

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, September 25, 2015

PARTICIPANTS:

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WILLIAM BARBER

ANNE CHASSER

JODY DRAKE

KATHRYN BARRETT PARK

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRMAN TEPPER: Good morning, everyone. I'd like to call our meeting to order and I would like to welcome everybody to this public meeting of the Trademark Public Advisory Committee.

Very briefly, we do have some folks who are watching online. You are certainly invited, if you have questions or comments for our speakers today, you have the option of emailing those in. We will absolutely value your input and try to get your questions answered.

So I invite you to do that as you're watching. We will be pausing from time to time to ask any of the public members attending for their questions and input as well.

This is our final meeting for the year. So we are very pleased to be here today. This committee has been working hard in recent months. We are working on our annual report and you'll be hearing, I think, some good updates today.

This is a fun occasion because, as you will hear, there has been a lot going on and it's

a lot of good stuff in a year of lots of change and uncertainty out there, it's nice to see that things are going so well at the office. The challenges they are facing are being met. We certainly have things to work on and you'll be hearing that throughout the day.

I want to take just a moment to introduce the members of our committee to you and then, we're very happy to have Director Lee with us today. I mentioned to her this morning, we always seem to schedule meetings and given the fact that she has a very heavy travel schedule this is likely. But we all seem to only pick meeting dates when she has to be somewhere else. So we are really pleased to be able to all be here today this morning. And we appreciate your joining us.

Our advisory committee members, I will start from my right. I don't know if that is stage right or left for anyone watching online. But Jody Drake with Sughrue Mion. Jody is from -- she is local and she is in her second term now with TPAC.

Anne Chasser. Anne is from

Cincinnati, Ohio who is a strategic manager for Wolfe Domains. Anne is also in her second term now.

Cathy Faint is here today on behalf of Howard Friedman. He is our usual participant and ex-officio member from NTEU 245? I'm surprised I got the number right but thank you, Cathy.

Tim Lockhart is from Wilcox & Savage in Norfolk. Tim has rejoined our committee. So he is something of a rookie but he previously served so he's been very active working in particular with our IT subcommittee.

Jonathan Hudis, he is our true rookie. He is completing his rookie season I suppose (inaudible) with our (inaudible). Jonathan is with Quarles & Brady here in DC. I'm Maury Tepper. I'm from a little town called Raleigh, North Carolina with Tepper & Eyster and very pleased to be finishing out I think six years now with the committee. So glad to have had the chance to chair and to work with such fine people.

And Commissioner Denison is known to all. She is a rock star and we'll have the chance to introduce her a bit later.

Dee Ann Weldon-Wilson is with Exxon Mobile. It used to be Dallas. It is now Spring, Texas? Thank you, okay. So Dee Ann is smiling but she's been in the midst of moving a department, relocating everyone and keeping up with that on top of being here to volunteer for the office.

Bill Barber also a Texan with Pirkey\_Barber. He is the Barber in Pirkey\_Barber so that gives him quite a bit of status.

Kathryn Barrett Park is also finishing out six years of service. This is her final meeting. She is the first ever and this is historic, the first ever Vice Chair of TPAC. This is a position that has been created and Kathryn was our obvious choice. And she does all of the work on this committee.

I do want to back up and mention this is also Dee Ann's final meeting. So she's finishing out her term. So for us we're very happy to be here and I think it's a little bit of a poignant day for us, too.

That being said, I'll only mention the purpose of our committee is, of course, to meet

with and to advise the office on matters relating to operations, personnel and budget. And I think I speak for all of us when I say it has been a distinct pleasure to get to know many fine and dedicated people who work here at the PTO on your behalf.

Most members of the public probably don't get the chance to see quite as much but we are truly, truly fortunate to have such talented, motivated and dedicated people up here. So I want to offer our thanks. And especially since we have great leadership in Director Lee who looks out for us, she is appearing before Congress on our behalf. She is advocating for policy. She is keeping an eye on the office.

And we thank you for your support. And with that, I'd like to turn it over to Director Lee for some comments.

MS. LEE: Thank you very much, Maury. Can everyone hear me? Well, good morning and it's a real pleasure to be here with you today in person. I should just stop choosing travel dates on the same dates that TPAC has its meetings and everything will be much simpler.

But really, I'm delighted to be here in what I understand to be the last, as Maury said, of this year's meetings and also the last for three very valuable TPAC members, Kathryn Park, Dee Ann Weldon-Wilson and of course, our esteemed chair, Maury Tepper.

So Commissioner Denison will have more to say about them when she speaks today but for now, I just want to say thank you for all that you've done on behalf of TPAC, on behalf of the USPTO and the American public. Really, thank you for your service on TPAC.

As a former member of our Public Advisory Committee on patents, on the patent side, I understand and appreciate the time and effort that each of you puts in to TPAC or the Committee. And I mean this when I say we are a better agency for it.

Your input and your guidance are all indispensable to our operations and our continued success. So thank you for that. I also know how valuable your time is which is why we try to make these meetings as informative and productive as possible. And to that end, we have a great

line-up of presentations today.

As all of you know, and we see in-depth through these updates, the last few months have been incredibly busy and productive times for our agency. And we have a lot more happening in the coming weeks. On October 15th we're opening our new permanent Silicon Valley regional office in San Jose City Hall and on October 9th, our Texas regional office at its new permanent location in downtown Dallas. We have a few Texans sitting here on this side. So I hope to see you there.

Commissioner Denison will join me in both the San Jose and Dallas office openings. And I believe that the day after the Dallas office opening, we will be conducting a trademark focused roundtable with AIPLA at our new office. Is that correct, Commissioner Denison?

MS. DENISON: It is correct although I'm not sure about the location.

MS. LEE: Okay. Location to be determined in Dallas but that's great. And I think that's a good example of how we're leveraging our regional office to host outreach and educational events outside the beltway where

many of our stakeholders, most of our stakeholders, reside.

This has already been the case of our longest running regional office in Detroit. And to date, that office has participated in about 50 outreach events and hosted regional IP professionals and those who just want to learn more about intellectual property.

So for example, the Detroit office has Saturday seminar sessions that provide training to independent inventors and small businesses on aspects of IP protection including trademarks. And our education and outreach efforts are not confined to the regional offices. We continue to have regular trademark educational outreach over the Web.

For example, next Tuesday, October 29th, our trademark outreach office will host a seminar for exhibitors planning to be at the international CES tradeshow in Las Vegas this coming January. Many thousands of entrepreneurs, including countless startups, stake their professional futures on exhibiting in that tradeshow.

So we've designed a program specifically for those who may not fully understand their IP rights or IP protections to advise them and give them some options as they look to bring their businesses right forward and move them forward. These are all exciting developments and I couldn't be more proud of the work of our trademark team not just in education and in outreach but really across the board in terms of all their performance metrics. And we do that with continued input and guidance.

Finally, since this may be a question on your minds, I'll reiterate what I told our employees this Wednesday regarding the possibility of a lapse in government funding. We very much hope that Congress will continue -- will pass a continuing resolution before October 1st to keep our government running. To prepare for the contingency that no continuing resolution is passed and funding lapses, I want to reassure you that the USPTO will work with OMB to continue our operations using our reserve funds as we did last time a lapse occurred.

This would allow normal operations at

the USPTO to continue on October 1st and beyond. We owe our customers and the American public no less. So really thank you again for all that you do to help keep our agency and our trademark operations running well and at the top of its game so that we can provide the best quality service to our customers. And I look forward to a great program on TPAC today. And I'm going to turn it back over to Mary, is that right or Maury?

