

UNITED STATES PATENT AND TRADEMARK OFFICE
WEBINAR

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

Alexandria, Virginia
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P R O C E E D I N G S

(1:01 p.m.)

MS. ESCOBAR: Okay, hi, everyone.

This is Elisabeth Escobar. I am serving as Chair of the Trademark Public Advisory Committee this term. We're going to give folks just a few more minutes to complete dialing in before we get underway.

(Pause)

MR. GOODER: Elisabeth, I cannot hear you. Did she disconnect? Anastasia), can you hear me?

MS. ANASTASIA: She's still on, but I cannot hear her either.

MR. GOODER: I think her phone is muted. Please unmute your phone, Elisabeth.

MS. ESCOBAR: This is Elisabeth, can folks hear me now?

MR. GOODER: Yes, I can hear you now, Elisabeth.

MS. ESCOBAR: Oh, great, okay. So sorry for the technical difficulties. I was mentioning that I was hoping that people would be patient in case we have any technical

difficulties, which we just experienced.

This is the very first fully virtual Trademark Public Advisory Meeting and we're learning as we go. So, welcome, everyone, to a slightly delayed meeting.

My name is Elisabeth Escobar. I am privileged to be chairing the TPAC this term -- this year. And I am calling you from my daughter's childhood bedroom here in Rockville, Maryland. We're all dialing in from home getting used to the new normal.

A couple housekeeping details. First, all of the members of the public will be on mute for this discussion. If you have questions that you'd like to ask TPAC members or USPTO representatives, please send them in by email to TPAC@uspto.gov and USPTO staff will make sure that your questions get routed to the right people. For panelists, if you would be kind enough to mute your microphones when you're not actually speaking. We have a lot of people who are panelists today, and that will help cut down on background noise and distortions.

I'd like to take just a minute to

introduce the other members of TPAC. We have Chris Kelly, who is our Vice Chair this year. He's a partner at Wiley Rein. Stephanie Bald, who is a partner at Kelly IP in Chicago. Dinisa Folmar, who's the head of IP at the Hershey Company in Pennsylvania. We have Jennifer Kovalcik, who is IP counsel at Community Health Systems in Franklin, Tennessee. Anne Gilson Lalonde, who is the author of Gilson on Trademarks. She's in Vermont. Susan Natland, who is a partner at Knobbe Martens in California. Donna Tobin, who is a partner at Royer, Cooper, Cohen, and Braunfeld in New York. Kelly Walton, who is head of IP at Dell in Austin, Texas. And representing the union is Jay Besch, who represents the NTEU 245. And also, I don't know if Pedro Fernandez is on with us or if Kimberly Kovalcik is subbing for him today. But one of them is representing POPA.

So, I'd like to turn the microphone over to our first speaker, Andrei Iancu, who is the Director of the United States Trademark and Patent Office and Undersecretary of Commerce for Intellectual Property. Andrei oversees the

USPTO with its over 12,000 employees and an annual budget in excess of \$3 billion. And he also serves as the principal policy advisor on IP issues to the Secretary of Commerce. Thank you so much, Andrei, for taking the time to be with us.

MR. IANCU: Thank you, Elisabeth. My first question, which is typical of these Webex meetings is, can you hear me? Okay. I guess that's a yes.

Welcome, everybody. So, good to "see you", but obviously, I would have much rather seen all of you in person. Nevertheless, it really is great to be with you online for this second TPAC meeting of the year. Of course, it really is, as Elisabeth mentioned, the first one that's all virtual, and we're all keeping our fingers crossed. We will see what happens, but we are hopeful.

First, I want to say that I hope that you and your loved ones are in good health. I am certainly heartened that during this unprecedented and challenging time, we all continue to press forward doing our parts to

support each other, to serve the public, and to promote U.S. commerce.

Indeed, the partnership between the USPTO and TPAC is more important now than maybe ever in our history. We are in uncharted territory here. And I speak for the USPTO when I say that we are all extremely appreciative of your service during these difficult times. I also want to thank our incredible trademark employees who continue to perform their jobs with the highest level of professionalism and energy. Despite all these difficulties, our trademark employees have continued business as usual during these most unusual times. Our operations have seamlessly continued uninterrupted due to their dedicated service. It really is inspiring, and I am so proud to be part of this dedicated and compassionate team.

As always, we have important topics to discuss today and a lot of material to cover. So, I will make some introductory comments and then turn it over to the Commissioner and the rest of the team to get into the details.

First and foremost, I -- as I mentioned,

the USPTO is open for business and fully operational. Although we closed our physical campus a few weeks ago, our employees are continuing to do their work from home. Even before the pandemic, about 55 percent of our workforce was telecommuting full-time. Plus an additional 30 percent or so teleworked at least one day a week. So, about 85 percent or so of our workforce is well-versed already with telework.

Again, before the pandemic, our work had become mostly electronic anyway. Indeed, on the trademark side, we had recently moved to mandatory electronic filing. And, as a result, the USPTO was -- because of all of this, we were better prepared than most to move to full telework when it became necessary a few weeks ago.

So, we are for the most part, conducting business as usual. We're holding virtual meetings by phone and video just as the one we are holding today, but otherwise, the work of the PTO continues seamlessly. Plus, and importantly frankly, we are working hard to support our stakeholders during these difficult times. So, this is separate and in addition to the internal

work that we are doing at the PTO.

As you all know, on March 27th, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, which included certain temporary authority for the USPTO Director. Within two business days, I exercised that authority and announced extensions to the timeline allowed to file certain patent and trademark-related documents and to pay certain fees. And a few days after that, we posted answers to several FAQs on our website.

If you have not already done so, I encourage you to look at the guidance to see how you might use this relief as stakeholders and practitioners. We want to support you as well, as we navigate these times, but we also want to support you as we come out of it. As I said when we announced the extensions, our goal is to ensure not only that our stakeholders can weather the storm, but that they can hit the ground running once it passes. And it will pass. In the meantime, we want to hear from you, our stakeholders, what else you think we can do to

help you as you navigate these difficult times, and as we work together to ensure a healthy rebound.

We know that we can always rely on TPAC for your thoughtful advice and counsel, and for your attention to and stewardship of the trademarks budget. Which in turn, is helping to ensure that the USPTO's trademark organization has stable funding to meet our stakeholders' needs. You will hear from our CFO and from our Commissioner regarding those issues.

The last time TPAC met for a public session, there was discussion on a number of important initiatives we have been working on. We remain committed to those initiatives, and we have made impressive progress as you will hear during the rest of this meeting as well.

As I mentioned, we completed our move to mandatory electronic filing not too long ago. We recently also launched a dedicated page on our website on artificial intelligence. As I said before, the time is now for us to thoroughly and diligently explore AI and its implications on our constitutionally founded IP system, as well as

the operations of the Office.

Some months ago, we published a request for comments on many issues related to AI. And we have gleaned compelling insight from the feedback we received in response to our request. Specifically, and amazingly, frankly, we received 97 comments from a wide range of stakeholders, including individuals, associations, foreign IP offices, and corporations. These are now posted on the dedicated page on our website. Again, if you haven't visited that, please go ahead and do so.

Also, in support of our mission to improve the protection of IP rights, the USPTO is working to mitigate the global scourge of counterfeited and pirated goods. This work has been ongoing for a while, but it is more important now than ever that we continue to do so. We have now begun to see the harmful effects that counterfeit goods are having on consumers' health and safety in these particular times.

Just a couple of weeks ago, the FBI issued a press release warning healthcare professionals of the increased potential for

fraudulent activity around the sale of COVID-19- related medical equipment. The heroic men and women working in healthcare on the frontlines of this global pandemic have enough to worry about. Whether their medical equipment and protective gear is authentic should not be one of them.

So, we are working on a number of initiatives including the joint USPTO National Crime Prevention Council Anti-counterfeiting campaign. In all of this and so much more, and especially as we manage our budget, a long-standing partnership between the USPTO and TPAC is extremely important.

So, I'd like to thank you once again, members of the TPAC, for your hard work and dedication. Your insights and guidance on a number of issues continues to be invaluable. We look forward to and we rely on your sustained support and collaboration now and in the months ahead. So, I thank you once again for service on the Committee.

So, with that I will turn the meeting over to our new Commissioner for Trademarks, Dave

Gooder. This is Dave's first TPAC meeting. So, allow me if you will, to say a few things about Dave. Actually, Dave's first month on the job has seen many unique challenges. None of which, I don't think, were in his job description. For whatever reason, we did not list global pandemic in his various duties, but here we are. And David is more than prepared to lead the trademark organization through this uncertain time and beyond.

David joins us with more than 30 years' experience in IP law. As many of you know, prior to joining the USPTO, David served as the chief trademark counsel for Jack Daniels and its sister distilled spirits and wine brands. In that position, David directed the company's global intellectual property work, including its large trademark portfolio, rights clearance, brand protection, licensing, and entertainment deals. His length and breadth of experience working in the IP field is impressive.

David has also been an officer and director of the International Trademark Association, INTA, or I-N-T-A, as some call it.

He also served as chairman of the INTA Foundation. And he was a founding architect and director of the International Federation of Spirits Producers, the distilled spirits industry's anti-counterfeiting alliance. He served on the board of that federation for 14 years and was its chairman for 10 of those years. Finally, not to be overlooked, I understand that David is an Eagle Scout. I also understand, not from personal experience, but I gather that this is a rare and important award, indeed, and that only about 2 percent of Boy Scouts throughout history have earned the status of Eagle Scout.

I am thrilled to have David on the team. Truly, the Trademark Office and the United States are better for his new leadership role. So, until we can all get together in person, please join me in giving David a warm virtual welcome. So, thank you all again for being with us. Have a great rest of the meeting. And now, Commissioner, please take it away.

MR. GOODER: Thanks, Andrei, very much. Thanks for the kind words. Greetings, everyone. And I want to echo Andrei's sentiment

that I hope everyone is safe and healthy and the same with your families.

I was sworn in as the new commissioner on March 2nd, and I knew that taking on this role, and a number of people had said, boy, you're going to be drinking from a fire hose for a few months, and nothing, though, in my imagination would have ever caused me to think that the world would look like it does today as opposed to a month ago. But that's what challenges are made of, I think, and we can only go forward from here and upward, so. As a friend of mine said, climbing a mountain isn't always easy. It's the journey though that makes it count.

As Andrei mentioned, I've been a trademark lawyer for going on 30 years and 22 of those as chief trademark counsel for Jack Daniels. And the thing that was interesting as I was thinking back on the role how the TPAC and the PTO, et cetera was involved in our brand, I started to see in a different way than being in a law firm how important the trademarks were to business, especially the role they played in innovation. How they contributed directly to

shareholder value, and to consumer protection.

