

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, November 23, 2010

1 PARTICIPANTS:

2 TPAC Members:

3 JOHN B. FARMER, Chair

4 ROBERT M. ANDERSON

5 JAMES G. CONLEY

6 MARY BONEY DENISON

7 JAMES H. JOHNSON, JR.

8 TIMOTHY J. LOCKHART

9 KATHRYN B. PARK

10 ELIZABETH R. PEARCE

11 MAKAN DELRAHIM

12 Union Members:

13 HOWARD FRIEDMAN

14 RANDALL P. MYERS

15 HAROLD E. ROSS

16 Also Present:

17 LYNNE BERESFORD, Commissioner for Trademarks

18 DANA ROBERT COLARULLI

18 Director, Office of Government Affairs

19

19 ANTHONY P. SCARDINO

20 Chief Financial Officer

20

21 JOHN OWENS

21 Chief Information Officer

22

1 PARTICIPANTS (CONT'D):

2 GERARD ROGERS

2 TTAB Representative

3

3 GARY CANNON

4

4 JOE WOLF

5

6

7

8

9

* * * * *

10

11

12

13

14

15

16

17

18

19

20

21

22

1 P R O C E E D I N G S

2 (9:00 a.m.)

3 CHAIRMAN FARMER: I'd like to welcome
4 everybody to our meeting of the Trademark Public
5 Advisory Committee. Just to remind folks that the
6 meeting is being recorded, and webcast, and a
7 transcript will be made, your biorhythms will not
8 be taken, but basically if you're here, you may
9 end up on camera, and if you make any comments,
10 your comments may end up being recorded, and so
11 just keep that in mind in case that matters to
12 you.

13 For those who are watching via webcast,
14 or as I like to say, for those watching at home,
15 if you go to the USPTO web site, which you've
16 already done behind the webcast, you can also
17 find, or at least should find the materials for
18 this meeting there. So if you see us referring to
19 this report or that report, you should be able to
20 access it and look at it yourself, so that you can
21 play along at home.

22 We are going to receive questions today,

1 and for those of you who have been in here before,
2 this features means the same, that is, during each
3 segment, I will first defer to the champion of
4 that issue on TPAC to ask questions, then we'll
5 take questions from any other TPAC members, then
6 we'll take questions from anyone here in our live
7 studio audience, because these are the folks who
8 have taken the time to come, and then time
9 permitting, we'll take questions from cyber space.

10 And so if you have questions you'd like
11 to send in to ask those folks who are chatting
12 with us here today, you can do so. I believe the
13 email remains asktpac@uspto.gov

14 I'm supposed to do an introduction in
15 five minutes, and although I said I like the
16 trains to run on time, it's just not going to
17 happen this morning because we've got some special
18 things to take care of.

19 We have four folks we need to say thank
20 you and goodbye to today, although one of them
21 hopefully we'll be welcoming back. I'm going to
22 start with the person to my left, Lynne Beresford.

1 But before I do so, I'll say that for all of the
2 people that we are thanking and recognizing this
3 morning, there is a tremendous collegiality and
4 friendship amongst us, and that arises from the
5 mutual respect of mutual hard work and mutual
6 goodwill, and I think that's what makes this
7 organization function so well.

8 I'm going to start off by recognizing
9 Lynne Beresford. Lynne is our Commissioner for
10 Trademarks. She started here in 1979, reportedly
11 the exact same day as Jim Johnson, a fellow TPAC
12 member over here, and I believe it was not even
13 just the same day, but your offices may have been
14 pertinent. And so here we come full circle today
15 as we'll be saying farewell, but not goodbye
16 forever, to Jim and to Lynne.

17 The thing about Lynne is that she is the
18 paragon of what a government official should be.
19 I have to admit, I have a bit of a cynical view
20 about government employment, although my mind has
21 been greatly changed by many of the folks I've had
22 the pleasure to work with here, and that's because

1 I've always been a bit cynical that one would
2 constantly strive for improvement and excellence.
3 If you didn't really have a day-to-day survival,
4 you might be fired tomorrow instead of backing
5 that up, and I've been proven wrong, and Lynne has
6 been the prime example of that.

7 She constantly strives to improve the
8 office. I won't go on and on with a lengthy
9 biography because I'm not qualified to give it,
10 frankly, but to give you an example of that, when
11 we were meeting with Lynne yesterday, she was
12 talking about the latest generation of the quality
13 standard for the office that's being rolled out.

14 For those of you all who don't know the
15 history, this will be the third generation of the
16 quality standard within the trademark operation,
17 and that's because they pegged the speedometer
18 twice and they don't work anymore and they have to
19 set a yet higher bar so that they'll have
20 something yet more that they can achieve.

21 And if you sit back and think about
22 that, that's simply amazing, for a government

1 organization to constantly be raising its own bar
2 voluntarily. I don't even recall us on TPAC even
3 suggesting that they should do that, they just
4 decided it needed to be done and that they were
5 going to go do it, and that's simply remarkable.

6 Another thing I really remember that
7 just caused me to be dumbfounded is when I first
8 started working with Lynne on TPAC, this was
9 before the recession, and we had to start watching
10 our dimes a bit better, Lynne constantly told me
11 that she felt that she could bring enough
12 efficiency out of the system to perhaps lower
13 fees, and I thought that is simply amazing, a
14 government official who doesn't have to do this
15 talking about possibly trying to give some money
16 back to the stakeholders in the community, and I
17 just thought that was amazing. And these are just
18 two examples, the quality standard and the fee
19 comment, you know, of course, that's on hold
20 because of the recession, that typifies so many
21 ways in which Lynne has handled this organization,
22 that is, she's constantly striving to make it

1 better, she confronts hurdles of various types,
2 they never become excuses for not trying to
3 improve the organization, and she does it, and she
4 always seems to do it with a very humble,
5 non-self-centered, non look at me way, she just
6 gets it done.

7 Lynne, I'm probably going to break the
8 law here, not the finance law, I assure you, 24.99
9 is the limit here, but I did not check any federal
10 statutes on the wording of this. But on behalf of
11 TPAC, I would like to present you a plaque that
12 reads as follows: "The 2010 Trademark Public
13 Advisory Committee of the United States Patent and
14 Trademark Office salutes Lynne G. Beresford as the
15 best darn Commissioner of Trademarks. Thanks for
16 your superb service."

17 COMMISSIONER BERESFORD: Thank you so
18 much.

19 CHAIRMAN FARMER: At this time, I would
20 like to ask - if any other TPAC members, you know,
21 I've already ran on and on, but if you want to add
22 any additional comments, please feel free to do

1 so. And for Jim Johnson, it's not optional.

2 MR. JOHNSON: Lynne, what can I say?

3 1979, some some years ago, you and I were sworn in
4 on the same day, and we were at different stages
5 of our life, I was fresh out of law school, the
6 University of Virginia Law School, single, and you
7 were a divorced mother of two who had been a
8 housewife for many years, and then you went back
9 to law school and worked in the tax court, and
10 then you came here to the Trademark Office.

11 We had a shortage of offices at the
12 time, and they were doing some remodeling, and so
13 we had to flip a coin for who was going to get the
14 broom closet and who was going to - and the winner
15 - who got the broom closet was the winner. And we
16 flipped the coin, and Lynne won, and she got the
17 broom closet, and I got a very interesting
18 officemate, and the rest is history.

19 But over that time, back then we had a
20 lot of paid overtime, so we were working 40 extra
21 hours a week sometimes, so Lynne and I had a lot
22 of opportunity to share our lives and our comments

1 and our advice, and she's just truly an awesome
2 person. There are two things about Lynne that
3 really have always impressed me, she's extremely
4 intelligent, but she also cares about people, she
5 cares about doing the right thing.

6 Her family was involved in the Freedom
7 Riders and the Civil Rights Movement back at a
8 time when you really were putting your life on the
9 line, but she was that committed, she and her
10 family were that committed to justice and
11 fairness.

12 Lynne, I want to thank you on behalf of
13 TPAC and the trademark community for all that
14 you've done for us, and for all your friends and
15 everything. And I only have one word of advice
16 for you as you go into the future, it's okay for
17 you to retire from your job, you deserve it, but
18 you can't retire from your friends. Thanks.

19 COMMISSIONER BERESFORD: Thank you.
20 Thank you, everyone, it's so touching. And I have
21 to say this plaque is absolutely priceless. I
22 have given and received many plaques in my life,

1 but this one is amazingly wonderful, so thank you.

2 CHAIRMAN FARMER: You're welcome. Thank
3 you for the reminder. Before I go on for Lynne, I
4 know Lynne did not control this, but I know she
5 had a hand in it. One of the tremendous acts of
6 Lynne Beresford was to leave the operation in good
7 shape, to make certain the operation is left in
8 good hands. And so we very much look forward to
9 having Debbie Cohn as the next Commissioner for
10 Trademarks, and we are very glad that things could
11 be arranged so that such a trusted and proven
12 person would take over that operation.

13 As a matter of fact, Debbie, it's
14 optional for you, but you're kind of handing off
15 the reigns, if you wish to come up here today in
16 case you wanted to make any comments, feel free to
17 do so, because I know it's sort of a transition
18 period, and so we really look forward to working
19 with you.

20 Now we've got to recognize some other
21 folks. Elizabeth Pearce, Elizabeth Pearce I've
22 called on the telephone for counsel probably, oh,

1 two dozen times over the course of my time on
2 TPAC, and the phone has never rung. Elizabeth is
3 so responsive that I've yet to get the phone to
4 ring in her office because she picks it up right
5 away and she's always there to help me sort
6 something out, because I've usually gotten myself
7 in muddle over some issue or over how something is
8 being handled, and Elizabeth just calms me right
9 down and helps me see the sweetness and light of
10 the best way forward and she always provides very
11 wise counsel.

12 Also, Elizabeth is the most diligent
13 TPAC member I could imagine, and that is, I think
14 with the finance role that she has served, a lot
15 of what she has achieved is just by letting
16 everyone know that she's watching and paying
17 attention.

18 And so a lot of times Elizabeth will get
19 emailed these massive documents, I mean it's like
20 the Encyclopedia Britannica, they made the font
21 size bigger, and five minutes later you'll see an
22 email coming back in the other direction from

1 Elizabeth saying, well, I was a bit curious about
2 page 23, footnote seven, in which you commented as
3 follows, and I was wondering if you meant X, and
4 that meant everyone knew that Elizabeth was on the
5 case and she was watching, and I think that simple
6 diligence has produced a lot of good results in
7 the areas that she is champion.

8 Elizabeth has made many contributions to
9 TPAC, and I will not try to list them all. One of
10 the best ones I have seen is that she and James
11 Conley, working as the dynamic duo, have built a
12 very strong relationship with the folks in the
13 CFO's office and helped bring together a good
14 relationship between the folks in the CFO's office
15 and the main trademark operation, and I think that
16 that's built a lot of mutual confidence and it's
17 made the organization stronger.

18 And also, Elizabeth is just simply the
19 iron lady. She seems to have the wonderful gift
20 of being very kind and very nice and always using
21 honey rather than a hammer, but lying beneath that
22 is an iron resolve to get things done and to do it

1 very well. Thank you, Elizabeth.

2 MS. PEARCE: I, of course, have
3 something to say, as I always do. Thank you,
4 John. I have learned so many things that I didn't
5 know that I didn't know while serving on TPAC. I
6 am the only member of TPAC who is not a lawyer or
7 a law professor, as James is, so I came at it from
8 a very different perspective. And I have
9 appreciated the camaraderie, the teamwork that has
10 gone into this effort. I have met some
11 interesting people, many of whom, and you've heard
12 these stories before, I was in awe of before I got
13 on TPAC, but I've had a chance to really be among
14 some of the best IP minds that I can imagine for
15 the past three years, and that includes Lynne also
16 as the Commissioner. You learn an awful lot being
17 on the inside. It's very different being on the
18 inside than it is being on the outside.

19 I made a list to make sure I didn't
20 leave anybody out. The CFO's office has done a
21 wonderful job of working with me and James, and I
22 believe that we've made tremendous progress in

1 three years, which enables me to leave my term of
2 duty feeling that we accomplished far more than I
3 would have expected, and I wanted to thank these
4 people, some of whom are here today, Mark
5 Olechowski, Karen Strohecker, who I know is behind
6 me, Michelle Picard, who's not here, who's in the
7 Caribbean at the moment and who has earned it, I
8 might add, Mark Krieger, Steve Porter, and Nabil
9 Chbouki, who does wonderful, very illuminating
10 charts and graphs that have made things a whole
11 lot easier for us to understand.

12 It's a great team that they've got over
13 there. I can't speak highly enough of them and
14 how much I'm going to miss working with everybody.
15 It's not often that you get to work with a group
16 of people where so many effective results come out
17 of your efforts. I mean we spend a lot of time in
18 this world spinning in circles and going through
19 the motions, but this group does not do that.
20 TPAC has accomplished a tremendous amount. The
21 various offices at the PTO that we've worked with
22 have worked hard also to accomplish with us, and I

1 leave with a great sense of satisfaction. And I
2 hope that whoever my successor might be will enjoy
3 it as much as I did.

4 CHAIRMAN FARMER: Thank you, Elizabeth,
5 we really appreciate your service, as we do the
6 service of Jim Johnson. Jim always makes me
7 smile. I remember when I called up Jim when I
8 stepped into the job, he just has this wonderful
9 dry sense of humor. And to tell myself just so I
10 can pass on what Jim said, the name of my law firm
11 is the Leading Edge Law Group, and I called up,
12 and Jim answers the phone and he says, well, I see
13 I'm speaking to the leading edge, I wonder what
14 that means, and it's kind of been like that ever
15 since and it's been great.

16 And then I'm talking with Jim and I
17 discover that although he presently lives in
18 Georgia, I'll call him a Georgia resident because
19 that implies a permanent intention to stay. I
20 discovered that he went to elementary school at an
21 elementary school I can see from my office, right
22 across the river, and that he went to the

1 University of Virginia to law school, and I
2 decided then that he's just a Virginian waiting to
3 come back, so we look forward to welcoming your
4 residency back.

5 Jim is also our utility infielder, and
6 that is, he has tackled a very wide range of
7 issues while he has been on TPAC, and I will not
8 try to list them all today because I'm afraid I'd
9 forget one, and he always volunteers for them.

10 I mean presently some of the issues he's
11 been working on are things as diverse as doing the
12 international issues here at TPAC, to somewhat
13 instigating and pushing TPAC's deep concern over
14 many of the online services that are not really
15 clear as to whether they're acting as trademark
16 counsel or just a filing service, to taking a look
17 at all the new videos that the PTO puts out to try
18 to help pro se filers, to a bunch of other issues.

19 You can just always count on Jim to put
20 his hand up and to say I'll take care of it, and
21 those are the magic words, I'll take care of it,
22 especially when you know that they will, and Jim

1 does, and so he just does it all with great grace,
2 again, without any self centeredness, and he just
3 takes care of business. And Jim also is just a
4 very wise person, and that is, a lot of times you
5 have to keep your bearing if you're a member of an
6 organization like this and have a very strong
7 sense of just what's going to work and what's not
8 going to work, and what's in pretty good repair
9 and what's kind of broken.

10 And Jim, when he counsels us in our
11 meetings, just always has this great sense of just
12 what makes sense and what doesn't. He just kinds
13 of brings it down to the pithy, this is why I
14 think this will work or why this won't work. And
15 so we've really appreciated that and we
16 tremendously appreciate simply his friendship.

17 And as I've said earlier with Lynne,
18 with Elizabeth and with Jim, it's a friendship
19 born out of these being generally nice people, and
20 also just the mutual respect and mutual hard work.
21 And so, Jim Johnson, thank you very much for your
22 service on TPAC and we will look forward to seeing

1 you down the road.

2 MR. JOHNSON: Thank you. Three years
3 ago, three of us were sworn into TPAC, Elizabeth
4 Pearce, Jeff Storie and myself. Unfortunately, or
5 fortunately, however you look at it, Jeff Storie
6 was called home, and my only solace is that he's
7 in a better place than this earth. But I've had
8 many, many interesting experiences working on
9 TPAC, this is my second time on TPAC, and it's one
10 of those things where each experience and each one
11 of you and every one I've had to deal with has
12 been a part of a little mosaic, a little tile, and
13 when you're working on a mosaic, when you first
14 put that first little tile in, as you put them in,
15 you don't realize the impact of each piece until
16 you step back and look at the big picture, and you
17 go wow.

18 They often talk about positions such as
19 this, one's a public duty, but I don't think in
20 this case it was a misnomer, because it's been a
21 pleasure and a privilege to work with each one of
22 you, to work with the members of the Board, with

1 you, John Farmer, as one of the greatest Chairman
2 of the TPAC they've ever had, with Lynne
3 Beresford, the greatest Commissioner, one of the
4 greatest Commissioners since Thomas Jefferson.

5 And when someone from the University of
6 Virginia puts your name in the same sentence with
7 Thomas Jefferson, you know you're really good.
8 And Sharon Marsh, and Debbie Cohen, and Gerard
9 Rogers, and Cindy Greenbaum, and Craig Morris, and
10 all my old friends, all the people I worked with
11 all these years. Ann Farson and I used to carpool
12 together back in the day, so it's amazing. So
13 this has been just a truly wonderful, wonderful
14 experience. And I would like to think that this
15 is the beginning, not the end of our friendship,
16 and we will continue. And as Bob Hope often said,
17 thanks for the memories.

18 CHAIRMAN FARMER: We have one more, but
19 this is with an asterisks. We've kind of been
20 down this road before. We have a member of TPAC
21 who's finishing up a partial term, finishing up
22 the term of Jeff Storie, as Jim said, and because

1 of just how the political process works, we don't
2 yet know whether he will be reappointed, although
3 we strongly hope that he will be.

4 And so this is sort of a provisional
5 recognition, because we'll look forward hopefully
6 to recognizing Bob's additional three years of
7 service three years from now; I strongly hope that
8 that is the case.

9 But Bob Anderson is also completing a
10 term on TPAC. He's been on TPAC less than a year,
11 but he has gotten up to speed and to a level of
12 high contribution extraordinarily quickly.

13 When we needed to fill a spot on TPAC,
14 well, we on TPAC, of course, don't fill it, the
15 Secretary of Commerce makes the appointment, but
16 we knew what sort of person we needed in that TPAC
17 has its fingers in a lot of different pies, and we
18 knew that we really needed someone to come onto
19 TPAC who had a very strong technological
20 background to help work with Tim Lockhart and
21 Howard Friedman on technology, especially with the
22 new Trademarks Next Generation coming along, to be

1 able to provide some TPAC oversight.

2 And we also wanted someone who had some
3 working experience in the office at some point in
4 there past who could be a good guide to the
5 internal way that things work. And so we're
6 looking for someone with those two traits, and,
7 you know, we were casting about and talking about
8 this and that.

9 And then Lynne Beresford said to me,
10 well, there's only one person, that's Bob
11 Anderson, and I said why, and she explained why,
12 and it was just so incredibly obvious that he was
13 the man that we needed to get, and fortunately he
14 was appointed to join us here on TPAC.

15 Bob has brought those skills to the
16 table. He has worked deeply with Tim and with
17 Howard on their technology issues, and this is a
18 very critical time for that. You know, everyone
19 knows the historical problems that we've had here
20 at the office of the computer system, and thanks
21 to the decision that Mr. Kappos made, we're on our
22 way to getting a better system, but you don't just

1 snap your finger, put your money down on the table
2 and get it, it's a process and it has to happen
3 and things can go right and things can go wrong,
4 and Bob, in addition to Tim and Howard, provided
5 great diligence there, and so we're very thankful
6 for that.

7 And also, in addition to the IT issues,
8 Bob has helped us out a lot on being a good minder
9 on trademark quality issues and on issues that
10 we've had some very stout discussions on on
11 improving the communications between trademark
12 examining attorneys and folks who are prosecuting
13 applications.

14 The character trait that I've really
15 noticed with Bob is that he doesn't wing it, and
16 that is, when he takes on a task, that he goes and
17 investigates deeply, doesn't make a big show of
18 it, but he goes and he talks to a lot of folks and
19 he does a lot of reading, and you'll hear Bob say,
20 oh yeah, I went over to the office the other day
21 and I talked to so and so and so and so and so and
22 so just to get the lay of the land as to how this

1 works.

2 And that doing of homework is just
3 really appreciated and it leads to a great work
4 product and it leads us all to have tremendous
5 confidence that when Bob says, well, I've
6 investigated this and this is what I see, and this
7 is why this will work or why this won't work, we
8 know that it's been very well thought through and
9 very well investigated.

10 And so Bob, in interim asterisks, thank
11 you for serving on TPAC and for being such a good
12 friend to all of us, and hopefully we'll be
13 welcoming you back very soon for another lap
14 around the track. So, Bob, thanks for your
15 service.

16 MR. ANDERSON: Since I had a very short
17 tenure, I'll try to keep it short. But I do want
18 to mention two things, I left the office January
19 3, 2004, and came back approximately six years
20 later, almost to the day, and was quite surprised
21 to find that people still remembered who I was,
22 and also found that many of the people who had

1 been very helpful to me when I was here for many
2 years were still very helpful, very knowledgeable,
3 and quite pleased to see that Lynne had become the
4 Commissioner of Trademarks.