CHAIRMAN TEPPER: Thank you very much, Michelle. And as you can see, it is a very active time and I think it's notable that our first potential crisis doesn't happen until next week. But we, of course, are grateful and I'm sure you'll be hearing more from Dana when he updates us on legislative matters about the likelihood of continuation of the government and it's good to know the PTO has contingency plans and will do everything that it can to continue providing really essential services to support our nation and our economy.

Since I mentioned Dana, I do see that Dana Colarulli is here and usually we start off with finances and with the legislative update.

This morning, however, I'm changing things up on you. The times they are a-changing. Chief Judge Rogers is going to begin. We are going to start with a TTAB update this morning.

I want to thank Gerry for being flexible and being here. He will be on his way to the airport. He has travel in his very near future but when you have a celebrity guest on a talk show you always try to book them in when they're available. So we are happy to have Chief Judge Rogers when he is available. And I'd like to start off this morning with an update from the Board. Thank you, Gerry.

MR. ROGERS: Thank you, Maury. Do you have the clicker? Thank you. I certainly wouldn't have missed for the world the last meeting of your chairmanship and that of Dee Ann and Kathryn who I've worked with very productively and very closely in recent years. So I'm very happy to be able to schedule my departure for a family event out of state after this meeting and to be able to be here this morning. So thank you all for your help and assistance and constructive comments over the

years.

I will start as usual with our performance measures and I've blown up the size of the slides for this meeting to make it a little easier on all of our eyes. So hopefully this is a bit of an improvement. In terms of staffing, this is already out of date even though I put these together a few weeks ago to send them to you in advance for the meeting. We've now added a judge since these statistics were put together and we will soon have a second one joining us.

So staffing for the judges will be up to 23 by the week after next. And in terms of the filings that have been coming in to the office this year, we see an increase in appeal filings which is not surprising given the increase in application filings that have been occurring for years in the trademark examining operations; a slight increase in petitions to cancel much different from last year when we had a double-digit increase in petitions to cancel.

Why oppositions have dropped, I don't know but it's very difficult to predict how many appeals, oppositions and cancellations we will

get out of increased filings in the examining operation. I can assure you though that these numbers for the oppositions and extensions of time to oppose do not suggest to me that we're on a downward trend with oppositions. I'm sure opposition practice will -- this is a stock market correction, if you will. It's generally been trending up for all proceedings at the Board in recent years and I expect that we will continue to see upward mobility on all of these measures.

In terms of what we've been putting out this year, again, on this slide, the numbers have changed. September is always a very productive month. So even though this slide shows that a number of cases decided on the merits is slightly down from where we were at the end of August last year, I expect we'll be pretty much where we were last year. It'll be pretty much a very similar year to last year. Judges are producing many decisions this month as is wont to happen in the month of September, the closing month of the fiscal year.

And our precedential decisions, while we were at 34 as of the end of August, we're

already up to 41. So we've already met our goal for the year and there's a few more in the pipeline which may yet go out before the close of the fiscal year next week.

Contested motions decided. Again, we expect a very productive September from the interlocutory attorneys on contested motions. So I'm sure we'll be pretty much where we were, again, last year with contested motions, if not, have more of them decided by the end of the fiscal year.

On motions, on the contested motions, the pendency measure we know from reports I've gotten from Ken Solomon, the managing interlocutory attorney, that pendency, while slightly above, essentially a portion of a week above goal at the end of August is likely to be within goal by the end of the year because of the work that's being done this month. And while we had one case above our stretch goal of having no case older than 12 weeks at end of any month, we had one at 19 at the end of 19 weeks at the end of August. But we will expect that no case will be older than 12 weeks by the end of the fiscal

year because, again, a lot of work is being done this month and a lot of the older cases are being cleared.

And a lot of newer cases are being handled, too, to balance them off. So we expect the pendency measure to be where -- or measures to be where they need to be by the end of the year. We also see on this slide that inventory was slightly above where we hoped it would be by the end of August but again, something we expect to drop dramatically in the month of September as it always does.

It's also important to note that the staff attorneys has two new attorneys who are still learning the ropes. And we did expand the staff attorneys this year. So it's quite possible that this goal, this inventory -- control goal for motions, will be revised and revisited for next year. It's only the last two years that for contested motions and for final decision issuance by the judges we've had an inventory control goal. And as our staff sizes change, we may need to revisit those and see what actually are the optimal inventories for both

groups.

For the judges, the final decisions well within -- well slightly under even our target goal for pendency to final decision. So we're doing fine there. The inventory is only 16 cases above where we would hope it would be at the end of August and I'm, again, sure that we'll be down within the goal by the end of the fiscal year; so no real surprises with any of those statistics.

The last slide I have is overall pendency and this is for appeals, trial cases and the accelerated case resolution trial cases. I'm very pleased to see that even if they're only slight decreases, we've continued to kind of squeeze out a little bit of time on end-to-end processing on appeals and trial cases. This will be at the close of the fiscal year the fourth year in a row that commencement to completion processing of trial cases has been reduced.

So it's a great testament to the work of everyone at the Board. The attorneys for getting the motions handled quickly and keeping the cases on track, the judges for getting them decided quickly once they're ready for decision

on merits and the staff of paralegals and our able electronic filing system, ESTTA, for approving and processing consented and uncontested motions and keeping these cases on track.

One notable thing, ACR cases - we've had a slight drop this year compared to the breakthrough year we had in 2014 just in terms of the number of cases. But again, I don't think it's significant. We have -- I checked yesterday and we have had at least 15 cases be submitted for a decision on the merits after going through some form of ACR. So the overall number of ACR cases proceeding through the office is close to what it was last year and still above all the years prior to last year.

We just haven't gotten as many of them decided within the year because many of them have come in near the end of the year. But they'll be out right at the beginning of the fiscal year.

So that's it for the performance measures. If anyone has any questions about those before I go on to outreach and initiatives, I'm happy to respond to any questions.

CHAIRMAN TEPPER: Great. Do we have

any questions for Chief Judge Rogers at this point? Gerry, that's it. You see you need the early slot before people wake up but --

MR. ROGERS: That's good.

CHAIRMAN TEPPER: -- I think when the news is good and everything's on track, it's hard to come up with a lot so thank you for that update.

MR. ROGERS: Well, and it's also been a pleasure for me to have had Susan Ritchie as our deputy for the last year and to help keep operations running smoothly. We didn't have a deputy prior to last year and as the Board grows and our workload grows and our outreach and initiatives have expanded. It's been really great to have her there. And you know, to have all of the staff.

As I've said in many of the presentations I've given before a number of bar associations over the last few months, it really is an honor for me to represent the hardworking judges, attorneys, paralegals and all the staff at the Board because they really do a great job.

So and speaking of that outreach, we have ramped up our outreach this year, in part

because of some concerns. Some of you may have heard about that *B&B v. Hargis* decision that came down from the Supreme Court. We talked about it a bit at the last meeting.

But we have been out at a number of events talking to bar groups, allaying any concerns as best we can about whether practice would change significantly in Board trial cases. And for obvious reasons, namely, the precedence that the Federal Circuit issues which tell us how we have to decide likelihood of confusion cases, our analysis of those cases is not likely to change in any significant way. We're not likely to change any rules in response to the *B&B* decision.

But we certainly have listened to the concerns of stakeholders at all of these events that I've been at and INTA roundtables that we've participated in. And we probably will do some things a little different following *B&B* such as be a little more careful and a little more nuanced in some of our decision writing to make it very clear to parties what evidence they put in the record relating to use was considered. What

evidence they put in the record might not have been considered because the Federal Circuit precedent tells us we can't or that it's not relevant to the analysis that we have to provide to the case at hand.