One of the critical components in our trademark portfolio, to me, were the registrations granted by the USPTO. And we knew that these U.S. registrations were really at their best when they were really high quality, were reliable, were accurate, and efficiently handled. So, as we navigate these uncharted waters, as Andrei said, the feedback from brand owners and trademark practitioners becomes critically important to us. And that's really where the TPAC comes in as well. Their guidance is tremendously helpful and appreciated. So, I'd like to say also a sincere thanks to the TPAC for their support and counsel and for welcoming me even though we're doing it at the end of a computer here.

I'd also like to thank everyone for participating in this first ever virtual TPAC meeting. We'd all prefer to meet in person, but at this important and critical time, I think it's more important that our collaboration continue than to go on hiatus until we're all back in our offices, et cetera.

So, with those words, let's dive into how the trademarks group has been performing. Anastasia, can you pull up your slides? There we go. All right, next slide, please.

One thing that's interesting is something we continually look at is the number of applications coming in. It really is what starts the pipeline. As you can see, over many years that trend has gone up. You'll see the dip in the economy in 2008 and '09 and right up to the crash -- not crash, the bursting of the first tech bubble in 2000. You'll hear more about this later with Jay Hoffman, our CFO. But at this stage, we're now forecasting a fairly significant drop in applications because trademarks, as you all know as trademark people and if you've been through more than one recession, you know that trademarks live at the tip of the spear of the economy really. And as it goes down, so will a lot of applications and trademark things. As it comes up, it does the same thing.

What I saw through the three recessions I've been through is that trademark owners tend to do two things when an economy gets difficult,

and that is hunker down and hit the pause button, or go into very protective mode. And both of those are trademark functions, believe me, because everybody understands that the storm is going to pass. It's how we weather it that matters.

So, when I came in, one of the things I was curious about was all the ways we measure this internally. And two of those ways -- Anastasia, next slide please -- is new applications and registrations. So, we know, if you look at the bottom left, you'll see Q2 of '20. Applications are down slightly, but registrations granted are up, which means there's a lot of work that's flowing through the pipeline.

Next slide, please. About 71 percent of those are U.S. filings and 29 percent are from applicants in foreign countries. And that 29 percent is down a bit from last year largely due to the U.S. Council requirement, which Meryl will go into shortly.

Next. Two of the things that are part of our performance measures are pendency, and you'll see quality in a second. Pendency -- I'm

really proud of this because through the end of Q2, which included March, which is the month where everybody really had to bugout and start working at home, et cetera, you see first action pendency is still within our range and has held remarkably steady. Same with disposal pendency. It's still well ahead of what our target was.

And for our crew to be able to do that under the circumstances they did, was really remarkable. And when I say that, what I mean is that even though a huge percent of the trademark group was already working from home, they weren't dealing with dependent care issues when they were working at home as much. So, even though they were experienced at it, they had another layer really laid on top of them in order to really stay productive and it's been remarkable.

Next slide, please. In terms of quality of the registrations and the Office actions, et cetera, you can see that on all the measures for first action and final action and exceptional actions, the quality numbers are ahead of target. And again, given the disruption and the change, et cetera, that we went through,

I'm very pleased with that. I'm very proud of our people.

Next slide. Now, as Andrei mentioned, when we -- when the pandemic really started to hit, the agency went into looking at what could we do to address this, work with it, help brand owners help practitioners, et cetera. And so I'd like to turn it over to Meryl now to talk about some of those rule changes.

MS. HERSHKOWITZ: Can you hear me?

MR. GOODER: There you -- there you go. We got you, thanks.

MS. HERSHKOWITZ: Okay, great. Anastasia, next slide, please.

So, I just wanted to talk a little bit about the U.S. Counsel Rule, which you may remember we implemented in August of 2019. And so, we really haven't a full year with it yet, but I think you'll be happy to learn of the success that it's brought us so far. It requires foreign-domiciled applicants, registrants, and parties before the PTAB to be represented by U.S. counsel. And the goals were to ensure effective use of available mechanisms to enforce foreign

applicant and registrant compliance with statutory and regulatory requirements and increase the confidence that those registrations that are issued to foreign applicants are not subject to invalidation for reasons such as improper signatures or use claims. In addition, we hoped it will aid in our efforts to improve the accuracy of the Trademark Register, including eliminating marks that are not in use.

Next slide. So, so far, it's important to note the changes. So, for a few years prior to the rule's implementation, we witnessed a steady increase in foreign pro se filings. But a more comprehensive analysis identified a consistent theme. Filings from China as a new addition to our register. Since the rule took effect, the level of foreign pro se filings has been negligible. So, we've eliminated the pro se issue. We've also found that the Chinese application filings as a percentage of the total filings has dropped nearly in half from a previous high of 13 percent to 7 percent after the implementation of the rule.

And of those domestic filings, until

recently were fairly steady, the decline in foreign filings overall resulted in a larger share for domestic filings. And again, until the last couple of months, they accounted for 72 percent of all filings rising from 68 percent prior to the rule.

Next slide, please. Now, I can't say that we are at 100 percent of implementation of the rule in the sense that there have been attempts to circumvent the rule. In a relatively small number of cases, we have found attorneys' names, bar information, and signature used without their consent. Our task force on improper behavior, however, has investigated these occurrences and worked with operations to address the affected applications. And as a result, we've issued so far 283 show cause orders to the applicants with the unconsented legal representation to tell us why we shouldn't strike those applications. We are in the midst of continuing those show-cause orders and we have several more hundred in the pipeline.

Next slide, please. What this graph shows, however, is closer to the success of the

rule. What the graph shows is the number of refusals issued for digitally altered or mocked-up specimens. It is a great illustration of the success of the rule in that it shows that we have been lowering the instances of registrations with improper claims of use in commerce. The graph shows the increase in refusals of specimens over time in the months before the U.S. Counsel Rule was implemented. Don't forget that we examine about three months after filing. You can see that the October refusals were very high and reflective of the increase in pro se filings in July right before the implementation of the rule. But since then, the refusals have decreased. In March, out of 68,000 first actions, not even 2,000 needed the refusal for these specimens, only 3 percent of all actions.

Next slide, please. Moving on to mandatory electronic filing, which we just implemented in February. Again, we have some success to talk about. We've had no major electronic outages since February. And approximately 103,000 application classes have

been submitted to the Office electronically. Only two petitions have been filed asking us to allow paper filed applications because of a problem filing. And, of course, those were granted.

I will say though that many of you provided substantial feedback to us on the requirement for an owner email address, especially when there is legal representation in the file. The complaints we heard basically were concerns about compliance being a target of bad actors sending misleading solicitations. So, we have been working very hard to figure out how to mask those addresses from public view. And I'm happy to say that in the upcoming weeks, we will be masking the owner email address field in TEAS and TEASi documents viewable in TSDR for our filing system for the outside user.

We will also be masking the submissions viewable, not only in the documents tab of TEAS, but in all programming -- all application programming interfaces for APIs and also in the PDF downloads. After the deployment, you'll see four Xs in the owner email address field when you

open a TEAS or TEASi document in TSDR. Providing an email address for the owner in any other field, however, will be public, so please be careful. Unrepresented owner email addresses will still be viewable in the correspondence email field.

We hope these efforts will decrease the spams sent via the owner email address field. We're very thankful to you for your engagement in our operations and policies and the feedback you gave us. We will continue to work on any other areas of vulnerability in our systems and you hope -- we hope you will continue to let us know if we have been successful in that vein. Thank you so much. Back to David.

MR. GOODER: Thanks, Meryl. Now, I'd like to turn it over to Sharon Marsh, who will talk to us a little bit about the CARES Act and our proof-of-use audit program. Sharon.

MS. MARSH: Thanks, Dave. Can you hear me? Can you hear me now? Okay.

MR. GOODER: Yep, you're good.

MS. MARSH: Yes, okay, thank you. As Director Iancu mentioned, the CARES Act gave the Director authority to waive or modify any timing

deadline under the Trademark Act for regulations. And as a result, we have issued a notice that states that certain trademark documents and fees that are due in the period from March 27th to April 30th will be considered timely if they are submitted to the USPTO up to 30 days from the original due date. And in addition, the filing includes a statement that the delay was due to a COVID-19 problem. And on our website, we publish some examples of, you know, common COVID-19 problems. Things like closed offices, cashflow problems, inaccessible files, and, of course, illness.

All of the information and the statement is on the USPTO website. If you just search the word COVID, you will get the page that has all USPTO notices related to COVID-19, and the information is there.

We have implemented these changes. Again, it seems to be going very smoothly so far. Our Trademark Assistance Center has received a relatively small number of calls, mostly just asking for information. And the trademark staff knows about the changes and they will be

attempting, at least, in cases where a filing is late and it does not include the required statement about COVID-19 being the cause of the delay, they will at least attempt to contact the filer and see if that -- if they want to add that and make the filing timely. And as the slide indicates, we have some FAQs about this on the USPTO website.

Next slide, Anastasia. One more comment before we get to proof-of-use. I was going to also mention that the other coronavirus relief that we enacted even before the CARES Act, if a filer has to file a petition to revive an application or reinstatement a registration, the petition fee will be waived, again, if the filer includes a statement that the failure to respond timely was due to COVID-19.

The next slide is about our proof-of-use audit program. We thought you might just like an update on how that is going. If you recall, a year and a half ago we started random audits of a small number of registrations where the registrant had filed the Section 8 or Section 71 affidavit of continued use. And in

the randomly selected group, registrants are required to submit proof-of-use for up to two additional items per class. And this has been running for a while now. It started in March -- or, no, November of 2017, and if we look at the data from November 2017 to the end of March of this year, we have issued 9,357 office actions on this project.

But if you drill down into the data, of that 9,300, about 71 percent of the registrants responded. And of that group, about 51 percent responded by deleting some of the goods and services that were questioned. And -- anyway, and then if you add to that group the number of registrants who simply didn't respond to the office action at all, it comes out to about 55 percent of audited registrations ended up deleting goods or being totally cancelled.

So, and if you look at the chart that's on the screen now, you can see that for March of -- November of '17 to the present, the data hasn't changed much. Still very large percentages of registrations with possible problems. We are continuing to monitor this and

consider what, if any, additional steps are needed to ensure that we have a register that accurately reflects goods and services that are in use in commerce.

One idea that was suggested at TPAC's public hearing last fall on the fee was to start charging a fee for deleting goods and services during the pendency of a Section 8 or 71 filing. So, that idea is still out there.

Next slide, please. Next slide, mm-hmm. And the last slide here for me is on the TM5 meeting. If you recall, this is the collaborative group we have that consists of the United States, China, Japan, Korea, and the European Union. We normally meet twice a year in the spring and the fall. And this year, of course, because of coronavirus, the spring meeting has been -- the in-person meeting has been cancelled. Our staff in the Office of Policy and International Affairs is working on arranging a meeting that will consist of just exchanging information on paper. And we're hoping that will happen in the next month or two. And we also normally have an annual meeting in the fall and

that is still very much up in the air. We hope in the next month or two to figure out how that will take place. Thanks.