5 She became Commissioner in what was
6 probably one of the low points of trademarks, and
7 I think has handled the job in an excellent
8 manner. Sorry to see her go. I was quite
9 disappointed when I heard that even though she had
10 been reappointed, she was now announcing her
11 retirement, which took me by surprise.

12 The second thing I would like to
13 mention, when I joined - when I was asked to join
14 TPAC and then approved by the Secretary of
15 Commerce, I was concerned about being the new kid
16 on the block and being associated with a number of
17 people, some of who I knew, some that I didn't
18 know.

19 I found the first time I came in contact
20 with the members of TPAC, that everyone was very
21 friendly, very welcoming, and it was almost like I
22 had been on TPAC for two or three years prior.

1 I think John has done an excellent job
2 as the Chair of TPAC over the past almost two and
3 a half years now. I think John has created an
4 environment on TPAC that is very welcoming to new
5 members. He gets them up to speed quickly, he
6 tells you what you need to know and what his
7 expectations are, which I think is very important.

8 I appreciate the camaraderie, I guess is
9 the best word, of other TPAC members, and I
10 appreciate the help they've given me in getting
11 used to being on TPAC. I hope I come back, but
12 we'll see. Thanks very much, everybody. And I do
13 want to mention one person who's been extremely
14 helpful to me, Ann Farson. She got me through all
15 the paperwork, made sure I've dotted all the I's
16 and signed everything appropriately, and when I've
17 been a little tardy on getting papers in, she
18 sends me a gentle reminder so things don't fall
19 through the cracks.

20 Ann was a great help when I was here
21 during my career, and Ann has continued to be a
22 great help as I've gotten - integrated myself onto

1 TPAC. Thanks very much, everybody.

2 CHAIRMAN FARMER: I said to Bob, we
3 expect to see you back, so I won't put you through
4 this. Jim and Elizabeth, we may have covered
5 this, I can't tell one way or the other, I said to
6 each of you that I wanted to give each of you the
7 opportunity to give any swansong you want, any
8 parting words of advice or any comments you'd like
9 to make. And I can't quite discern if you all
10 have kind of already done that with your little
11 gift or if there is more. So if there's any other
12 things you wanted to say now. No? If you think
13 of anything, the floor will be yours at your
14 command on that.

15 Now let's get down to the public's
16 business. We think highly of each other, but
17 we've got to get to that, too. We next get to
18 welcome and brief comments from USPTO leadership.
19 Lynne, I'm going to guess that you're going to do
20 that.

21 COMMISSIONER BERESFORD: Yes.

22 CHAIRMAN FARMER: And so we'll just

1 start there and we'll just kind of naturally roll
2 right into your section of the agenda, if that's
3 okay with you, and so I'll turn the floor over to
4 you.

5 COMMISSIONER BERESFORD: Yes, thank you
6 very much. And I, too, want to say what a great
7 Chairman we have for this Public Advisory
8 Committee. I've been involved with the Public
9 Advisory Committee for more than 20 years in a
10 variety of different roles, and this has been the
11 most active, the most involved, the most
12 discerning committee that I've had the pleasure to
13 deal with, so you have all been a great help to
14 the USPTO, you've certainly more than fulfilled
15 your statutory duties, you've gone above and
16 beyond, so thank you. And also thank you to Ms.
17 Farson over there, she's gone above and beyond.

18 On to the business. Just some updates
19 here. The USPTO's strategic plan, sure, the
20 Committee is interested in where we are on the
21 strategic plan, it's been posted, we thank
22 everyone for their comments. We think of it as a

1 living document, and that means that there will be
2 - that it can continue to be tweaked and it can
3 continue to improve. Essentially, the strategic
4 plan has a certain number of initiatives in it,
5 and we've talked about all of these before.

6 There's maintaining pendency between 2.5
7 and 3.5 months and maintaining pendency, final
8 action pendency, at around 11 months for cases
9 without and the parties are suspended, and 13
10 months for other things. I expect that the final
11 action pendency will continue to go down as we
12 refine our process.

13 Trademark quality, another thing in our
14 strategic plan, we're working on this new quality
15 measure, the comprehensive excellence measure.
16 We'll be benchmarking it this year. We had a
17 pilot last year of an award, the award for
18 comprehensive excellence, where we were kind of
19 test driving what we wanted to have in this
20 measure.

21 The best thing I can say about this
22 measure is, I think it's very comprehensive. Our

1 quality metrics in the past have been based on a
2 single point, was the decision made correctly, and
3 this is the quality measure we report to the
4 public. And although that's an extremely
5 important quality measure, it's not the whole
6 story. And we're now at approximately 97 percent
7 on that measure, so it's time to look for
8 something else, and we've stayed at 97 percent for
9 a while. So we're now going to benchmark a new
10 measure that looks at the comprehensive excellence
11 of every first action, including the search, the
12 writing, the evidence, the decision-making.
13 Everything in the first action is going to be part
14 of this excellence measure.

15 I think this is where we should be
16 headed in quality. As you've all heard me before,
17 we've gone to the bar and had the USPTO
18 subcommittee of INTA and the Trademark's
19 subcommittee of AIPLA, and the IPO Trademark
20 Committee, and all the members have reviewed 200
21 office actions and given us specific feedback on
22 those office actions, that's the information we

1 used to set this quality measure.

2 We will continue to refine it as we
3 benchmark it, because we are still learning about
4 what we can do with this quality measure. The NY,
5 New York Intellectual Property Law Association,
6 the Ohio Intellectual Property organization,
7 FIGPI, and a number of other organizations have
8 also ponied up saying they would be willing to
9 review all sections. I'm still amazed that
10 lawyers who are so darn busy in these
11 organizations are willing to take their time to
12 review office actions and give us feedback on
13 them, it's just wonderful.

14 But that will be the new quality goal
15 that we'll be benchmarking, and we will continue
16 to look for feedback from folks on that quality
17 measure to refine it and to try to make the
18 quality something that is meaningful to the folks
19 that use our services, so that's the plan there.

20 And the award for comprehensive
21 excellence that we rolled out in the second half
22 of this year, as a pilot, has had some really

1 positive effects. We've seen an increase in the
2 number of phone calls examining attorneys have
3 made, the percentage of examiner's amendments that
4 have been done in the second half of the year
5 versus the first half of the year, and an increase
6 in the excellence in the writing, especially the
7 area of writing, Section 2D, where we did training
8 on excellence, so we see there are improvements
9 can be made and we're seeing those improvements
10 happening.

11 And, of course, the final two things in
12 the strategic plan have to do with the IT updates,
13 John will talk about that. Trademarks will
14 separate its systems, for the most part, from the
15 patent systems and will become virtual, and
16 hopefully will be able to add more services to
17 what it offers now, be a more user friendly web
18 site, and be better for our applicants and
19 attorneys to use.

20 So we're working on our toward what I
21 think is going to be the real trademark office of
22 the century, not the 19th century trademark

1 office, not the 20th century trademark office, but
2 maybe the 21st century trademark office.

3 And last, but not least in our strategic
4 plan, we have the issue which we called Bose issue
5 on ID's and whether or not ID's practice and the
6 descriptions of goods and services and
7 applications and registrations are accurate, and
8 we're working on a rule for that.

9 The rule, which will increase the
10 ability of post-registration examiners to ask for
11 specimens or evidence in situations where they
12 think what they've received is a Section 8 call
13 for that type of action, that rule package has
14 been written, it's in final form, it'll be shared
15 with the Committee in the next week or so, and
16 then it'll start through the USPTO OMB clearance
17 process. But you should all be - you will all be
18 receiving an advanced copy, and, of course, we
19 always look forward to comments from the TPAC
20 members about that. So that's what's going on
21 with the strategic plan.

22 We have an upcoming roundtable on

1 December 3rd on electronic communications. Our
2 very own Kathryn Barrett Park will be chairing
3 that roundtable, it's at 1:00. And the purpose of
4 the roundtable is to talk about best practices in
5 the private sector for handling electronic
6 communications, both between themselves and their
7 clients, and also between themselves and the
8 USPTO. How do people do it to be efficient, have
9 good records, et cetera.

10 We have about ten folks coming in with a
11 variety of experiences in the private sector to
12 talk about that. We'll webcast it and we're
13 hoping that other people who have electronic
14 filing and communication issues will listen and
15 maybe get some ideas, and we're also hoping that
16 we'll get ideas from this roundtable that can help
17 us improve our systems as we move towards
18 Trademark's Next Generation.

19 Already this Committee, of course, has
20 contributed by talking about multiple email
21 addresses, to send communications out to multiple
22 email addresses. Again, we think we'll get other

1 good ideas, and we're really looking forward to
2 this roundtable. Perhaps Dana Colarulli will talk
3 about the telework legislation that passed. But
4 just as a matter of course, we will be expanding
5 our geographic pilot as we go through time once we
6 work out the requirements of the legislation. And
7 trademarks totally supports trademark work at
8 home, it's been a real win/win for the office, I
9 think it's contributed to our very low attrition
10 rate and our ability to keep experienced examiners
11 who continue to want to do the job and work for
12 the USPTO.

13 The "Trademark Bullies" study, we have a
14 mailbox open, it has not received a lot of
15 comments, but we think that we will continue to
16 get comments, and often you don't get them until
17 the very time that the mailbox closes.

18 We're going to be having some
19 roundtables of this subject matter. The dates and
20 places haven't been set up, but they will not be
21 exclusively here in Washington, D.C., so that's
22 something that I think we can look forward to,

1 too.

2 Let me talk about our consistency issue.

3 There's been a lot in the blogosphere about
4 consistency in the trademark office. And as you
5 all know, we have a consistency mailbox which is
6 where we try to solve consistency problems, it's
7 very easy to find. You get on the web site, click
8 on trademarks, click on contact us, and the
9 consistency mailbox is in the list of mailboxes
10 that are there when you look at contact us.

11 I'm looking for my stats on that. We
12 get things into the mailbox, but it's pretty
13 lonely because we don't get a lot into the
14 consistency mailbox for a variety of reasons.

15 Nevertheless, we have gotten a few
16 things in it and we are using. We opened it June
17 23, we've received 13 requests, five are ID
18 related, seven of the 13 were granted, two denied,
19 four were forwarded to the proper place. So this
20 is where we are in consistency.

21 I know some of the things on the INTA
22 blog have been what's going on, they say they're

1 consistent, why aren't they consistent, you know,
2 but apparently the folks haven't submitted their
3 issues to this particular mailbox that are talking
4 about this.

5 And then trademark user feedback, at the
6 suggestion of this Committee, we have a user
7 feedback mailbox on the front trademark page, and
8 it opened in February, we've had 110 submissions,
9 nine were positive, 29 were suggestions for
10 improvements or complaints, 53 were questions that
11 should have been directed elsewhere, seven
12 regarding the Madrid Protocol Survey, and two
13 regarding the accuracy of identifications of goods
14 and services, and ten related to the so called
15 Bully Survey.

16 We answer all of them that are
17 answerable. We forward the ones to the
18 appropriate place where they need to be forwarded.
19 But again, considering this period of time this
20 has been open, not a lot of input into this
21 mailbox, but we have lots of, you know, again, we
22 continue to try to reach out to people and to hear

1 what people have to say and look for suggestions
2 and comments.

3 And I think that covers all the things
4 for opening remarks. If there are any questions,
5 I'm happy to talk about them.

6 CHAIRMAN FARMER: Thanks, Lynne. My
7 guess is that, you know, we'll kind of now just
8 march through the items on the agenda, some of
9 which you've touched on, and we may go into a
10 little bit more depth, and if there are any
11 questions, maybe they'll just get flushed out that
12 way. I'm just going to kind of take it from the
13 top towards the bottom. I've got first a bucket
14 of issues under the general rubric of
15 communicating the trademark examining attorneys.
16 The first one I'll pick out is the status of
17 anticipated eventual transition to requiring
18 examining attorneys to put their email addresses
19 on office actions, and if you could give us an
20 update as to where you all stand on that.

21 COMMISSIONER BERESFORD: I expect that
22 will happen. What we're doing right now is

1 working on a clear set of instructions for
2 examining attorneys to know what to do in certain
3 circumstances. For example, if the applicant
4 sends the response to the office action in an
5 email to the examining attorney, we need a clear
6 set of steps for how to deal with that so we deal
7 with it consistently across the operation. And
8 there are some other issues, but we continue to
9 work on that and expect that it will happen.

10 CHAIRMAN FARMER: We'll look forward to
11 that. And then we'll go ahead and do the other
12 email issue. I can't remember who came up with
13 the idea, it may have been you all, but to foster
14 communications that actually made contact, adding
15 to the trademark application form, where someone
16 might be able to state a secondary email address,
17 the idea being that very often, at least for
18 firms, the primary email address is often an IP@
19 or a TM@ or whatever, but that will usually only
20 get you to the docket clerk, it won't get you to
21 the attorney who's prosecuting the application,
22 and thus, the possibility of adding a second email

1 address that may be the attorney who filed the
2 application so that the examining attorney may
3 have an easier job of making contact with them,
4 but at the same time, having only the primary
5 being the one that would trigger paper if, for
6 instance, it fails, and so I wanted to check in
7 with you all as to what you all are thinking about
8 that.

9 COMMISSIONER BERESFORD: We're
10 definitely working on that because we think this
11 is something that would be helpful to examining
12 attorneys and to the folks that are prosecuting
13 the application.

14 The issue, as you've touched on, John,
15 is that right now, when we send out an email and
16 we get a bounce back, we have a procedure for then
17 sending out paper for that application, to make
18 sure that they get the communication.

19 We don't want to be in the position of
20 giving you the possibility of having three email
21 addresses and getting three bounce backs and
22 having an automated process that then sends out

1 three paper office actions, so we're working on
2 having a primary email address where, if there's a
3 bounce back on that address, we would send out a
4 paper office action. Otherwise, bounce backs on
5 all the other courtesy addresses, that's what
6 we're calling them, would not trigger a paper
7 response.

8 So we're figuring out how to do that in
9 an automated fashion, and that would be a plan.
10 And we're hoping that - and this I think was a
11 suggestion from TPAC, that we do this, and it's
12 just a really great idea, I think it'll solve some
13 problems that we have now with setting up phone
14 calls, making sure that we can contact the
15 prosecuting attorney directly, I think it will be
16 a good thing for us to do.

17 CHAIRMAN FARMER: Right, and I think the
18 sense of TPAC has been as long as the primary gets
19 through, we don't think paper needs to be
20 triggered at all if the secondary email address
21 fails because that's just a courtesy to try to
22 establish contact. And for those listening at

1 home, so that we can show all of our math, I think
2 part of the thinking of TPAC is, if it's easier to
3 establish email communications with the examining
4 attorney, what that might do is an avoidance of
5 telephone tag, where you might be able to send an
6 email and say, hey, can we chat Wednesday at 9:30,
7 that's not really good for me, how about Tuesday
8 at 10:00, okay, that's fine, do you want me to
9 call you or me call you, vice versa, and you just
10 cut back on the back and forth that takes the time
11 of both parties, the examining attorney, so they
12 can be more efficient, not constantly having to
13 get a file, prep up, return a call, you don't get
14 an answer, and then, of course, on the prosecuting
15 attorney or individual's end also.

16 And that kind of naturally segues into
17 the other two communications issues, and so I'll
18 throw them out at the same time. The first one is
19 morphed a bit, but I put it on the agenda as
20 follows: Explore establishing office hours during
21 which generally one can call a trademark examining
22 attorney and have that call answered unless

1 examining attorney is on the phone with someone
2 else.

3 And related to that, possible changes to
4 expectations as to when trademark examining
5 attorneys return calls so that such calls will be
6 made during normal working hours Monday through
7 Friday. I think that's just a general
8 introduction into what are you all thinking about
9 the future of phone communications of examining
10 attorneys.

11 COMMISSIONER BERESFORD: It's of course
12 very important. We are a public service
13 organization, and it's very important that we
14 return phone calls and answer the phone. We're
15 getting ready to send out guidance on what the
16 phone rules are to remind folks. We had phone
17 training more than a year ago on how to answer the
18 phone and what to say and lots of other things, so
19 we're going to be reminding folks about that.

20 We will certainly be encouraging folks
21 to put their - put into their voicemails and on
22 their office actions times when they might be

1 contacted. It would be especially useful on the
2 voicemail because people call and they can hear,
3 oh, I'm going to be available today between 2:00
4 and 4:00, whatever, and so it gives you a real
5 good idea of when you can expect to get that
6 examining attorney.

7 All of those things we're looking into.
8 As Howard will tell you, they have labor
9 implications, so we're taking kind of a phased
10 approach to them. But again, I am totally
11 committed, and I know Debbie is, too, to customer
12 service, this is what we're here for.

13 CHAIRMAN FARMER: Excellent; my
14 understanding is that under, I think it's the Ace
15 Award and other things, presently, while there is
16 an incentive given to a trademark examining
17 attorney to utilize the phone, there's not
18 necessarily an incentive to specifically answer
19 the phone, as opposed to always return telephone
20 calls. Returning calls are great, but, you know,
21 the person on each end wants to be the one to have
22 the call at the time that suits them. You can get

1 a little back and forth. Do you think there may
2 be a future in somehow offering an incentive or
3 something that encourages examining attorneys
4 beyond their professionalism to actually pick up
5 the phone when it rings, if, you know, they're
6 available, if they're not talking on the phone
7 with someone else, as opposed to being in an
8 approach of all these just receiving calls and
9 returning them when you wish.

10 COMMISSIONER BERESFORD: Well, it's
11 certainly something we're going to look into.
12 We've just started talking about it, and I don't
13 think we have a good idea about exactly how we
14 will do that, but we're certainly willing to look
15 into it. It's something that, you know, again, I
16 want people to be good public servants, answer the
17 phone, resolve the issues, and work with the bar
18 on their applications, on prosecuting their
19 applications, they're extremely important, that's
20 what we're here for. So how we get folks to be
21 more responsive is always a good question and one
22 we'll continue to look at.

1 CHAIRMAN FARMER: I think there's a
2 consensus among the voting members of TPAC that we
3 would like to see a day when there is an incentive
4 to answer the phone. And we recognize, of course,
5 that that's, in part, a labor management issue
6 that will have to be worked out. And, Howard, in
7 case many examining attorneys are watching, Howard
8 has been very engaged on that issue and looking
9 out for their interest, so those have not gone
10 unrepresented as we've discussed those things.

11 Are there any questions or comments on
12 email phone stuff before I go on down the agenda?
13 Not seeing any, the next thing we have - by the
14 way, I failed to mention that the issue we just
15 covered is one that Bob Anderson has been watching
16 over for us.

17 Jim Johnson has been monitoring for us
18 with an update and discussion of TPAC concerns
19 about trademark filings being made by online
20 non-attorney services and/or non-attorneys working
21 for online services. So what's going on with
22 that?

1 COMMISSIONER BERESFORD: We've talked
2 about this numerous times, and we have relatively
3 limited ability to do anything about this. We
4 report unauthorized practice when we find it to
5 our OED office. They, in turn, report it to the
6 state bars, who take action on it. But we have
7 relatively limited ability to deal with this. So
8 we do what we can, but we don't have a plan to do
9 anything more at this point than we have been
10 doing.

11 MR. JOHNSON: Lynne, as I read the rule,
12 and maybe I just don't understand it, I thought
13 that only lawyers could represent others before
14 the PTO. When you look at the web sites of
15 several of the known online trademark people, they
16 state that they will help you prepare your
17 application right there on the web site, so it
18 seems to me that's proof on its face, at least
19 from the way I look at that, they're engaging the
20 unauthorized practice of law before the office,
21 can we challenge them on that basis?

22 COMMISSIONER BERESFORD: First of all,

1 some of those sites have lawyers working for them,
2 you know, and we're not in the position to
3 investigate, so there's that issue. Also, we
4 suspect that we get a number of applications that
5 look like they're filed by the applicant, but have
6 been actually prepared by one of the online
7 services. When it's clear to us that someone is
8 engaging in the unauthorized practice, through one
9 means or another, we take action, ROED
10 investigates, and then we take the person off, we
11 send them a letter and tell them we will not
12 correspond with them anymore and we'll only
13 correspond with the applicant, or if the applicant
14 gets a legal representative, we'll correspond with
15 them.

16 And again, we report folks to their
17 state bar. But, again, we have limited authority.
18 And, you know, I don't see us getting into the
19 business of investigating these folks, I don't
20 think we have the capacity or the statutory
21 authority to do that.

22 CHAIRMAN FARMER: Jim, did you have

1 anything else? While Lynne is the reporter to us
2 on this issue, this is not Lynne's primary
3 responsibility, so I'm not taking Lynne to task.
4 But I personally feel, and I think this may be a
5 sense of TPAC, that we hope that the USPTO as a
6 whole will become more aggressive on this issue,
7 more aggressive than it is presently right now.