So a lot of it will be something of a waiting game and we'll just have to wait and see how things play out. We're not really going to be able to control what District Court judges do but I always have been reminding people, too, that at least in terms of likelihood of confusion cases, the chances are so rare that a party will go through a trial case at the Board, get a decision on the merits. It's less than two percent of all cases, trial cases that actually go to a decision on the merits. Not take an appeal and then, find themselves in a later District Court action with the same party.

So I think people have to keep that in context and I've been at these events trying to provide that context, trying to allay concerns and also hear concerns so that we can be sure to address them. I'll be happy to take your question, Jonathan.

We also had in terms of other outreach, we've been trying to, as we have for a number of years, have more hearings in cases in public forums. The ABA IP section was here on campus recently and we heard arguments in a case here during that program. We will hear arguments in a trial case at the AIPLA annual meeting in a few weeks in Washington. And we've also got a hearing scheduled for Loyola Law School in Los Angeles.

We're getting out to the West Coast for a change and hearing arguments in a trial case there. We were able to find a case involving two LA-based attorneys and tell them they did not need to come to Washington to argue their case and we'd be happy to come to them. So this is kind of in conjunction with the opening of the Silicon Valley office. We want to make sure that the California and West Coast stakeholders see the Board in operation. So we'll be out there for that.

So that's kind of what we've been doing and we plan to continue doing a lot more outreach and participation into roundtables and other

events. Jonathan, you had a question?

MR. HUDIS: First a comment on your outreach. In addition to the hat I wear here, Judge Rogers, as you know, I also work with a few of the bar associations. And they find the hearings that the Board holds before the bar groups during their CLE sessions exceedingly helpful.

They also find very helpful the commentary of the judges and the interlocutory attorneys on best practices before the Board, whether it's motion practice or final briefing or oral argument. So I just wanted to make note that those outreach efforts that the Board has made have not gone unnoticed and they are greatly appreciated.

I want to return to your comments on *B&B Hardware* and the Board's operation in its decision-making going forward. It occurs to me, you do not have an easy job of it because you're dictated, for example, by the Federal Circuit's decision in *Octicon* that says you're supposed to make a decision on likelihood of confusion based upon the identification of goods and services in

the registration and in the application. Whereas if real world usage of the parties or marks are provided for to the Board and the Board has considered that usage in its decision, there is the potential for collateral estoppel effects in subsequent District Court litigation.

So Judge Rogers, I just make the comment and invite further thinking on this, is not only would the Board necessarily have to, in its decisions, describe with more particularity what evidence of world (sic) usage its considering but how it's considered in the likelihood of confusion mix.

MR. ROGERS: Agreed. And we're not inexperienced in that regard. Obviously when we are dealing with Plaintiffs who are relying on common law rights, all the evidence relates to use in the marketplace and the extent of their rights is dictated by the extent of their use. In situations where we have Section 18 claims or defenses and identifications are proposed for revision based on actual marketplace uses, you know, we've got experience there.

So we're certainly well-versed in

dealing with issues of use when the particular circumstances of the case dictate that we consider evidence of use. Of course, as you've recognized, there are many cases where the particular circumstances, whether it is a standard character mark or a very broadly worded identification with no restrictions on channels of trade or classes of consumers, dictate that we provide a broader analysis that is not based as much on evidence of use.

But we certainly will do our best to make sure that the evidence of use that is put in the record that's appropriate to the particular circumstances of the case gets handled well and explained well. What we've been trying to remind parties of is that it's not a categorical reaction to *B&B*. It's not every case that requires more discovery about use or more evidence about use. But particular cases when the circumstances allow for its consideration and we will certainly be cognizant of those cases.

CHAIRMAN TEPPER: Bill?

MR. BARBER: Hi, Judge Rogers. I just wanted to tag along and just, I guess, note a

concern or an issue that the potential impact of the *B&B v. Hargis* decision is not limited to likelihood of confusion issues. Now of course, that case -- the issue in that case was likelihood of confusion but I don't think the Supreme Court's decision is limited to that.

It basically said whenever the normal rules of preclusion apply then it would be applicable to the TTAB decision. So I think potentially TTAB decisions on genericness and abandonment and any other issue could potentially have preclusive effect in a later District Court action. So I guess, you know, just food for thought and consider how that might affect how the Board considers or writes decisions on other issues besides likelihood of confusion.

MR. ROGERS: And I think this is something that I've heard and we've discussed. I've been on a number of panels that have discussed the *B&B* case and I'll be on another one in Chicago next Tuesday. And this is an issue that I think everyone is well aware of and frankly, it's not just limited to all possible Board decisions that could have preclusive

effect. But this could be a boon, the Supreme Court's decision, for other administrative agency decisions outside the PTO.

So the potential ramifications of the decision, agreed, are very far-reaching. And so we'll just have to wait and see how far reaching they end up being. But we will do what we can to account for the impact on Board decisions and possible future litigation for parties who have been before the Board in regard to any claims.

CHAIRMAN TEPPER: Okay, thank you.

Are there other questions on outreach or particularly, I suppose, *B&B* at this point in time? Any time the Supreme Court speaks, of course, lawyers and least of -- and litigants do not enjoy uncertainty. And in the wake of that, we see a slow train coming around the bend and until we get to that point where we understand the outcome and we will see how things will settle out, I understand there will be concerns. I'm grateful to know that the TTAB has been thoughtful about this, will be doing what it can within the limitations it faces to provide clarity and assistance and we certainly welcome the continued

dialogue about the potential impact of this decision as we all work forward.

So Gerry, I'll let you continue.

MR. ROGERS: Thank you. And we've had this question that has come up in many of the discussions about the impact of *B&B*, about whether we would change rules or processes or procedures in response. And of course, I've said, no, there would be no significant changes to our processes and procedures because of that decision. But it doesn't mean the Board won't be considering or proposing in the future process and procedure changes.

As we've discussed at previous meetings, we had a very productive stakeholder roundtable back in February of this year where we acknowledged and discussed with stakeholders the fact that we hadn't changed our rules or updated our rules since 2007. There have been technology changes, there have been case law changes, other than the *B&B* decision that impact our practice and our procedures and for many reasons, it seemed that this year was an opportune time to revisit our processes and procedures and to think about

changing them.

I think it's very useful to be doing that in the wake of the *B&B* decision because we now know what the Supreme Court looks at as value-added features of Board trial cases. And so we, going forward and thinking about possible rule changes, will certainly not do anything that would devalue what the Supreme Court has identified as valuable in Board processes and procedures. So it's very useful to have had their decision come down while we're going through this process.

And we, of course, have provided the TPAC with an initial draft of the changes that we're thinking of making. And we value your input and your comments and your suggestions as we prepare for eventual publication of a notice of proposed rulemaking and we've engaged with the TPAC. And subsequent to the TPAC, we engaged with other bar groups on the revision to our standard protective order and we'll continue to engage with all stakeholder groups and rule changes moving forward.

So I know you're going to have a busy

time ending up the fiscal year and transitioning to new members and producing your annual report but we're very thankful that you're willing to look at what we've put together so far in terms of a future vision of Board trial cases. And we'll be looking forward to any of the comments and suggestions that we can get from the TPAC as we continue to work on that package.

And then, of course, when something eventually gets published in the Federal Register and we start receiving comments, we'll engage the bar just as broadly as we have engaged the bar with discussions about the *B&B* decision and other events going on at the Board. And I'm a little early but I'm happy to take any questions that anybody has.

CHAIRMAN TEPPER: I think there's never any harm in being early. Do we have other questions for Chief Judge Rogers today? Any questions from the public? It looks like you get to go on vacation, Gerry. I do want to take this opportunity to thank you and your group. It's been remarkable looking back over the last five, six years.