Next slide, Anastasia.

MR. GOODER: Thanks, Sharon, very much. Before we move off to the next topic, I just want to pause to see if any of the members of the TPAC have any questions or comments they want to ask or raise at this moment?

MS. ESCOBAR: It's Elisabeth. Can you hear me?

MR. GOODER: Yes.

MS. ESCOBAR: I just -- great. I just wanted to mention that I think a couple of folks are having trouble participating and -- several of the TPAC members. If that is happening, you can -- I'm monitoring my email, so if you have questions that you'd like to ask, I'm happy to be the conduit if you want to send them to me, assuming you aren't able to enable your audio.

MR. GOODER: Anyone else at the moment? Okay. Then let's turn now to our financial situation in the trademark unit at the Office. We know from historical data that there is a

pretty direct link between trademark filings and the health of the economy, both in the U.S. and other countries. And in the first few months of our fiscal year, we saw trademark filings decline roughly 3 percent, in part because of the decline in filings from China. Now with the coronavirus really kind of tightening its grip on the economy, the corresponding drop has caused trademark filings to decrease to almost 4 percent year-to-date, and in March alone, roughly 9 percent. No doubt the second quarter is going to be a bumpy ride.

As you can appreciate, a decline in filings creates a decline in revenue and this has created a critical and highly fluid situation, which requires us at the PTO to be agile and really proactive as we manage our finances. I'm pleased to introduce to you Jay Hoffman, who is our CFO and like me, he only joined a couple of months ago, but he's had an extensive career in finance with government agencies and he's led us with a very steady hand through a lot of this. So, I'll turn it over to Jay to walk you through in a bit more detail what's happening.

MR. HOFFMAN: Great, thank you, Dave.
Can folks hear me? Okay, wonderful.

MR. GOODER: Yes.

MR. HOFFMAN: All right, go ahead and
advance to the next slide, please.

Okay, so in our time together this
afternoon, as Dave mentioned, I'm going to spend
the majority of my time providing you with a
status of our FY 2020 funding and revenue
situation. And then I will briefly touch on our
next two years, our FY 2021 planning, as well as
the upcoming FY 2022 budget process. And
finally, I'll end with a brief update on where
we're at with the trademark fee rule.

Next slide, please. So, first let's
talk through the FY 2020 status, the trademark
financial outlook. As Dave just mentioned about
fee collection revenues, historically USPTO fee
collection revenues have been correlated with
gross domestic product and generally speaking,
trademarks versus patents tends to be a little bit
more on the front-end of that correlation,
whereas patents tends to lag. What has our
attention is that the FY 2020 Q2 estimates for GDP

from some of the larger banks and economic firms have estimated some pretty severe contractions. They range anywhere from 14 percent to 30 percent and diminished expectations for the remainder of FY 2020.

My team has taken a look at these GDP scenarios and we've developed some new revenue forecasts for trademarks. And those forecasts range from anywhere between \$280 million and \$336 million for the year. And to just give you some point of reference, when we began the year back in October, the federal government runs on a fiscal year October to September, we were projecting that we would be somewhere closer to \$369 million for the year. So, these are already lower than that and some of them are quite lower.

On the expense side, trademark expenses were planned for \$429 million in FY 2020 and are planned for \$420 million next year. The reason these are a little bit higher than revenues is that trademarks had staged some IT investments for these years. However, the agency is currently reviewing requirements to reduce trademark expenses in response to these revenue

risks that I'm describing today. And consequently, those investments will likely be deferred into the following year or perhaps beyond.

Lastly, trademarks does have a reserve since it operates like a savings account. Its purpose is to essentially buffer asymmetries between revenues and expenses that occur throughout the year. Right now that trademark reserve is sitting at about \$92 million. However, as a result of the revenue declines that we've been experiencing, that reserve is declining at approximately \$1 million a week. So, that is why we are looking to try to trim our expenses.

Next slide, please. So, this is a snapshot of our fee collections.

Trademark fee collections through the end of March were about \$164.3 million. This was 8 percent, or \$14 million below where we had planned to be at this point in the year. If these revenue rates continue flat -- and I actually -- I don't think they will be flat. I think they'll probably be down a little bit. But if they do

continue flat, we'll probably end the year between \$28 and \$30 million below where we had expected at the start of October.

Next slide, please. So, as I had mentioned, we put together some trademark fee forecasts. First, let me acclimate you to this slide. So, the Y axis is in millions of dollars and the X axis is in months of the fiscal year. As I mentioned, the federal fiscal year runs October through September. The gray line with the numbers underneath of it, this is our seasonally adjusted revenue rate. And as you can see, it's been tracking fairly consistently at about \$338 to \$340 million for the first part of the year. And then in March, starts to degrade down to \$336 million.

From there, we developed three forecasts, and those are the ones I alluded to on my first slide. So, the first forecast is the dashed blue line. It says revenue assumption \$336 million. This assumes that we essentially level out and continue on the trajectory that we're -- we've been on for most of the year. I think this is a somewhat unlikely scenario.

The second revenue forecast that we developed is the yellow dashed line in the middle that says revenue assumption \$318 million. This particular revenue assumption maps very closely to the recession from 2008 until 2009. So, if this recession were the same in terms of magnitude and depth, this is about what we could expect.

And then lastly, because the GDP contraction scenarios from the major banks were, you know, pretty eye-popping, we developed this last scenario, the purple dashed line that takes revenue down to \$280 million.

So, these are kinds of the range of scenarios that we're monitoring. We've developed a number of new metrics and daily reports. We're spending a lot of time looking at these different revenue tracks. It's still a little bit early to say whether we're seeing, you know, significant revenue degradation. But I think it's likely that we will find ourselves somewhere below the blue dashed line.

Next slide, please. So, we've already had quite a bit of conversation on the CARES Act, so, I'm not going to repeat too much of that here.

But I think the key takeaway is that when the agency implemented the CARES Act relief, that also entailed deferring some fees. And so, our revenues are already down as a result of the economic impacts, and what the CARES Act does is it pushes revenue that we would have received today out a month or two months. And so, on the trademark side, the agency is offering limited relief to all entities with the exclusion of application filing fees.

We had estimated that if everyone who is eligible to participate in this CARES Act relief, it would cost us roughly \$2.4 million a week, or about \$11 million through April 30th. And to give you some sense of comparison, we generally bring in about \$6.7 million a week on the trademark side. So, about you know, one-third or so of our revenue could decline if everyone took advantage of the CARES Act relief. I will note that through the first two and a half weeks or so of the program, we haven't seen subscriptions anywhere near those levels. But it's still early so that's something that we're monitoring.

Next slide, please. Excuse me. This slide just shows the different fee categories where we offer CARES Act fee relief on the trademark side. So, as I mentioned on the prior slide, if everyone participated in the relief being offered, the impact to the agency would be \$2.4 million per week. These are the fee categories where we're offering our relief. So, on application filings, as I mentioned, there'd be no impact because there is no CARES Act relief associated with application filings. But on maintaining exclusive rights, again, if everyone took advantage, that would be about \$1.1 million a week. On the intent to use, the impact could be up to \$1.1 million a week if everyone took advantage. For Madrid Protocol, about \$43,000 a week, and for Trademark Trial and Appeal Board, that relief could add up to about \$139,000 a week. So, that's kind of the sense of impact that we could get from CARES Act relief.

Next slide, please. So, as I mentioned in my first slide, the USPTO is conducting a thorough review of all of our spending for FY 2020. The objective of that review is to

evaluate agency priorities and also to ensure that we have an operating balance that is sufficient to mitigate, you know, additional revenue reduction in risks not just in the current year, but in next year. We actually met earlier this week to assess various reductions and delays and we're looking at those right now through the Executive Committee process. We're continuing to closely monitor daily fees and collections. Without getting into the details of the recommendations, things that, you know, we're considering are to defer future hiring for as long as we can, probably into next year. And then the other major item is deferring some of the large IT investments that trademarks had planned for this year into next year or even potentially beyond.

Next slide, please. For FY 2021, obviously if we're pushing our FY 2020 spending reductions and deferrals into the out years, as well as revisions to anticipated fee collections, it's likely going to require us to rethink what our spending plan is for next year and what our budget assumptions are for next year. And that

work is ongoing. As that picture becomes clearer probably this summer and into the fall when we get closer to initiating our FY 2021 work activities, we'll be coming back to you and letting you know how the FY 2021 budget is going to need to be adjusted for what we're doing today.

Just an update from our last meeting. When I had met with you I think back in January or February, we were preparing the Secretary to go up and brief House and Senate subcommittee appropriations. And those hearings did occur on March 4th and 5th. And from what we can -- what we heard and from what we saw, both hearings were focused on policy issues and other bureaus within the Department of Commerce. No substantive issues regarding the USPTO were raised in those hearings.

Next slide, please. For FY 2022, so I know it seems like that's a long ways off, but we are actually beginning the budgeting process. Just this past week, we issued policy guidance to begin formulating the FY 2022 OMB budget submission. The process will, again, consider the impacts of fees and budget changes in FY '20,

how those changes cascade into FY 2021, and ultimately they'll have impacts in FY 2022 and beyond.

The TPAC and the Department of Commerce will receive drafts of our 2022 budget submission late summer, probably around August. And the final documents are submitted to OMB around Labor Day every year, so this year in September of 2020.

Next slide, please. Lastly, just an update on the trademarks fee rulemaking. As you know, we've been working with you for about 18 months now on a set of fee changes in the trademark side of the House. The next step in that process is to publish a notice of proposed rulemaking in the Federal Register for public comment, and that process runs, I believe, a couple of months. Once we receive public comments, we then need to adjudicate those and make potential adjustments. I think all in all, the possible release of the final rule adjusting trademark-related fees could happen later this year, subject to public comment. I don't think it will happen really before the end of the fiscal year. I think we would -- it's possible, but I think that would

really require us to hustle. But it's something that we are continuing to work on.

So, that concludes my remarks. I think I'm right at time so I'll pause there and turn it back over to David.

MR. GOODER: Thanks, Jay.

MS. ESCOBAR: Can everyone hear me?

MR. HOFFMAN: Yes.

MR. GOODER: Yes.

MS. ESCOBAR: Thank you, Jay. I had a quick question. Also, before I went ahead with that I wanted to remind the members of the audience that if you have questions for the panelists, to please send them to tpac@uspto.gov. And also, a couple of the TPAC members were having some technical difficulties. If anyone is still having that, hopefully that's been resolved, but you can also send your questions to me or to tpac@uspto.gov.

