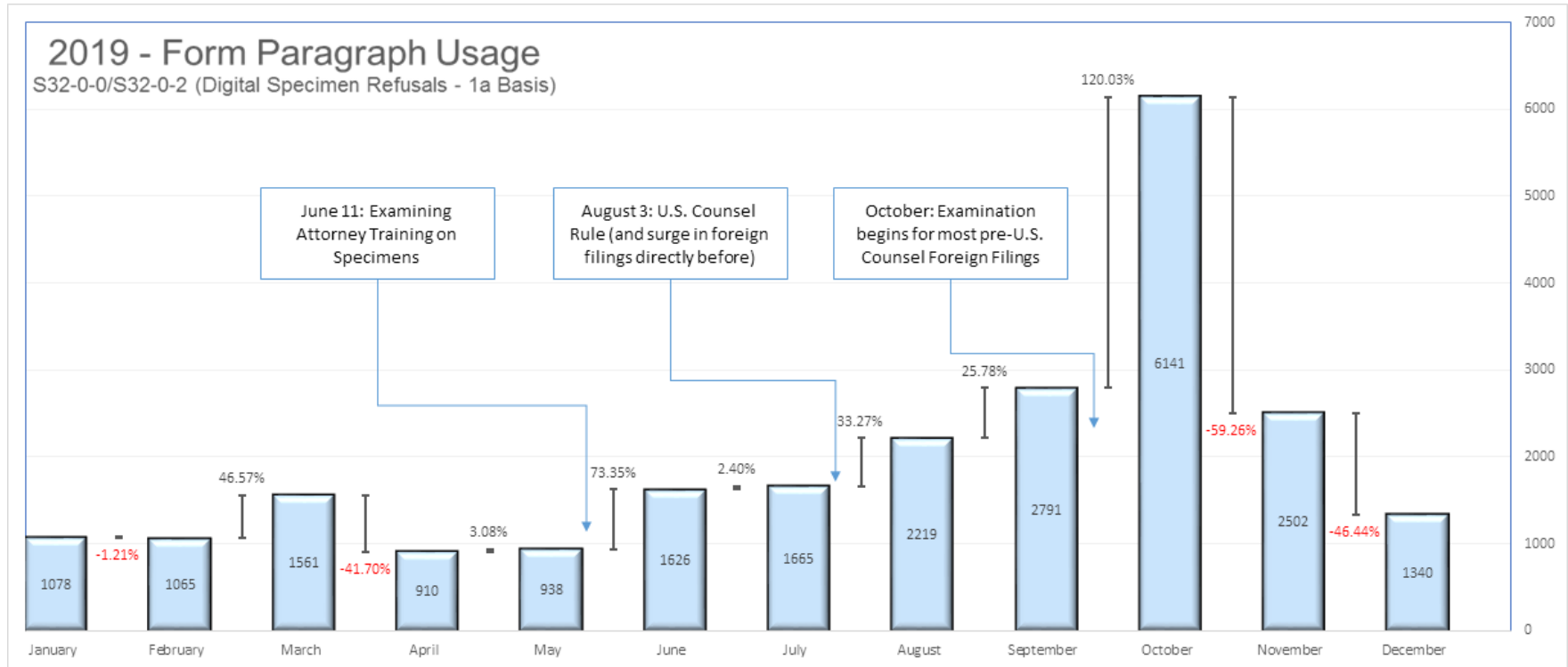
# Challenges remain this year: circumvention of U.S. counsel rule

- Improperly signed submissions
  - Our special task force reviews weekly data analytics reports to identify suspicious surges in foreign representation and receives information from examining attorneys regarding suspicious applications.
  - We have identified applications that include fictitious attorney names or the name and signature of U.S. attorneys who did not sign or consent to be designated in applications.
  - To date, we have issued 34 show cause orders and suspended examination on those applications pending their responses. An additional 100 orders are being prepared.
  - Unauthorized parties have filed forms through TEAS making changes to trademark records. Created a [webpage](#) (search “unauthorized changes” on [www.uspto.gov](http://www.uspto.gov)).
  - MyUSPTO login was required for TEAS forms starting on October 26, 2019.