Your leadership has brought about a great deal of change in the performance and operations at the Board. I think it's really a pleasure to see how carefully you all are measuring both your objective goals, the quality of your decision-making and what you can do to continue to engage your customers to find out other ways to improve the overall experience and outcome for folks who are involved in proceedings before the Board.

And I want to take this chance to thank you all for that and I will miss getting the chance to see these updates in person. I will be watching them online when the next meeting rolls around but thank you very much.

MR. ROGERS: Thank you, Maury.

CHAIRMAN TEPPER: And at this point, we will sort of step back into what would be our usual programming, folks. We are going to have a legislative update from Dana Colarulli. Dana is a busy man. He is looking out for our interests on the Hill. He is patrolling all along the watchtower for us. And there are always things to see out there.

You've already heard a little bit about the possibility of our government not being open come next week. So Dana I'll let you let us know how the world's going to hold together.

MR. COLARULLI: Thanks, Maury. Good morning, everyone. Maury, I'll tell you in preparing the slides for today, and we'll go through, I'll give you an update on what trademark activity has occurred, talk about some of other things we're doing and end out with making some comments on the current outlook for the Federal budget.

I did put together a list of jokes, Maury, in your honor, to put in here somewhat-dry in their nature. I think I'm going to hold those back for future meetings so that we can keep your legacy alive but I wanted to let you know I put that effort in before the slides and they'll be forthcoming.

So let me go right through. Not a lot of trademark activity in this session since you last heard from me. I've divided them between things where there was a little bit of activity and things we're still monitoring. Certainly,

continuing activity related to the Redskin's football team, a trademark in Congress. Continuing ways that Members of Congress want this issue to be addressed. Our own District of Columbia delegate at large, Eleanor Holmes-Norton, introduced a piece of legislation that would have not allowed them to rely on the antitrust exemption if they continued to use the Redskins mark.

I don't expect a lot of activity on that bill to move forward but certainly a statement piece. Continuing activity looking at the administration of the ICANN WHOIS database and the trademark issues around that, the activity there was the Department of Commerce extending the contract for an additional year and some additional study from the Government Accounting Office in what is really needed for an effective transition.

So I think that's pushed down the road a bit, those trademark issues continue to be of concern but pushed down the road. And then, trade secrets legislation reintroduced in the Senate. We expect activity in the House as well,

likely, though, not before some resolution on the patent litigation issues are resolved in the Congress. So I don't expect a lot of activity at the end of this year but certainly, into next you'll see a pickup there and perhaps sooner if legislation on the patent arena moves forward.

We continue to monitor some other issues. There's continued discussion about trademark rights and whether they extend to state seals and local insignia. Again, a conversation that hasn't seen a lot of traction but we've been up to the Hill, talked to staff about the purpose of trademark law with the way the statute is currently structured to protect those types of rights and others. I expect that to continue to be the case as cities are looking to see the best way to protect their local emblems.

Thank you very much for the applause. I appreciate it. A couple of other issues, and I know Shira will join you a little bit later today and talk further about activities at the World Intellectual Property Organization. Earlier this year, over the objections of the United States, WIPO moved forward and adopted a treaty

that really does not serve the US trademark system. The US delegation continues to be very active in pushing back on the treaty.

We're now in the point where we're talking about implementation and very concerned about how WIPO will pay for the treaty and whether they will open a conversation that actually will serve US trademark owners. So I think a very important discussion. Shira will talk a bit more about the proposals that the US government just recently sent up to WIPO and will become relevant as the general assemblies begin in October.

We have gotten a lot of support from Congress and they've sent up two letters to WIPO directly, asked us to come up, keep them very closely in the loop on any discussions. So we've done that. We've had a couple of staff briefings, continue to have discussions along the way as WIPO decides how they're going to implement this and whether they do take any other actions to serve not just the US but other countries in a like situation. So I included a quote there where Congress uses very strong language to express its "grave disappointment" with this

international IP organization.

And I think that's on top of some question about the effectiveness of the organization overall. So this is very much in line with other statements that Congress has made before. We'll continue to work with WIPO and you'll hear more again from Shira.

Congressional Trademark caucus, I reported on this before. It looks like the caucus is starting to gear up to do some events. We're hopeful that we'll help the caucus provide some education for members; to elevate the role of trademarks and the importance of trademarks. It looks like they're going forward on a first event. I don't know if we'll participate in person or simply provide some materials but we'll certainly help to support and participate in some way. I know that our trade associations, INTA and others, will also be supporting this caucus. It's a really great opportunity to talk to members about why these issues are important.

So we've been encouraging this type of activity. There's a number of other caucuses on the Hill, some related to IP, some not but again,

good opportunities for members who may not be on the committee, may not have oversight authority to get involved in our issues. So we look forward to working with all of those members. Certainly, Senator Grassley is the Chairman of our Senate Judiciary Committee. Congresswoman DelBene, Congresswoman Forbes - and Senator Coons, all on the Judiciary Committees as well. So they've got a stake on these issues. And we'll fuel that stake and that interest.

So let me wrap up and talk about the other things that certainly the Office is focused on in terms of activity up on the Hill and my team has been spending a lot of time on. Patent litigation abuse legislation, continuing activity there with the possibility of some more activity this fall to try to address abusive tactics in litigation. And the core of those bills has essentially stayed the same. There are some proposals in the House that are different from the Senate. The Senate has also focused on making some changes at least targeted changes to our PTAB proceedings to the extent that they contribute to creating a more efficient

litigation and enforcement environment.

I want to make sure they're working correctly. The Office has proposed rules to make sure we're actively managing these proceedings. We're likely to see, at least, some narrow changes there in Congress as well. Copyright issues, a lot of talk about copyright issues. The House Judiciary Committee continues to do a comprehensive review. They did an event in Tennessee just this past week on some of the policy issues in the digital marketplace.

There is discussion about the Copyright Office itself both its location and whether it has the resources it needs. So we've been pulled into some of those discussions. I will say I know that downtime is very important for the trademark operations, but the Copyright Office was down for over a week, the registration system, just recently which is just an untenable situation. I think that will continue to fuel some of the discussion that there needs to be some changes here.

The NAPA report on telework and improvements to our telework program overall, in

the wake of some IG reports last year, certainly, fueling some additional efforts that we had been making to make sure that we're managing our telework program appropriately and, frankly, managing our employees appropriately. NAPA came out with I think a very positive report for the PTO on things that we've done to help manage our telework program. And it talked more broadly about what tools we have in place to manage all employees, again, whether they're teleworkers or not. And it looked across the agency.

So we're continuing to talk to the Hill about how we're managing our telework program and our employees. I think that in this environment we'll continue to have scrutiny over potential abuse even if isolated within the agency. Those are issues that are very important certainly to the PTO and certainly to the Director. I expect we'll continue to go up to the Hill and talk about these issues.

And there is at least one report just recently as well on single instance of abuse within the PTO. So with a 13,000 person organization, you're certainly going to have

these cases. The key is that we address them, that we have the tools to address them and that we train our managers to do so. So it's an important dialogue. The Hill is very interested in making sure that we're taking these actions and we're briefing the Hill on them as well.

Regional offices, the Director mentioned Silicon Valley and Dallas offices opening coming up this fall in October and November respectively, very excited about those offices as well. My team has been building new skills to reach out to local elected officials which has been an exciting time for us. And we're benefited by the fact that we'll have now regional outreach managers as well as the directors, as well as the operations folks, at least on the patent side. So I think that will benefit the trademark operations. I think that'll benefit the Agency overall creating new opportunities for us really to educate.

I know Mary's going to be out in California as well doing another roundtable. Offices create a lot of good opportunities for us to do those types of activities. So round-up,

Maury, the issue you started with.