The question I have for you, Jay, was to help me understand a little bit better why the CARES Act relief would represent a loss to the Office as opposed to just a deferral of revenue for a month, possibly longer if that got extended.

But right now it's just a one-month extension.
And I'll mute for your response.

MR. HOFFMAN: Sure, thank you for that question. So, you are absolutely correct that the good news is that CARES Act relief is just a deferral, and with a little luck, it's revenue that would ultimately turn back to us. What makes it challenging particularly if it extends beyond a month, is in order to pay for the CARES Act deferral, we have to use the operating reserve. So, essentially, we use our savings account to continue funding the agency without disruption and drawing that reserve down even faster than the \$1 million a week that I articulated.

So, the more CARES Act relief that we offer and the longer that we offer it, the faster we draw down our savings account and eventually we get to a level in the savings account where either we can't afford to offer the relief anymore, or it starts creating operational difficulties. So, that's the kind of tricky chess piece that we have to figure out how to manage with the CARES Act relief and why I wanted

to bring it to the Committee's attention.

MS. ESCOBAR: Thank you, that makes perfect sense. Do any other TPAC members have questions that they'd like to ask Jay? Let me remind you if you're on mute, you'll have to go off mute to ask them. Okay, well, hearing none, I just want to thank you very much for your time, Jay. I know that it's a very, very busy time for you and we really appreciate your sharing this information with us.

MR. HOFFMAN: Well, thank you very much. I appreciate you inviting me.

MS. ESCOBAR: Dave, do you have any comments or -- oh, hi Susan, go ahead.

MS. NATLAND: Okay, sorry about that. I was trying to unmute.

Jay, I just have a really quick question for you, if you have a second if we can go back?

MR. HOFFMAN: Yes, I'm listening.

MS. NATLAND: Okay, great. So, I just wanted to confirm what the projections were initially for the fiscal year? I thought you said \$369 million, but on your chart with the dotted lines, it looked like the top number was

\$336 million. I'm just wondering if you could clarify that for us.

MR. HOFFMAN: Sure, so, the original forecast for FY 2020 was 369 million. And we've been tracking at about \$340 million all year, so we've already been tracking a little bit below our forecast. And then with the COVID-19-related downturn, we're expecting it to go down -- or likely will go down further. We're obviously just tracking it very closely. But you are -- that's a very astute observation. It was lower than the forecast already, and now has degraded further.

MS. NATLAND: Okay, great. Thank you so much. So, it sounds like then we're going to be even below the 28 to 30 million below, because the projection has shifted now from 369 to 336 at best. So, it sounds like we're going to even be deeper than, perhaps, it was indicated.

MR. HOFFMAN: Yes. I think at a minimum we'll be 30 million below, and that's the best case scenario. I think that's the easiest way to think about it.

MS. NATLAND: Okay. Below the new

forecast?

MR. HOFFMAN: No, below the original.
So, I think the best case scenario --

MS. NATLAND: Oh, okay.

MR. HOFFMAN: -- is 30 million below
the original, but more realistically we're
probably going to be 50 or 60 million below.

MS. NATLAND: Okay. That makes a lot
of sense. And expenses were projected at 429
million.

MR. HOFFMAN: Correct, and we're
bringing those down.

MS. NATLAND: Okay.

MR. HOFFMAN: It will be down
significantly from that.

MS. NATLAND: Okay. Thank you.

MR. HOFFMAN: Yep.

MS. ESCOBAR: Thank you, Susan. Any
other questions from TPAC? Dave, did you have
anything you wanted to share before we move on to
the next speaker?

MR. GOODER: No, I think we're good.
Thank you.

MS. ESCOBAR: Okay. All right, well,

thanks again, Jay. We really appreciate it.


Our next speaker and we're not too far off of our allotted time, is Branden Ritchie, who is the Director of the Office of Governmental Affairs and Oversight. Branden, take it away.

MR. RITCHIE: Okay, well, thank you very much. And thank you for having me here today. I guess we'll pull the slides up and we will -- we just wanted to give you an update from the legislative perspective.

It was pre-COVID-19 was a big quarter for trademarks because of the introduction of the Trademark Modernization Act by the Congress. And so it was introduced both in the House and in the Senate and in a bi-partisan fashion and by a bicameral fashion by the leaders of those committees after a lot of work.

I guess we can go on to the next slide. A lot of work on the part of the committees, but we'll get to that in a second. We've talked a lot about the CARES Act, you know, we worked on the bill to get that enacted. We can go ahead and skip that. There's been plenty talked about there.

Okay, so here we go. The Trademark Modernization Act that was the product of months of work by the Hill. I know they had conducted multiple stakeholder roundtables. We helped by providing technical assistance along the way. And it was introduced both in the House and the Senate. It had, as you can see on the slide, it had new expedited cancellation procedures for third parties to use. It codified the letter of protest procedure that we have at the PTO. Among other things, it created -- creates a rebuttable presumption that irreparable harm exists when trademark infringement is shown, which was a big component of the legislation for trademark owners. And it also requires a GAO on the USPTO's efforts with respect to clearing the -- decluttering the trademark register.

That was introduced right at March 11th, and so, of course, there hasn't been a lot of procedural  abates since then because of the outbreak. But it's a priority for the Hill as can be shown by the fact that the chairman and ranking members of the IP subcommittees introduced it in a coordinated fashion. So, there's likely to be

additional action on that legislation once Congress comes back at some point.

Next slide. So, in the Senate, the action was really on their multi-hearing, still ongoing review of the Digital Millennium Copyright Act. They had two hearings so far and they have others planned. The first one was on a basic backgrounder on the Digital Millennium Copyright Act with multiple panels of witnesses. And the second was -- looked more specifically at copyright law in foreign jurisdictions. That's expected to go on for a while. And I think they are contemplating whether there will be legislation at the end of that process. And so we'll be monitoring that and working with them on that as well.

Next slide. So, some of the -- in addition to some of the work that we did with Congress with respect to the package and relief for deadlines, we're also still working with Congress on a number of priorities that deal with trademarks, of course, the Trademark Modernization Act. Continuity of service issues that would include, you know, additional

clarification for the statute that we have now with respect to the Director's authority to postpone legal deadlines in cases of emergencies. We've been working on that.

We've been working on trying to work to reauthorize the telework program, the Telework Enhancement Act Pilot Program or TEAPP. Authority for that program expires on December 31, 2020 of this year. And so, we're working with Congress to extend that authority. We're seeking permanent extension and that is one issue that we -- that is under the jurisdiction of the House Government Reform Committee and HSGAC in the Senate, but also we're working with the judiciary committees as our authorizers as well on that.

Then we've talked about this before. We're also continuing to work on the IP attache rank issue so that intellectual property issues can get even more attention in international fora.

Next slide. So that was our presentation today. A lot of the topics that we're all talking about have a lot of overlap, so

to save time for you guys and so you don't have to hear the same thing twice, I'll end it there and see if anybody has any questions. I'm sorry, I'm going to turn the floor over to Kim Alton who is going to give an update on World IP Day. We've been working on that here internally at the USPTO as well. We have a different way of doing it this year, so I'll turn it over to Kim.

MS. ALTON: All right, thanks, Branden. And this will be very brief.

Next Sunday, April 26th is World IP Day. And the USPTO is joining forces as usual with our stakeholder partners. We are working with INTA, AIPLA, the Chamber of Commerce, IPO, and the American Bar Association. And this year, we are working to pull together a virtual celebration of World IP Day, so it's really sort of our ongoing effort to educate and inform the public about the importance of intellectual property.

This year's theme, developed by WIPO, is Innovating for a Green Future. So, stay tuned. I think it will be a very interesting celebration this year where we will have video submissions, sort of do-it-yourself home videos

from green innovators from across the country that we will compile and put out on our different social media platforms. So, stay tuned. That will be coming soon as we celebrate World IP Day next Sunday. Thank you.

MR. RITCHIE: With that, we'll answer any questions anybody may have.

MS. ESCOBAR: Excellent. At that time I'm just wondering if any of the TPAC members have questions they'd like to ask Branden while we have him -- and Kim, while we have them? Okay, well, thank you, both. We really appreciate your time. And we look forward to hearing about how things are going --

MR. RITCHIE: Thank you, very much.

MS. ESCOBAR: -- in future meetings.

MS. ALTON: Bye-bye.

MS. ESCOBAR: Let's see. We are running just a few minutes behind, but I think we can squeeze in our next topic before we take a brief break. Our next speaker is Shira Perlmutter, who is the Chief Policy Officer and Director for International Affairs. Shira, thank you so much for coming to speak with us.

MS. PERLMUTTER: Great, thank you very much. And good afternoon, everyone. Can you hear me?

MS. ESCOBAR: Yes, we can.

MS. PERLMUTTER: Great. So, it's wonderful to either see or hear everyone virtually. And what we thought we would do with this time period is to give you some background on the collaborative process we undertook internationally as we responded to the CARES Act and worked on extending statutory deadlines. So, we've been closely monitoring developments around the world to inform our response.

And if we can go to the next slide, please. So, generally, on the international stage, we've seen two main models for the extension of deadlines. And, of course, all offices are grappling with this with slightly different models in terms of what their authorities are and what their financial structures are. The first model we've seen in some offices is just the automatic extension of all deadlines, which, of course, is the simplest way to do it. That's the office's closed model

where the due date for any deadline during the closure is moved to the day after the office reopens. And, of course, offices have a lot of experience with this model because of national holidays or postal disruption-type scenarios. And their IT systems are built to handle it.

This model then will apply to all customers that have deadlines that fall within the emergency period, including those who are nevertheless capable of meeting the deadline. And it's relatively easy to administer and so it's not surprising that that's probably the predominant one around the world.

The second model is an extension by request model, which has two variants. One is similar to what we're doing -- well, it's similar to the PTO petition process. You must request relief by a specific time, make your case why you should get the extension, and identify how long you will need to make your submission. That means, of course, that the length of the extension conforms to the individual situation and is quite labor intensive.

The other approach, the other -- to the

request model is more pro forma. You have to request relief, but if you say the magic words and say that you've been affected by the emergency situation, you will get an extension of a specified time. And that's the model that the USPTO has chosen.

So, if we can go to the next slide. The next two slides are -- give you examples of what other countries are doing. So, the first slide has the IP offices -- the IP5 offices, the big 5, plus the UK and Canada and Australia. And you can see from the slide, I won't read it all out loud, but some of them are giving automatic extensions and some by request. Now, where there are specific dates of extension provided, they're generally the end of April or beginning of May. But a word of caution. It's not quite that simple because the notices we're seeing from other offices don't always identify with specificity what deadlines are extended and what deadlines are not. So, to be sure where you're worried about a particular deadline, you'll still need to contact the Office whenever possible to get that specificity.