# Fake or altered specimens: refusals timeline



# Current rulemaking and policy

# Rulemaking: mandatory electronic filing

- Implementation scheduled for February 15, 2020
- Mandatory use of TEAS for all trademark filings with the USPTO except in cases of:
  - International agreements requiring acceptance of paper submissions from certain countries
  - Specimens for scent, flavor, or other non-traditional marks
  - Postal service interruptions or emergencies
- Petition process for requesting acceptance of paper submissions under limited circumstances
- [www.uspto.gov/trademark/laws-regulations/mandatory-electronic-filing](http://www.uspto.gov/trademark/laws-regulations/mandatory-electronic-filing)



# Mandatory electronic filing: changes to forms

- Initial application form options
  - TEAS RF renamed TEAS Standard
  - TEAS Regular no longer a filing option
  - Single initial application form for TEAS Plus and TEAS Standard

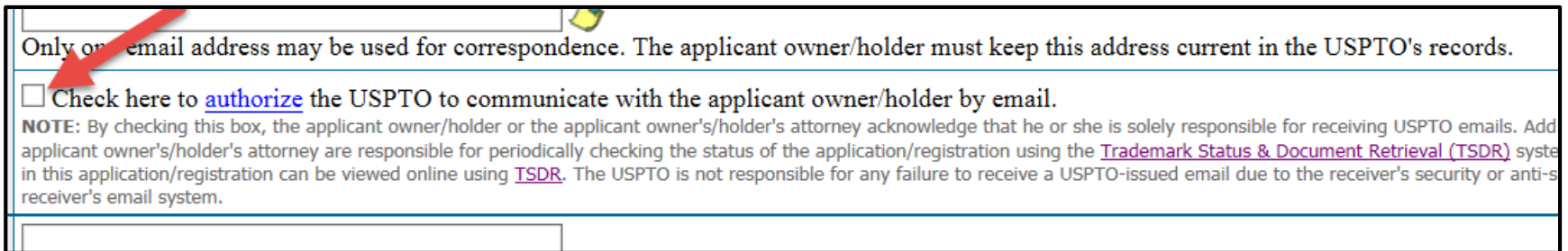
# Mandatory electronic filing: new domicile address field

- Enhancements to initial application forms and new Change Address or Representation form allow owners to provide a separate domicile address
- USPTO initially presumes owner's mailing address and owner's domicile address are the same
- If addresses differ, the owner may enter a separate address in the domicile address field and it is not publicly viewable in the USPTO's TSDR database



# Mandatory electronic filing: entering email address

- Owner email address field now mandatory
- Email authorization is presumed. Removed check box for authorizing email communication when you provide an email address for the owner/holder, attorney, or domestic representative



Only one email address may be used for correspondence. The applicant owner/holder must keep this address current in the USPTO's records.

Check here to [authorize](#) the USPTO to communicate with the applicant owner/holder by email.

**NOTE:** By checking this box, the applicant owner/holder or the applicant owner's/holder's attorney acknowledge that he or she is solely responsible for receiving USPTO emails. Add applicant owner's/holder's attorney are responsible for periodically checking the status of the application/registration using the [Trademark Status & Document Retrieval \(TSDR\)](#) system in this application/registration can be viewed online using [TSDR](#). The USPTO is not responsible for any failure to receive a USPTO-issued email due to the receiver's security or anti-spam receiver's email system.

# Mandatory electronic filing: revised correspondence information

- Removed postal address, telephone number, and fax number fields
- Name and primary email address fields for correspondence are not editable. Populates from attorney's email address, if appointed; otherwise, the owner's email address
- Enter up to four secondary email addresses for courtesy copies of USPTO communication

Correspondence Information	
Watch the <a href="#">TEAS Nuts and Bolts: Correspondence Information video</a> on the USPTO website for instructions on this page. To make changes to the <b>Primary Email Address for Correspondence</b> below, either (1) return to the Applicant Information section (if no attorney has been appointed) and enter the change, or (2) use the Attorney Information section of the form to enter the change (if an attorney has been appointed).	
<b>Name</b>	Pam Martin
<b>Email Address</b>	<b>Primary Email Address for Correspondence:</b> attorney@email.com <b>Secondary Email Address(es) (Courtesy Copies)</b> <input type="text"/> Enter up to 4 addresses, separated by either a <b>semicolon</b> or a <b>comma</b> . Only the Primary Email Address for Correspondence is used for official communication by the USPTO. If an attorney has been appointed, the USPTO will correspond <b>ONLY</b> with the appointed attorney; otherwise the USPTO will correspond with the applicant owner/holder. The applicant owner/holder or the appointed attorney must keep this email address current with the USPTO.  <small><b>NOTE:</b> I understand that (1) a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, for correspondence and (2) all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).</small>