8 We feel that this is a very serious
9 issue, and it's not just a protect attorneys and
10 their incomes issue, it's a consumer protection
11 issue. We would like to see the office I believe
12 become more aggressive in trying to uncover
13 violations of I think it's Rule 11.5, and feel
14 that even if it doesn't have the power to
15 prosecute someone for unauthorized practice of
16 law, that they can be aggressive in trying to
17 uncover it and making certain that it's followed
18 up on.

19 And I will point out that some of these
20 services have started to be taken to task by
21 various state bar organizations for their
22 activities. And also, one thing we've discussed

1 before is trying to get the attention of the
2 Federal Trade Commission.

3 It takes a big megaphone to get their
4 attention because they have limited resources and
5 don't pursue a reissue, but I think that as I can
6 tell, unanimously calling the office to use its
7 standing to try to get the interest of the FTC to
8 look at this issue, because I think there's a
9 concern amongst members of TPAC that maybe these
10 services are not entirely clear as to what they
11 offer and what they don't offer to consumers, and
12 we don't want folks to be left high and dry, to be
13 thinking that they're going to be given more in
14 the way of clearance or be given more in the way
15 of registration prosecution than they're going to.

16 I've looked at those systems or those
17 services myself recently, and I felt, for
18 instance, in one case, that it was not entirely
19 clear as to whether the service was going to be
20 there with you once the application gets its first
21 office action, whether they're going to see you
22 through until the end, and I think that's a

1 consumer protection issue.

2 And so, again, Lynne, we're not picking
3 on you, because I know that that's the
4 responsibility of other folks in the office, but I
5 hope the leadership of the PTO hears that we think
6 this is a big issue and it deserves a harder push
7 than it's receiving right now. Does that call up
8 any other comments from other folks on TPAC?

9 MR. LOCKHART: Does the Federal Trade
10 Commission have a Public Advisory Committee like
11 the TPAC or the PPAC? If so, maybe they would
12 have an interest in urging the FTC to pursue this
13 matter.

14 CHAIRMAN FARMER: That's a good
15 question. Jim, you were about to say something?

16 MR. JOHNSON: I also want to note that a
17 lot of examining attorneys have complained about
18 the efforts of these online practitioners because
19 they mark up the works for everybody else. So,
20 again, I understand and appreciate the limited
21 abilities to do it, but let's make sure we explore
22 all avenues before we walk away from challenging

1 this, because it looks kind of serious to me.

2 Thanks.

3 CHAIRMAN FARMER: Sure; and one thing I
4 noticed when I was investigating these services
5 recently is, I think when this impression was
6 great for the public, is that they don't
7 understand, is that you can do practically the
8 same thing yourself on the USPTO web site.

9 Now, that doesn't mean that I'm
10 encouraging a bunch of folks to file pro se
11 applications, it's certainly your right to do so
12 and to represent yourself, you may or may not fall
13 into pot holes, but, you know, for instance, the
14 service will offer for a price of over \$100 to do
15 a direct hit conflict search for you before they
16 file your application, and you can just go to TEAS
17 and type in the exact mark you want and do that
18 yourself and save over \$100 and have a very quick
19 answer.

20 Or, for example, I've actually gone
21 through one of their filing processes to take a
22 look at it, and, you know, it's not that different

1 than just using TEAS or TEAS Plus in answering the
2 questions directly on it, they're just populating
3 it into those forms. In some cases, I'd say that
4 the services that they offer may be a little less
5 word intensive, and so they may appear to be a
6 little less stressful, but ultimately it's filling
7 in the same forms, and they don't really give you
8 the additional guidance beyond the very robust
9 guidance that's already on TEAS and TEAS Plus,
10 because through work such as Lynne's been working
11 on videos and all these pop-up windows and stuff,
12 you get explanations, that stuff is there already.

13 And so I think one misimpression that
14 the public may get getting is that this service is
15 offering something that the PTO doesn't already
16 offer. And so I'm just, again, very concerned
17 that the public may be not fully understanding the
18 value proposition that they're getting. So sorry
19 to get on my soapbox about that. Anymore on that
20 issue before we go on to the next one?

21 The next one is the Deadwood issue, and
22 that is, update regarding ensuring accurate

1 prescriptions of goods and services, i.e.,
2 minimizing deadwood, especially in the wake of the
3 Federal Circuit decision in In Re: Bose Corp. And
4 we wanted to know where you all stand in your
5 process of that. I think you all may be working
6 on setting the table to do some studying.

7 COMMISSIONER BERESFORD: Yes, we have a
8 rule that you guys will be getting in the next
9 couple of weeks to change the process, to change
10 the ability of post registration examiners
11 slightly to give them more ability to request
12 specimens when something looks suspicious or to
13 ask for more information if they don't really
14 understand what they're seeing in the Section 8
15 affidavit.

16 Once that is done, then we will be
17 coming back to this Committee and asking them, we
18 want to do a study to see what really the Deadwood
19 percentage of issue is in post registration, there
20 are a number of different ways we can do that, and
21 we'll come back to this Committee to talk about
22 that, to find out what you all think is the best

1 way to proceed in this issue.

2 We want to make sure we do something
3 that's meaningful, and, of course, the best way to
4 do that is to get input from people that actually
5 work in the area, so that's the plan at this
6 point.

7 CHAIRMAN FARMER: Kathryn Barrett Park
8 is our leader on this issue. She's done a lot of
9 work on it, too. Kathryn, if you have any
10 questions or comments, I'll turn the floor over to
11 you since you've been leading us on this.

12 MS. PARK: No, I think we agree that a
13 study is the next right step. And I take it,
14 Lynne, that the rulemaking is sort of the pilot
15 that we had talked about, for want of a better
16 word, last time.

17 COMMISSIONER BERESFORD: The rulemaking
18 sets us up to do the pilot. So that's what the
19 rule - that's why we're waiting on this rule, and,
20 again, we'll have it out soon. I've talked about
21 it to lots of different people. I don't think
22 it's anything that will raise anybody's eye, but

1 one never knows when you propose a rule. I think
2 it doesn't make much of a chance except to give a
3 little more ability of post registration examiners
4 to ask more pointed questions when the situation
5 arises that they might want to do that.

6 MS. PARK: One other question I had is,
7 when we were in Phoenix at the INTA meeting and I
8 attended the subcommittee meeting, that group and
9 I think other IP organizations and other users
10 have put in comments on the long list of possible
11 suggestions that came out, and I wondered where
12 those other suggestions are, are they just on hold
13 until the study is done?

14 For example, INTA was in support of
15 having sort of increased solemnization of the form
16 and a checklist and things like that, and I
17 haven't looked at what the other groups and other
18 comments have been, but where are those right now?

19 COMMISSIONER BERESFORD: We're talking
20 to the IT folks about having a check box for each
21 item in the post registration, whether or not that
22 would be a good idea. We're trying to get to

1 chatting with the Canadians about their Section
2 45, what they don't and do like about it, because
3 we've heard a variety of things. At the INTA
4 subcommittee, somebody said I used it and it was
5 great, so somebody with actual experience, you
6 know, so that's one thing.

7 But we've also talked to people that
8 went, oh, you don't want to do that, it doesn't
9 work very well, well, the question is why not, can
10 it be tweaked. So we've got a call into the
11 Canadian office to see if we can figure out what
12 they think about this procedure.

13 The other items on the checklist are,
14 we're talking about them internally, about how to
15 do them and how to go forward with them, they
16 haven't been forgotten. And, of course, we're
17 reading INTA's comments and other comments that
18 we've gotten, and I think it's fair to say from
19 reading the comments we've gotten, everyone wants
20 the register to have as much integrity as
21 possible. The second thing is, they don't want to
22 do that by having to have lots and lots of

1 additional work in their boxes. And so the idea
2 here will be to do this pilot, and then if we
3 think there's a problem, to figure out how to
4 solve the problem without let's say causing
5 problems for the innocent, you know, unless it's
6 absolutely necessary.

7 So there are some things that we have to
8 find out, and, of course, it's a plan as we go
9 down the road. And I feel certain that trademarks
10 and this committee will work wisely together to do
11 it the right way.

12 CHAIRMAN FARMER: Just to provide some
13 transparency to the public as to where TPAC is on
14 this, we on TPAC have looked at a lot of the ideas
15 that came out of that roundtable that Kathryn
16 participated on, Mary was at, I participated on,
17 and other folks on TPAC were not there to put in
18 their two cents.

19 There are different views. Some people
20 would like to keep things pretty much as it is,
21 some people, like me, typically aggressive, want
22 to see every good and service proven, and the way

1 we've decided to approach this, and please correct
2 me if I misstate it, is to stand back and wait and
3 see how that study looks so we can see whether we
4 have a big problem or a small problem. If there's
5 just a little bit of Deadwood in there that
6 wouldn't call for a sledgehammer approach, if
7 there's a lot of Deadwood in there, then there may
8 be the basis for more significant changes to
9 trademark practice that could effect people's cost
10 and expense, and we're just going to stand by so
11 that we don't come forward advocating the wrong
12 sized approach to the problem, and so we'll be
13 cautious, and we'll look forward to hearing back
14 as to how the picture looks and we'll address it
15 then. Kathryn, is that a fair statement?

16 MS. PARK: Absolutely, yes.

17 CHAIRMAN FARMER: Next we have an update
18 regarding any possible changes to trademark fees
19 such as for paper or electronic filing. And
20 Elizabeth Pearce has been our fee study lady and
21 so she's really been on top of this issue, so off
22 to you. I'm just giving you, Elizabeth, a heads

1 up.

2 COMMISSIONER BERESFORD: Yes, we have a
3 rule that we're writing right now for a charge for
4 paper filings, again, that should be coming out,
5 and probably soon after you see the post
6 registration rule, you'll see this paper fee rule
7 more to encourage people to file electronically
8 than anything else, but also because we recognize
9 that processing paper costs us extra money, so
10 that rule is in progress, and we plan to bring it
11 out in the next month or so.

12 In terms of changes to trademark fees, this is a
13 question - this is really a big policy question from
14 my standpoint at least. When we look at fees and we
15 change fees, we usually like to have a reason for
16 doing that. And one of the guiding principals over
17 the years has been, the most important thing we do is,
18 give people notice of who claims rights and what.
19 So we strike to keep our application fee low so that
20 more people are encouraged to file and put their mark
21 on the register. This has been one of our guiding
22 principals, and we continue to embrace that.

1 When we looked at the paper fee, we were talking
2 about, yes, it's more money to process paper, but from
3 the policy standpoint, it's also better for the bar
4 and the office and people who use our systems to
5 encourage more electronic filing because it encourages
6 the accuracy and the speed of information getting into
7 the database. Again, we don't have anything against
8 changing fees, we also have to look at the economic
9 landscape and what's going to happen in the next
10 couple of years, but changing our fees is something
11 where we think we have to have a discussion about what
12 it is we want to accomplish with the change of fees,
13 and that's kind of the whole picture from my
14 standpoint.

15 CHAIRMAN FARMER: Elizabeth, do you have
16 any thoughts on this? I'm especially interested
17 in Elizabeth's thoughts, because while this issue
18 is developing, Elizabeth won't be here several
19 months down the road as things develop, and so I'm
20 very interested in what she's been thinking about
21 the issue.

22 MS. PEARCE: I think Lynne covered a lot

1 of what we discussed in subcommittee yesterday
2 about this. It's very much an issue in progress.
3 The paper filing issue, trying to encourage
4 people, to drive people toward doing electronic
5 filings is very important, and that's been
6 successful more and more, that is exactly what's
7 being done, there are fewer and fewer paper
8 filings out there.

9 But what we'd like to do is, for the
10 sake of the integrity of the register, and I think
11 Lynne expressed that well, get as many things into
12 the register as quickly as possible and keep the
13 fees low so people will file. One thing I would
14 like to add to that is, I think it's also
15 important to make it economically reasonable for
16 them to renew existing registrations, because
17 we've got common law rights in the United States.
18 A lot of times people, if they're having economic
19 issues or budgetary issues, may choose not to
20 renew and rely on their common law rights instead.

21 I don't think that that is the best
22 possible solution for the trademark office. So

1 one thing I would urge the trademark office to
2 consider is whether or not there are any economic
3 imperatives on renewal fees also, and to make sure
4 that we do not make that process onerous for
5 people, and thereby, encourage them not to renew
6 and to rely on the common law rights, that was
7 something we discussed yesterday a great deal and
8 I think they're aware of that.

9 COMMISSIONER BERESFORD: Thank you.

10 MS. PEARCE: I don't know that there's
11 anything else. I see that Nabil is here, I
12 thanked him earlier and he was not in the room.
13 He did some beautiful charts yesterday which
14 explained a lot about what the cost of various
15 filing stages are. This is something that James
16 Conley is going to continue to stay on top of, and
17 I think we've made a lot of progress. And that
18 was the only other thing I could think of that we
19 covered that Lynne didn't mention was the renewal
20 fees.

21 CHAIRMAN FARMER: The only other thing I
22 can think of on fees, and I think it may have been

1 mentioned in passing, is that I think that there
2 is strong unanimous TPAC support for maybe a
3 surcharge on all paper filings. And I think that
4 what you all were seeing was that you can never
5 make up how much more paper costs because of what
6 it does to the system, and so we really are trying
7 to not only cover the cost of those filings, but
8 encourage folks to use the electronic system.

9 MS. PEARCE: Yes, I would like to point
10 out that, yes, the paper surcharge is not going
11 to, by any means, cover the additional cost. It
12 is purely a measure to continue to encourage
13 people to go to electronic filings when possible,
14 which are very convenient and work very well. My
15 office does everything electronically now and it
16 works beautifully. We are big believers in TEAS
17 Plus, which I think is a great system, and I would
18 encourage everyone to use that. And anything else
19 that you file in subsequent prosecution or in post
20 registration, do it electronically, it's really
21 very, very easy, you get immediate response back,
22 you get that receipt. Once you do it, you'll

1 think, gosh, why was I ever doing it any other
2 way? It's a great system and I hope everyone
3 continues to use it.

4 MR. LOCKHART: I just wanted to echo
5 Elizabeth's comment about taking a closer look at
6 the cost of renewals, because at the present time,
7 unless I've got my numbers wrong here, one can
8 register a mark if you use TEAS Plus for \$275 per
9 class, but to renew it, it's \$500 per class, and
10 that just seems like a pretty big difference.

11 CHAIRMAN FARMER: Anything else on that
12 issue? All right. The next one I think we may
13 have covered fully, but just in case we didn't,
14 the status of the Trademark Bully Study, I think,
15 Lynne, you gave us the update, Tim is our champion
16 of that; did you have anything, Tim?

17 MR. LOCKHART: I have nothing further.
18 I think Lynne touched on it in her opening remarks
19 and I have nothing to add.

20 CHAIRMAN FARMER: Yes, I was just
21 checking the thing off the list as we go down.
22 And we may have entirely covered this one, but

1 I'll read it out just in case. Some quality
2 issues, discussion regarding the excellent first
3 office action initiative. I'm not sure if that's
4 the same thing as the new quality benchmark or
5 not, and any other programs that target
6 substantive quality of office actions. You may
7 have already covered that one fully.

8 COMMISSIONER BERESFORD: I think so, but
9 I think I have covered it, but I'm happy to answer
10 questions if there are questions.

11 CHAIRMAN FARMER: I don't know that
12 there are any questions. Bob is our quality
13 champion; anything from you, Bob?

14 MR. ANDERSON: No, I don't have anything
15 further that would add to what Lynne said.

16 CHAIRMAN FARMER: Okay, wonderful, okay.
17 Well, we're just ticking right along. Let's see,
18 this is the general just oversight stuff, report
19 on current trademark office, speed and quality
20 performance metrics. Lynne has given us -
21 certainly tell us about it, but she gave us, you
22 know, the chart in advance, and it appears to me

1 that everything is right where it should be, but,
2 Lynne, I'll let you add anything to that you want
3 to.

4 COMMISSIONER BERESFORD: Yes, I think
5 the - looking at the end of the year statistics,
6 we were two- tenths of one percent under our final
7 action compliance measure. It was within the
8 error rate, but it was at 96.8 instead of 97
9 percent. On E-government, we raised our total
10 number of disposals. The number of disposals
11 handled totally electronically has risen now to 68
12 percent, which is great, because it means people
13 are more and more using the electronic systems.

14 And our pendency numbers are right on
15 target, we're at three months for first action
16 pendency, and disposal pendency is at 13 months
17 for files with inter parties and suspended cases.
18 And for the pendency cases without inter parties
19 or suspended cases, it's 10.5 months, again, I
20 expect that to go down.

21 And when you look at the productivity
22 and quality measures for our staffing

1 organizations within the trademark organization,
2 what our legal instrument examiners do, what our
3 intent to use paralegals do, what our processing
4 paralegals do with pre-exam and post registration,
5 all of those areas are meeting our quality goals
6 and meeting their pendency goals, all of them are
7 ticking along.

8 We've seen tremendous improvement in
9 those staffing organizations, and we've seen
10 tremendous improvement in those staffing
11 organizations over the past couple of years, we've
12 rolled out work at home for many of them, and this
13 has proved to be a benefit for them and for the
14 office. So I really see that throughout the
15 organization, all of our organizational statistics
16 are looking really good for quality and really
17 good for timeliness.

18 MS. PEARCE: I'd especially like to
19 commend the ITU unit. I just wanted to say thank
20 you to the ITU unit, they've really improved their
21 pendency since last we met.

22 CHAIRMAN FARMER: We have a ghost in the

1 machine. Let's see, next one, status of TPAC
2 goal, get the Official Gazette published in HTML
3 rather than PDF. And it requires tremendous
4 concentration. We have someone deliberately
5 throwing people off guard.

6 COMMISSIONER BERESFORD: Right. The
7 goal of getting the HTML for the Official Gazette
8 is one that I think will accomplish in Trademarks
9 Next Gen. We haven't got it on the plate right
10 now. The best we could do is improve the
11 downloading speed of the Official Gazette. But we
12 hear you loud and clear and we think this is
13 something that would be beneficial to trademark
14 owners, and so it's in the cue, so that's the best
15 I can do on that.

16 CHAIRMAN FARMER: Yes, excellent, and
17 it's gotten better. I mean they've gotten the
18 file size down, and so it does download better,
19 and we understand that you've got technological
20 limitations that just keep you from getting there
21 right away, and while we're pushing towards the
22 goal, we realize you can't just make it happen

1 tomorrow. Kathryn, did you have anything to add
2 to that?

3 MS. PARK: No, I was just going to echo
4 that it's really gotten a lot better already, so
5 thank you.

6 COMMISSIONER BERESFORD: Good, yes,
7 thank you for the folks in the office, Craig and
8 others, who realize what is happening, so that's
9 great.

10 MR. LOCKHART: We did talk about this a
11 little bit yesterday in the IT Sub Committee, and
12 the feedback we got was, publishing the OG and
13 HTML could be done once the TMEP upgrade is
14 complete, and it's really a question of what is
15 the priority of this for the trademark operation.
16 I mean the higher priority it is, the sooner it
17 could be done. And, frankly, I did not know the
18 answer to that as far as where it falls in the
19 relative priority, maybe that's something, Lynne,
20 that you could address.

21 COMMISSIONER BERESFORD: I don't know
22 where it on the priority list either. We're far

1 from having the TMEP, however. I mean a new TMEP
2 was posted, and just for everyone's information,
3 we also have archived copies of earlier TMEP's on
4 the web site. But we are far from, and this is
5 another topic further down, we are far from
6 getting the TMEP in a form that is fully
7 searchable and easily changed and maintained, so
8 that when that happens, then perhaps we'll - and,
9 for me, I think the TMEP was considered the more
10 important goal here, maybe it shouldn't be, but
11 that's what we've been looking at as the higher
12 goal.

13 MR. LOCKHART: You're absolutely
14 correct, that was the impression I had yesterday,
15 from yesterday's meeting, that the TMEP upgrade is
16 the more important goal, and then they said after
17 that, they could take a look at the OG, and how
18 soon after the TMEP upgrade they look at the OG
19 was really just a matter of how badly the
20 trademark operation wanted it. So they may be
21 looking for some additional feedback from your
22 office on that.

1 COMMISSIONER BERESFORD: Yes.

2 CHAIRMAN FARMER: I think to add on top
3 of what Tim just said, we feel like the question
4 was sort of posed for us, but we didn't know
5 everything else on the list, so we could
6 meaningfully say, well, it should be high, low or
7 middle because we wouldn't know where we're
8 butting in relative to other tasks and so we'll
9 just rely on your organization to slight it where
10 you think it's appropriately slighted, if that's a
11 fair statement.

12 And since we're on the TMEP, why don't
13 we go ahead and go there. I had known the
14 discussion of progress towards the TPAC goals,
15 having it continuously up-to-date, and you've just
16 reported you all have just put out a new revision,
17 which is good.

18 And also, I know it's been a goal of
19 yours to eventually get to being able to have a
20 parallel wiki one, and so maybe you can let the
21 folks listening at home know as to where that
22 stands.