So, just to give an example, in Japan, you can request an extension and explain the circumstances that prevented you from being able to carry out the application or appeal procedures that were due. For statutory deadlines, you can request relief, but only if you submit the required documents within 14 days from when it becomes possible for you to do so. And this is extended from 14 days to 2 months for foreign residents. So, it's all quite complicated and fairly confusing.

China also will grant an extension upon request, but you have to request it within two months after the end of the emergency with documentation that your delay was due to the fact that you were affected by the coronavirus. Now, the UKIPO has made it much easier and just extended every deadline for all customers until May 1st.

If we can go to the next slide, please. So, this just shows you a few more deadlines for Mexico, Brazil, Chile, India, Singapore, Thailand, Jordan, Israel, and South Africa. Again, you'll see that there's a mix of automatic

deadlines, automatic extensions, and those are provided upon request. And again, most of the dates are late April to early May. I think the earliest is April 20th for Mexico and the latest is May 8th for Singapore.

We are likely to see, of course, many of these deadlines extended further. When we've spoken to other offices, there's a general sense that they want to be conservative and extend deadlines for a month or so at a time and then wait and see whether they need to be extended again. And we're seeing that begin to happen. Canada, for example, recently extended a date in April to May 1st.

So, if we can go to the next slide, please. So, I wanted to talk a little bit about the Madrid situation. So, in many offices' notices, you will see statements that treaty deadlines are not extendable. And that may or may not be true, really depending on the country and whether the Office has the authority to extend its own statutory deadlines.

So, for the USPTO, the Madrid deadlines that are under our national law may be extended

if an incoming Madrid applicant receives an office action from us. He or she can request a 30-day extension beyond the original 6-month response period. He or she can also request an extra 30 days to request reconsideration or appeal to the TTAB to transform an international registration into a U.S. national application and to make a priority claim based on a foreign application. And he or she could also get an extension to file a Section 71 declaration of continued use.

If you go to the next slide, it's a bit different for Madrid outgoing. So, we can't extend Madrid deadlines that are not within our control. That means that if you file an international application claiming priority on a U.S. Application that was filed more than six months previously, we can't send that claim to the International Bureau, they'll reject it. If you need to petition for denial of certification of the international application, we can't extend that deadline or you will lose your filing date as the date of the international application.

And you also can't get an extension to

respond to an irregularity notice from the International Bureau on the international application. So, for Madrid-related deadlines, it depends whether you're talking about ingoing or outgoing.

And then if we could go to slide 8, please, the next slide.

So, as I mentioned, we have been discussing with other offices the measures that they're taking to assist stakeholders and customers. It's very helpful for us all to know what each other are doing even if we're not doing the same thing. And that includes the members of TM5. We're in constant communication with those offices to gather information and share experiences. And we're also talking with WIPO to see what role they can play in helping national offices. That's included discussions that Francis Gurry, the Director General at WIPO has set up with heads of about 16 different national offices, and Andrei has taken part in those discussions among other things on ideas about what role WIPO can play. And that will include WIPO's plan to collect information from national

offices on their responses to the crisis and provide that in an organized form on a dashboard on its website with links to each office's own site.

We are also talking to WIPO about ways in which they can provide interpretive guidance on flexibilities related to treaty obligations such as priority claims. And those discussions are actively continuing. There are also some discussions partly being led by WIPO about the growing calls for IP flexibilities to respond to public health concerns. So, it's helpful to have ongoing conversations with other countries about their views on that as well.

So, if we can go to the last slide, please. I just wanted to mention in the middle of all of this that OPIA's training programs that outreach to foreign governments continue in the virtual world. That is much of it led by our Global Intellectual Property Academy or GIPA. We've been trying for a long time, working for a long time, to expand our distance learning capabilities. And now that we're in a mandated virtual environment, that's accelerating the

process. So, we're offering programs to foreign offices and meeting with foreign officials by DBC (phonetic) and it's going quite well. And, of course, these efforts will continue even after the pandemic is over.

So, that's all that I have for today and open to any questions or comments, and really appreciate the opportunity to share this information with you. Thanks.

MS. ESCOBAR: Can everyone hear me?
Am I off mute?

MR. GOODER: Yes.

MS. ESCOBAR: Okay, great. Shira, thank you so much for this information. It's very helpful. Does anyone on TPAC have any questions for Shira?

MS. LALONDE: This is Anne. Can you hear me?

MS. ESCOBAR: Yes, go ahead, Anne.

MS. LALONDE: I was just wondering how many of these foreign offices are entirely closed at this point? Are there many trademark offices commercially that are simply, you know, not open for business at all?

MS. PERLMUTTER: Unmuting. I think very few are completely closed of the ones we've spoken to. But, of course, we haven't spoken to all of the smaller ones. But generally people could still be functioning. Amy, if you're on, I don't know if you have anything you'd like to add.

MS. COTTON: Yeah, no, that's correct. A lot of the smaller offices are closed. They don't have the telework capability. The offices you would expect. But even the medium-sized offices they are trying to figure out how to have their examiners work from home. It's tough. But they seem to be working in a limited virtual environment and trying to continue processing applications. Appeals are a real problem, so I think they're still working with that. But a lot of the medium-sized offices are processing applications. It's just a little slow-going as they try to get their examiners going. But it seems to be just the smaller offices that are just outright closed.

MS. PERLMUTTER: With maybe the exception of India.

MS. COTTON: That's true.

MS. LALONDE: Thank you.

MS. NATLAND: Hi Elisabeth, it's Susan.

MS. ESCOBAR: Other questions?

MS. NATLAND: Yes, it's Susan Natland, hi. Shira, thank you so much. And thank everybody for these really thoughtful and helpful presentations. Just a really quick question on whether or not the PTO has taken a position on whether it will extend relief due to COVID-19, and with the understanding that, of course, it will have a financial impact on the PTO whatever we do given Jay's comments earlier?

MS. PERLMUTTER: Dave, do you want to take this one?

MR. GOODER: I'm sorry, it was broke -- it broke up a little bit, Susan. I'm sorry, can you ask it again?

MS. NATLAND: Sure, no problem, yeah. Yeah, I was just asking whether the PTO has taken a position on whether or not it will extend relief due to COVID-19, with the understanding of the financial impact, of course, that any decision

would have based on Jay's comments earlier?

MR. GOODER: Yeah, good question. We have not yet taken a position on that, but plan to by the end of the month.

MS. NATLAND: Thank you.

MS. ESCOBAR: Thank you. Any other questions? I'm going to give people an extra beat to get off of mute.

Okay, well, hearing no further questions, thank you very much, Shira and Amy for sharing this information with us.

MS. PERLMUTTER: Thank you.

MS. COTTON: Thank you.

MS. ESCOBAR: This is the time for us to take a quick break. It is 2:28. Why don't we plan to reconvene in 10 minutes -- well, let's throw in an extra 2, so let's make it 2:40. Thank you.

(Recess)

MS. ESCOBAR: Well it is 2:40. So, why don't we reconvene. Our first speaker is Chief Gerry Rogers, Chief Judge of the Trademark Trial and Appeal Board. Gerry, thank you so much for taking the time to come and speak with us. I'll

let you take it away.

MR. ROGERS: Thank you. And before I ask Anastasia to advance the slides, which are very numbers-heavy, and I think a lot of people can -- since they're posted on the PTO website, can look at them in more detail. I will certainly run through them, but for those who want to look at them in more detail, they'll have that opportunity afterwards.

But based on some of the discussion that we've already heard today about the CARES Act and extensions, I thought it would be useful first to just convey a couple of reminders, couple of points about how some of those extensions relate to TTAB. In TTAB in the CARES Act notice that the Office issued and in the Frequently Asked Questions that are up on the website, we have made it clear that the only extensions which are available under the CARES Act authority invoked by the Director are extensions of the time to file a notice of appeal from a final refusal of registration, the time to file an extension of time to file an opposition, and the time for filing a notice of opposition.

So, the distinction -- the reason I'm drawing the distinction, is because there are many other deadlines which people may face during the period covered by the CARES Act extension from March 27th to April 30th such as the deadline to file an answer in an opposition or a cancellation, a deadline to file a brief in an ex parte appeal, that sort of thing.

All of those other deadlines other than those which were specified in the CARES Act information the Office posted, are handled in the same way that you would normally handle any other delay. So, if you had a delay because of an ISP problem or a computer problem or a sudden illness or something like that, you would file a request to extend the deadline in an ex parte case or you'd file a motion to extend or a motion to reopen in a trial case. And for virus-related reasons, you simply do the same thing, but you can rely on the virus situation as the basis for your request in an ex parte case, or your motion in an inter partes case.

The specific CARES Act relief that has been provided relating to the TTAB will allow late

filing of a notice of appeal as I said. However, in most cases, you will be facing if you didn't get your appeal in in timely fashion, you will be facing an abandonment of your application. And so then what you will most likely do in most cases, is to file a petition to revive the abandoned application along with an indication that you intend to file the appeal with the Board. So that when the petition to revive is handled, we'll know that the next step will be your appeal to the TTAB.

With the extension of time to oppose, if you request an initial extension of only 30 days, which some people will do because there's no fee for it, there is no space in that form for putting in your COVID-19-related explanation of the reason for your delay in filing that initial extension of time to oppose. Nor can you attach a document to it which would include that explanation. Fear not, what the Office will do, what the TTAB will do is to issue an action asking for an explanation for the delay in filing that initial extension of time to oppose. And that's when you can provide your COVID-19-related explanation if that's the reason for your delay.

And the other issue which is somewhat unique to the TTAB, and also interfaces with some of the Madrid material that Shira Perlmutter was discussing, is the fact that even though extensions of time because of the CARES Act when coupled with other available extensions of time to oppose, might take your total extensions of the opposition period beyond 120 days, which is the current maximum that you can obtain at the TTAB, you have to keep in mind that the TTAB still has to notify the International Bureau of any opposition that was filed within seven months. And so even if you get a CARES Act extension, if you then take all of the other available extensions, you will go out and be pressing up against that deadline. So, keep in mind you may not be able to get the full benefit of all of the extensions and you may have to file a little bit sooner than the full 190 or 200 or 210 days.

So, a little technical, but if you have questions about that, feel free to contact our staff and everyone on the information specialists team and the paralegal team can help you out with those questions.

But we'll go back to the slides now.
Anastasia, if you can bring those up.

And the first slide really just lets you know where our filing levels are this year. FY '19 was a banner year so to speak for TTAB where we had increases across the board in all possible filings, appeals and oppositions, cancellations, et cetera. The rate of change on this slide shows that we're not seeing increases except in petitions to cancel this year. And that has been true for many years. We've been seeing year after year increases in petitions to cancel. So, that continues. But everything else is basically flat or down a little bit. Not declining yet, but potentially could decline by the end of the year.