# Rulemaking: fees

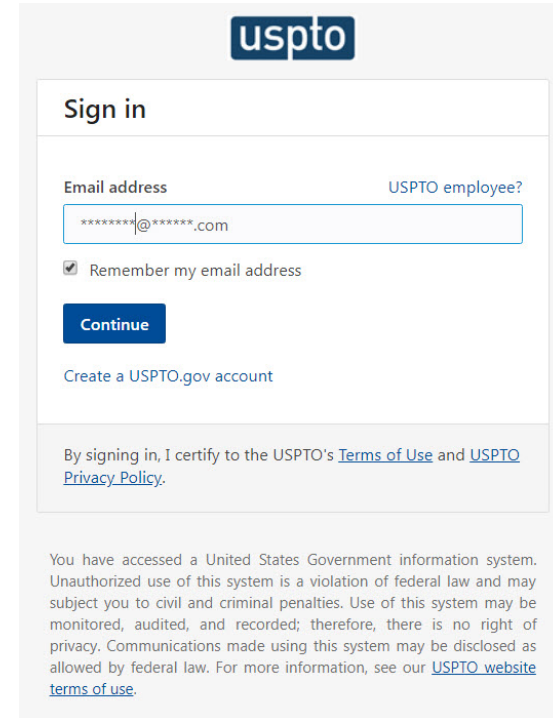
- Justification
  - IT stabilization and modernization
  - Budgetary requirements
  - Shift in filing patterns
- Timeline
  - TPAC public hearing held September 23, 2019
  - TPAC report on Trademark fee proposal issued October 31, 2019
  - NPRM to publish
  - Public comment period
  - Publish Final Rule in the Federal Register
  - Effective date for fee changes



**Initiatives**

# Mandatory login

- Phase 1: implemented October 2019
  - Use an existing uspto.gov account or sign up for a new one at [my.uspto.gov](https://my.uspto.gov).
  - Log in through [my.uspto.gov](https://my.uspto.gov) or click on the TEAS form you want to use and you will be prompted to log in.
  - Once logged in, file as usual through TEAS.
  - MyUSPTO has four ways to provide two-step authentication:
    - Email
    - Phone call
    - Authentication app
    - Text message



The screenshot shows the USPTO Sign in page. At the top is the 'uspto' logo. Below it is a 'Sign in' section with a form. The form has two input fields: 'Email address' and 'USPTO employee?'. The 'Email address' field contains a masked email address '\*\*\*\*\*@\*\*\*\*\*.com'. Below the email field is a checkbox labeled 'Remember my email address' which is checked. A blue 'Continue' button is positioned below the checkbox. Below the button is a link that says 'Create a USPTO.gov account'. At the bottom of the form, there is a disclaimer: 'By signing in, I certify to the USPTO's [Terms of Use](#) and [USPTO Privacy Policy](#).' Below the form is a larger block of text: 'You have accessed a United States Government information system. Unauthorized use of this system is a violation of federal law and may subject you to civil and criminal penalties. Use of this system may be monitored, audited, and recorded; therefore, there is no right of privacy. Communications made using this system may be disclosed as allowed by federal law. For more information, see our [USPTO website terms of use](#).'



# Mandatory login

- Phase 2: summer 2020
  - Current and new uspto.gov account holders will verify their identity.
  - Identity proofing prevents “impostor” accounts.
- Phase 3: late 2020
  - Customers will be able to create roles and delegate authority to other accounts.
  - Attorneys may authorize multiple staff accounts to access and edit filings.
  - Customers may restrict any unauthorized users from making changes to an application or registration.



# Proof-of-use audit program results so far (Nov. 2017-Jan. 2, 2020)

- 8,276 first actions issued by examiners on project
- 4,928 responses received
- 80% of respondents represented by an attorney
- 20% of respondents pro se

Basis for registration	2012-2015 (pilot) 500 registrations % unable to verify previously-averred use	Nov. 2017-Jan. 2, 2020 (permanent) 8,276 registrations % unable to verify previously-averred use
Use Section 1(a)	45%	49%
Paris convention Section 44(e)	65%	68%
Madrid Section 66(a)	71%	67%
Combined use and Paris Sections 1(a) and 44(e)	69%	63%

# Anti-counterfeiting campaign

- In November 2019, the USPTO and the National Crime Prevention Council (NCPC) kicked off the Go for Real Campaign, a five-year educational anti-counterfeiting campaign
- The goals of the campaign are to:
  1. Raise public awareness about the importance of intellectual property and the danger of purchasing counterfeit goods, and
  2. Change attitudes and purchasing behaviors of consumers of all ages, with specific focus on teens, tweens and their parents.
- The campaign is creating public service announcements (PSAs) for television, radio, outdoor signage, social media, and digital messaging and providing educational materials for public distribution
- Please visit the campaign page to learn more: [www.ncpc.org/GoForReal/](http://www.ncpc.org/GoForReal/)