The Congress has yet to pass a budget and we're nearing the end of the fiscal year mid-next week. The outlook, at least at this point today, is that the Senate at least has a path towards a continuing resolution so they can continue the discussion about the budget that doesn't include some of the more controversial issues that have held them up, Planned Parenthood and other issues.

I'm optimistic that they'll be able to move forward, but it's unclear how or when. It's a political environment and things could certainly shift. As it relates to the PTO, we've been very lucky that in the past when these situations have come up, we have been able to make the case that we should continue operations. We certainly have the resources. Again, we're hopeful that, and you heard the Director say this morning, we're hopeful that we'll be able to work with OPM and have that same situation.

To the extent that this becomes the default for USPTO in these cases, that's a very good thing, so that we can continue operating. We

have successfully argued for this on the Hill. We've also successfully made the case within the administration and we'll continue to fight that flight.

So with that, Maury, I'll end. I'll thank you for certainly your dry humor in making my presentations interesting and I'm happy to answer any questions.

CHAIRMAN TEPPER: Dana, thank you for that tour de force. It is admirable that Dana could keep a smile on his face in a climate on the Hill when it seems like it's not dark yet but it's getting there. And so we do -- we have the close of the fiscal year coming up next week. I want to -- I just want to make sure knows and understand that we have -- we are a user-fee funded agency. However, in order -- and we have an operating reserve.

However, in order for the Office to access that reserve and remain open, they will need authorization from OMB. They'll still need congressional action. So we do remain hopeful both that we won't need to take that step and that if we do need to take that step, the authorization

will be forthcoming but there are no guarantees in life, I suppose.

Do we have any questions for Dana today?

Yes, Bill?

MR. BARBER: Hi, Dana. So it's my understanding that in one of those patent litigation abuse bills there's a trademark-related provision that has to do with where a TTAB decision, somebody takes a review in a District Court and then, that District Court decision is appealed. Currently, those appeals go to Regional Circuit Courts of Appeal and this provision would require those appeals to go to the Federal Circuit.

And that provision is -- would extend to both inter partes cases at the TTAB and ex parte appeals at the TTAB. I personally have some concern about that because typically, at least, in inter partes cases, when a review is taken in a District Court, very frequently infringement claims are added at that point. So it becomes much more like a regular trademark infringement case and those types of cases would seem to me more appropriate to be appealed to a regional circuit.

So I guess my question -- three-part question, one is -- well, I'm sorry. Let me add one more thing. It's my understanding that the US Patent and Trademark Office supports that provision or maybe even sponsored it. So I guess a three-part question. One is, correct me if I'm wrong about any of that, two, do you know what the status or have there been any changes with respect to that provision up on the Hill and, three, I'm just curious whether you're aware of any cases that have been appealed to regional circuits that have really caused a problem for the US Patent and Trademark Office. Or, you know, sort of what is driving this provision?

MR. COLARULLI: So confirming, starting with the first question. It is a provision that we would support here at the PTO in line of consistency, in line of having that single court addressing those cases. I don't know of any particular case where this has come up but certainly, we've had this discussion with some folks in INTA on what our views would be. We've certainly discussed it with the Hill and the provision that the Senate staff chose to put in

there did come from a product of those discussions.

It hasn't changed as I understand since it was put into the Senate bill but we would support the language that is currently in there. I'm happy to follow up with other cases in particular. I know there are some other arguments in addition to just the consistency, the trial and certainly some of your colleagues at AIPLA and others have raised the issue of infringement claims being added in and how they would be treated. So happy to follow up further on that issue but hasn't changed much. I think we generally support what's in the bill right now.

CHAIRMAN TEPPER: I think we have another question. I'll add, as far as I'm aware and perhaps we should and when we, you know, patent litigation abuse legislation we do need to note that the trademark issue in there, I think it is fair to say that all of the associations either oppose or at least do not support that change. So we have, I suppose, a difference of opinion in this particular instance and on this issue between the Office and the IP associations,

at least ABA, AIPLA and INTA. And I'm happy to be corrected by anyone who's been involved in those discussions in more detail. Did you have a question, Jonathan?

MR. HUDIS: I was just going to state what Maury took my thunder away from. The bar, as far as I know and I've been in these discussions with Bill and others, is uniformly opposed to the USPTO's position on this. We can see the PTO's positions with respect to a uniform addressing of appeals of ex parte cases.

We do not see, for the very eloquent reasons that Bill Barber just discussed, a reason why the Federal Circuit would take away what has traditionally been the province of the Regional Circuits especially when infringement claims are joined with register ability decisions in the inter partes case. So understand, Dana, when the PTO is making these recommendations to Congress, it's against the will of the Trademark Bar.

MR. COLARULLI: So I haven't seen specific letters of opposition to the Hill. I know that the discussion between ex parte versus inter partes discussion was had. Again, happy to

follow up with some additional arguments. I'm not an expert on these particular issues, but again, happy to follow up with what the discussion has been to date.

CHAIRMAN TEPPER: Thank you, Dana. And I appreciate that we are on your radar screen now so. Other questions? I see Bill and Jonathan both waiting to take turns. So perhaps there's more.

MR. BARBER: Well, maybe I'm just rehashing here but I really think it would be helpful to the discussion if the Patent and Trademark Office would identify a case or cases where a Regional Circuit has decided an issue and that has been a problem. Because it seems to me like a solution searching for a problem that doesn't exist. I'm not aware of any cases where this has been a problem.

And Regional Circuits can apply Federal Circuit law just as well as Federal Circuit; the Federal Circuit can apply regional law. So it, I don't see that there's a real problem here.

MR. HUDIS: It would also set up a situation if that legislation were to be passed,

Bill, I'm not familiar with the exact section of Lanham Act, maybe you are, that gives the District Court judge the right to make a decision affecting the register. Section 39 maybe? I just don't remember the exact section of the Lanham Act. But it would set up a situation, you know, where you're going to have two pieces of legislation that would be directly contrary to each other.

CHAIRMAN TEPPER: So just to close this issue up and I will not speak for any of the IP associations but at least on behalf of TPAC, I think it's a bit of an unusual situation when we see the Office not engaging in a dialogue with customers and stakeholders and getting their views. And it's rare to see any type of disagreement. So I note this is an unusual situation. I do hope that there will be the chance perhaps for this to be taken up, discussed and considered and I'll just note this is a bit of a change for us to see a situation like this. So I hope that there will be the opportunity for some further thought on that issue.

Do we have any other questions on legislation, on Congress? Yes, Jody?

MS. DRAKE: A very small question, it won't take long but I was interested the copyright policy and office modernization discussions. And I think this is a relatively discussion and if I understand, I think when the online registration system went down, this is what precipitated some of this focus all of a sudden on the aging IT systems at copyright office and taking a hard look.

I think their budget overall is \$20 million or something. They're heavily subsidized. Their user fees, I guess, generate around that amount. So in that regard, the discussion about, well, should they become part of the USPTO, should they move to this campus, should they share resources with patents and trademarks here? Have -- I know this is very early, but have you been asked to weigh in on some of those -- these early discussions at all? Just curious.

MR. COLARULLI: So I think the discussion about Copyright Office modernization started long before even the most recent IT problems that they've had. They're certainly

unfunded. They're not 100 percent fee supported and their budget is controlled by the librarian of Congress. So there has been some concerns from the copyright community for a while about whether the office had what it needed to do to serve its users who rely on the registration in a very different way than they did in the past.

There are about three proposals out there. Two have been circulated in draft language. One would be to move the office into the Executive Branch and potentially to the PTO. That certainly has been proposed.