But last year's filing levels were pretty high. So, even if they stay flat, we would still be getting a lot of work coming in the front door just as we did last year.

Next slide, please. This is just a reminder that the context of basically flat filing levels for FY '20 compares to what were very extensive increases across the board for the

previous three years. So, we're actually catching our breath as filings seem to be leveling off a little bit in Fiscal '20.

Next slide, please. So, this one for those who want to look at it in a little bit more detail later on, again, these slides are up on the PTO website relating to TPAC. This will give you a little bit more of a sense of things. One I will draw your attention to is the fact that by quarters, we've had some categories where things have gone down consistently over the quarter. Appeals were up in the first quarter, but down in the second quarter. Extensions of time to oppose have gone down two consecutive quarters. Oppositions have gone down two consecutive quarters. So, it really depends on the matter that we're talking about how they fluctuate quarter to quarter.

Next slide, please. Now, this slide focuses on the cases that are further along in the TTAB pipeline. These are the cases that become ready for decision on the merits by a panel of three judges. In Fiscal '19, we can see in the Fiscal '19 column, we had an explosion of cases

that were becoming ready for decision. So, they have been filling into the TTAB pipeline for a number of years. And we had an almost 15 percent increase last year in the number of cases maturing to ready for decision. And we also had, as you see in the bottom of that FY '19 column, inventory at the end of any quarter when we took the snapshot that had become very trial heavy. So, 40 percent of the cases that were waiting for decision were trial cases most of the time throughout Fiscal '19. And those are historically high levels for the makeup of our docket between appeals and trial cases.

But in Fiscal '20 through the mid-year, we've seen a pretty significant decline in the number of cases maturing to ready for decision by a panel of judges. And we don't know whether that has any relationship to the economy. It might be that some people, some filers, have chosen not to proceed with cases that were previously initiated. But we won't really know until we see how the numbers pan out for the remainder of the year.

The good thing about the slackening in

the number of cases maturing to ready for decision is it has given us an opportunity to catch up some on this docket that really exploded last year. And the bottom line for us is that the inventory of cases awaiting decision by a panel of judges is only up in -- by single digits over what we ended Fiscal '19 at and that's very useful because we have seen very significant increases in Fiscal '19.

Next slide, please. Now, this was again, last year appeals maturing to ready for decision, trials, and appeals decided. These are the increases that we saw last year. A 40 percent increase in the number of trial cases decided last year. A 30 percent increase in the number of trials maturing to ready for decision. We ended the year with 40 percent of our inventory ready for decision being trials. But at mid-year, at the bottom of this slide, we see we're now down to 32 percent. So, we're making inroads on the trial case. And when we get down under 30 percent, we'll be more in the realm of historical balances between the number of appeals waiting for decision on the merits and the number

of trial cases.

Next slide, please. So, in terms of the -- again, we had this very heavy trial case docket for the last few years. In terms of the impact on the interlocutory matters that come up in trial cases, we had a large inventory of motions waiting to be decided on the merits. Cases with contested motions at the end of Fiscal '19. We see that on the bottom of this slide in the '19 column. But we significantly brought down the inventory of contested motions. And we are only two-tenths over our goal. We have a goal of getting contested motions decided within 8 to 12 weeks. So, we are a little bit over where we were at the end of last year, but the number has been coming down as we go through the year. And we fully expect to meet this goal by the end of the year, if not by the end of next quarter.

Next slide, please. So, again, the trends on motions ready for decision, this is basically flat. We have not seen a decrease in the number of cases with motions maturing to ready for decision. It's basically very similar to what it was last year. A little bit down. But

our production of decisions on contested motions has gone up. So, the decrease in our inventory of cases with motions waiting to be decided, of almost 15 percent, which is a good thing. Sometimes decreases are good, sometimes not so good. But this is a good thing. And this is attributable to fewer motions becoming ready for decision to some extent. But also, and to a greater extent, the increase in production that we've obtained from the interlocutory attorney staff, which has been expanding some over the last couple of years to deal with the burgeoning trial case docket.

Next slide, please. In terms of the judges' work on final decisions, again, we have seen a very large increase in Fiscal '19, which really kind of threw us behind in terms of our goals for getting casework processed by the judges. Our goals are getting final decisions out in ex parte cases within 10 to 12 weeks of the time they become ready for a decision by a panel of judges. So, we're above that goal at 15.7 weeks.

But what we have done in the first

quarter of this year was focused mostly on getting out older trial cases. So, even the trial case goal at 20.4 weeks or the pendency measure is above goal, which is a 12 to 15 week goal for processing trial cases once they become ready for decision. But between quarter 1 and quarter 2, we shaved off four weeks of pendency on processing of trial cases that became ready for decision by a panel of judges. And during the second quarter, we've been focusing on the ex parte appeal cases. So, we kind of tend to focus on one group of cases or another in an alternating way to try and ultimately bring them both down over the course of the year. And we expect to see much better numbers by the end of the year.

Next slide, please. So, the inventory -- our appeal balance is slightly up again because we were focusing on disposing of trial cases during the first quarter. But the trial balances you can see on this slide are all down, and so we're making progress. And once we get inventory under control, you know, the pendency numbers will continue to decline.

Next slide, please. And this slide and

the next slide will actually illustrate what I've been talking about. These are also dashboards and graphical illustrations of the state of our docket that are available on the TTAB webpage. You can see these at any time. But you can see the lighter colored blue, which I can't see very well because I'm colorblind, but I think the rest of you can see the distinctions even better than I can. But I do know that the slice of the pie in the right-hand chart is getting larger and that's good. That's the lighter color and it shows that what we are getting to is a point where the cases, the appeal cases that are waiting to be decided by a panel of judges are getting younger because we've been working off of the older cases. So, this is a visual illustration of the progress we've been making on the age of the appeal cases waiting to be decided.

Next slide, please. We see the same improvement here. We've now got a larger, lighter colored section of the pie. And, again, that means that the age of -- average age of trial cases awaiting decision on the merits have gotten younger over the course of the mid-year from the

beginning of the fiscal year until now.

Next slide, please. End-to-end processing times, it's something we always focus on. It's not completely in our control. It's partly in our control in terms of the processing of motions and the processing of decisions once they become ready for -- our cases once they become ready for decision. But, of course, also the choices the parties make about how to proceed when they're within the context of and the confines of an appeal or a trial case have an impact on end-to-end pendency. Appeal pendency is up some this year. So, it's up about six weeks over what it was last year, but still well under a year. And we do expect that to come down closer to what it was in FY '19 by the end of the year.

Fortunately, the trial case pendency is down four weeks from what it was overall end-to-end or commencement to completion pendency compared to the end of last year. And that's almost exactly attributable to the four weeks that the judges have shaved off on their pendency in the last quarter. So, there is a correlation between the work that we do and what

the parties do within the context of the cases.

The bottom line on this slide is very useful for people to note. If you are really interested in getting a trial case resolved quickly, then if you are willing to discuss with your adversary use of accelerated case resolution, you can get a trial case decided in two-thirds of the time of a typical case. So, you can really save a lot of time and resources, which may be something that many people will be looking for as we move forward in the pandemic, and so ACR is probably an attractive option for people to consider.

Next slide, please. Staffing, we have been increasing judges and attorneys over the last few years as our docket continued to increase. At this point, no further increases are planned at least this fiscal year. Again, we're making progress in bringing inventory down and pendency down. And so, we'll just see how that continues to play out over the rest of the year. But we currently have 25 judges on staff in addition to myself and the deputy chief judge, 17 full-time attorneys, and 1 part-time attorney.

Next slide, please. And this is the last slide for TTAB. We have essentially ended our almost two-year Expedited Cancellation Pilot Program. As we heard earlier from Branden Ritchie, the Trademark Modernization Act that's pending on the Hill would potentially deploy a kind of expedited cancellation proceeding. So, we will hopefully review the data that we compiled as a result of our pilot program, and be able to learn from that so that if we are called upon to create rules for a new type of cancellation proceeding based on the Trademark Modernization Act, we will have had some experience that will help us craft those rules.

The other thing that we are working on, we've not yet deployed, but we're working on it in-house is the possible rollout of a new Pre-trial Conference Pilot Program. This is now named as a -- or we are calling it a Pre-trial Conference Pilot Program, but it actually could be a late discovery conference pilot program. In other words, we're looking at identifying cases that have had a lot of motion practice, had a lot of activity in them, which could go off the rails

at trial if we don't actively manage them in a significant way. And so we're thinking about when we might step in, whether it would be late in discovery, after discovery, but before pre-trial, or before the parties start trial and to discuss with them the most efficient way that they can pursue trial of the case on the merits.

Cases with larger records, which we often get, are not necessarily better records and so, to a large extent we can help parties create better records by discussing the cases with them before they go to trial. And we can focus on potential broader use of stipulations, pre-trial disclosures, and focusing parties on efficient presentation of the evidence. So, that's something that we're considering.

That's it. I think I'm a few minutes over on the time, but I'm willing to take any questions. Well, I'm actually more than a few minutes over on time. But hopefully we'll make that up. But if there's any questions, I'm willing to take them.

MS. ESCOBAR: Thank you, Gerry. Any questions from TPAC?

MS. NATLAND: Hi, Elisabeth, it's Susan Natland. Thank you so much, Judge Rogers. We always appreciate your presentations (inaudible) and I actually in particular appreciate the last slide about your pilot program. I do have a question, however, about the COVID-19 situation. And I'm just wondering if there's a common practice that the TTAB is undertaking as to the amount of time the TTAB is extending dates based on an unstipulated request to extend for COVID-19 reasons. And I only ask because under the CARES Act, on the other side of the Office, the Trademark Office, the extension period is 30 days. I'm just wondering if the TTAB is kind of common practice doing anything different?

MR. ROGERS: We're not -- we don't have any standard timeframes for extensions. I think when we have a motion to extend in a trial case or when we have a request to let's say extend the time to file a brief in an ex parte appeal, we'll consider the merits of the basis for the request. And they could be relatively short extensions. They could be much longer extensions depending on

the situation.

I think we're very cognizant of the fact that there are many difficulties for attorneys getting into their offices and being able to access the materials. It depends often on the firm and their size and their resources. So, we have to take all of that into account. But I think that we are going to be very accommodating of the very unique difficulties that are presented by the pandemic compared to the typical reasons that we normally get or provided for as the basis for a request to extend or a request to reopen. And so I think recognizing the very unique circumstances presented by the pandemic would, one might guess, lead to more flexibility in some of the extensions and potential reopenings that we will grant. And I think otherwise we just have to rely on handling these things on a case-by-case basis.

MS. NATLAND: Thank you so much.