1 COMMISSIONER BERESFORD: I don't think
2 much progress has been made on the wiki TMEP. I
3 think what we - and I'm not sure much progress has
4 been made on having the TMEP - having an editor
5 for the TMEP that's useful that we can quickly
6 update it or update it on a regular basis, more
7 regularly than once a year, but that's still on
8 the wish list for OCIO to accomplish. So I don't
9 know when that will happen, but it's still on the
10 list.

11 CHAIRMAN FARMER: And it's my
12 understanding there, to flush out what you just
13 said, is that it's technological hurdles, it's not
14 just something that the trademark operation hasn't
15 done, it's just technologically the path has not
16 been paved.

17 And I've been hearing that there may be
18 some new tool available that you could use for the
19 TMEP, I can't remember its name, but I'm hearing
20 that it's not going to enable the wiki that you
21 desire to achieve, that it's going to be more like
22 a blog where you can post blog comments, which is

1 nice and maybe useful, but it's not the goal - it
2 doesn't enable the goal you're trying to reach.
3 Did I kind of get that right?

4 COMMISSIONER BERESFORD: Yes, there is a
5 tool that was developed for the patent side of the
6 house and it is a very nice tool and it will do
7 exactly the kind of things you're talking about,
8 but it isn't particularly well suited for we think
9 the kind of comments you would want to collect on
10 a legal document like the Trademark Manual of
11 Examining Procedure, but it a very - it's a tool
12 that was I think demoed to the subcommittee
13 yesterday and it's a very - it's an interesting
14 tool, and again, developed for patents, but, of
15 course, we can use it, too, and so this is
16 something that will be available we think
17 relatively soon.

18 MR. LOCKHART: And there could be some
19 utility to it. As Lynne says, it's not, you know,
20 the wiki version, but it has some usefulness.

21 CHAIRMAN FARMER: Right, and I think,
22 Tim, tell me if I get this wrong, but I think the

1 sense of TPAC is it's, you know, it's a nice tool
2 and we welcome it, but we still hope that at the
3 appropriate time, when it's the appropriate use of
4 resources, that we will get the wiki capability
5 and that the office won't see this tool as having
6 checked that box.

7 MR. LOCKHART: That's correct.

8 CHAIRMAN FARMER: Anything else on TMEP
9 before I roll on down the road? I'm going to skip
10 back up to I, and I think this is probably sort of
11 like the Official Gazette thing. But just so we
12 can keep the public informed, it said discussion
13 of progress toward the TPAC goal of having
14 electronic certificates of registration with an
15 option to obtain a paper certificate.

16 COMMISSIONER BERESFORD: Yes, I think
17 this will be something that comes in with
18 Trademark's Next Generation. There are so many
19 things that we've put forward as part of
20 Trademarks Next Generation, and there's a
21 relatively, you know, there's only so much
22 bandwidth in OCIO to deliver, so this is on the

1 delivery list, but it's not something that we
2 expect to see any time real soon, so --

3 MR. LOCKHART: If I can just ask a
4 question. Was this issue, getting electronic
5 certificate with a paper option, was that put into
6 the list of requirements for Trademark's Next
7 Generation?

8 COMMISSIONER BERESFORD: I believe it is
9 in that long list of things. When you use the
10 term "requirements", you're using a technical
11 term, which we've given a list of things that we'd
12 like, technically those aren't requirements,
13 because as OCIO will tell you, the requirements
14 are a very specific list of things and so on and
15 so forth, so it's something we've asked for, but
16 it is not a requirement.

17 MR. LOCKHART: I stand corrected, thank
18 you for that. But it is on the list of things
19 that we would ideally like to have, so if we don't
20 get it before Trademark's Next Generation, we'll
21 get it as part of Trademark's Next Generation?

22 COMMISSIONER BERESFORD: I would think

1 so, yes.

2 CHAIRMAN FARMER: We only have two more
3 agenda items for Lynne. And I'm thinking we
4 discussed maybe these would be more appropriately
5 asked during the OCIO part, but I'll just check.
6 One was on maybe changing the handling of
7 trademark assignments and the other was the
8 potential use of CAPTCHA technology for using tess
9 and tory databases such as that. Lynne, if you
10 have comments to go with those, although I think I
11 kind of get the impression that we need to ask
12 someone else mainly on that.

13 COMMISSIONER BERESFORD: Yes, the
14 assignment operation is assessment in OCIO for
15 many years, and John Owens or someone from his
16 shop would be able to answer the questions about
17 fax and also about CAPTCHA.

18 CHAIRMAN FARMER: I certainly think
19 leaving the CAPTCHA issue for OCIO would be a good
20 idea, but there was one thing that came up
21 yesterday that I did not understand, and maybe
22 Lynne or someone else could enlighten us on this,

1 what we were told in the IT subcommittee is, as
2 far as sending the notice of recordation of
3 assignments out by email instead of fax, that
4 could be done pretty easily from a technological
5 standpoint. But there was an issue about sending
6 out by email notice of recordation of assignment
7 of a document that reflected patent application
8 numbers, not numbers of issued patents, nothing to
9 do with trademark, but the application numbers for
10 pending patent applications, and that was news to
11 me; is that something that anybody could address?

12 COMMISSIONER BERESFORFD: Well, perhaps
13 somebody from the patent organization can talk
14 about that. Why that's holding back trademark
15 assignments, one doesn't know, but that's news to
16 me, too, I have no idea. And I don't know how
17 faxing them out - well, I don't know.

18 MR. LOCKHART: We discussed that, too.
19 I mean I don't understand, if you can send it out
20 by fax, why couldn't you do it by email, but maybe
21 that - and I don't know who would be the
22 appropriate person to look at that, but --

1 COMMISSIONER BERESFORD: We have a
2 volunteer.

3 CHAIRMAN FARMER: Step right up and
4 introduce yourself, please.

5 MR. CANNON: I'm Gary Cannon from
6 Trademarks. And I did meet last week with
7 assignments on this topic. So I can't really
8 speak for them as far as when they can do it or
9 anything, but they did see that technically it
10 would be rather straight forward, send out the
11 email, and that they had to clear certain issues,
12 and one of them they wanted to consider was
13 whether or not any of the data might also include
14 any sort of patent data, as well as trademark
15 data. And they were just going to clear it, it's
16 not that it was raised as an issue that it
17 couldn't be done, I believe that it - since '95,
18 the office has accepted trademark assignments as
19 separate from patents, but they just wanted to
20 clear the issue.

21 CHAIRMAN FARMER: Don't take off quite
22 yet. Tim, did I pick up on this correctly

1 yesterday when you all were briefing us on it? I
2 think presently the assignment documents
3 themselves are not posted online, right, it's just
4 the record of the assignment?

5 MR. LOCKHART: Yes, that's my
6 understanding. You can see the record title to
7 whatever the trademark documents are, but you
8 don't see the actual assignment documents. We did
9 talk about making them visible.

10 CHAIRMAN FARMER: And I think especially
11 because I think presently they're just taken on
12 face value, the office does not get into the meat
13 of the assignment and make a judgment as to
14 whether it's an effective assignment or so forth
15 or so on.

16 MR. LOCKHART: And I don't think that's
17 going to change.

18 CHAIRMAN FARMER: Right, and I'm not
19 saying it should, but where I was going with that
20 is that if those can eventually be put online,
21 since the office doesn't examine them, so to
22 speak, it may be a public service to have them

1 posted publicly so that someone trying to assess a
2 chain of title can do that assessment more
3 accurately.

4 MR. LOCKHART: Gary talked about this a
5 little bit. You said you needed to run some
6 performance testing?

7 MR. CANNON: Yes, this is another topic
8 that I brought up when I talked to the assignments
9 people. They said they needed to run some
10 performance testing, they said that it's something
11 that could be done, exposing those documents on
12 the internet, but that they would want to run a
13 performance test before they did it to make sure
14 that they could meet the capacity needs or if they
15 had to make any adjustments.

16 MR. LOCKHART: Then I guess one way to
17 move forward would be, perhaps we could ask that
18 by the next TPAC meeting, that somebody take a
19 look at this issue about whether or not any of the
20 patent related information would be exposed by
21 sending out a notice of recordation by email and
22 whether or not the bandwidth and the computer

1 resources and so forth would permit the viewing of
2 the actual assignment documents.

3 MS. DENISON: Yes, I learned yesterday
4 that if you file a trademark recordation sheet for
5 assignments, it doesn't automatically fill in the
6 ownership data if you file more than nine
7 properties, I believe, and so I would just like to
8 make sure that when we're going through this whole
9 changeover, that someone look at that to see if
10 that technical difficult can be handled, because
11 it's important for the database to be correct when
12 people look for - they do an owner search, they'd
13 like to know what people really own, not if it was
14 the 10th or 11th or 12th property, then it didn't
15 show up, so that would be very helpful I think to
16 users.

17 COMMISSIONER BERESFORD: Does that
18 information appear on the web site, that there's a
19 limit to how many - no, because that would be
20 something that should just be on the web site so
21 people understand what the limitations are.

22 CHAIRMAN FARMER: So I guess the

1 practice that comes out of this is, always make
2 your trademark assignment a separate schedule so
3 you don't have to put up a bunch of business
4 details on what could become a public document.
5 Okay. Anything else on that issue? Before we
6 take a little break, any other questions or
7 comments from TPAC members on trademark operation
8 stuff generally? Anything from our folks visiting
9 here today? I don't think anyone in cyberspace is
10 going to talk to us yet. In that case, we'll take
11 a five minute break and we'll come back and visit
12 with Judge Rogers of the TTAB.

13 (Recess)

14 CHAIRMAN FARMER: We will now have a
15 discussion with the TTAB representative regarding
16 TTAB matters. Gerard Rogers. Mary Boney Denison
17 is our champion on TTAB stuff, and so as hard as
18 it is, I'm going to defer to Mary to let her kind
19 of drive us through this, and then when I can't
20 resist it anymore, I'll jump in at the end with
21 other questions.

22 MR. ROGERS: And an able champion she's

1 been. I think she's kept my feet to the fire
2 during my last year as acting chief, so you can
3 rest assured she's been doing her job. The first
4 item on your list, the status report on the coming
5 appointment of a new TTAB Chief Judge, the front
6 office has done all of the heavy lifting that they
7 need to do to get the position filled. I think
8 the candidates that they had selected were not SES
9 members, so there is requirements that people be
10 vetted through the Office of Personnel Management,
11 and that process is going on now, and I suspect
12 that it'll all be wrapped up sometime very soon,
13 but I think that's about all we can say on that
14 subject.

15 On a subject of other judges, as you
16 know, we have hired two judges in this year,
17 Angela Lykos and Frances Wolfson. Angela - well,
18 I couldn't say that one of them was hired in
19 particular to replace Al Drost, but one of the
20 two. We hired the two because we had to fill the
21 position vacated by Al Drost at the beginning of
22 the year, and we hired two of them because we also

1 anticipated the vacancy that would be created when
2 Paula Hairston retired.

3 And since our last meeting, Judge
4 Hairston did, in fact, retire. So the fact that
5 she's retired does not mean we are considered to
6 have another vacancy, a judge vacancy to be
7 filled, because that was anticipated and was taken
8 care of when we hired Angela Lykos and Frances
9 Wolfson.

10 We do know that, because of the age of
11 our ATJ staff and their experience and time in the
12 office, we'll probably be expecting additional
13 retirements in the coming calendar year. How many
14 and when, I can't really say. But at this point
15 in time, based on the objective measures that I
16 see, whoever is the Chief Judge will probably be
17 replacing judges as they retire, assuming that we
18 are able to do so under the continuing resolution
19 that the office may be operating under.

20 Because we do have, as we will discuss
21 in a moment when we get to TTAB statistics, a
22 growing backlog of finals awaiting decision. So

1 based on the objective measurements that we have,
2 we're doing fine with the paralegal work, we're
3 doing fine with the attorney work, our staffing
4 levels appear to be appropriate there, but we have
5 fallen behind on getting final decisions on the
6 merits out, primarily because we had far more
7 judges working on the revision of the manual than
8 we did others members of the board's personnel
9 group.

10 So we hope to fill those positions as
11 they become vacant and work off that growing
12 backlog of cases awaiting final decision. But
13 that's probably about all there is to say on
14 hiring plans, if you will, right now.

15 Since we've mentioned that those hiring
16 plans are influenced or have been influenced by
17 the revision work on the TBMP, I guess we can go
18 into that unless there are any questions about
19 hiring plans. As we discussed in subcommittee
20 yesterday, we have made great progress, even since
21 two weeks ago when I sent out a chart to you all
22 about the completion of the board's work and the

1 solicitor's office review on the various chapters
2 of the manual, and so as of yesterday, when the
3 subcommittee met, we had a full sheet of
4 checkmarks on our table, which was a great visual
5 I think.

6 And basically what that means is that
7 the board and the solicitor's office, we have
8 finished our work revising the content of all of
9 the chapters of the manual, so that's a great step
10 to have achieved.

11 We've also sat down and had some
12 preliminary work done with the CIO on getting the
13 Word documents, each chapter of the manual as a
14 separate Word document, getting them converted
15 into XML, which will serve as the springboard for
16 posting the manual on the web in two versions,
17 both an HTML version and a PDF version.

18 As we discussed in the subcommittee
19 yesterday, CIO is working on the final stages of
20 the RDMS system, the Reference Document Management
21 System, if I have the acronym or initialism
22 correct, and I'm told that the board's manual will

1 be the first manual for the office that will be
2 deployed under the RDMS system, and it will be
3 followed by future revisions of the MPP and the
4 TMEP, when they're ready to launch down the road.
5 So in some respects, we're a bit of a guinea pig,
6 the board's manual or procedure will be a little
7 bit of a guinea pig working through this OCIO RDMS
8 system, but presumably will get a lot of
9 individualized attention then to make sure that it
10 all goes well.

11 We did have a meeting with a contractor
12 who was working on the conversion process to
13 convert the Word documents into XML, and we've had
14 a test conversation done on one of our shorter
15 chapters, so that chapter is now being reviewed to
16 make sure that the conversion process didn't
17 corrupt any of the content or the text and that
18 everything looks good.

19 And again, this is just the conversion
20 of the Word document into XML. And if that
21 process works well, we will then move on and
22 convert all the other chapters into XML to get

1 them ready so that when this RDMS system is up and
2 running, and we hope that OCIO will have that up
3 and running by the end of the year or early in
4 January, we can then take all of the XML documents
5 that we've created and move them into the RDMS
6 system and get ready for our work to have the
7 manual posted in both HTML and PDF. Now,
8 concurrently with this work we're doing with CIO
9 on the technical end, we will have to get content
10 clearances, and so the first thing we'll do is,
11 when we finish the index of changes and summary of
12 - narrative summary of what's been revised in the
13 manual, we will be running that by Deputy Director
14 Barner and answering any questions that she and
15 her staff have about the revision of the manual.

16 Now that the reorganization is official
17 and we're reporting directly to the front office,
18 that will be our next clearance step. And then
19 once we've discussed the manual with Deputy
20 Director Barner and her staff, we will then go on
21 to seek the OMB clearances that are necessary for
22 guidance documents that are issued by the office.

1 I'm told from attorneys in general law,
2 that based on the good working relationship the
3 office has with the OMB desk officer, as evidenced
4 by the clearance that was obtained for the recent
5 revision of the TMEP, that it should be a
6 relatively smooth process for us.

7 And so, again, we'll be working on those
8 content clearances at the same time that we're
9 working on the technological conversion that we
10 need to complete so we can get the manual up on
11 the web in the form that everybody wants it to be
12 there in. And we also discussed yesterday the
13 schedule for revisions, and there is I think some
14 concern that we not have too much judge time spent
15 on maintaining the manual and revising the manual
16 moving forward, because all of the judge time
17 spent on revising it now has contributed in some
18 sense to the backlog of cases that we have
19 awaiting final decision.

20 So we're thinking probably semi-annual
21 revisions to get in precedential decisions that
22 have issued and perhaps more frequent targeted

1 revisions if, under this new RDMS system, it's as
2 agile as we're being led to believe, and can make
3 more targeted revisions as may be necessary based
4 on changes in the federal rules or based on
5 decisions that may come down from the federal
6 circuit. But that's where we stand on the manual.

7 MS. DENISON: I want to say that we're
8 delighted, all of TPAC is delighted that the
9 TTAB's work has been completed. I guess the only
10 thing left to be done is the summary by Ms. Lykos
11 on - that's being done this week. And so in terms
12 of your involvement, the work is done, and we're
13 delighted that that has happened. We are
14 disappointed, we had hoped that this project would
15 be completed by the end of the fiscal year, in
16 September, and it's now looking like it won't
17 really be online until the end of the second
18 quarter, in fiscal year - in order words in March,
19 so that is a disappointment, but it's done, and
20 we're just going through the approvals, and so the
21 users will be thrilled when this is up, because
22 this is a big beef that there hasn't been one in

1 six years, so everyone will be very, very happy
2 when this finally gets up, and I'm delighted that
3 the TTAB has finished its job, and they made huge
4 progress between the last TPAC meeting and this
5 one to get it done, so thank you for all your hard
6 work, and the amount of time spent on this was
7 just unbelievable, so now you can get back to
8 writing decisions.

9 MR. ROGERS: Yes. I did mention that to
10 all of the judges when I had them in a full judge
11 staff meeting last week, that we have quite a few
12 inter partes cases. As you know, our final
13 decisions are on ex parte appeals and on inter
14 partes cases, and we keep a running spreadsheet of
15 cases based on the date they're ready for a
16 decision, and so when a judge requests an
17 assignment of work, cases to work on, it could be
18 ex parte cases, it could be inter parte cases, and
19 I explained to them in this meeting that we had
20 quite a few inter partes cases awaiting final
21 decision and that they should request them sooner
22 rather than later to try and work through some of

1 them before everyone starts taking their leave in
2 December. So hopefully we'll be able to get a
3 little bit of a head start for next calendar year.
4 December is traditionally a little bit of a slow
5 month I think for production, as a lot of people
6 end up taking their use or lose leave, but
7 hopefully we'll be getting some work out of our
8 judges before they start taking the use or lose
9 leave, and then they'll hit the ground running in
10 January.

11 MS. DENISON: Yes, and TPAC understands
12 that you're not going to do monthly updates, it's
13 a pain in the neck, it takes up way too much time,
14 and I think that - my sense is that TPAC is fully
15 supportive of semi-annual updates, and, you know,
16 you can work that out however you want, how often
17 you have to meet, you know, to do that, but I
18 think that twice a year would be great.

19 MR. ROGERS: Yes. Of course, we may
20 have a group of individual chapter champions, if I
21 can borrow a term from the TPAC, to meet
22 periodically throughout the year just to discuss

1 the status of the chapters that they're overseeing
2 in cases that have issued and any rules changes
3 that may have occurred and whether they warrant
4 consideration for revisions, but again, those
5 periodic meetings would just feed into these
6 semi-annual revisions.

7 MS. DENISON: Right. And as you know,
8 TPAC had supported the hiring of a full-time
9 person to work on this, and that did not happen,
10 so we would very much like to stay in the loop as
11 to whether it's causing problems to have the
12 judges involved in this on a regular basis, and if
13 it's slowing things down too much because we're
14 willing to take up that fight again if it's
15 necessary.

16 MR. ROGERS: Yes.

17 MS. DENISON: Thank you.

18 MR. ROGERS: Thank you. And before we
19 leave the topic, I did just want to also publicly
20 acknowledge that the solicitor's office not only
21 reviews our precedential decisions, but they also
22 reviewed every chapter in the manual, and

1 basically that was two people, Christina Hieber
2 and Tom Shaw, and they did really good work, made
3 a lot of thoughtful comments.

4 They helped us get out the quality
5 precedential decisions that we issue, and they
6 also helped us tremendously with the manual. So I
7 just - they kind of operate behind the scenes, and
8 you're not often aware that they're doing a lot of
9 important work besides defending the Office of the
10 Federal Circuit, but they do provide a lot of
11 support I think to TTAB. Next subject,
12 accelerated case resolution. As I noted on the
13 one page, or two page statement of statistics that
14 I had sent a few weeks ago, for the last two
15 fiscal years, we were getting about one ACR case a
16 quarter submitted for review and for issuance of a
17 final decision.

18 But in the fourth quarter of the
19 recently closed fiscal year, for whatever reason,
20 we had an explosion and we had five cases
21 submitted for issuance of final decisions as ACR
22 cases.

1 We're hopeful that all of the talk that
2 we've been doing about ACR and all of the
3 publicity that TPAC has been giving the ACR
4 process, the information we've put up on our web
5 site, that all of this together is having a
6 positive effect and leading practitioners to
7 consider ACR as an option.

8 I'm hopeful that that increase during
9 the fourth quarter of FY '10 was not a blip and
10 that we'll continue to see more cases pursued
11 through ACR, and I'm hopeful that that's going to
12 happen. And, of course, we do have, and we
13 received through the TPAC the AIPLA submission,
14 the plug and play options. I was discussing with
15 a member of another organization, another bar
16 organization whose initials shall remain anonymous
17 at this point in time because they have to vet
18 their thinking on this up the line, but there may
19 be other plug and play options coming from other
20 groups who have looked at the AIPLA suggestions
21 and are now thinking, you know, that there may be
22 some holes they'd like to fill or there's some

1 additional suggestions they'd like to make.