Another would be to make the copyright office an independent agency. Yet a third would be much more modest changes. To leave the Copyright Office where it is but perhaps give it some additional independence on its budget. And with that, there's discussions about the role of the copyright office, certainly its independence, not just operations but policy and then, the actual head of the copyright office, if it should be a political appointee or not.

There's a number of discussions of ways you could change the copyright office to try to

be responsive. With some of those proposals, we have concerns. The administration has not taken a position yet. So we're actively discussing it now. This has come up in the context of the House reviewing the copyright system as a whole.

Many in the stakeholder community would like to see changes probably, here and maybe not substantive changes on the policy side. So I think there's a likelihood that you might see something that at least gives minimal ability of the Copyright Office to be able to have control over its budget.

Mind you, any change you make here, you need to be careful not to impinge upon the Executive Branch activities already. The USPTO and Shira Parlmutter's team is the lead negotiator on copyright issues at WIPO. We lead those discussions within the Executive Branch in partnership with the Copyright Office. We're in the process right now of implementing two major copyright treaties.

So you do want to make sure that whatever change you make doesn't prohibit some of the very good work that's going on right now.

There's a lot of good models around the world where just as you suggested, all the IP functions are in one place. That's certainly one option that I know is being discussed and we'd like to discuss further.

CHAIRMAN TEPPER: All right, other questions? Do we have any questions from the public? Yes, sir. Mr. Kent.

(Inaudible question asked)

CHAIRMAN TEPPER: Yes, I believe what I said was does not support. So I hope I'm accurate about that and thank you for that clarification. All right, Dana, I want to thank you for your tireless dedication in looking after our interests and for the updates and I have always thought your jokes are funny. So I'll look forward to continuing to hear those as we listen and we appreciate the time today.

And we're also pleased now to have Tony Scardino with us. We're going to move back to an update from our Chief Financial Officer. It is very near the close of the fiscal year so this is a very busy time for Tony. Next week we will close the books out. In a lot of companies that

marks the time for a million dollar bash. That is not the case in the government.

As you may be aware, we're waiting to see if we'll be operating and open beyond that point in time. Nevertheless, Tony's got his plans in mind and is covering lots of contingencies that I think most folks when they get into finance and accounting hope and pray never to have to deal with it. Tony manages it with a good sense of humor and positivity. So thank you for joining us today.

MR. SCARDINO: Thank you for having me. I appreciate the opportunity, as always, to talk about our fiscal affairs. We're, as Maury mentioned, we are in the midst of a busy time. We're closing up FY 2015. We are waiting for Congress to act on FY 2016 which is challenging. We'll go through that in a minute. And then, for FY 2017 we just submitted a budget to the President's budget office. So we are working with them very closely.

And then, we have a fee review which we'll go through.

But more specifically, to the end of

'15. FY15 ends in less than a week and fees are, on the trademark side, just about where we thought they would be, which means we either do a really good job estimating or Mary runs a really good shop, and maybe hopefully it's both. Because we're right where we wanted to be -- right where we thought we would be. Just slightly one percent below corresponding to the '14 at this time, but that's because we lowered some fees in January, you'll recall.

Trademark applications are increasing at a rate of 8-10 percent this year, and for the foreseeable future; which is all good but causes more challenges on the hiring side and things like that, which I'm sure Mary has or will discuss with you. This gives a breakout of more specific fees that I know you're all pretty much aware of, but we try to group them in major groupings here. Application filings is, of course, the big revenue driver but intent to use or use fees, of course, is also a big revenue element for us.

Under your spending here, this year we are actually dipping into the operating reserve. You'll recall prior years we used to call it

carryover funding. These were fees that we collected and didn't spend. We now have a goal on both the trademark side and the patent side to have an operating reserve. Usually the goal is between, you know, a floor of let's say two months on the trademark side and a ceiling of six months.

We came into the year very healthy with a \$157 million operating reserve. And by plan, we have dipped into that for mostly IT spending, IT development. Trademarks NextGen has consumed some commitment of costs but we're making strides with that.

But we will end the year with almost \$100 million carryover which is still well above our minimum levels that we would target. And that'll become important as I go into talking about '16. Again, spending, a majority of spending for trademarks, of course, would be salaries and IT development and IT operations and maintenance.

So we have two major portfolios. One would be the NextGen and one would be the legacy systems. We have to maintain the legacy systems, of course, until the NextGen systems come online.

There will be overlap, in fact, for the two systems. But we're not there yet. So that's the majority of our spending in the trademark's IT.

So going to '16, of course, Congress has not passed an appropriation for 2016 for any federal agencies and that's not all that surprising. That's happened, I think, 27 out of the last 30 years. So that's kind of what we're used to but I'm sure you follow the news enough to know that a continuing resolution is usually the short-term response. It's called a stop-gap bill. In other words, that would be your bridge to a permanent appropriation.

And folks are worried, are concerned, that there may not be a continuing resolution passed by October 1st. We're all optimistic, of course, but there are a lot of factors in play and I can't obviously speak for Congress or the White House. But we are in a somewhat unique situation like we were two years ago that we have authority to spend prior year fees. So our operating reserve would be used during a shutdown. We did that two years ago you may recall.

There was a partial government shutdown

for 16 days and we still remained open. So patent and trademark operations continued as normal. So we're positive that, I mean, we're not positive, we're optimistic that that'll happen again if there is a partial government shutdown.

Having said that, FY16 fee collections overall for USPTO we're estimating will be lower than what the President's budget included back in February. So we are in the midst of doing some reviews internally on spending for '16 and '17. Maury, I want to use a baseball analogy in honor of you. And Yogi Berra, the great Yogi Berra passed away a couple of days ago and he was famous for quotes. Whether they were his or not he was still was given credit. \_\_

The one we've been using lately is, apparently one time he ordered a pizza and he said, could you please cut it into four slices, because I don't think I'm hungry enough for six. Right? So we've been saying that because the pie is still the same size or shrinking and yet, all the folks that want slices seem to be growing.

We have more and more activities, great activities. You know, you can always do IT

development. You can always hire more people. We've got a backlog, of course, on the patent side. So we're trying to, you know, in a measured way prioritize. And so Mary and I actually co-chair something called a financial advisory board, FAB. We've been having days and days of meetings -- the staff is actually meeting even more than we are -- to review our spending, every line item, and to make sure that Russ and Michelle have informed decisions when they make some tough decisions on some cuts we'll be making over the next couple of years.

You know, really we are all about staff and IT when you think about it. So many other things -- rent for this building and others -- they're pretty fixed. Staff's pretty fixed for that matter, too, in terms of staff onboard. So we're looking at, you know, how much growth should we have.

Trademarks, of course, with the applications going up so much we'll continue to hire. It's just a matter of the rest of the organization. So that brings us to '17.

The 2017 budget was submitted to OMB,

the Office of Management and Budget, a couple of weeks ago. We're meeting with them next Monday to review it and go over the details of it. But as I mentioned, we're looking at some spending reductions over the next couple of years so we'll refine our budget before it goes to Congress the first Monday in February. So we'll be working with TPAC to go over any adjustments to the budget that you've just reviewed and we submitted to OMB.

So this pretty much goes through what I just mentioned about budget prioritization. We want to keep, you know, continuing to meet our mission requirements; pendency goals, backlog goals will remain the same. It's just a matter of, you know, at least on the patent side especially, we're trying to figure out where we -- where that right mix is in terms of patent examiners and workload coming in along with fees.

On the trademark side, of course, as I mentioned, we will continue to hire. In fact, I think we're going to have our biggest hiring this year or next ever for trademarks, which is great. We're very excited about that. We always get a lot of interest in positions to work here so

that's a good sign.