MS. ESCOBAR: Any other questions?

Well, Judge Rogers, thank you very much for your time and for this information. It sounds like if there is a silver lining to the whole COVID-19,

it's that the numbers are coming down, which is good.

MR. ROGERS: We need to catch our breath once in a while.

MS. ESCOBAR: Yes. Okay, so I think our next topic -- we're just a few minutes behind schedule, but nothing major. We are grateful to hear from Jamie Holcombe, the Chief Information Officer.

MR. HOLCOMBE: Good afternoon. I hope everybody's doing great. I'm happy to report that we have been steady as she goes, normal operations. We've actually had over 14,500 simultaneous connections into our backend. So, we have been maintaining a very good steady stream of Webex meetings. In fact, on average we have been having 1,455 meetings each and every day. And so, that's quite a lot of work. And everybody has been adapting and been able to do their work. So, this is just normal operations. We just had to accelerate some of our configurations for the increase in demand and once that was done, we've been pretty stable.

I know that Eunice has a lot she'd like

to talk to you about the specific trademark IT advancements that we've made since we last talked. So, I'll turn it over to Eunice right now.

MS. WANG: All right, thank you, Jamie. Good afternoon and thank you for the opportunity to share with the TPAC community the latest progress we've been making for the Trademarks and the TTAB. We are definitely in challenging times and so I'm proud to be part of an organization that has been able to provide the technology and infrastructure to support these complex circumstances.

Anastasia, do you mind going to the next slide? Okay, thank you.

Okay, so just to go down the list of activities since our last TPAC when we met in February. We implemented the system changes to comply with the CARES Act that has been a hot topic for today. We updated several systems to support the 30-day extension for certain trademark and TTAB deadlines. We've also deployed the mandatory electronic filing in February. And as reported earlier by Meryl, we have not had any

system downtime since then and we've received over 103,000 applications since then.

We've also gathered requirements for our next TEAS release. And now we are working on the development and the testing for that release. And we are also continuing our efforts with the specimen analysis capabilities. This is one of our initiatives to reduce suspicious filings and we are utilizing an agile team to develop and to test a solution and it is showing potential. And we think we may be able to use this tool in the future.

And lastly, we're continuing our IT planning of new requirements and the development of new capabilities, as well as stabilization efforts. So, included in this is the latest requirements with the masking of the email address -- masking the owner email address, you know, we heard your feedback from the last TPAC meeting and so we're taking the steps to implement that.

Next slide, please. And in our road ahead for 2020, we have set up an internal trademark agile team to continue to plan for major

new capabilities. This is so as we move forward into modernization, we can ensure that we have defined the capabilities that will return the highest business value in order to maintain forward progress in the planning and development of enhanced, high performing trademark IT tools and capabilities. Meanwhile, we'll continue with the stabilization of trademark and TTAB and ESTTA systems. And ensure that our servers and operating systems are up-to-date.

So, it's a pretty short, short and sweet update for the IT side of the house. Are there any questions that I could address?

MS. TOBIN: Hi --

MS. WANG: All right, I guess --

MS. TOBIN: -- this is Donna Tobin.

MS. WANG: Hi Donna.

MS. TOBIN: Hi. Can you hear me? I assume you're (inaudible)?

MS. WANG: Yes.

MS. TOBIN: Great. Well, first of all, thank you both very much for everything you're doing to keep everything moving and for spending time with us today, and that we could all

see and hear each other.

I was just wondering if you
(laughter) -- if you could give us some more
specifics maybe on whether there's anything now
that you are focusing efforts and time on that has
been required by this new normal that maybe we
didn't talk about last time that has just kind of
become necessary. And then if and when things
resolve, what is on the top of the list of future
things to do?

MS. WANG: Sure, so, in terms of, I
guess transitioning to this current new normal,
our initial effort really was to stabilize our
current system just, you know, in terms, you know,
getting the Webexs, you know, available and
having that support and that steady stream of
network connectivity. So, that was our main
priority. And, I guess, as we transition back
hopefully soon to, you know, the normal, normal,
I think that's where we will try to resume with
things. I think there are several
considerations to be taken. You know, I think a
lot of our conversation today was about the
current financial situation. So, I think that

will come into play in terms of how we will be able to proceed with things.

But, you know, of course, with our main intentions are to make sure that we upkeep and stabilize our current system so that both our internal and external users will still have the capability to still perform all of the actions that they need.

MS. TOBIN: Thank you.

MS. WANG: Thank you. Any other questions?

MS. FOLMAR: Can you hear me? This is Dinisa.

MS. WANG: Okay, Hi.

MS. ESCOBAR: We can hear you, Dinisa.

MS. FOLMAR: This is really more of a statement. Yeah, it's really more of a statement. It seems like the Trademark Office has been really cutting edge in, you know, the work from home programs and that you already had a great start, you know, just from almost two decades of piloting various work from home programs. Just wondering if any other agencies have reached out to you for best practices?

MS. WANG: I will actually try to defer that to -- I don't if, Jamie, if you had? I personally have not had people reach out to me, but I'm not sure if maybe if other leaders in the organization have been reached out to.

MR. HOLCOMBE: Well, yes, I can take that. The Department of Commerce has actually reached out to us in a number of cases for security and vulnerability patches in our Webex and how do we conduct those simultaneous VPN connections? So, yes, they have been asking. And in fact, one of the things we do Webex very securely as I stated, 1,455 on average every day. The thing about that is many people are using Zoom and the USPTO was the first agency to say, no, we're not going to use Zoom because of the security problem. And so, that has now been adopted in the Department of Commerce. And, of course, the FBI was putting those security vulnerabilities out in the public before that.

So, we make sure that we're doing everything safe and secure. So, yes, there's been a lot of people asking how best we do it? And we've been sharing that in different forums.

Anything else? (Laughter)

MS. ESCOBAR: Thank you, team.

(Laughter) Any other questions? Okay, well, we really appreciate your time. I know it's a very busy time for you and thank you for sharing that with us. We look forward to hearing how things are going as hopefully, this situation resolves.

Our last, but definitely not least, we are lucky to have Laura Peter, who is the Deputy Undersecretary for Commerce -- Deputy Undersecretary of Commerce for Intellectual Property and the Deputy Director of the USPTO. And Laura has graciously attended I think every TPAC meeting since she joined the USPTO and we are so glad to have your support and to see you here this afternoon. And without further ado, I'll turn it over to Laura.

MS. PRICE: Thank you so much. Hello everyone. I'm delighted to be here today with you at least via video. And, yes, I have attended every TPAC meeting since I joined over a year and a half ago now. So, I definitely am a supporter of TPAC and everything that Trademarks and TPAC are doing.

I hope you all are staying safe and I do wish you all to stay safe and have continued good health. I also appreciate that everyone was able to join us online today so that we can continue to collaborate with TPAC and our stakeholders, even in the face of this unprecedented pandemic. So, Ralph Waldo Emerson is one of my favorite American philosophers and he once said, we acquire the strength we have overcome. And I'm confident that as a nation we will grow stronger and stronger together.

Since our last meeting, the USPTO has been engaged in a number of efforts designed to improve our IT legacy systems. Stabilization of our systems remains a top priority. Though we made the first certain IT modernization efforts, we will not lose focus on our goal to achieve the state-of-the-art world class IT systems. We will accomplish this in part by moving to a more agile and adaptable system that makes it easier to keep up with the advancements in technology without impacting our services to applicants and stakeholders.

Trademarks continues to be an exciting

topic in the intellectual property world. And in just the past couple of years, we have seen many important decisions come down from the Supreme Court involving the First Amendment. A couple of weeks ago, we were poised to hear oral arguments in another Supreme Court case USPTO v.

Booking.com. Of course, the hearing like so many others, has been deferred given the global current health crisis. It is now on calendar for telephonic oral argument in early May, the first time the Supreme Court has allowed telephonic oral arguments on such a wide basis.

At the USPTO, we will continue to plan for the future including the use of artificial intelligence tools to improve the accuracy and efficiency of our work. Currently, we're exploring a number of tools. One such tool is an automated specimen of use analysis tool that we call ASAP for Automated Specimen Analysis Project. We've been exploring automated analysis of specimens in response to the rise in improper behavior before the USPTO, including the submission of fake or suspicious specimens of use.

This software could help us overcome two hurdles. It may help in detecting patterns and images typical of doctored specimens of use and it may help in detecting the level of similarity between images to identify when the same or similar image has been submitted in multiple applications to fulfill the requirement of demonstrating use of the mark in U.S. commerce. When and whether this tool proves to have high enough quality results to merit rolling out to the team remains to be seen and we'll keep you posted.

We're also looking at AI tools in the pre-examination phase to help applicants properly identify goods and services and then to help properly classify these goods and services. While artificial intelligence tools may prove to be fruitful some day in the future, we have not lost sight of our overarching mission with respect to IT for trademarks. Namely, the three to five-year effort to completely rebuild our end-to-end information technology suite of applications.

While we had hoped to begin the acquisition process by bringing on development

teams in Fiscal Year '20, our financial position requires us to take a more measured approach. Work on requirements and planning for the rebuild will continue, but structural development will not commence at least until Fiscal Year 2021.

In our economy, trademarks remains highly valuable assets accounting for on average one-third of corporate value. The world's most valuable brands are estimated to be worth billions of dollars each. Trademarks are crucial to our economy and remain an important business investment.

Since the first trademark was registered in 1870, words, phrases, symbols, designs, shapes, and colors have established the identities of countless sources of goods and services for consumers worldwide. On March 3, 2020, 150 years after that first trademark, the 6 millionth trademark was registered. The trademark was awarded to Encapzing (phonetic) for health supplement products. So many marks have been registered in that timeframe, and we are seeing registrations accelerate each year.

In the Eighth Edition of the Annual

Global IT Index, our IT system ranked number one in the world. Our trademark system tied with the UK for number one. And this is a validation of our IT leadership and supremacy. Through this period of uncertainty, there will be a lot of change. Out of that uncertainty there will be a lot of new innovations created and new businesses formed. One thing that sets the United States of America apart from any other country in the world is that we are a country of innovators and entrepreneurs. We like to take risks to innovate to spur new businesses. But it will take time for the innovation to manifest and for the trademarks that brand those new businesses and products to take root. In the meantime, we need to stay steady and (inaudible) and invest wisely for the future that we know is coming.

I want to thank you again for inviting me today and please stay safe and well. And I look forward to seeing you all at the next TPAC meeting.

MS. ESCOBAR: Thank you, Laura, so much for your comments and for your support for TPAC. We really enjoy working together with you and we

look forward to continuing it. Do any TPAC members have questions or comments for Laura? Okay, well, yes, and we hope to continue seeing you at our future TPAC meetings. Hopefully, some of them will be in-person again.