2 And so I think we were discussing in the
3 subcommittee yesterday how we might reach out to
4 other organizations and try and get additional
5 suggestions that we can eventually put up on the
6 web site as a whole litany of possible plug and
7 play options, but while it may be a little slow
8 getting this response, I think we'll be likely to
9 get some more.

10 MS. DENISON: I was delighted to see all
11 the effort that AIPLA put into doing the plug and
12 play letter because it is very helpful, and it was
13 obviously a lot of work, a lot of thinking went
14 into that, so we're very grateful that they made
15 the effort to do that.

16 I would be thrilled if another bar group
17 also participated. I don't think that we should
18 let that delay things, though. And, as promised,
19 I'm going to work on drafting something up,
20 because I think that it's not something that's
21 obligatory, and we could start with options A and
22 B and change it later, it's easy to fix things on

1 the web site. If people don't like A and B, then
2 they won't use them. But I don't really see that
3 we have to wait and see that we get comments from
4 everybody that might want to participate, because
5 these are just options, and no one is being
6 required to do anything.

7 MR. ROGERS: Right.

8 MS. DENISON: So I would hope that we
9 wouldn't wait indefinitely in the hopes that
10 another bar group would come through with
11 comments.

12 MR. ROGERS: Right; I know it's been the
13 desire of this Committee to have the board post on
14 the web site, not just the information we have
15 about ACR and the list of cases and this kind of
16 broad invitation that you can create your own kind
17 of proceeding, but to actually give parties
18 default options.

19 And I've certainly been discussing that
20 with Judge Peter Cataldo, who's been kind of the
21 point person on ACR at the board, and we will
22 certainly be working on developing those plug and

1 play options. And I'm sure that by our next
2 meeting, we will have already posted them on the
3 web site.

4 MS. DENISON: Great; the reason that
5 we're pushing this, just for the public's
6 information, is that we don't think ACR is going
7 to get wide spread use until the plug and play
8 options are available, because it just will make
9 it easier for everybody than having to create
10 their own accelerated case resolution plan.

11 If they could choose between options A,
12 B and C, they're more likely to do it than if they
13 have to make it up and have an argument with
14 opposing counsel about it. So we're pleased that
15 five people used it, but five isn't really much of
16 a statistically significant number in terms of use
17 of the system compared to the number of cases that
18 the TTAB has, so we would hope to see significant
19 numbers, because it will lighten the load and
20 reduce the cost of proceedings for the people
21 involved.

22 MR. ROGERS: Right, and those are always

1 my watch words when I talk about ACR to any group
2 that I go and make a presentation to. It's
3 economical and efficient, because I think that's
4 the way it has to be looked at. And if that's
5 what you want for your client, you can still get a
6 decision on the merits, you still have full appeal
7 rights, you can still have an oral argument, but
8 you're just realizing savings and time and money
9 in discovery and trial if you adopt some more
10 efficient and economical alternatives. But I know
11 I'm preaching to the choir on that point.

12 The next item on the list is having the
13 TTAB become more assertive in encouraging
14 settlement, and this, of course, is also an
15 element in the strategic plan. Commissioner
16 Beresford mentioned the trademarks elements in the
17 strategic plan. There's five elements in the plan
18 that relate to TTAB, and one of them is reaching
19 out to the bar and reaching out to stakeholders
20 and determining what kind of involvement they
21 would like, by whom, and at what junctures and
22 various stages of proceedings to try and

1 facilitate settlement talks of the parties.

2 As the Committee is aware, we have a
3 draft request for comments. We had some very
4 productive discussions in the subcommittee
5 yesterday about revisions to that draft, and so
6 we'll be working on those sometime very soon. And
7 hopefully before Judge Kuhlke, who's my point
8 person on this request for comment, starts taking
9 her use or lose leave in December, but I know
10 she's got a few weeks left before she starts that,
11 so hopefully we'll be working on this quickly in
12 the next few weeks and then be in a position to
13 get something out quickly early in the new year.
14 And we'll incorporate as many of the revisions as
15 we can that we discussed yesterday and be prepared
16 to get that out very soon.

17 The strategic plan kind of mentions the
18 involvement of judges in settlement talks. One of
19 the themes we discussed yesterday was kind of
20 broadening the scope of the outreach effort and
21 thinking not just about judge involvement, but
22 attorney involvement, and possible outside

1 volunteer mediators or other ADR that the office
2 might be able to set up, possibly having somebody
3 detailed or working at the board in a mediator
4 kind of position, where that person would not also
5 work on the cases, but would just be assigned
6 mediation duties.

7 So there's a wide range of things that
8 we're considering in which we'll try and have
9 reflected in the final request for comments when
10 it goes out, and then, of course, see what the bar
11 has to say about it.

12 MS. DENISON: We're fully supportive of
13 the effort to involve the TTAB in whatever role in
14 settlement, because we think, again, it will be
15 good for the board and good for the user, so thank
16 you, we appreciate that, and we'll have some more
17 comments for you shortly.

18 MR. ROGERS: Back to the two pager that
19 I had distributed before the meeting, because
20 we're now on the speed statistics and case volume
21 statistics, and this also implicates the strategic
22 plan to a certain extent.

1 The two major performance measures that
2 are reflected in this page of statistics are the
3 time it takes the board to issue decisions on
4 contested motions and the time it takes the board
5 to issue final decisions on the merits for cases
6 that have been argued or briefed.

7 These are the two traditional
8 performance measures. There's other performance
9 measures that we track internally as kind of
10 management tools, but the two publicly reported
11 ones are the pendency to a decision on contested
12 motion and pendency to a decision on finals.

13 The goal has, as we discussed in the
14 subcommittee yesterday, fluctuated some years,
15 it's been at ten weeks, some years it's been at 12
16 weeks. The fluctuation of that goal is something
17 I've discussed with Deputy Director Barner, and I
18 think we're going to try and standardize some of
19 the board's performance measures so that they
20 don't change from year to year, and the public and
21 the stakeholders will know what the board is
22 expected to do every year. But another aspect of

1 the strategic plan is also to discuss alternative
2 performance measures for the board other than
3 these two traditional measures, so that as we move
4 forward, if there are other indicators that would
5 be more reliable and more indicative for
6 stakeholders about how well the board is doing and
7 whether it's realizing its mission, then we can
8 adopt some of those other performance measures and
9 report them.

10 For example, one of the things I threw
11 out to the INTA subcommittee meeting in Phoenix
12 was, perhaps we want to track an inter partes
13 cases the total time spent in discovery, and how
14 many cases get out of discovery and into trial
15 within the six months that's established by the
16 normal, the traditional discovery and trial
17 schedule, maybe, you know, that's going to be an
18 important measure, how many cases are we keeping
19 on track and keeping on the normal schedule.

20 Just one example, but I think the front
21 office and Deputy Director Barner are willing to
22 discuss with stakeholders almost any performance

1 measure that they think would be useful in
2 assessing the performance of the board as opposed
3 to simply the two traditional pendency measures on
4 motions and finals.

5 MS. DENISON: The TPAC applauds the
6 concept of the standardization and publicly of the
7 TTAB speed goals, and however we can help with
8 that, we're happy to do that. Thank you.

9 MR. ROGERS: Okay, great. And as for
10 the goals for the past year themselves and what we
11 accomplished, when it comes to finals, as alluded
12 to earlier, we issued final decisions on the
13 merits in about 12.4 weeks from the time those
14 cases were ready for a decision.

15 So, again, based on some prior years,
16 that would have been very close to goal. Based on
17 this year's goal of ten weeks, we were a few weeks
18 over goal, but not dramatically, so considering
19 all of the time that was spent by judges on the
20 manual.

21 The number of decisions issued was down,
22 significantly, again, largely attributable to

1 judge work on the manual, but also, in part,
2 attributable to the fact that the number of cases
3 maturing for final decision on the merits was also
4 down.

5 I'm not sure whether that means that the
6 economy caused people to finance fewer inter
7 partes cases through trial, maybe it meant there
8 were fewer appeals coming in because people didn't
9 want to finance the appeals, it's hard to say, but
10 trademarks is reporting that their filings have
11 leveled off or are on the increase, and so even
12 though our incoming filings, our incoming appeals,
13 our incoming oppositions, our incoming
14 cancellations were down or only steady during the
15 year, we expect that we will probably see
16 increases in the near term, and how soon it will
17 take those cases to work their way through
18 trademarks and to the board, it's hard to say, but
19 eventually these statistics, these incoming
20 filings are going to go back up and cases maturing
21 to a final decision on the merits are going to go
22 back up.

1 But, of course, in the meantime, we've
2 got a backlog of - it was 127 cases awaiting final
3 decision at the end of the fiscal year, it was up
4 to 150 at the end of October, so we have work to
5 keep our judges busy for some time to come, and so
6 if we get a little bit of a respite before our
7 incoming filings on the front end pick up, then
8 that will probably be useful. On contested
9 motions - I'm sorry, Mary, did you have something
10 on finals?

11 MS. DENISON: No.

12 MR. ROGERS: On contested motions, the
13 attorneys produced fewer decisions on contested
14 motions this year. Again, that's probably
15 attributable to the fact that there were some
16 attorneys, not as many judges, but some attorneys
17 working on the manual revision, but they were able
18 to beat the goal.

19 So where we needed to be, the figure was
20 up somewhat from the previous fiscal year, but it
21 was certainly still well within goal. Another
22 performance measure, if you will, if unofficial is

1 the board's issuance of precedential decisions and
2 we were able to get out 54 decisions this past
3 year, up five from the previous year, and I'm also
4 pleased to say that a number of them I think were
5 very useful in terms of dealing with evidentiary
6 issues, making it easier for parties to get
7 evidence into the record in inter partes cases.

8 We had a number of cases dealing with
9 dilution and with foreign marks and foreign
10 applicants, and so we think that we're not just
11 pumping out precedential decisions to meet a
12 number, but we're actually getting out decisions
13 that are useful because of the subject matter. So
14 that would be about it on the speed statistics.
15 If there's any questions, I'm happy to answer
16 them.

17 MS. DENISON: I've heard a lot of
18 compliments on the quality of the decisions that
19 have been coming out this year from the TTAB, so I
20 want to commend you and the other judges on that,
21 because people seem to be happy with the quality.
22 And we're pleased that there are more precedential

1 decisions coming out, and we hope that in the
2 future there will be even more, because people
3 always want precedential decisions that they can
4 use in their litigation.

5 We are disappointed, as you know, with
6 some of the speed slippage, but we expect
7 significant catch up in the second quarter of the
8 fiscal year since the role of the TTAB and the
9 manual is done.

10 MR. ROGERS: Right.

11 MS. DENISON: Thank you.

12 MR. ROGERS: And even though we're now
13 two years into the new rules regime, if you will,
14 we're still facing issues of first impression that
15 are going to be the basis for precedential
16 decisions. For example, we now have a lot of
17 cases that have spent some time working their way
18 into the trial phase, and, of course, we've had
19 many decisions we've already decided under the new
20 rules, but for cases that were bogged down in
21 discovery for a while, we're having some cases now
22 that are reaching the trial stage, and I was

1 discussing with two of our attorneys yesterday
2 pre-trial disclosure issues that have come up, and
3 you know, just another example that there are
4 always things coming up under the new rules that
5 are going to give us opportunities to issue
6 precedential decisions, not just final decisions
7 in appeals that are always nice to see and deal
8 with substantive issues, but also decisions on
9 these procedural issues as they come up under the
10 new rules.

11 CHAIRMAN FARMER: If I can just jump in
12 for a second, thank you for that. For those who
13 may be looking for it, Judge Rogers' group sent
14 their statistics and stuff on to us, but I think -
15 we didn't realize that they weren't also going to
16 be posted on the web site, and I didn't think to
17 send them along, so we'll get that fixed. But for
18 those looking for the statistics who may be
19 watching at home, this will be posted later on the
20 web site.

21 And I'm not sure if they're in the
22 written materials, but if not, they'll be made

1 available, so if you hunt for those, it's not you,
2 and they will be there, so just a little note on
3 that. And I'll try to make a note myself when I
4 do my post meeting follow up to send out a message
5 to folks, because I've never made this clear
6 before, that when you send stuff to TPAC that's
7 public, it also needs to go to Ann Farson and Pat
8 Beck so they can put it up on the web site, and
9 I've never made that clear before, so I'll clean
10 that up.

11 MR. ROGERS: I'll share responsibility
12 for that. You don't have to take all the blame on
13 that, John.

14 CHAIRMAN FARMER: I think I do deserve
15 it, but thanks.

16 MR. ROGERS: And then I guess the last
17 item on the list is the update on any cases that
18 have lingered on the docket for a very long time.
19 We do have one of our administrative staff members
20 who's kind of constantly monitoring, periodically
21 monitoring the cases that are proceeding under the
22 prior version of the rules governing inter partes

1 cases, those commenced prior to November 1, 2007.

2 We're down to under ten percent of total
3 cases pending on the board's docket, as we
4 discussed in the subcommittee meeting yesterday.
5 Quite a few of those are cases that are on appeal,
6 quite a few of those are cases that are under
7 suspension for settlement. Quite a few, a couple
8 of hundred at least, are cases that, at least in
9 theory, are on track because they're in discovery
10 or they're in trial or there's some kind of motion
11 practice going on. We've had some preliminary
12 discussions with attorneys in Howard's unit about
13 what we can do to try and draw a lot of attention
14 to those cases and to work on those cases in
15 particular and keep them moving. We've talked to
16 the paralegals about it.

17 We're still trying to get all of our
18 parts working together, but I expect that at some
19 point we're going to have an effort that will lead
20 us to the point where all of those old rules cases
21 are either submitted on the merits or on appeal,
22 but no longer proceeding under the new rules, and

1 that will be an accomplishment for us, because it
2 would be nice to have all of our inter partes
3 cases proceeding under one set of rules.

4 MS. DENISON: I agree completely with
5 what you said. And I hope that the involvement --
6 the TTAB and settlement will hope to get rid of
7 some of these old cases, because it would be - it
8 is a significant drain to be operating under two
9 sets of rules, and so the sooner you can get these
10 cases resolved, I think the better for everyone.

11 MR. ROGERS: Thank you. That's about it
12 for me. If there's other questions or comments?

13 CHAIRMAN FARMER: Yes, I have one
14 question, then I'll have a few comments. And also
15 for anyone else on TPAC, I'll open the floor up
16 for them, too. A genuine question, and that is, I
17 understand this RDMS, if I'm getting it right,
18 system is coming up that will allow folks to put
19 up comments on what they see in the TBMP in case
20 they may see things that need supplementing or
21 whatever. Is that going to be a system that's
22 open only to folks within the TTAB or is that

1 going to be a public system where perhaps a
2 litigant can notice that, well, this doesn't jive
3 with certain case law and they would submit their
4 comment?

5 MR. ROGERS: Let me actually clarify
6 this. And I'm sure the CIO's office in their
7 presentation later on will clarify any
8 misstatements that I've made. But the RDMS system
9 is a utility, as I understand it, for delivering
10 content to the web, and it makes it easier to get
11 it up on the web in the XML and the PDF formats
12 that we want to have the TBMP out there in.

13 And it also makes it easier for us
14 using, as I understand it, oxygen software for
15 making revisions and getting them quickly and
16 easily posted to the web. But it has nothing to
17 do with the wiki version or the ability to comment
18 on the manuals that are posted, it's the idea
19 scale application that's going to be out on the
20 web for use with the MPEM, I guess, and by
21 patents, in which trademarks and the board have
22 looked at and seen, and I think the subcommittee

1 saw yesterday a demo of.

2 And so we're essentially not going to
3 try and reinvent the wheel, and whatever
4 trademarks is going to eventually settle on is
5 what we will eventually settle on, too, because we
6 know that we've got the same core group of users,
7 and we want everybody to be able to interface with
8 trademarks and the TTAB and the respective manuals
9 in the same way.

10 CHAIRMAN FARMER: That's wonderful. And
11 I asked Lynne a question on the side earlier,
12 because I had never thought about this, and she's
13 been talking about the wiki version of the TMEP,
14 and I asked her, this is for the public to also
15 submit comments and stuff, too, it's not just to
16 close this and for examining attorneys, and she
17 confirmed that, yes, that's the case, I just
18 hadn't thought about that before.

19 And what I'm hearing from you is, the
20 same thing will eventually be true for the TBMP,
21 so that if a litigant sees something that doesn't
22 appear to square with current law, they would have

1 an ability to flag it for you all, so when you
2 come up on your next semi-annual revision, you'd
3 catch that.

4 MR. ROGERS: Yes, absolutely.

5 CHAIRMAN FARMER: Wonderful. I wanted
6 to throw in a few additional comments on top of
7 Mary's excellent leadership. I realized at the
8 start that the TTAB has made tremendous progress
9 over the past several years. I mean I remember as
10 a much younger trademark attorney, when I had more
11 black hair and less white hair, that I had summary
12 judgment motions that pended over a couple of
13 years, and the TBMP, of course, has been out of
14 date for quite a while, and so we certainly
15 recognize that, compared to those days, things
16 have improved dramatically.

17 And although we have suggestions for
18 improvement from time to time, we haven't lost
19 sight of the fact that you all have made great
20 strides and we really appreciate that.

21 I do have a few concerns. One you
22 raised earlier, and I salute you for doing so, and

1 that is, I have a concern that the judges are
2 taking on a lot of tasks, and maybe part of it is
3 just to make certain they get done and get done
4 well, because you can make certain it's done well,
5 but you are, you know, of course, responsible for
6 getting out decisions in a high quality and timely
7 fashion, but on top of that, you also have TBMP
8 revisions, and on top of that, you may have a
9 substantial role in settlement. I realize the
10 settlement part has to play out, and other folks
11 may be doing that, and I just - that's just a lot.

12 And, you know, we'll see how it goes
13 down as it goes forward, but we just don't want
14 you all to have so many things on your plate other
15 than deciding cases that you all can't maintain
16 really good pendency numbers, and so we support
17 you all to the extent you all ever think that you
18 need additional resources to delegate some of
19 those tasks and review them, and also, we would
20 encourage you all when you can to consider
21 delegating some just so that those pendency
22 numbers can always be good.

1 We certainly understand that you all had
2 to get the TBMP done and that caused a little
3 slippage, and we appreciate getting it done, it's
4 just we want to make certain that you all have all
5 the time you need to stay right on top of those
6 decisions, and so that's one thing there.

7 And also, I do salute you all to - I
8 think it's, you know, a reasonably firm commitment
9 to getting the TBMP revised every six months, we
10 really like that, and I think it's you all's
11 intention and our hope that that will be something
12 that you all stick to pretty well, and it's not an
13 aspiration that becomes delayed, but it becomes a
14 fairly regular thing, and I think that will be a
15 real service to the bar, and we're thankful to
16 hear that that's coming down.

17 As sort of got flushed out earlier, I
18 personally, and I think this speaks for TPAC,
19 would love to see you all at some point have the
20 sort of published quality benchmarks that the
21 trademark operation does, that the benchmarks that
22 are keyed off, which you all think is a good,

1 stout level of performance, maybe not perfection,
2 because we never achieve perfection, and we on
3 TPAC certainly don't, but so that the public can
4 say, okay, this is what you're shooting for, a
5 published benchmark that you benchmark yourselves
6 against, so they not only need to see your speed
7 statistics, but they know what you're aiming for,
8 and they can see your progress towards that goal.

9 On ACR, that's headed in the right
10 direction, I'm glad you all are working with Mary
11 on that. Just to make certain that there's no
12 possibility for two ships passing in the night, I
13 think the TPAC vision, and I think you all are
14 seeing it, so mainly this is just for the public
15 to know that we're working on it, is that ACR be
16 truly plug and play, so that it's not where you
17 look at a document that offers ideas, and you
18 think, well, we could go in this direction or that
19 direction, although you certainly have the
20 latitude to do so, but that it's truly we'd like
21 discovery option B and trial option C so that
22 parties don't have to negotiate and draft and go

1 back and forth to select the options, once they've
2 selected those two things or whatever, then
3 there's no ambiguity left, there's no document
4 that has to be drafted and signed off, you just
5 say that, okay, we've selected those and we're
6 done.

7 Now, of course, if they want to invent
8 their own ACR, you've certainly signaled that you
9 all will work with them, because the whole idea is
10 to give parties flexibility to invent what they
11 need. But as Mary said earlier, we believe that
12 there should be truly plug and play options that
13 are available for folks to select like a menu so
14 that they can pick up on them.

15 And then the last comment I have is just
16 that when we had the chance to visit with you all,
17 I sense a little bit that there could be some
18 labor management, not difficulties, that's too
19 strong a word, but some tears that may be somewhat
20 stymieing efforts to move forward on things that
21 you all want to move forward on. And I just hope
22 that however those things can be addressed, that

1 they can be addressed so that internal issues
2 don't keep you all from reaching the goals that
3 you want to.

4 I don't know what should or could be
5 done beyond that, and I'm not here to point any
6 fingers, it's just that we want you all to be able
7 to get where you need to get, and if there are any
8 labor management issues that need to be sorted
9 out, I hope that the folks that sort those things
10 out will do so so that you can move forward on
11 your goals, because we encourage progress.