And finally, the biennial fee review. You'll recall we set new fees for the first time ever, USPTO, through the AIA Section 10. We got authority to set fees. They went into effect in March of 2013. So at that time we pledged a biennial fee review. We would look at all fees. Of course, since then, we actually lowered a few fees in trademarks but now we're in the process of looking at all fees to see if we should eliminate some, introduce new fees, increase some fees, lower some fees. So folks have been working throughout the summer and we will be making a decision, Russ and Michelle, very soon on what fee proposal we would like to propose.

And then, that would go to TPAC. We're going to have two different processes. The way we're looking at it right now, we think that it could be a more efficient process so that one fee can't hold up both sides of the house, if you will. And of course, TPAC will be very involved in that. If we end up proposing new fees or increases in fees, we'll propose that to the committee and you'll have a clock that will start. You'll have

30 days to take some action and we can go through that.

But of course, we'll help staff. You know, you will need to have a public hearing within the 30 days and make some recommendations. We will, of course, help set that up for you and staff it accordingly.

But I can't say strongly enough, there would be a bit of an ambitious timeline. When you're nearing the end of an administration, there are only so many notices for rules that go through the process.

So the administration, we believe, would be supportive of any proposal but of course, as you get close to the end of the administration that's when they say, well, we may have to wait until the next administration. And we want to be respectful of that. So we would help you kind of meet some ambitious timelines.

Any questions or thoughts?

CHAIRMAN TEPPER: Thank you, Tony, very much. Do we have questions today for our Chief Financial Officer? Please, Dana?

MR. COLARULLI: Just to add on to

something that Tony had said. Currently in the House patent litigation legislation, there is a proposal to extend the fee-setting authority for an additional 10 years. We are -- will soon be submitting to Congress our implementation report on the AIA. I think our view at the agency is getting to a static state and making that authority permanent would be a good thing.

And certainly, I know it gives some more certainty to Tony's team as they're going through that fee-setting process. So certainly, we need to meet those tight timelines anyway but being in a situation where we have permanent fee-setting authority would certainly improve the agency. So it's a discussion that's up in Congress that we're supporting.

CHAIRMAN TEPPER: Thank you, Dana, for that update and clarification. And it is I think you know good to see. We're at the very early stages of this regular biannual review taking place. This is two years in as Tony mentioned so a top-to-bottom look I think that's certainly a healthy exercise. We'll look forward to seeing the outcomes of that and knowing that this will

be an ongoing process.

Dana will keep us up-to-date on if it becomes permanent or the next 10 years. I think in most people's world the next 10 years is a pretty permanent situation at least for the foreseeable future we'll be knowing that we have our group with a regular review. I believe, too, in our June meeting you all heard an update about the new FAB, is it Financial Advisory Board? Thank you. I'm bad with acronyms so I'm glad to have gotten that right.

So that's the second mention. I appreciate the office setting up a formalized process, letting everyone have some input and providing better recommendations that way on the decisions they need to make. So thank you, Tony, very much for all of your help and your work.

It's, I think, among the big challenges Tony has, and they are many if you watch all of these different calculations, numbers and authorizations, making lawyers understand numbers is probably the most difficult. So on behalf of TPAC we do want to really thank you all. You have been very patient, very responsive and

very helpful in assisting us in our efforts to understand the finances at the office and make sure that we're in a position to support and make good recommendations.

So I wanted to thank you for that. We value the assistance and we've come to rely on you very much.

MR. SCARDINO: Well, thank you. I appreciate that. I'm going to leave you with one more Yogi Berra quote then in your honor. He said 90 percent of this game is mental. The other half is physical. So if you can add those numbers, we're in good shape.

CHAIRMAN TEPPER: I like it. I don't know where my other half of physical went to but I'm at least half physically here. So we're glad for that. And thank you for bringing Yogi in today. May he rest in peace. One of the greats.

MR. LOCKHART: And didn't he also say it's difficult to make predictions especially about the future?

MR. SCARDINO: Thank you.

CHAIRMAN TEPPER: All right, thank you. Since we're on baseball and I don't know if

anyone has any more Yogism's they wish to share, but it is time for us to turn to -- it's hard to believe given how well things are going that she is just finishing her rookie season with us, Commissioner Mary Denison who has begun services as Commissioner 1st of this year. So this is also, I think, a strong finish to her rookie year.

We'll be getting an update now on trademark operations. Thank you.

MS. BONEY-DENISON: Thanks Maury. I want to start off before I get into the nitty gritty of details on operations, I want to start off by thanking the TPAC members who will be rotating off. So I have a little certificate and the first person, if Dee Ann would come up?

MS. WELDON-WILSON: Thank you, Mary.

MS. BONEY-DENISON: This is a certificate of appreciation for your outstanding contributions and service as a member of TPAC. And I just want to say thank you and we are very grateful to you for all your hard work (inaudible) so thank you very much.

MS. WELDON-WILSON: Thank you so much. It's been an honor.

MS. BONEY-DENISON: Next we have Kathryn Barrett Park. Now Kathryn and I and, actually, Tim Lockhart were all on TPAC together. And I was -- when I was on TPAC I was involved with the TTAB and Kathryn took over that project for me and took it up a level. So I've always been appreciative to Kathryn for following up so nicely on what I was working on TPAC. So Kathryn here is a certificate for you and I just want to say thank you so much for your fabulous contributions.

MS. BARRETT PARK: Thank you, Mary.

MS. BONEY-DENISON: We will miss you.

MS. BARRETT PARK: I'll miss TPAC and I was very happy. I thought today when I was listening to Chief Judge Rogers, what a very -- if for no other reason, how productive my time on TPAC has been. I've really seen so many great improvements and changes and I'm always so inspired when I'm here and walk away with such a good feeling about the dedication of people like you, Mary, and Judge Rogers and everybody in this room. It's been truly a pleasure to get to work with so many talented people. So thank you.

MS. BONEY-DENISON: Thank you, Kathryn. Our fearless leader is next. Maury, we have a certificate for you. We want to really, well, there aren't any words to express what you've done for us. We are so grateful for everything that you have done and you have been an amazing chair for TPAC and we will very much miss you. So thank you for all of your hard work and your contributions and for making every meeting fun.

CHAIRMAN TEPPER: I think I'm speechless. Other than to say it has been a singular honor to get to work with this group. I think we're only called TPAC because Super Friends was already taken. And this is an incredible group of people. You have some very, very accomplished folks here giving of their time and especially just the chance to work with the office. If I start naming people I will leave someone out and I don't want to do that and I will simply say across the board it has been a marvelous experience to get to see the dedication, the responsiveness, the support that we have up here at the PTO.

So it is well worth it. As you can see, we have a Commissioner here who's a former TPAC member. We have a Director who's a former PPAC member. You just never know where this will take you. So I'm looking forward to seeing what might happen next. Thank you.

MS. BONEY-DENISON: Thank you, Maury. I have to say; when I joined TPAC it never occurred to me I would end up at the PTO full time. But it has really been a very nice relationship that the Office has with TPAC and I want to thank you all for your support because you have been a terrific help to us and the collaborative nature of the relationship is really very productive and helpful so thank you.

Okay. So we're going to start off with some good news. We are meeting all our goals. Now I can't say, you know, the fiscal year doesn't end till September 30th but we seem to be on track to meet all our goals and in fact, I'm told that we have met first action pendency every month since April 2007. So that is a real tribute to our hardworking staff. I mean, they're really doing a great job. So I'm very grateful to

everybody for all the hard work that they do.

And disposal pendency is also well within our target. So I'm really delighted that we're finishing up the year so strongly. And of course, it's not all about pendency.