**International**

# TM5

- **Comprised of the five largest trademark offices:**
  - China National Intellectual Property Administration (CNIPA)
  - European Union Intellectual Property Office (EUIPO)
  - Japan Patent Office (JPO)
  - Korean Intellectual Property Office (KIPO)
  - USPTO
- **Focuses on exchange of information and collaboration and harmonization projects regarding trademark matters to benefit users**
- **Projects include (among others):**
  - Combatting bad faith filings
  - Common status descriptors
  - ID list
  - Non-traditional marks
  - Image searching
  - Anti-counterfeiting
  - Misleading (fraudulent) solicitations
  - USPTO will be Secretariat (host) for the TM5 Annual Meeting in late 2020



# Feedback

- We want to hear from you!
- Email [TMFeedback@uspto.gov](mailto:TMFeedback@uspto.gov) for general suggestions
- Other Trademarks contact information can be found on our website at:
  - [www.uspto.gov/trademark/contact-trademarks/other-trademark-contact-information](http://www.uspto.gov/trademark/contact-trademarks/other-trademark-contact-information)





# Thank you!

**Meryl Hershkowitz**

Acting Commissioner for  
Trademarks

[Meryl.Hershkowitz@uspto.gov](mailto:Meryl.Hershkowitz@uspto.gov)

571-272-9173

[www.uspto.gov](http://www.uspto.gov)

# Policy and international affairs update

Amy Cotton

Office of Policy and International Affairs

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Trademark labeling restrictions

- **High fat/high sugar foods:**
  - Prohibitions on advertising of foods marketed to children that are high in fat/sugar; advertising includes characters on the packaging
- **Infant formula:**
  - Prohibitions on advertising infant formula and foods that could be substitutes for breast milk. Packages cannot contain any information (including trademarks) that suggests suitability for kids

# Trademark labeling restrictions

- Alcohol:
  - Graphic health warnings that cover up surface area on labels including trade dress and trademarks
- Tobacco:
  - Dark markets; no advertising and plain packaging

# Chile

- Placed stop sign stickers on packaging of foods high in fat, sugar, calories, and sodium
- Guidelines dictated proportion of the stickers in relation to the packaging
- Required removal of characters (trademarks) from packaging that was targeting children, such as Tony the Tiger, Keebler Elves, Trix rabbit, etc.
- Engagement by USG since at least 2016 on this issue

# Chile



# Chile



Banned depiction of Santa Claus on chocolate



# Peru

- Required stickers on packaging of food products high in fat, sugar, calories, and sodium
- Guidelines dictated size of the sticker in relation to the packaging
- Did not include removal of characters
- USG engagement since at least 2017/2018



# Peru



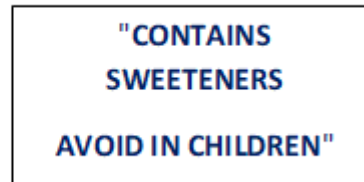
**high in saturated fat – high in sugar – high in sodium – contains trans fats**

# Mexico

- Currently considering proposal similar to Chile's
- Both domestic and imported packaged products will be affected

# Mexico: Frontal warning labels

- Limits to (1) calories, (2) sugars, (3) saturated fats, (4) trans fats, and (5) sodium that determine when the following frontal warning labels must be used in the packages.



# Mexico: marketing limitations

- If a product has a frontal warning label, it cannot use characters, drawings, celebrities, gifts, promotions, toys or contests, discounted price, nor advertise on social networks
- If a food product and non-alcoholic beverage product exceeds the nutritional limits, the regulation bans any text or design that refers to a recommendation or approval made by a professional organization

# Report on combating trafficking in counterfeit and pirated goods

- Platforms will be encouraged to adopt the best practices identified in the report, and the IPR Center will also monitor and report on the adoption, progress, and effectiveness of the best practices
- DHS, including CBP and ICE, and the IPR Center will initiate a series of actions to stem the flow of counterfeit and pirated goods coming over the U.S. borders
- The report includes recommendation for actions by other agencies, including that the Department of Commerce should:
  - Assess the state of liability for trademark infringement and seek input from the private sector and other stakeholders as to the application of the traditional doctrines of trademark infringement to the e-commerce setting
  - Launch a national public awareness campaign to involve platforms, rights holders, and the relevant government agencies to provide education for consumers regarding the risks of counterfeits as well as the various ways consumers can identify them



# TM5

- Midyear meeting & user session at INTA, April 25-26, 2020 in Singapore
- Annual meeting & user session proposed for mid-November in Alexandria
- Developments:
  - Brand new website
  - TM5 ID list now at 20,000 terms
  - Invitations to join common status descriptors project, including to WIPO for Madrid Monitor
  - Published a bad faith report in December and a Paris priority report in January; about to issue one other report on quality services; finalizing catalog of TM5 application requirements for non-traditional marks