12 And so that's all I have. I don't know
13 if that causes any comments from other TPAC
14 members or any comments from you, Judge Rogers. I
15 won't turn it over to the audience quite yet. But
16 those are the few things that run in my mind.
17 Anything from audience members? I haven't gotten
18 an email yet. We put the folks at home to sleep.
19 Judge, thanks for your service, and thanks for
20 your time and for working with us so closely, and
21 we look forward to seeing you again soon.

22 MR. ROGERS: Okay, thank you.

1 CHAIRMAN FARMER: We're going to take a
2 - no, we're not going to take a break. Let's go
3 straight into the financial stuff.

4 MS. DENISON: Thank you, Judge Rogers,
5 and Cindy Greenbaum also.

6 CHAIRMAN FARMER: Yes, thank you to
7 Cindy, too. Cindy spends a lot of time with us
8 and we appreciate that. I'm not quite clear. Are
9 we actually doing a financial report or are we
10 just hearing from Dana Colarulli on some
11 legislative stuff? There you are. How are you?

12 MR. SCARDINO: Good; how are you?

13 CHAIRMAN FARMER: Welcome. Please tell
14 us what's going on in money land.

15 MR. SCARDINO: Good morning. Thank you
16 for having me. This is my first TPAC meeting.
17 Today is three months on the job for me at the
18 USPTO. And I had the pleasure of meeting with
19 James and Elizabeth yesterday and the Budget
20 Committee. And I'm trying to figure out if
21 there's any correlation between my first meeting
22 here and Lynne's last and Elizabeth's last. We

1 have a lot going on in the financial world for the
2 USPTO right now. As you all know, we're living
3 under a continuing resolution, as is the rest of
4 the government. And I don't know if our slides
5 are going to go up there.

6 But for fiscal 2010, it was also a
7 challenging year. As you'll recall, the USPTO got
8 a supplemental appropriation, \$129 million, late
9 in the year. Most of the money was not spent
10 because of the timing that we got it, so we
11 carried over a good amount of money, totally \$222,
12 almost \$223 million. The way that splits out,
13 it's \$100 million for trademarks and roughly \$123
14 million for patents.

15 However, we have this terminology we
16 call diversion of funds or funds availability is
17 what we're trying to change it to. Fifty-three
18 million dollars we collected that was not
19 available for USPTO to spend. So instead of
20 needed a supplemental for 129 million, we really
21 needed a supplemental for closer to \$180 million.

22 So we're working towards eliminating

1 that problem in '11, and certainly in fiscal 2012;
2 '11 may be a little bit of a heavy lift, and I'll
3 try to explain why. This continuing resolution
4 expires December 3rd, and there's a variety of
5 things being considered right now, either a two
6 week CR extension, a three month CR extension, or
7 a full year of CR. Under each of scenarios, and I
8 guess the fourth option would be an omnibus bill,
9 where they wrap all the unfinished bills together,
10 pass it as an appropriations bill.

11 The democratic leadership in the Senate
12 would like an omnibus bill passed. The new
13 leadership in the House we're hearing would not
14 like to see the omnibus passed, they would prefer
15 reduced spending, either an '08 level, a '10
16 level, something. The administration is still
17 pushing for an omnibus, because that's the
18 President's budget.

19 So we're kind of in flux, we'll know a
20 lot more in the next ten days, next week is going
21 to be critical in terms of if it goes for a two
22 week CR, we think we'll have a better chance of an

1 eventual omnibus, and if they just punt down the
2 field three months, things could get pretty grim.

3 Here at the USPTO, the difference
4 between a full year CR and the President's budget
5 request is almost \$400 million, which is 20
6 percent of our funding, so just imagine. That's
7 on supposedly the discretionary side, in other
8 words, you know, that's what we'd have to try to
9 control, and when you've got salaries eating away
10 at 60 to 70 percent of your budget, that's really
11 not controllable. Folks are on board, we have to
12 continue to pay them. So we'd have to cut back on
13 all the fun things like overtime, more hiring,
14 PCT, and IT. As Mr. Owens will speak next to, it
15 would be a devastating situation if we had to live
16 at the fiscal 2010 levels and not have the ability
17 to continue with our IT development.

18 So I don't want to be doom and gloom,
19 I'm just trying to give you the picture of where
20 we are, because we'll know a lot more in ten days,
21 but we just don't know anything right now.

22 We're working with the administration,

1 we're working with Congress to, you know, get a
2 surcharge authority, 15 percent, which could bring
3 in for the rest of the year probably a little more
4 than \$200 million, and we're also trying to get
5 what we call full access to our fees so we no
6 longer have this diversion or unavailable funds.

7 I don't think that's going to be
8 something we can accomplish in '11 directly. So
9 indirectly, what we're trying to get is a larger
10 buffer. So if they set us at a certain level,
11 we'd have authority to collect end use fees above
12 that amount, to the tune of \$100 million in the
13 President's budget request. So there's kind of a
14 lot going on in '11, but unfortunately that ties
15 our hands a little bit on '12. We're trying to
16 build a '12 budget. We've got serious deadlines
17 that really don't move. The President's budget
18 has to be submitted to Congress by February 7th.
19 To get to that point, we have to submit things to
20 the Office of Management and Budget by the middle
21 of December.

22 So TPAC will have the opportunity to

1 review our budget in December, we just can't tell
2 you when yet, because now OMB pass back is
3 scheduled for the week of December 6th, it was
4 supposed to be next week. So that gives us less
5 time to even work with whatever they pass back to
6 us. So it's a fun process, it's just getting more
7 fun.

8 I don't know if our slides are ever
9 going to go up there, but I've pretty much talked
10 about everything I wanted to talk about, and
11 you're welcome to please ask any questions.

12 CHAIRMAN FARMER: Thanks for showing up.
13 I'm John Farmer, by the way, it's nice to meet
14 you. I will get that straightened out in the
15 future. Elizabeth Pearce and James Conley are our
16 money folks, and so, first, if there are any
17 comments or stuff from them before I say anything,
18 I will defer to them. Anything?

19 MS. DENISON: Elizabeth, just one thing.
20 The slides are in the book, so anyone who got the
21 book can look at them.

22 MS. PEARCE: I would just add, because

1 we didn't really introduce Tony, would you give us
2 a little bit about your background? I don't think
3 people realize how imminently qualified you are to
4 be dealing with all this budget stuff.

5 MR. SCARDINO: That's fair. I joined
6 the government 20 years ago as a Budget Analyst
7 with the FBI. I spent most of my career in the
8 budget field; a couple different times left the
9 government to be a consultant or work for a
10 non-profit. But I spent the last four years as
11 the Budget Director for the Department of Housing
12 and Urban Development, and I was also the Acting
13 Deputy CFO and the Acting CFO for my last year
14 there.

15 So as Elizabeth mentions, I've got a
16 little bit of experience working budget issues.
17 It doesn't mean it makes it any easier, it just
18 means that you've seen some things before. But we
19 are working hard to get the best funding for the
20 PTO going forward.

21 MS. PEARCE: Well, the one thing I
22 believe we can't emphasize too much to Congress is

1 that we are one of the rare government agencies
2 that is self-funding. I mean it's funded by the
3 user community. It's not a matter of tax dollars,
4 it's not a matter of things needing to come out of
5 the general budget, and if that can be
6 consistently emphasized to them to buy us some
7 more leverage, that certainly would be a huge
8 advantage.

9 I think you've done a great job, given
10 difficult circumstances, not only to keep the
11 trademark office's head above water, but
12 comfortably so, but that doesn't, of course, mean
13 that you can predict what's going to be coming
14 next. Is there anything that TPAC can do, any
15 kind of support that you feel like you need which
16 would make a difference going forward?

17 MR. SCARDINO: That's always a
18 challenging question. Certainly any
19 communications expressing our needs would be
20 welcome to anyone that could be influential. It
21 really is a matter of education. I mean I was
22 joking of sorts this morning with Director Kappos

1 and others that it seems like I still talk to
2 folks that - it's like with a fresh set of ears,
3 they haven't heard the word "different". We don't
4 cost, we're no budget authority, we don't cost the
5 tax payer a dime, so the more people we can
6 continue to educate on that is helpful.

7 MS. PEARCE: I might add I think we are
8 the poster child for the incoming Republican
9 congressional people, too. Aren't we exactly what
10 everybody should approve of, which is a user
11 funded system? So, you know, it doesn't help, of
12 course, between now and the end of December, but,
13 you know, you go whichever way the wind blows,
14 right.

15 CHAIRMAN FARMER: I'm not sure how many
16 folks in Capital Hill are listening in, but just
17 in case, I'll point out that in the last TPAC
18 annual report, we reiterated for I think it was
19 like the 118th time that we fully, fully support
20 and pray for and wait for and hope for the end to
21 fee diversion just because it doesn't make sense
22 that the fees that people pay to have the PTO do

1 stuff don't go to the PTO for them to do stuff,
2 it's simply illogical.

3 And the way we phrased it in our report
4 is that we said we would also like to see the PTO
5 have a question setting authority, but we believe
6 that should go hand in hand with keeping your
7 money, because enabling you all to take more money
8 from users simply to give it over to the Treasury
9 doesn't really solve whatever it is that you all
10 are trying to solve. And so we are fully there
11 for you to say that, we've said it in the annual
12 report, and if there's anyone you would like me or
13 anyone else to go say it to, just point me in the
14 right direction, because I'm not shy about that.

15 And also, just to clarify one thing, I
16 know the answer, you know the answer, but for the
17 folks listening at home, when you spoke earlier of
18 a possible surcharge, that's just a patent
19 surcharge, you all are not looking at a trademark
20 surcharge.

21 MR. SCARDINO: Correct, I'm sorry,
22 you're right. It's a surcharge on some of our

1 patent fees.

2 CHAIRMAN FARMER: Right.

3 MR. SCARDINO: Which we estimate will
4 bring in a little more than \$200 million the rest
5 of this fiscal year.

6 CHAIRMAN FARMER: Keep nettling. We
7 appreciate it.

8 MS. PEARCE: And one quick question,
9 because John always brings this up and I want to
10 make sure it's said, we have - the trademark
11 office has been concerned in the past about the
12 financial stability of the patent office and how
13 that might potentially effect us. It seems to me
14 that the patent office is on much firmer footing
15 at this point; can you confirm that, Tony?

16 MR. SCARDINO: Yes; you know, granted I
17 wasn't here last year at this time, but I
18 understand that. The way it works, you know, you
19 submit a budget as part of the President's budget
20 in February, and every September Congress asks us
21 for an update, and last year our update reduced
22 the President's budget request level, and Congress

1 kind of took that and ran with it, which set the
2 PTO back quite a ways in terms of funding needs
3 versus availability.

4 This year, thankfully, our estimates are
5 only higher, so it could only really go the other
6 way, in other words, supports the President's
7 budget level or higher, and the President's budget
8 level would be sufficient for all of our needs
9 this year.

10 CHAIRMAN FARMER: Anything else, any
11 other questions from TPAC for Tony on money
12 issues? Anything from folks in the audience?
13 Welcome, and we look forward to working with you.
14 Thanks for your service.

15 MR. SCARDINO: Thanks for having me.

16 CHAIRMAN FARMER: Excellent. I think I
17 see Dana Colarulli, if I'm pronouncing it
18 correctly, back there, and I think you've come to
19 give us a little bit of a legislative update, and
20 so thanks for coming to visit with us.

21 MR. COLARULLI: Sure, I'm happy to, and
22 I'm happy to come and address this group. I've

1 done a similar legislative update for the PPAC
2 recently, so I think it makes a lot of sense. I
3 don't know if my slides are also going to go up,
4 but I could also just, you know, talk very quickly
5 about the legislative challenges that we're
6 currently facing, the biggest one of which is
7 funding.

8 And Tony and I have been working very
9 closely together since he started to ensure that
10 we're making the best case, that we're being very
11 consistent about our fee projections. Certainly
12 that's been something that the agency has been
13 asked about in the past, so we've tried to make
14 sure that we're being - giving good information,
15 giving responsive information, and being
16 consistent.

17 So very quickly I'll run through my
18 slides. In terms of challenges, and I like to
19 always look at these as challenges and
20 opportunities, you know, we have a number of
21 operational challenges that we've been addressing
22 over the last year. A number of them are on the

1 patent side, but organizationally, you know, we're
2 trying to ensure that the entire organization is
3 working efficiently. I always say, on this last
4 bullet, the outdated IT infrastructure, like most
5 small businesses, the government is also guilty of
6 this, the first thing you put off are IT
7 investments, and PTO is guilty of doing that for
8 some time when budgets got tight.

9 We now are faced with an outdated IT
10 infrastructure which John Owens is doing his best
11 to address. But this is a big part of our plea to
12 Congress on behalf of the administration that we
13 need the funds to run the agency.

14 So recovering from funding cuts as a
15 result of the recession, two points on our patent
16 backlog and our patent production capacity, you
17 know, both of those go to why we're requesting a
18 15 percent increase on the patent side of the shop
19 to support efforts there and our IT
20 infrastructure.

21 Legislative challenges certainly, as I
22 said, PTO funding is a big one. Substantive

1 patent reform legislation has been one of the big
2 focuses of my office. Telework, we had a big
3 success on this last week, that's been a focus, as
4 well, enabling us to be a little bit more
5 flexible, further develop our program, which we
6 always call an award winning program within the
7 federal government, and in many ways, what the
8 legislation that was passed last week does is
9 bring other agencies up to the level that PTO is.
10 But importantly, it gives us flexibility on the
11 bi-week requirement. And then I'll personally
12 touch on some other important IT legislation, a
13 couple things on the trademark side. Go to the
14 next slide.

15 So I always show two slides when I'm
16 giving presentations, and it's almost my own
17 personal score card. The first is, you know,
18 signed into law. Right now this has special
19 significance because we're at the end of a
20 Congress, we're looking forward to the 112th
21 Congress and what we might propose, and I'd be
22 interested to hear conversations on possible

1 legislation that maybe this group has discussed.

2 I know among those are potential restructuring of
3 appointments here, so I'd be interested to hear
4 more about that.

5 But one of our early successes was the
6 trademark technical corrections bill that
7 essentially enabled parity between Madrid and
8 non-Madrid filings. That was a big part of that
9 bill, among other changes, and very quickly, the
10 Congress picked it up, said this is important,
11 this is time sensitive, and let's get that done,
12 so we were able to encourage them to do that. The
13 next big success was supplemental appropriations
14 for the office, \$129 million, to help Tony manage
15 the finances a little bit better. I think among
16 the federal government, that's really helped us to
17 continue at the level that we've been operating
18 without really realizing a lot of cuts, so we're
19 happy to get that, and then the Telework
20 Enhancement Act last week.

21 There's another one that's even so
22 minor, I hesitate to mention it, there's a

1 Copyright Corrections Act that some folks in this
2 room might also be interested in that made a
3 number of minor changes. It also made a minor
4 change to the Trademark Bully Study that the PTO
5 is currently engaged and putting together, which
6 many of you in this room know about. Go to the
7 next slide.

8 So then, you know, as the 111th Congress
9 ends, what's pending, certainly patent reform
10 legislation still, and that will continue to be a
11 priority for the next Congress. For this group,
12 probably the most significant thing in the bill is
13 the ability for PTO to set its own fees, and
14 that's an office-wide effect. That is tied up in
15 substantive legislation right now, that's the most
16 likely vehicle that will move forward that will
17 include that. Again, that will be the beginning
18 of the 112th Congress effort. The House had moved
19 forward with looking at PTO funding a bit more
20 holistically and maybe more long term, and had put
21 one option up on the table. That has seen a
22 couple of different variations as the staff on the

1 House Judiciary. I've talked to House
2 Appropriation staff and had a number of
3 conversations with our stakeholders about the way
4 we want to move here. Again, that may be
5 something that is moved forward, a long term fix
6 to our current funding problems in the 112th
7 Congress.

8 Four easy pieces, these are the other
9 technical bills in addition to the trademark
10 legislation that we had proposed to Congress the
11 beginning of this year that we're looking to move
12 forward, and they're self-explanatory,
13 implementing legislation for two treaties and
14 technical directions for the level of pay for
15 certain things, one which I know Gerry is very
16 concerned about, payment for what we're paying our
17 administrative law judges.

18 PTO has also been active in
19 participating in discussions on other intellectual
20 property policy issues, including in the copyright
21 area. So we don't just do patents and trademarks,
22 we also do copyrights. Performance Rights Act is

1 a bill that fits in that category. There's a lot
2 of discussion up on the Hill right now on online
3 piracy, and federal legislation that could be
4 introduced to curb online piracy, and particularly
5 targeting that web sites that are set up for that
6 purpose, we're engaging in that discussion on the
7 so called Leahy Rogue web sites bill, again,
8 another issue teed up for the 112th Congress. So
9 our list for the 112th Congress is growing here.

10 Last, but not least, there's been a
11 number of proposals on IP attaches and we're
12 following those. Next slide.

13 So two highlights briefly it might make
14 sense to spend some time on, and I might, John, to
15 the extent you want to have more discussion, I can
16 even stop here because I think you've addressed a
17 lot of the funding things I was going to address.

18 But let me highlight these two. One is
19 the Trademark Technical Corrections bill which I
20 mentioned was passed earlier this year, in March.
21 It included a provision that required the
22 Department of Commerce to do a study on litigation

1 tactics in the trademark space.

2 It was slightly amended by the
3 corrections bill that passed the Senate last week,
4 and is on its way to the President now, simply to
5 make it clear that corporations, by enforcing
6 their trademark rights, are not, by default,
7 engaging in litigation context. I think for the
8 IP world, that's a very important statement. It
9 doesn't change really, from our perspective, the
10 scope of the study that we're conducting.

11 But anyway, a congressionally directed
12 study, we'll complete it by March 17th. Whenever
13 folks ask me about the study, I always tell them
14 we're going to have a green cover on the front to
15 celebrate St. Patrick's Day. That's the
16 anniversary of the Technical Corrections Act.

17 The second highlight legislatively I
18 wanted to do for this crowd is the telework
19 legislation. And as I think a number of folks in
20 this room appreciate, this was a bill that had
21 been talked about on the Hill for quite a long
22 time. A lot of effort was put into making sure

1 that this legislation moves forward. There were a
2 lot of hurdles that - a lot of bumps in the road
3 in getting legislation that would, at a minimum,
4 address PTO's needs to have the flexibility to
5 expand its program.

6 And the bill that was passed last week
7 we think allows us to do that. We're taking
8 immediate steps to implement that flexibility, the
9 first step of which is to create an oversight
10 committee to determine how we can appropriately
11 waive the - essentially result in waiving the
12 bi-weekly requirement, requiring folks that are
13 outside the 50 mile radius of the PTO to not be
14 forced to come back to the office twice every pay
15 period, twice every bi-week.

16 The rest of the legislation I think it
17 makes sense to spend maybe a couple sentences on.
18 As I said, I think it's fair to say brings the
19 rest of the government up to a level that PTO is
20 at, and actually encourages some consistency
21 across federal agencies to encourage looking at
22 telework programs.

1 There's a particular requirement within
2 180 days of enactment of the bill for every
3 federal agency to identify eligible teleworkers.
4 So there's some additional requirements on PTO to
5 act maybe a little differently. But it does
6 address a lot of the things that we think we've
7 already addressed, having a central - a
8 coordinator for telework programs, incorporating
9 telework into our continuation of operations
10 plans, among other things.

11 The bill also sets up a test program
12 which is available to other agencies in the
13 federal government to test out flexibilities and
14 travel regulations. PTO would otherwise be
15 eligible for that, however, a third part of the
16 bill, the third category I'll describe, is a PTO
17 specific section, and that's what provides us
18 immediate relief and requires this oversight
19 committee for us to take advantage of, again, the
20 flexibilities in the law. So we think this is a
21 logical next step in the development of our
22 telework program, which the trademark side has

1 really embraced as a business model, and the
2 patent side is doing, as well. I give the
3 trademark side a bit more credit for a longer
4 program and really finding ways to incorporate
5 telework into its operations.

6 I think it's fair to say that the PTO
7 has had a lot of support. I was in multiple
8 meetings on the Hill as this legislation was
9 discussed, along with my staff, and many of you
10 know Judy Grundy on my staff who really has been
11 an undying advocate for this, where PTO was raised
12 as the model for the rest of the federal
13 government, and we're really proud that we were
14 able to be raised up as an example that way. All
15 of that culminated in this bill.

16 You know, we've heard, even right after
17 the passage of the bill, some members of Congress
18 say they'd like to revisit some of the provisions
19 of the telework bill. We'll keep a close eye on
20 that, but we think that the bill as it is hit the
21 right balance and allows us to move further.

22 So with that, John, I can end. Actually,

1 if you could go two more slides very quickly and
2 it'll summarize something that Tony had talked
3 about; one more, you know, essentially that the
4 continuing resolution ends December 3rd, you know,
5 these are three options.