I think that brings us to the end our scheduled agenda. I wanted to give TPAC members the opportunity to ask questions that they might have saved up until the end of our scheduled speakers.

I'm going to go ahead and move on to questions from the public. But if TPAC members discover that there is something that they'd like to ask, please feel free to jump in. We did receive a couple questions from the Internet. I'm going to take the shortest one first. And the question was whether or not the Office is considering expanding the acceptability of digital signatures given that so many of us are working from home where they may not have easy access to printing and scanning capabilities. Sharon, is that something that you would like to take up?

MS. MARSH: Sure. Yeah, we've had

some discussions. I know I talked to at least one user who is -- would like to have an alternative way to sign TEAS documents using a commercial digital signature program. And we are looking into that. We've gotten distracted the last week or two with the CARES Act and some other things going on in the Office, but we are currently looking at that issue and should have more information for you very soon.

MS. ESCOBAR: Thank you, Sharon. The other set of questions that have come in so far -- came in had to do with some of the measures that the Office has been taking to combat improper filings. And I'm just now looking for my copy of the question. So, one concern that the person raised was how the Office's approach to digital specimens has changed and their perception, at least, that there is an increase in refusals to digital specimens and there's a request in this question, I think, for additional guidance about what the Office's rules about those specimens is.

Meryl, is that something you'd like to address?

MS. HERSHKOWITZ: Sure, I'm happy to.

First of all, I would like to thank people for their feedback and their comments, and remind everyone that we do have a mailbox called TMfeedback@USPTO.gov where you can always send any comments or feedback, good or bad. Compliments are nice too. And we will respond to it.

I did read the question and I think the stakeholder was asking us about our latest exam guide on specimen refusals. And it was, of course, in reaction to the many digital and fake specimens we've been receiving from especially China, but also some other places as well. And one of the requirements that we put in for the examiners was to look at the specimen and we gave many reasons why something might be suspicious. One of the reasons that we've heard a lot of feedback on has to do with specimens with white backgrounds. And we did notice that a lot of our suspicious specimens had white backgrounds, so we did make that an awareness issue for the examining attorney.

(Inaudible) that it's such a common thing for marketers to do,

we are reviewing that advice and we are exploring how we can better advise our examiners as to that element.

The second issue that we hear from our stakeholders quite frequently is the burden that numerous requests for information that we've suggested to the examiners to use when there is a potentially suspicious specimen, have been putting too heavy a burden on our stakeholders. So, we are taking that comment very seriously. And I know one of the issues for the examiners as well was that even if a good substitute specimen is submitted, the exam guide requires them to go final on any requests for information that aren't answered. So, we are looking at that again, and we're exploring changing that requirement.

So, thank you for your question because I think it's one that numerous stakeholders have.

MS. ESCOBAR: Thank you, Meryl. The other question that came in and I don't know if this something that you want to handle or one of the other members of staff would like to take. But it has to do with making applicant email

information available. The question was really two-pronged. The stakeholder was asking why the Office is now requiring applicant email addresses and also to what extent the Office -- what measures the Office is taking to keep it safe from hackers or from accidental disclosure?

MS. HERSHKOWITZ: Okay. So, I can definitely answer the why. When we went to mandatory electronic filing, of course, we need to communicate electronically with applicants and their attorneys. I think the question is asking specifically well, why do you need an owner email address when you have the attorney email address? And it's a pretty simple explanation. And that is in numerous instances, the attorney who starts the representation doesn't complete it. And that could be for a lot of reasons. It could be because there's a breakdown between the attorney-client relationship. It could be because there is a new attorney. Or it could be because the attorney that's listed in the file, has not consented to the representation as we have now discovered in the hundreds of cases where we've had to issue show cause orders because the

attorney is not really the attorney. So, we need some way of contacting the applicants when we can no longer have an attorney to contact.

As far as the security of the masking, I'm going to ask either Eunice or Jamie to address that. Are they still here?

MS. ESCOBAR: Eunice, I can see. Eunice is on mute. Jamie may have dropped off. Eunice, do you think you could take a crack at that?

MS. WANG: Sorry, I apologize. The question was about owner email address?

MS. ESCOBAR: Yes, the stakeholder had asked about the measures to --- what measures the Office is taking to avoid hacking of that information or accidental disclosure?

MS. WANG: Yes, so, thank you. Yeah, that's a good question. So, we have been reviewing our systems in terms of the owner email address. And so, we have -- we are in the process of making updates to our systems. The first one being with TSDR to put Xs (inaudible) email address if the information was entered into TEAS and TEASi. So, it will not be available in TSDR.

And so, we're looking at other phases, but we're approaching it in phases. But we're looking at our additional systems in terms of how we can continue.

MS. ESCOBAR: I vaguely recall that the additional security identity authentication measures also have a role to play. Is that correct? The future --

MS. WANG: Yes --

MS. MARSH: -- where we've done phase one, we're going to go to phase two and phase three?

MS. WANG: Yes, so we are considering the phase three of the filing credentials what we call, you know, the log-in field filing credential phase three as also contributing to the masking of the owner email address solution. So, we are looking into seeing how we can accelerate that. And, yes, so we're still in the novel phase of that.

MS. ESCOBAR: Great, thank you. I appreciate your jumping in.

I think I just want to double-check that we don't have any other questions from the public

that have come in while we've been chatting. In the meantime, I would like to take the opportunity to thank everyone from the Office. I know that it takes a lot of time and energy to put together this information, to put together this call, and even more so now that it's all virtual. And to take the time to present to TPAC and the members of the public. And I would like on behalf of all of TPAC to express our sincere appreciation for your doing that during this extraordinary time when we're all scrambling just to keep our heads above water so I don't want you to think that we -- we think that it's business as normal and that we expect everything to happen the way it normally would. But we really do appreciate that the Office took the time to prepare for this meeting and to hold it on schedule. So, thank you, on behalf of all of us.

We would like to know how we can support the Office during this difficult time. If there is anything that we can do as TPAC to help, we are available and we want to make sure that the offices would not hesitate to call on us because that's why we're here and we're ready and waiting

and anxious to help in any way that we can. I would like to give other members of TPAC if you have any final questions or comments the opportunity to make them before we wrap up.

MR. BESCH: Hi, this is Jay Besch. And I just wanted to make a couple -- say a couple of things. I want to thank everybody that presented today and everybody from TPAC and I think this really went off well today. I always like to say this, but I'm very proud of our unit and the employees that I represent. They've done an excellent job through all of this and I also would like to commend the Office for their ability at getting all of these people who work in the office out and working and able to continue doing what they're doing. So, I want to give credit where credit's due.

Also, I had one last question before -- after all those niceties, I have one question of clarifying. When the filing percentages and how much they were down were stated, I just have a question about that whether that was the filing classes, the number of applications filed, just a little bit more

clarity as to what those numbers are and I guess that's really my question.

MR. GOODER: Meryl, do you want to grab that or I can?

MS. HERSHKOWITZ: I'm sorry, I didn't hear it. Can you repeat it, Jay?

MR. BESCH: Sure. The question is there was a statement that the -- I think the -- and correct me if I'm wrong, but the filings were down 4 percent for the fiscal year and then 9 percent for March. And I was just wondering if you could provide a little bit of clarification. Is that like filing classes? Is that the number of applications? I just was wondering what those numbers were relative to.

MS. HERSHKOWITZ: I generally measure everything in classes. I don't know who did that calculation, but that's generally what the slide said, I believe. Dave, it was one of your slides.

MR. GOODER: Yeah, it is classes. The numbers are classes.

MR. BESCH: Okay, thank you.

MS. ESCOBAR: So, we had one more question come in from the public. I think we can

squeeze it in. It should be a pretty quick answer, I believe. The question is whether right holders have any recourse at the USPTO against licensed U.S. attorneys who represent applicants who are filing applications repeatedly in bad faith? Mostly foreign applicants.

MS. HERSHKOWITZ: I'll try that.

(Laughter) Other people should jump in as well. The Office has, as everyone knows, a unit called the Office of Discipline and Enrollment, and they are the ones who are authorized to take actions and investigations against attorneys who practice before the Office. So, I would just say, if someone has information that they have evidence or knowledge of that would indicate that someone who's practicing before the Office has, you know, behaved in a way that's unethical or conducted themselves in an unethical way or filed a bad faith filing or something like that, that they need to bring that to the attention of the Office of Enrollment and Discipline. I don't know if anyone else wants to add anything to that. Gerry or Sharon?

MR. ROGERS: I can add that bad faith

filings is a claim that is often raised in trials at the Board. But bad faith I have to say is somewhat in the eye of the beholder. And there's no real ready definition of what bad faith constitutes. So, I think the one thing that I would suggest for anyone who would take Meryl up on her suggestion and go to the Office of Enrollment and Discipline, is to be very clear about what conduct you believe constitutes bad faith and what evidence there is to support it. Because it's a term that is often thrown into a pleading at the Trademark Trial and Appeal Board, but rarely do we decide a case based on the element of bad faith.

So, the question kind of presumes that each of these applications being filed by the attorney who's facilitating the purported bad faith is clearly an instance of bad faith. And I think that's subject to proof. And the Office of Enrollment and Discipline is going to want to see what evidence there is to support an allegation that a particular application was filed in bad faith, or that there's been a pattern of conduct illustrating bad faith. And so, the

Office of Enrollment and Discipline is not going to go out and try and investigate unless there's a pretty substantial showing. At least I believe that that is the threshold that they would want to see from any party who is going to be filing a complaint about a particular practitioner who's practicing before the Office.

But again, as Meryl said, this is really the domain of the Office of Enrollment and Discipline and not particularly of the examining operation or even the Board. Of course, at the Board, if a particular attorney was making an argument in bad faith, there might be a motion for Rule 11 sanctions or something like that. But the Board is only going to deal with the consequences for the particular case before us, and not with any potential consequences or the ability of an attorney to practice before the Office. That's all I'd have to add.

MS. ESCOBAR: Thank you, Meryl and Gerry. That's helpful. I assume that any complaint brought before OED would need to make a showing not just of the applications were in bad faith, but that the attorney representing the

client was aware of that fact. Yeah, okay, I see Meryl nodding I think. Okay, and Gerry.

So, that brings us to the end of the questions that we've received and to the end of our scheduled presentation. I just would like to thank everyone again for taking the time to participate. And to remind folks that the next TPAC Quarterly Meeting is currently scheduled to take place on July 24th, Friday, July 24th. Hopefully, we will all be in a position to see each other in person, but if not, we -- I think we have a good first effort to build on for next time.

Wishing everyone a safe and healthy and comfortable weekend, and our meeting is adjourned.

(Whereupon, at 3:43 p.m., the HEARING was adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

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

My Commission Expires: August 31, 2021

Notary Public Number 122985