# Legislative/governmental affairs update

Branden Ritchie

Director of the Office of Government Affairs and  
Oversight

February 6, 2020

UNITED STATES  
PATENT AND TRADEMARK OFFICE





# The 116th Congress



- USPTO-related hearings
  - House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet: The Patent Trial and Appeal Board and the Appointments Clause: Implications of Recent Court Decisions (November 19, 2019)
  - Senate Judiciary Subcommittee on Intellectual Property: Fraudulent Trademarks: How They Undermine the Trademark System and Harm American Consumers and Businesses (December 3, 2019)
  - House Small Business Committee: Enhancing Patent Diversity for America's Innovators (January 15, 2020)

# Legislative activity

## 116th Congress

- Hot issues in Congress related to trademarks
  - Trademark filings with inaccurate/fraudulent use claims
    - Roundtable on January 22, 2020
    - Draft legislation
  - Counterfeit Goods Seizure Act of 2019 (S. 2987)
  - Trademark Licensing Protection Act of 2019 (S. 2439/H.R. 4164) (Franchisor / franchisee relationship)
  - FLAG Act
  - *Brunetti* update
- The USPTO is actively monitoring these efforts
- Federal Budget FY2020: (P.L. 116-93) (December 20, 2019)
  - Provides \$3.45 billion for the USPTO



# Legislative activity

## 116th Congress

- Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018 (P.L. 115-273)
- USPTO submitted the study to Congress as required by the SUCCESS Act on October 31, 2019
  - Available on the USPTO website
- Update on USPTO initiatives
  - Collaborative IP program
  - Award program
  - Creation of council for innovation and inclusiveness
  - Expansion of USPTO educational outreach programs for youth and teachers
  - Workforce development
  - Increase professional development IP training for educators



# Legislative activity

## 116th Congress

- USPTO's legislative priorities
  - Continuity of service during lapse in funding
  - Elevate IP attaché rank
  - Work with Congress on section 101 reform
  - Work with Congress on trademark legislative package



# Thank you!

**Branden Ritchie**

Office of Government  
Affairs and Oversight

[branden.ritchie@uspto.gov](mailto:branden.ritchie@uspto.gov)

571-272-7300

[www.uspto.gov](http://www.uspto.gov)

# USPTO budget update

Jay Hoffman

Chief Financial Officer

February 7, 2020

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Agenda

- FY 2020 status
- FY 2021 budget
- Fee rulemaking

# FY 2020 status

- The FY 2020 Consolidated Appropriations Act was passed on December 20, 2019.
- The bill provides the USPTO with \$3.45 billion for FY 2020 and requires that:
  - Any amount received in excess of the FY 2020 appropriated amount will be deposited in the Patent and Trademark Fee Reserve Fund (PTFRF).
  - \$2 million will be transferred to the OIG account associated with carrying out investigations and audits related to the USPTO.
- The USPTO received congressional approval to transfer fees from the Patent and Trademark Fee Reserve Fund to its Salaries and Expenses account on January 8, 2020.
  - The transferred amount is \$28.7 million.
    - Patents: \$24.7 million, Trademarks: \$4.0 million





# FY 2020 status: fees

Trademarks' current fee estimate is \$368.8 million.

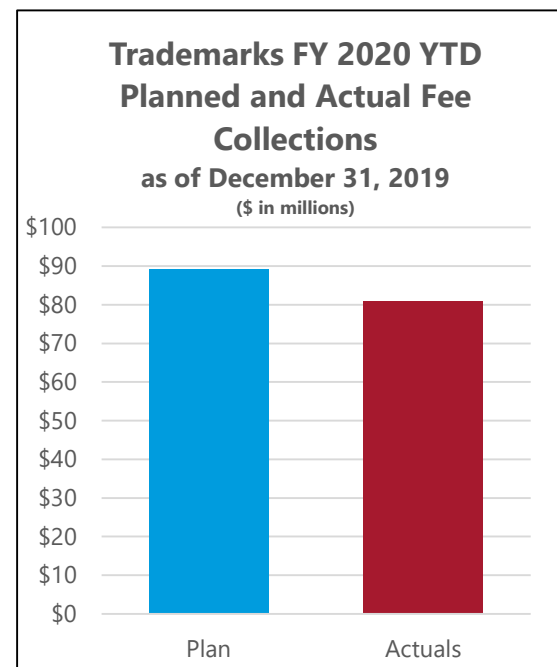
**Total Trademarks collections** (dollars in thousands)

FY 2018		FY 2019		FY 2020	
Actual	Actual	Increase	Plan	Increase	
\$328,976	\$343,901	4.5%	\$368,770	7.2%	

Collections through December 31 are currently 0.9% below the corresponding FY 2019 time frame.