6 Tony might add a third option in there,
7 which would be a two week, an even more limited
8 continuing resolution. OMB has asked us to
9 essentially game out these two options, a two week
10 and a three month option.

11 It's unclear what will happen next week,
12 it's the most pivotal week for Capital Hill in
13 determining how we move forward. And I think Tony
14 provided some good insight onto what the best
15 options for PTO would be and our conversations
16 within the administration to ensure that we can
17 continue to operate at the level we've been
18 operating. With that, I'll stop, and I'm happy to
19 talk about other legislative items that folks are
20 interested in.

21 CHAIRMAN FARMER: Before I get in my
22 TPAC reorg course, any questions, comments from

1 others on other legislative things, Howard?

2 MR. FRIEDMAN: Well, I would want to
3 comment on one of the legislative matters that
4 Dana already touched on, which is telework. I
5 just want to say how gratifying it is that the
6 bill was passed, how gratified we are to you and
7 to your office for aiding in the passage. And I
8 assume you would concur, though you don't
9 necessarily have to agree on the record, but I
10 think one of the best things about the bill being
11 passed is, I know I was very concerned about how
12 Judy was going to react if the bill wasn't passed,
13 and in that light, as you paid homage to her, we
14 really appreciate all the good work that Judy
15 Grundy did and all the help she delivered.

16 I will say that, as far as
17 gratification, it's very gratifying when you send
18 a message out to the bargaining unit on, as Dana
19 has referred to, a long road, that you start
20 getting emails back immediately with people
21 commenting that they're yelling and they can't
22 stop yelling. And while five days have gone by,

1 and I assume by this time that particular member
2 has stopped yelling, but perhaps not, I think it
3 is emblematic of the reaction of our bargaining
4 unit and how strongly they feel and how gratified
5 they are by passage of the bill.

6 As Dana has referred already to the
7 particular impact, it makes what is the best
8 program in the federal government, telework-wise,
9 even better. We look forward to working with the
10 office to rolling it out.

11 MR. COLARULLI: Thanks, Howard. And I
12 think, you know, you've helped my office to
13 continue, and as I said, Judy's an undying
14 advocate. I think this is a really good example
15 where management unit has worked together to get
16 this goal. And NTEU, both locally and nationally,
17 put a lot of effort to help make sure that this
18 legislation moves forward, so we appreciate it.

19 CHAIRMAN FARMER: Just so I can
20 understand what's going on before I - save a few
21 minutes for the TTAB, excuse me, the TPAC reorg
22 stuff, I gather that there may be some desire from

1 some quarters in the new Congress to change
2 aspects of the telework bill, if I heard that
3 correctly, and I'm just totally unknowledgeable.
4 What are the issues there? What are some of the
5 things that folks are thinking they might want to
6 tweak, and how would that change the bill that's
7 just been passed by the Congress?

8 MR. COLARULLI: You know, with a new -
9 it's unclear whether these are things that will be
10 on the top of their agenda or not. With a new
11 Congress, you know, there's always a change in
12 priorities. In particular on this bill, some of
13 the members of the House Government Oversight
14 Committee were concerned about the telework bill.
15 One of the hurdles that we made reference to
16 earlier in this process was the bill failing to
17 pass the House floor earlier this year based on a
18 Congressional Budget Office score that said that
19 this bill actually would cost the government
20 money. You know, what was incomplete about that
21 debate was the amount of savings that telework
22 programs lend to the federal government.

1 So there are some in Congress who I
2 think are slow to adopt telework as a business
3 model and quick to look at telework as an option
4 for federal workers just to stay at home, and
5 that's certainly not the case here at PTO.

6 So I think it's more of an education
7 model - education challenge that we'll continue to
8 fight. I imagine the specific proposal they might
9 start with are some of the amendments that were
10 offered on the House floor when the bill passed
11 the House, and that were stripped by the Senate
12 before the bill came back to the House one final
13 time for signature, and that's issues about doing
14 union work while teleworking, among others.

15 So we'll watch those, we think those
16 types of efforts are neither necessary or wise,
17 but I think it goes to illustrate I think the
18 challenge that we'll continue to fight to make the
19 case that telework really is a business strategy
20 and not just a fun thing to do.

21 CHAIRMAN FARMER: Thanks. I'm going to
22 carve out a couple minutes here just to talk about

1 TPAC reorg. And I realize this is not of the
2 level of importance of let's say getting the money
3 issues right, and so we're not saying it should
4 rocket ahead of those things, but I would draw
5 attention to the leadership here at the PTO, that
6 for the second year in a row in the TPAC annual
7 report, we have called for a reorganization of
8 TPAC, and while PPAC wasn't able to work it into
9 this year's report because they had had a lot of
10 other heavy lifting, I know that we have their
11 support on this.

12 And I hope that the leadership of the
13 PTO will study what we've put in there. We've
14 made the case that various changes need to be
15 made, and I won't go through all of them, but the
16 two biggest ones are that we get TPAC terms
17 aligned with the current flow of TPAC, which is we
18 read an annual report right after the end of the
19 fiscal year, it's due roughly at the beginning of
20 November, and that's kind of the start of a brand
21 new TPAC year, you know, around the beginning of
22 December/beginning of January, and we'd really

1 like to get it so that all TPAC members in the
2 future flow into TPAC at that time, because that's
3 really the best time for a transition. Really
4 once we get the annual report behind us, that's
5 when we really dig in on our non-annual report
6 issues and push those pretty hard until let's say
7 August, then we're back in the annual report soup
8 and we set everything aside. And when you have to
9 change horses in the middle of that swing, from
10 roughly mid December until late August, it just
11 disrupts things, and that will happen again this
12 next year, because that will finish up my term as
13 TPAC Chair in June, and that's going to be smack
14 dab in the middle of the year, and it's probably
15 going to, you know, effect things a little bit.

16 Also, one thing we called for in there
17 was to perhaps change it to a system where the
18 TPAC Chair comes out of TPAC after having proven
19 themselves on the committee and serves for only a
20 year.

21 I don't think it's healthy to have one
22 person be the chair for three years, I think you

1 need fresh blood more frequently, and also, I just
2 think it's too much of a job to do for three
3 consecutive years if you've got another job that
4 you've got to get done also. And so we really
5 encourage the leadership of the PTO to take a look
6 at that. The other thing that we threw into the
7 annual report is that one thing that was issue
8 this past year is that we receive some guidance
9 that we need to make absolutely certain that we on
10 TPAC don't work more than 60 days a year, because
11 that's - we can't trace all the law, but we're
12 told that's the law, and we're adhering to it.

13 And what we asked for in the annual
14 report, and this is the first time, this was not
15 in the report last year, is that we just be given
16 some flexibility there so that we can amass hours
17 during the week and push them into a single day
18 provided it doesn't exceed a certain number of
19 hours, and we asked for that just out of
20 recognition, the fact that, you know, unlike some
21 other contractors, except when we come here, we
22 don't typically come in, punch the clock in the

1 morning, work all day, go home after a full day,
2 it's often an hour here, an hour there, and that's
3 driven by the fact that most of us - we all have
4 other jobs to do, and we have to interface with
5 folks at the PTO in the outside, and they can't
6 always do things at exactly the time we would like
7 to do it, and so it's just a work flexibility
8 thing.

9 And that would enable us to be more
10 effective, because we try hard to serve the office
11 and to work with them, and if we have to
12 constantly put things on ice because we're out of
13 time, then we can't uphold our end of the bargain.
14 I kind of wonder if maybe these four easy pieces
15 could become five easy pieces and that may be a
16 place where these could be slid in, because I
17 think they are non-controversial, and that would
18 enable us to serve better.

19 Again, if you even look at the annual
20 report, you'll see that we not only laid out the
21 case for this, but we were even so bold as to put
22 in draft language to show what an amended TPAC

1 statute would look like if these two concepts were
2 folded in, and so that may just be something to
3 look at. And I'm going to personally try to
4 follow up with the leadership in the
5 administration to see if we can have some support
6 on that.

7 And so, again, it's not as big a deal as
8 the money issues, the most important thing is to
9 get the funding fixed, but if we can get some
10 support in that, we'd appreciate it. Anything
11 else from legislative stuff? Anything from our
12 visitors here today on legislative stuff? We seem
13 to have attracted more folks as we've gone along,
14 it's the reverse of most TPAC meetings. Dana,
15 thank you for your time and for your service.
16 We're going to take a five minute break, then
17 we'll come back and visit with the CIO, John
18 Owens.

19 (Recess)

20 CHAIRMAN FARMER: Let's go ahead and get
21 started. If everyone can please take their seats.
22 All right, we're back. John, thanks for coming,

1 and the floor is yours. Before John gets started,
2 just so that folks know, our technology folks are
3 Tim Lockhart and Bob Anderson and Howard Friedman,
4 so they'll be primarily leading this session.

5 MR. OWENS: So good afternoon. Let's
6 get right into it. Go to the second slide,
7 please. So after we did our studies and talked to
8 - worked with trademarks and CIO to talk about the
9 Trademark Next Generation independent platform,
10 the core infrastructure for that current system,
11 we did receive two reports that we paid for, and
12 we needed a little more clarity, and at
13 trademark's recommendation, we acquired the
14 services of William Ulrich, who is a well known
15 author and professional in leading legacy system
16 to modernize - through modernization.

17 He has been doing an assessment of the
18 systems. CIO and trademarks has been working with
19 him, and his report will be given to both of us
20 shortly in the coming month of December. So we
21 are looking for to this, though this has not
22 stopped, as some might think, the progress all

1 together.

2 There were mention last time of four
3 work request forms. A work request form, for
4 those that don't know, are a very basic form, two
5 - three pages long at a very high level that
6 describes large ideas.

7 And what we did was, we pruned out of
8 those four documents a couple of projects of which
9 we'll talk about some today that have already gone
10 through a project life cycle, including
11 development, and soon beta, into final deployment,
12 as well as looking at the core infrastructure that
13 will facilitate separation of your systems from
14 other systems here at the USPTO, which is one of
15 the primary goals, as agreed to by both trademarks
16 and CIO. So Mr. Ulrich is helping us put the
17 final touches on that plan and his experience is
18 certainly welcome.

19 So the progress last quarter, to
20 continue, can you flip slides, please? Thank you.
21 As a first step to establishing that Trademark
22 Next Generation core infrastructure, we built a

1 virtualized environment. What does that mean?
2 It's a bunch of computers that can randomly run
3 virtualized pieces of software, so one computer
4 can do more than one thing at any one time. This
5 allows you to scale up and scale down. It also
6 allows you to be redundant, which means if one
7 part of the system fails, another will be
8 available to take its place.

9 Virtualization technology has been used
10 in industry for well over 15 years, so this is one
11 of the more modern types of environments that we
12 are bringing here. PTO has used it in the past
13 for our work at home program, and now we are
14 adopting it as a core foundation to our
15 infrastructure.

16 A common piece of infrastructure, when
17 you talk about a service oriented design or
18 building instead of independent AIS's, but
19 services, and you're going to see the
20 demonstration of what a service is like today, is
21 what's known as an enterprise service bus.

22 And I know I'm a little heavy on the

1 acronyms today, but what we're talking about is
2 the technical aspects of building a foundational
3 infrastructure on which to grow next generation.
4 This is innately technical. It is not something
5 that you will all see. It is not something that
6 most of you will even want to touch or comprehend.
7 But what it is important to note is, before you
8 build the building, you have to dig the basement,
9 you have to put in the foundation, and this is the
10 less glorious aspects of the software development
11 world that we are talking about here.

12 The enterprise service bus was
13 delivered, as well, it is in test, it is in our
14 development environment, as well as a virtualized
15 infrastructure, what is also commonly called
16 nowadays coined the cloud or a private cloud here
17 at the USPTO that can run concurrently 100
18 different development environments.

19 So what this is is, we have prepared our
20 internal environment for rapid development using
21 the agile methodology I talked about earlier last
22 time we were here in a virtualized, very modern

1 way, with one of the core components for a service
2 oriented architecture, and we have worked very
3 closely with Gary Cannon and the rest of the
4 trademark's team on putting this up, demos are
5 going on now, and you are getting this information
6 at the speed that we're delivering it and working
7 with trademarks, which is almost in real time.

8 Let's continue, let's talk about one of
9 the products that came out of those four work
10 request forms that were mentioned last time. TDR
11 is the repository that you all pulled data from
12 today. And we wanted to move that onto a new
13 platform. We are in real time looking at a public
14 beta in January. You're going to see a demo of it
15 today. It is web 2.0 based, it is our first
16 delivery in a cloud environment.

17 The user interface, the front end, is
18 housed in the Google cloud today, that's what
19 you're going to see. The back end is housed in
20 our virtual environment here. It provides a
21 series of services that separate and protect our
22 core back end infrastructure from any undue

1 influence or abuse by the outside, so we remain
2 protected, but now the two can grow independently.

3 The back end can grow, the features and
4 functionality, independent of the user interface
5 changes. It also allows trademarks to take
6 control over the verbiage of what's on the web
7 site, which they could not do before. All changes
8 on the TDR site today had to go through CIO, which
9 added extra time and effort that really wasn't
10 needed. This puts the power back into the hands
11 of trademarks, much like we did the web site a
12 year ago.

13 So with that, I'm going to ask you to
14 switch, Mr. Wolf, if you would. And Mr. Wolf, so
15 you know, is a federal employee, he is one of the
16 developers that I have brought on board, he has
17 been dedicated to work on trademark's development
18 efforts, and he is working with a team of
19 contractors to do this, but he is the technical
20 lead for the development and architecture for the
21 service that exists here on campus, where the
22 contractors have been concentrating on the

1 development of the user interface and the Google
2 cloud. Go ahead.

3 MR. WOLF: I apologize for speaking from
4 the back, but that's where the computer is, so
5 that's where I'm going to be showing TDR from.

6 MR. OWENS: Is that on? No.

7 CHAIRMAN FARMER: If we get his volume
8 up a little bit, that'll help.

9 MR. OWENS: And we don't want the
10 universal laptop, we want the laptop in the back
11 of the room, please. Experiencing small technical
12 difficulty, please stand by.

13 MR. WOLF: TDR stands for Trademark
14 Document Retrieval. All the documents pertaining
15 to trademark cases can be viewed through this
16 system. One of the obvious things that you might
17 notice is, we've made the look and feel consistent
18 with the USPTO web site to make it seem less like
19 you're going into a separate AIS and more just
20 going to the PTO for information. Another thing
21 is that it's adopted web 2.0 capability, so
22 instead of having separate pages for your results

1 and for your search fields consolidated on one
2 page, additionally usability features like sorting
3 on the document lists gives the user a little more
4 power into what they want to look at.

5 So here's an example of a document. You
6 can scroll through the pages. Unlike the present
7 TDR, you can jump to any particular page that
8 you'd like. This file used to be a TIF image, it
9 required a PDF plug-in in order to view it, but
10 now we've had a service convert that to JPEG so
11 that no plug-in is needed.

12 Of course, since PDF's are useful, we
13 still offer PDF access to this documentation. So
14 here is a PDF rendition of this document.

15 Another feature is the ability for
16 trademarks to go in and make changes to text that
17 appears on the web page without having to go
18 through the OCO first. This requires a log-in,
19 which is necessary in order to protect, you know,
20 obviously other people from going in and making
21 changes to the web site.

22 As you see here, now an edit button has

1 appeared. I can click it, and let's say we want
2 to be ambitious and move up our deployment to
3 December, 2010, now it's December, 2010. The
4 FAQ's can also be modified this way, as well. So
5 if there's a question that happens to be asked
6 frequently, they can just go in and add the
7 question through the same interface and it appears
8 immediately in the FAQ list.

9 So having that power, as you just saw,
10 it happens immediately, there's no need to go
11 through the OCO in order to get these changed
12 deployed, they can be done immediately.

13 MR. OWENS: Can you show them the inline
14 help?

15 MR. WOLF: A lot of text appeared on the
16 first TDR. This text has been moved to these
17 overlays, so if they need to see the text, they
18 can click on the help icon and they can read it
19 there. For the people that don't care to see it,
20 it's out of the way, so they can focus on seeing
21 the documents at hand.

22 Now, another new feature is the download

1 original. What that means is, there are files in
2 the Trademark's Document Repositories that make up
3 all these documents. They're not in PDF natively.
4 This system will convert those documents to PDF,
5 but in the case where you actually want to get to
6 the original documents as they are in the document
7 repository, you can download the original. And
8 this happens to be a zip file of all these
9 documents. So you have TIF's, XML documents,
10 JPEG's, things like that. Of course, if you do
11 want the PDF, then you can get the PDF of these
12 documents, as well.

13 And behind the scenes, this is going to
14 a web service. This web service is exposed to
15 more than just this client, and it's intended to
16 be used by people that, you know, if they don't
17 want to use this cloud UI, they can essentially
18 make their own client and get to their data. So
19 here's the URL to this particular PDF. I can go
20 to the service, I can get to the HTML, I can get
21 to the underlying XML data, as well. So there's
22 more power available through the service than

1 there is through the client.

2 You can also query for data across
3 multiple cases through the service and I'll show
4 you an example of that. So I'm going to get a zip
5 file of Case 7651587877975812.

6 MR. OWENS: Can you deliver it as a PDF,
7 please, so they can see that?

8 MR. WOLF: Sure; it's just a change in
9 the URL. Now, because this is going to be a
10 fairly large PDF, for the sake of time, I can say
11 - well, let me only include the APP documents of
12 these two cases, and then you get a PDF of just
13 those particular documents.

14 MR. OWENS: The power that Joe is
15 showing you is that the new design based on the
16 web 2.0 technologies and the infrastructure that
17 we have deployed allows us to separate the back
18 end from the front end, which would allow a third
19 party vendor to produce a much better user
20 interface above and beyond what we have done
21 without involving us at all.

22 It also shows that we have progressed

1 much further in the back end than we have the
2 front end at the moment. We can develop
3 interfaces to download multiple related cases and
4 join them all into one PDF, or deliver all
5 documents into a single PDF, which some of our
6 folks that have spoken to us in trademarks have
7 requested.

8 Joe, if you can, now, as part of TRD 2,
9 we're pretty much replicating the current
10 functionality, as requested, on the current - in
11 the new environment, but we're also independently
12 working on new functionality for TDR 2.1 as part
13 of our agile method. Joe, can you show them the
14 quick demo of the video file?

15 MR. WOLF: Sure.

16 MS. PEARCE: In the meantime, John, I
17 have one quick question. Does this TDR retrieval
18 include assignment information, as well as the
19 prosecution history?

20 MR. OWENS: That's a good question. I
21 don't know if it's available on TDR today.

22 MS. PEARCE: It is a separate database,

1 so that's why it would be great if it were also
2 included.

3 MR. WOLF: As of right now, the only
4 information is from the document repository
5 database.

6 MR. OWENS: It's a different database
7 today.

8 MR. WOLF: There are intentions for the
9 future to include other information from other
10 databases into the service, that's not scheduled
11 for this current release, but the intention is
12 that because of the separation between the client
13 and the service, we can start adding that
14 information into the service without disrupting
15 the client, and then when the client decides how
16 they wanted to split information, they can make a
17 change to the client so that the public can see,
18 as well.

19 MS. PEARCE: I would just like to put in
20 a vote for having the assignment information
21 added. I think that's something that's crucially
22 important any time you're reviewing a file

1 history. So if you guys could prioritize that,
2 that would be great.

3 MR. OWENS: I'm sure that trademarks has
4 heard you, so we take our priority from trademarks
5 actually. But we also have TDR 2.1 going, and
6 we'll look at future enhancements as we go along.
7 Joe is going to show you a big one, which is
8 actually a lot farther reaching because we have
9 to, of course, store multimedia files, which we do
10 not do today. But we wanted to show you that the
11 services we are producing are extendable beyond
12 their current capabilities that we have throughout
13 the rest of the system, which is the display of --
14 the retrieval and display of a video in store
15 which is on our test system today.

16 MR. WOLF: Unfortunately, the volume is
17 not working, but there is some nice, exciting
18 music to go along with this wonderful video. And
19 there are many other wonderful videos in the
20 trademark database, as well, and they can be
21 exposed through the web service.

22 MR. OWENS: So you're going to see a

1 beta of this in January that will be open to the
2 public. You will see iterations come out over the
3 next year. The deployment, the final deployment,
4 including the first ever USPTO deployment into a
5 clouded environment for trademarks, the very first
6 one ever here, if everything goes well with the
7 beta by April, which is big news --

8 MR. LOCKHART: And is that going to be
9 the - that's the first implementation of Trademark
10 Next Generation?

11 MR. OWENS: It is one of the features
12 that was derived out of the four work request
13 forms that were submitted, though a work request
14 form doesn't have enough detail in it to suffice
15 it to say define a product. What we did was, we
16 gleaned several items out of that, those four work
17 request forms, worked with trademarks to define
18 those products, and then we built them, and what
19 you're seeing now is the results of some of that
20 work.

21 MR. LOCKHART: Well, I understand that,
22 but given that this is the first cloud based

1 application, we're now moving into TMNG?

2 MR. OWENS: Yes, this starts it. I
3 don't want to say that it's the end all, be all,
4 there is still a lot more to do, but it is the
5 first step.

6 MR. LOCKHART: We understand that we
7 understand that, but it's great to see this first
8 step and great to see that you are moving in the
9 cloud.

10 MR. OWENS: So let's talk a little bit
11 about something that will effect the examiners.
12 You've heard me talk about it before. If I could
13 get the slide moved. You were on the right slide,
14 I just need you to go to the next one. Okay. I
15 would like to notate a small correction to this
16 slide that slipped in at the last minute.
17 Actually, this isn't the correct slide at all, but
18 that's all right.

19 As much as I'd like to develop a time
20 machine, I can't go back to the second quarter of
21 FY 2010, so those are supposed to be the last two
22 dates there, FY 2011, and it's missing a bullet,

1 which I'll fill in for you. I guess my slides
2 didn't get updated.

3 But basically you've all heard about
4 RDMS and the publication of the TMEP. RDMS, as
5 was stated before, is a publication system. It
6 takes XML data and it published it in a variety of
7 formats. XML keeps it native XML, HTML, PDF,
8 whatever we desire. And there is a front end
9 corresponding tool that allows public comment
10 called IdeaScale.

11 Now, this was just demonstrated to
12 trademarks within the last week. An IdeaScale is
13 used by the White House as the main commenting
14 tool available for the public to comment on
15 various things the administration is doing. And
16 we're working with trademarks to refine that
17 experience, and when they are happy, we will
18 launch it.

19 But the beta 1 for that launch, for the
20 public comment tool, the internal XML editing with
21 the piece of software that was mentioned earlier
22 called oxygen, that's basically an XML text

1 editor, as well as the internal search capability
2 is planned for December.

3 Our beta 2 plan, which is in the second
4 quarter of FY 2011, you have to remember, we start
5 our year in October, so it's the first three
6 months next year, is internal search and
7 annotation, so an examiner will be able to use the
8 search system, as well as annotate and keep their
9 annotations, their comments in the environment.

10 But also the bullet that's missing is
11 that public search capability, will be put up
12 there. There's two standing issues in the way of
13 that; one is the results of the beta 1, because if
14 we find out that the search is inadequate
15 internally, we were reluctant to release it
16 externally, though I heard loud and clear
17 yesterday from the subcommittee that it may still
18 be desirable; and the second is a licensing issue
19 with the software, we just have to make sure we've
20 acquired the right licenses and contractual
21 agreement.

22 Last, but not least, the production plan

1 for somewhere in the fourth quarter of the year
2 after the beta has been complete. Now, we hope to
3 get it done earlier, but without feedback from the
4 beta, and that usually likes to run for two or
5 three months, we don't quite know yet.

6 MR. LOCKHART: Now, this won't be the
7 wiki version, is it a precursor to the wiki?

8 MR. OWENS: Let's talk about the term
9 wiki. Not to get all geek on you folks, but wiki
10 has a particular connotation on it, which is,
11 someone starts a conversation, and the person can
12 change the content. So if you ever go to a wiki
13 site like Wikipedia, and you want to change the
14 content of the article, you can.

15 We're not looking at an actual wiki
16 site, we're looking more at what's known as a
17 discussion forum, which is, the original post
18 doesn't get to change, because as much as I think
19 a lot of people would like to change the rules on
20 the TMEP, they can't. But what it allows you to
21 do is comment on that section or subsection, as
22 well as comment on other people's comments. So if

1 we're talking about is that tool the IdeaScale
2 tool that allows the discussion forum to happen
3 going to be available for beta 2, the answer is,
4 yes, and we are hoping to include the public
5 search capability, as well, which we know is very
6 important for folks to be able to --

7 CHAIRMAN FARMER: John, a question. I'm
8 gathering though from the TTAB and from Lynne's
9 group that they want a wiki. Am I gathering from
10 you that you don't see that happening?

11 MR. OWENS: The product that is being
12 investigated, IdeaScale, is not a wiki, it is a
13 discussion forum.

14 CHAIRMAN FARMER: Right, and that's my
15 concern. It appears that the CIO folks may be
16 going in the direction that's not what's being
17 requested from the TTAB and the trademark
18 operation.

19 MR. OWENS: Not to toss it over the
20 fence, but the selection of that tool was done by
21 the front office.

22 MR. LOCKHART: Well, I don't know that

1 they're necessarily incompatible, but I mean I can
2 see some utility to this, but I think the question
3 is, are we also pursuing a wiki version of the
4 TMEP, not that the public could go in and make
5 changes to the TMEP, but they could propose
6 changes, I think that's the idea, right?

7 CHAIRMAN FARMER: Well, I think the idea
8 is that there would be a parallel version.
9 There's the official one that, of course, the
10 public doesn't change, but there's a parallel one
11 in which the public can suggest changes based upon
12 the discordance they see between those manuals and
13 the law that they're built upon. Lynne, is that
14 correct?

15 MR. OWENS: That is what a discussion
16 forum does, it allows you to make comments and
17 propose changes on the current TMEP. A wiki would
18 allow you to make the change. This catalogs your
19 requested changes and discussions on a particular
20 topic. That's what my comment was about. I think
21 we are using the terms inappropriately.

22 MR. LOCKHART: Well, the short answer

1 is, and I realize that you're driving toward this,
2 and again, I think we all recognize there's
3 utility to this, but the short answer is, you
4 don't have another process ongoing for what we're
5 referring to perhaps loosely as a wiki version of
6 the TMEP? This is what you have under
7 development, and you have nothing else under
8 development right now regarding the TMEP?

9 MR. OWENS: That is correct.

10 CHAIRMAN FARMER: If we could jump in,
11 Lynne.

12 COMMISSIONER BERESFORD: Yes, I think
13 the trademark saw this tool last week for the
14 first - a couple days ago I think, no, I guess it
15 was last week for the first time and have just -
16 at this point don't think it particularly meets
17 what we had in mind. We've been told that it
18 perhaps can be altered in terms of using wiki
19 technically, we've been using it as a short hand
20 to describe what we want.

21 I think there's a disconnect in actually
22 figuring out what trademarks wants here but this

1 tool is a fine tool and as seen, it doesn't do
2 what we want it to do, so that's an issue. I also
3 have a question. All this beta, is that actually
4 for the TMEP or is that for the MPEP?

5 MR. OWENS: No, it's both actually.

6 COMMISSIONER BERESFORD: In talking to
7 folks within trademarks, I'm not sure that was the
8 time schedule that we understood, but that's fine.
9 Thank you for clarifying.

10 MR. OWENS: No problem. Any other
11 questions before I go on? So let's talk a little
12 bit about the deployment, where I was getting to
13 before, sorry I missed a slide, of the universal
14 laptop. And I don't know if the camera over there
15 is on, but if we can show the image to everyone
16 out there of what the new laptop looks like.

17 Basically, again, this is the Intel I7
18 quad core eight gig of RAM, fully modern laptop.
19 We have planned the first beta to start in
20 December. There are 100 users across the agency
21 divided up between all of the business units. And
22 then we have two additional betas that will add

1 200 people at a time, one in January and one in
2 February.

3 Currently, the bulk of the software is
4 working. There is one trademark or two small
5 trademark applications that are not quite out of
6 internal testing yet, but they will be coming
7 along shortly, as well as a couple of patent
8 applications, but they're moving right along.

9 The purpose of the beta is to test out
10 the environment and find the issues with the
11 software in its conversion, as well as the
12 usability of the product itself. Once we receive
13 all of the data, we plan on starting to roll out
14 to the business units in March, and we hope to
15 complete deployment within a 12 month window.

16 MR. LOCKHART: John, you might want to
17 talk a little bit about - I know you're trying to
18 get the image of it up on the screen, but while
19 they're doing that, you might want to talk a
20 little bit about the related - well, I'll tell you
21 what, your next slide is on VOIP, so on the
22 bandwidth thing, maybe you'll wait until you get

1 there, but at some point we'd like to hear about
2 the bandwidth.

3 MR. OWENS: I was just going to show you
4 the laptop here real quick, if we can switch to
5 the camera on the side. Well, why don't we
6 continue to the next slide then since - okay. Too
7 late, almost there. If you can adjust that a
8 little bit.

9 It is a Windows laptop. We purchased
10 them. The trademark software, though, you can't
11 see the desktop, is on the desktop. I think
12 there's a small issue right now with getting trade
13 ups, as well as Madrid through testing, but that
14 is continuing. So we are very, very, very close.

15 If you pan out to the right, please, the
16 rest of the desktop system is there. There's two
17 extra monitors. The docking station is behind the
18 laptop, you can't see it. There's a high
19 resolution HD camera, of course, speakers, so
20 that, as part of this effort, we are investigating
21 a new software suite of tools for video
22 collaboration, a separate keyboard and a separate

1 mouse. If you pan to the left, show them the
2 telephone. This is the new handset, it will be
3 available, of course, and it will replace
4 everyone's phone in the office. It will also be
5 available to the business units that choose to
6 provide them at home.

7 It is a Cisco voiceover IP phone, which
8 we talked about earlier in the last meeting, which
9 brings us to the bandwidth question. I didn't
10 cover it in the presentation explicitly, but going
11 from 300 megabits per second to three gigabits per
12 second is ongoing.

13 That effort is through the networks
14 contract provided by GSA. In support of all
15 agencies, it is an OMB mandate that every one of
16 the federal government move to that managed
17 internet protocol connectivity through that
18 contract by the end of next year. And we are
19 working with GSA, our orders are already in for
20 the three gigabits per second.

21 That will cover all of the new bandwidth
22 necessary for the roll out of the collaboration

1 tools and the software for the laptop system, et
2 cetera. And, of course, the plan, depending on
3 funding, of course, is still to expand that to six
4 gigabits the following year, which is more than
5 many ISP's have. So we are definitely playing in
6 a different ballpark.

7 The phone itself, the infrastructure is
8 rolling out in October, so right now - and it
9 started in October, it's rolling out now, and the
10 employee equipment rollout is scheduled at the
11 same time, this is for the phone, that the laptop
12 is rolling out, because we didn't want to impact
13 our customers, our examiners in particular, more
14 than once.

15 So they will very much on the same day
16 get a new laptop, new docking station, they will
17 more than likely keep the monitors they have, they
18 may need a new printer or scanner depending on
19 compatibility, they'll get a new camera, new
20 keyboard, new mouse, there's a copy of options for
21 carry bags, we have three options for carrying
22 bags, and, of course, the new phone, and a video

1 collaboration tool, starting in March, a
2 completely new set up, all modern. Okay, I'm
3 happy to take some questions.

4 CHAIRMAN FARMER: Thanks, John. I do
5 have one question. I thought with the VOIP issue,
6 there was not only an issue with the equipment
7 that the end users are using, but there was an
8 overall PTO bandwidth issue; am I mistaken about
9 that?

10 MR. OWENS: No, that's why I brought up,
11 as Tim brought up, the answer to the bandwidth
12 problem, which is, it's not on any of the slides,
13 I talked about it just a second ago, we are
14 ordering that bandwidth, that bandwidth is
15 ordered, so --

16 CHAIRMAN FARMER: And I apologize if I
17 zoned out, when do you expect the new bandwidth to
18 be in place?

19 MR. OWENS: In time for the rollout of
20 the laptop, sir, in a schedule. So not an issue.

21 CHAIRMAN FARMER: Thank you. Mary.

22 MS. DENISON: I'm not sure I understood

1 this, so I apologize if I'm confused. The TDR,
2 when it shifts into the cloud, you I think
3 responded to Elizabeth that it would not have the
4 assignment database. Will the old TDR - that
5 currently has a link, so will that be gone,
6 because if so, that will be a worse system for the
7 user than what we have now.

8 MR. LOCKHART: Are you referring to the
9 link that, you know, when you go into TESS, than
10 you switch to TARR, there's a link to the
11 assignment database.

12 MS. DENISON: Right.

13 MR. LOCKHART: That's not going away.

14 MR. OWENS: No, that should not be going
15 away.

16 MS. DENISON: Okay, I just wanted to
17 make sure, okay.

18 MR. OWENS: What we want to do is, we
19 want to hide in the future, we want to hide the
20 various databases behind a single - a series of
21 services, and those services would make the
22 exposure of the data seamless to one interface.

1 So even though it's coming from multiple places on
2 our side, through a series of services, we can
3 obfuscate that and provide you one clean
4 interface. So the request of adding the
5 assignments data is certainly doable, you wouldn't
6 notice. Suddenly you would get the data, or you'd
7 get the option to retrieve the data.

8 But we're doing evolutionary work right
9 now, but we're going to start doing iterative work
10 very soon as part of the agile method, we're doing
11 2.0, TDR 2.0 now, we're already planning and
12 working on 2.1, we're also planning 2.2, and
13 that's the way it goes, right.

14 MS. DENISON: So is TASS going cloud
15 also? I was confused I think, because you now go
16 into TASS and you can do TDR or you can do the
17 assignment database, because that's how people
18 generally look at things if they're --

19 MR. LOCKHART: But you have to hit the
20 link, it's not in the same database.

21 MS. DENISON: Right, but that still will
22 be available and TESS won't be on the cloud, it's

1 just the TDR that'll be on the cloud?

2 MR. OWENS: TDR was first, yes.

3 MS. DENISON: TESS will eventually be on
4 the cloud?

5 MR. OWENS: We hope to build the whole
6 new system in a clouded environment.

7 MR. LOCKHART: Because I think the
8 ultimate goal, and somebody correct me if I'm
9 misspeaking, but the ultimate goal is that
10 somebody in the trademark community would be able
11 to go to one database and you get everything
12 that's now in TESS, TARR, TDR, and assignments,
13 one place.

14 MR. OWENS: Yes, one user interface that
15 would be smart enough to know what services to
16 make the request from, and there may be 30
17 services behind it, but it would be one interface
18 for you, and delivery would be seamless and
19 uniform. So if you wanted that information, as
20 you saw, you could check different boxes of the
21 information you wanted, and you want to dump it
22 let's say into a file for your records in a PDF,

1 which you saw demonstrated, if there was other
2 data types available there, you would just check
3 those, hit drop it into a PDF or drop it into a
4 zip file or whatever you desired, and we'd deliver
5 it to you, and that's the beauty of the system.

6 We don't have to radically change the
7 environment, nor do we have to radically change
8 the back end infrastructure to add those pieces of
9 functionality for you.

10 MR. LOCKHART: Or to put it in I guess a
11 very short way, the idea, if I understand, is to
12 consolidate all the data and make the delivery of
13 the data transparent to the user so the user
14 doesn't have to worry about was it filed as a PDF,
15 as a JPEG, as a video, just give me the data and
16 you get it.

17 MR. OWENS: Yes.

18 CHAIRMAN FARMER: Bob, do you have any
19 questions?

20 MR. ANDERSON: No.

21 CHAIRMAN FARMER: Are there any others
22 from any TPAC members? Anyone in the audience?

1 John, thank you.

2 MR. OWENS: Thank you, and I hope you
3 have a good afternoon.

4 MR. LOCKHART: Can we talk about
5 CAPTCHA?

6 CHAIRMAN FARMER: Sure, go ahead, that's
7 true, I forgot we put it on public record.

8 MR. OWENS: I'm sorry. The attacks that
9 we were seeing on our site as related to
10 trademarks have dropped. We did work to get ready
11 to put in CAPTCHA when necessary, but because
12 those seem to have subsided, and we are prepared
13 to put in CAPTCHA if necessary, and we didn't want
14 our constituency to have to suffer through using
15 CAPTCHA unless it was necessary to protect the
16 agency, we have decided to put that on hold until
17 the need arises.

18 CHAIRMAN FARMER: The other thing that
19 Lynne reminded me is that we've talked about
20 assignments a good bit, but I'm not sure if we hit
21 specifically on trying to get away from using fax
22 to communicate assignment instead, and instead, I

1 thing going to email. Did we hit that, Tim?

2 MR. LOCKHART: Yes, Gary Cannon
3 addressed that earlier.

4 COMMISSIONER BERESFORD: I didn't know
5 if this is an OCIO issue, I didn't know whether
6 John had any comments on it.

7 MR. LOCKHART: Yes, I'm not sure you
8 were in the room.

9 MR. OWENS: As far as I know, we've been
10 working with Gary, who met with my team and worked
11 it out. There's a couple of questions that need
12 to be answered, one of them I believe is legal,
13 Gary, you can correct me if I'm wrong. And we can
14 prioritize that along with the rest of the list.
15 Again, we take priority from trademarks on what
16 needs to be done and when. But we're working
17 through the issue, as far as I know.

18 MR. LOCKHART: Yes, I think, and again,
19 you may not have been in the room at the time, but
20 we, the TPAC, would like to hear on that issue is,
21 by the next TPAC meeting, if we could get some
22 clarity about are there any legal issues or

1 practical issues that would preclude providing to
2 the trademark community notice of recordation of
3 assignment by email, and then when would it be
4 possible for the trademark community to actually
5 view the assignment document, you know, the
6 underlying assignment itself, as opposed to the
7 PTO's notice of recordation and the record title
8 regarding the trademark assignment or the
9 trademark application or registration?

10 MR. OWENS: I'll be happy to continue
11 supporting Gary in that research and defining that
12 product that he would like to see and those
13 requirements. And, of course, once those are
14 available and prioritized, we'll be happy to work
15 on it.

16 CHAIRMAN FARMER: Is there anything else
17 for John? John, thank you.

18 MR. OWENS: You all have a good
19 afternoon, thank you.

20 CHAIRMAN FARMER: That takes us through
21 that part of our agenda. Now is the public forum
22 and public square time. Did anyone on TPAC,

1 Howard, have any comments that they wanted to
2 make?

3 MR. FRIEDMAN: Yes, I'll sort of pile
4 on, but in a good way, to go full circle from the
5 meeting. I just wanted to add in my brief
6 comments regarding folks that are or may be
7 departing. First for Bob, I'm going to assume
8 that you're still going to be around, but if for
9 some reason you're not renominated, obviously we
10 go back a few years when it came to labor
11 management matters, and I really appreciate now
12 being on the same side, really appreciate being on
13 the same side. And for Elizabeth and Jim, you
14 know, on its most basic level, really on its most
15 basic level, you're just two individuals who bring
16 so much as human beings and you're just very
17 likeable, both of you, and there's a number of
18 things I could say that support why you're so
19 likeable and why you're going to be missed so
20 greatly, whether it's the humor, the kindness, and
21 the list goes on and on.

22 But I just want to pass on how much I

1 personally am going to miss both of you. And I
2 can only hope that peace and serenity will be
3 created your way, such that when you're sleeping
4 late at night, you don't get woken up thinking
5 about the items on John Farmer's champion list
6 that you neither completed or he's still going to
7 assign to you, and that is actually a lot of peace
8 and serenity in view of that champion list.

9 Finally, we did a lot of toasting last
10 night, and rightfully so, to Lynne, the outgoing
11 Commissioner. I would add sort of two penultimate
12 thoughts sitting where I do, as I guess the inside
13 member of TPAC. I think as a Commissioner, and
14 particular this Commissioner, Lynne Beresford,
15 it's the kind of a job, the way Lynne did this
16 kind of job, where we see a lot of things, but
17 there's also a lot of things that never get to
18 TPAC and never get to me, and all I can say is, on
19 behalf of myself and on behalf of TPAC, I'm sure,
20 assuming I'm not taking any liberties, thank you.
21 You have to be a filter, and obviously we see a
22 lot of things, but there's also a lot of things we

1 don't.

2 And that leads to part two, which is, in
3 that job, the job that Lynne had, you have to wear
4 a lot of hats, you have to communicator, you have
5 to be a negotiator, you have to be a politician,
6 you have to be deft, you have to have tremendous
7 business acumen, and these are all skills that
8 Lynne has.

9 You also have to deal with people above
10 you, people to the side of you, people below you,
11 you actually even at times have to deal with that
12 rogue outfit known as TPAC and NTU 245, but we
13 appreciate no matter what hats you've worn and who
14 you've dealt with, that you've run a great ship,
15 we appreciate all that you've done for the
16 trademark examining attorneys. I, on a very basic
17 personal level, appreciate all that you've done
18 for me. And I only wish you the best as you pile
19 on future memories, future points in bridge,
20 future memories with your children, and future
21 photos with all your travels, the best of luck.

22 COMMISSIONER BERESFORD: Thank you,

1 Howard.

2 CHAIRMAN FARMER: Great words, Howard.

3 Any other comments, questions, things that members
4 of our visiting audience want to bring up? Well,
5 in that case, we're done, thanks. Would all the
6 TPAC members kind of huddle together, because I
7 think James Conley is going to put us through the
8 picture drill.

9 COMMISSIONER BERESFORD: We have a
10 photographer coming.

11 CHAIRMAN FARMER: Right, but he is
12 always our shepherd. Let's do a little brief
13 lunch break. And then after about a 30-minute
14 lunch break, I'm sure we'll all be in the
15 cafeteria, we'll reassemble here for a little
16 quick executive session.

17 (Whereupon, at 12:44 p.m., the
18 PROCEEDINGS were adjourned.)

19

20

* * * * *

21

22

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

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: September 30, 2014

Notary Public Number 301609