**Year-to-date comparison** (dollars in thousands)

FY 2018		FY 2019		FY 2020	
Actual	Actual	Increase	Actual	Increase	
\$79,944	\$81,658	2.1%	\$80,904	-0.9%	



# FY 2020 status: spending

Projected end-of-year funding as of December 31, 2019:

Trademarks	
(\$ in thousands)	
Projected income summary	Actual
Fee collections – end-of-year	\$368,769.9
Actual prior year carryover (operating reserve)	126,609.1
Carryover-PTFRF (operating reserve)	4,068.8
Other income – current apportionment	5,515.5
<i>Total projected income</i>	<i>504,963.3</i>
Projected spending	
Actual commitments and obligations	125,186.1
Projected spending for remainder of year	304,057.9
<i>Total projected spending</i>	<i>429,244.0</i>
<b>Total projected operating reserve</b>	<b>\$75,719.3</b>



# FY 2021 budget

- The FY 2021 President's Budget request will be submitted to Congress on February 10, 2020.
- The USPTO expects that appropriation hearings will be held by the House and Senate CJS subcommittees for the DOC's FY 2021 budget.

# Fee rulemaking

- The USPTO is in the process of drafting and reviewing a notice of proposed rulemaking (NPRM) to set and adjust trademark-related fees with the benefit of the TPAC Fee Setting Report.
- The agency expects to publish the NPRM in the Federal Register for public comments in spring 2020.
- Following a consideration of public comments, the USPTO plans to release a final rule adjusting trademark-related fees in summer 2020.



# Thank you!

**Jay Hoffman**

Jay.Hoffman@uspto.gov

(571) 272-9200

[www.uspto.gov](http://www.uspto.gov)

# Trademark Trial and Appeal Board Update – FY2020 Report

TTAB Chief Judge Gerard Rogers

February 7, 2020

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# FY2020 TTAB Incoming Filings

FY 2020 TTAB incoming filings	FY 2019 EOY results	FY 2020 actual, target or projected	FY 2020 Through Q1	Rate of Change
<b>TYPE OF FILING</b>				
Notices of Appeal	3,333		863	+3.6%
Extensions of Time to Oppose	20,502		5,025	-2%
Notices of Opposition	6,955		1,841	+5.9%
Petitions to Cancel	2,426		632	+4.2%

# Cumulative 3 year increases

- Ex Parte Appeals Up 6.8%
- Extensions to Oppose Up 7.6%
- Oppositions Up 18.3%
- Petitions to Cancel Up 31.3%



# Trends in new filings

Type of filing	FY17 (% +/- FY16)	FY18 (% +/- FY17)	FY19 (% +/- FY18)	By Quarters in FY19	FY20 Q1 (rate of change +/- FY19)
<b>Appeals</b>	3,158 (+1.2%)	3,223 (+1.2%)	3,333 (+3.4%)	866; 747; 871; 849	863 (+3.6%)
<b>Extensions of time to oppose</b>	18,490 (-3%)	19,208 (+3.9%)	20,502 (+6.7%)	4,672; 4,673; 5,564; 5,593	5,025 (-2%)
<b>Oppositions</b>	6,156 (+4.7%)	6,496 (+5.5%)	6,955 (+7.1%)	1,599; 1,632; 1,780; 1,944	1,841 (+5.9%)
<b>Cancellations</b>	2,101 (+13.7%)	2,253 (+7.2%)	2,426 (+7.7%)	565; 599; 609; 653	632 (+4.2%)

# Trends – cases ready for decision

Final decisions on merits appeals and trial cases	FY17 (% +/- FY16) (% trials)	FY18 (% +/- FY17) (% trials)	FY19 (% +/- FY18) (% trials)	By Quarters in FY19	FY20 Q1 (rate of change +/- FY19)
<b>Maturing to RFD</b> (ready for decision) (appeals/trials) (percent trials)	679 <b>(-1.2%)</b> (517/162) <b>(23.9%)</b>	650 <b>(-4.3 %)</b> (473/177) <b>(27.2%)</b>	<b>744</b> <b>(+14.5%)</b> (514/230) <b>(29.9%)</b>	191; 185; 201; 167  (128/63); (126/59); (132/69); (128/39)	<b>145</b> <b>(-22%)</b> (111/34) <b>(23.4%)</b>
Awaiting decision at end of period (appeals/trials)	93 (+12%) (65/28) (30.1%)	130 (+39.8%) (74/56) (43.1%)	206 (+58.5%) (123/83) (40.3%)	197; 213; 267; 206  (131/66); (129/84); (158/109); (123/83)	<b>235</b> <b>(+14.1%)</b> (153/82) <b>(34.9%)</b>

# A trial case heavy docket

- Appeals maturing to RFD Up 8.7%
- Trials maturing to RFD Up 29.9%
- Appeals decided Up 1.6%
- Trials decided Up 41%
- Inventory split (123/83) 40.3 trials%

FY 2020 TTAB performance: Contested Motions	FY 2019 EOY results	FY 2020 Actual, Target or Projected	FY 20 Q1 results	Variance
<p>PENDENCY – Contested motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p>	11.5 weeks	8-12 weeks (new target)	12.5 weeks	slightly above target range
<p>INVENTORY – Contested motions ready for decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	242		250	3.3% increase

# Trends – motions ready for decision

Contested Motions	FY17 (% +/- FY16)	FY18 (% +/- FY17)	FY19 (% +/- FY18)	By Quarters in FY19	FY20 Q1 (rate of change +/- FY19 or compared to Q1 FY19)
<b>Maturing to RFD</b> (ready for decision)	1212 (+4.4%)	1287 (+6.2 %)	1284 <b>(-0.2%)</b>	341; 301; 304; 338	319 <b>(-0.6%</b> ; compared to 321 as ¼ of FY19 total) <b>(-6.5%</b> ; compared to 341 maturing to RFD Q1 FY19)
<b>No. of Motions Resolved by Issued Decisions</b> (No. of Decisions Issued)	<b>1,238</b> (-9.4%) <b>(991)</b> (-3%)	<b>1,318</b> (+6.5%) <b>(1,082)</b> (+9.2%)	<b>1,231</b> (-9.4%) <b>(1,002)</b> (-7.4%)	248; 376; 270; 337  (208; 304; 216; 274)	<b>318</b> (+28.2%)* <b>(245)</b> (+17.8%)* *each compared to Q1 FY19
<b>No. of Cases with Motions Awaiting Decision</b>	147 (+25.6%)	165 (+12.2%)	242 (+46.7%)	250 (+3.3%)	250 <b>(+3.3%)</b>

FY 2020 TTAB performance: Final Decisions	FY 2019 EOY results	FY 2020 actual, target or projected	FY 2020 Q1 results	Variance
<p><b>PENDENCY – Final decisions in ex parte appeals</b> Average time to issuance, measured from ready for decision date until mailing for final decisions, excluding precedents, in appeal cases decided during reporting period</p>	12.7 weeks	10-12 weeks (new target)	15.6 weeks	above target range
<p><b>PENDENCY – Final decisions in trial cases</b> Average time to issuance, measured from ready for decision date until mailing for final decisions, excluding precedents, in trial cases decided during reporting period</p>	15.3 weeks	12-15 weeks (new target)	<b>22.8 weeks</b>	above target range

FY 2020 TTAB performance: Final Decisions	FY 2019 EOY results	FY 2020 actual, target or projected	FY 2020 Q1 results	Variance
<p><b>INVENTORY – Cases ready for final decision</b></p> <p>The number of pending appeals and trial cases in which briefing was completed, or in which briefing and arguments were completed, thus becoming ready for decision on the merits, as of the end of the reporting period</p>	<p>Ex parte appeals 123</p> <p>Oppositions 57</p> <p>Cancellations 24</p> <p>Concurrent Use 2</p> <p><u>Total:</u> 206</p>		<p>Ex parte appeals 153</p> <p>Oppositions 52</p> <p>Cancellations 28</p> <p>Concurrent Use 2</p> <p><u>Total:</u> <b>235</b></p>	<p>appeal balance up but trial balances steady</p>



# Trends – Time to final decision

<b>Final decisions on merits appeals and trial cases</b>	<b>FY17 (% +/- FY16)</b>	<b>FY18 (% +/- FY17)</b>	<b>FY19 (% +/- FY18)</b>	<b>FY20 Q1 (% +/- FY19)</b>
<b>Average Pendency of Appeals, RFD to mailing</b> (excluding precedents, possible precedents)	<b>7.0 weeks (-20.5%)</b>	<b>8.3 weeks (+18.6%)</b>	<b>12.7 weeks (+53%)</b>	<b>15.6 weeks (+22.8%)</b>
<b>Average Pendency of Trials, RFD to mailing</b> (excluding precedents, possible precedents)	<b>10.4 weeks (-3.7%)</b>	<b>9.5 weeks (-8.7%)</b>	<b>15.3 weeks (61%)</b>	<b>22.8 weeks (+49%)</b>



FY 2020 TTAB performance: End-to-End Processing Times	FY 2019 EOY results	FY 2020 actual, target or projected	FY 2020 Q1 results	Variance
<p>TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents</p> <p>Appeals (448 in FY19; 111 decided FY20)</p> <p>Trial cases (203 in FY19 (+41%); <b>34 decided FY20</b>)</p> <p>ACR trial cases (27 decided in FY19; 6 decided FY20)</p>	<p>40.5 weeks</p> <p>160.6 weeks</p> <p>126.2 weeks</p>		<p>47.6 weeks</p> <p>140.6 weeks</p> <p>114.3 weeks</p>	<p>+17.5%</p> <p>-12.5%</p> <p>-9.4%</p>

# FY 2020 TTAB Staffing

FY 2020 TTAB staffing	As of October 1, 2019	As of February 3, 2020	Projected
<b>JUDGES and ATTORNEYS</b>			
Administrative Trademark Judges	23	25	further increases possible
Interlocutory Attorneys	14/1	17/1	

# Additional staffing notes

- Interlocutory Attorney training detail resumed
- Full-time law student extern on board
- Investigating law clerks

# Continuing interest in ACR

- Speed can be realized (though it is not a given)
- Imagine efficiencies ... and agree to them!
- Mutual informal exchanges of documents
- Limitations on discovery
- Broader use of Notices of Reliance
- Summary judgment-style trial
- Stipulations re: facts and authenticity of evidence
- Remember your burden(s) of proof

# Pilot programs update

- Expedited Cancellation Pilot to continue through Q2 FY20
- Will provide two years of data
- Already clear default rates high with nonuse/abandonment:
- 44% in all cancellation cases
- 49% when the case includes abandonment or nonuse claim
- 55% for cases with only nonuse claims
- 60% for cases with only abandonment claims

# Pilot programs update

- New Pre-Trial Conference pilot program being explored
- Recent increases in trial case portion of docket
- Cases with larger records not necessarily better records
- Will consider broader use of stipulations, discussion of pre-trial disclosures, focusing parties on efficient presentation of evidence

# Revised Standard Protective Order

- Reworded provisions improve clarity, readability
- Example: Preamble, ¶2: *clarifies modification of SPO is by agreement of parties approved by the Board or when additional provisions approved by the Board*

# SPO – Changes

- 1) Classes of Protected Information - AEO (Trade Secret/Commercially Sensitive): *clarified internal reference as to AEO*
- 5) Disclosure to Independent Experts or Consultants: *addressed ambiguity regarding disclosure of protected information to experts/consultants*



# SPO – Changes

- 7) Production of Documents: *clarified “Confidential,” to mean as defined in Section 1 of SPO*
- New footnote 2: *addresses access issue where party represents itself*
- 8) Depositions: *clarified “Confidential,” to mean as defined in Section 1 of SPO*

# SPO – technical issues

- Posted format on TTAB home page changed to PDF: *addresses suggestions to ease conversion to a Word document*
- Entering SPO in record/case history: *future enhancement, when migrating from legacy systems to next generation systems*



# Trademark IT update to TPAC

Eunice Wang

Trademark portfolio manager (Acting)

February 7, 2020

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Activity since last TPAC

- System updates to support mandatory electronic filing (MEF) rule changes are in progress (effective February 15)
- Testing artificial intelligence (AI) solution for image search capabilities for the identification and classification of goods and services
- Conducting market research to seek expertise in AI capabilities for the identification of goods and services
- Testing solution for specimen search capabilities
- Stabilization of Trademark and TTAB systems continue
- Deployed changes to the Trademark Status and Document Retrieval (TSDR) system to support MEF
- Trademark agile pilot teams continue to focus on refining the team structure and processes to be used for future efforts



# Roadmap for future success



## 1. Stabilization

- Reduce risk of future system outages in infrastructure and legacy systems
- Nine Trademark systems and applications initially targeted based on risk and business criticality
- Systems integrator (SI) vendor to upgrade five systems; in-house teams will upgrade remaining four



## 2. Modernization

- Improve agility, performance, and stability of Trademark systems
- Develop and integrate a portfolio of new features to address business needs and increased demand
- Drive savings and speed to market through data management, automation, and artificial intelligence



## 3. Governance

- Optimize speed, quality, and cost-effectiveness of IT delivery through operating model refinements
- Launch agile at a large scale, starting with small pilot teams, eventually spanning across OCIO
- Redefine software development life cycle (SDLC), planning and governance, and IT acquisition processes



# Remarks

Laura Peter

Deputy Under Secretary of Commerce for  
Intellectual Property and Deputy Director

UNITED STATES  
PATENT AND TRADEMARK OFFICE