We very much care about quality and again, it's, you know, these are the end of August numbers but we're looking like we're doing really, really well and I'm particularly pleased with the exceptional office action numbers. This looks at more -- the first two numbers, the first action compliance and the final action compliance look at whether we got it right. And the exceptional office action looks at a lot more than that. It looks at the quality of the search, the evidence, the writing as well as the decision.

So the fact that we're at 52.4 percent at the end of August is a really great number and I'm very proud of that number. And I hope all the examining attorneys are as well.

So as has been mentioned, filings are up. And if you look at the light blue, we're predicting that they're going to keep going up. So right now at the end of August, we're at 10.8

percent higher than the last fiscal year which is kind of amazing.

And the swings have ranged from a 27 percent increase, so we're not quite there, back in '99 and 2000 to a 21 percent decrease in 2001. And so we're always thinking about how many people we're going to hire because we don't want to get anywhere close to having another RIF. People still talk about it 15 years later. And we really are trying to be cautious but yet, we have to maintain pendency.

So we're expecting seven or eight percent increases going forward. And so next year -- this year we're thinking 483,000 classes and next year I think we're talking a little over 500,000 which will be a record.

MR. HUDIS: Mary?

MS. BONEY-DENISON: Yes?

MR. HUDIS: When you look at this graph, it's pretty amazing at how trademark filings track the economy. The dip you had between 1999 and 2001 that was the burst of the.com bubble. And the dip you had between 2007 and 2009 that was the Great Recession. And at

least from your anticipated filings, I mean, this is portending for a very nice robust economy in the next, my goodness, four years.

MS. BONEY-DENISON: Yes, it does track and actually, we have asked the Chief Economist's Office to look into this and they are doing some studies to see if, in fact, trademark filings are a leading indicator for GDP. So I don't have anything to report yet but they are, in fact, looking at that. So that will be interesting to see how that comes out.

CHAIRMAN TEPPER: I do just want to caution everyone that Jonathan is not licensed and cannot give investment advice. So if you decide to go to the market today, that's your own decision.

MR. HUDIS: And past results do not have any guarantee of future.

MS. BONEY-DENISON: Right. So just to talk about staffing for a moment. We have 725 employees and there are 456 examiners right now. And 85 percent of them are teleworking full time. We're in 29 states and we hired 43 new examining attorneys in FY15. We have just been

interviewing and we'll be making offers shortly to hire about 20 more to start in November.

And then, if things continue as we expect them to, we will likely be hiring another approximately 30 later in the fiscal year. So we're likely to be advertising for the rest of the lawyers in November. So if you're interested in a job as an examining attorney, please read USA Jobs on a regular basis because we don't advertise for long.

We get anywhere -- I think the last time we advertised 4th of July week, we got 700 applications. The time before that it was in December and we had over 1,000. So it is highly competitive and you have to be paying attention to USA jobs or you're going to miss it.

So we decided to do something new this year in terms of bringing on our examiners. In the past we had plugged in people to the different law offices. So we decided to try a training office and we are piloting this to see how it works. We know that we're going to have to be hiring more and more people and so we just thought we would try some different options. And the

training office was started -- it's called Law Office 120 and it was started with the May group; so all the new hires in May went to one law office instead of being distributed throughout the other law offices.

We have had focus groups following up to see what people like and don't like about the regular way we've been hiring and placing people in already existing law offices and comparing that to the training office. So we'll be doing some more serious assessment. In the meantime, we are planning to start Law Office 121 as another training office. And the law office -- the training offices have a managing attorney and a senior attorney. And Law Office 120 also has an acting senior attorney and I believe it is six mentors.

So we have a high degree of trainers, ratio of trainers, to new employees. And the idea is that Law Office 120 will stay together and will not be split up later.

We believe that -- well, if we don't do the law offices, it will be more difficult to staff. So, anyway, we're just trying this out as

an experiment to see whether it works better. And we're trying to also give the people in Law Office 120 more experience with real cases earlier on.

So on the screen is a trademark org structure chart and it shows that we, in the past have had the -- on the far right, the Deputy Commissioner for trademark examination policy that is Sharon Marsh. She's in charge of policy and training. And then, on the far left, Meryl Hershkowitz is the Deputy Commissioner for operations which is where I came from.

But we've added a new Deputy Commission for trademark administration and this person will be primarily responsible for IT needs, budget and planning. And we have received a significant number of applications for this position. And we are reviewing resumes right now and hope to interview in October.

I'm excited that we had a lot of applicants. There's a lot of interest. We did a lot of promotion for this and IT is such a major part of everything we do. We can't really seem to move without having an IT component to

something. And of course, it costs a lot of money and it's very important to strategic planning. So we're hoping that by combining all this in one deputy position, we'll be in a better position to move forward in the future.

I'd also like to ask that Dan Vavanese and Chris Doninger stand. They're in the audience today. They are our two new Acting Group Directors and they join Tom Volcek. Tom, will you stand, too? So we will now have three group directors instead of two to keep up with the significant increase in the law offices. And we've very excited about having them on board and they both, interestingly enough, have done a lot work for us on the trademarks next generation front. So any rate, welcome and we're thrilled that you're helping us out.

So as most people know, I was a customer of the Office for many years. So one of the initiatives that we're working on is a plan to enhance customer service and to that end, we will be working on improving some Web site instructions, trying to simplify problem resolution and we're going to be having a training

day for all employees in April of 2016. And that will have a customer service theme.

So we are open to suggestions from the public, from TPAC, from the bar groups on how we can enhance the customer experience. And so I would ask that you either send me an email if you have an idea and/or you can send it to [tmfeedback@uspto.gov](mailto:tmfeedback@uspto.gov). My email is at the end of the slides.

One of my pet projects is trying to get our electronic processing number up. As a lot of you know, almost everybody files their applications electronically now. So we're, I believe, at 99.7 percent of the applications coming in in electronic format which is fabulous. But what happens is some people do not opt to receive emails from us and/or they file on paper after they get their serial number, the application filed. And that costs us a lot of money and it increases the chance that there's going to be human error when someone touches your file.

So we are very much interested in trying to get the number which now is a little over 81

percent to a much higher number. And in that regard, as you know in January we introduced a new fee which was called TEAS Reduced Fee. And if you want to use that, you have to agree to be 100 percent electronic with us. And as this slide shows people have been interested in this. So as you can see, the top line in the chart was what the TEAS filings were originally.

And then, you'll see back in January when the purple line comes in, that was the TEAS RF. So TEAS RF has become pretty popular with people and we're excited about that. Of course, we won't know whether it drove people to go 100 percent electronic till we've been through a whole cycle.

So we're figuring that we won't really know the results till January or February of the coming year. But people have taken to it so we're very pleased with that. And just so you know, Madrid filings are also up this year.

We are -- I want to talk a minute about our IT projects. I thought that we had 26 computer systems. I recently learned that we have 35 and so it's a very complicated process to

update the old IT systems. We are working to improve them across the board. We first had to stabilize and then, virtualize and separate. We are now -- we're not 100 percent but we are very close to that being separated from patents. So if patents has an outage, we don't want to have an outage.

So we are making progress and one of the ways in which we have recently made significant progress is that we have a new ID manual. So I want to urge people to take a look at it. If you go into the Web site and look at the ID manual, you will see a box in yellow at the top. And if you click on that, you can go into the new ID manual.

And the new ID manual has more bells and whistles than the old one in addition to being more stable. And it is going to allow you to do a lot of different types of searches. So for example, you can use an exact match. You can use a prefix. You can use a suffix. You can use plain English. You can search the way you always did.

So we think that you're going to like

the new ID manual. You will also be able to export records into Excel, XML, HTML formats, if you want to filter and sort the data. And you will also be able to print results on -- print the whole results and also individual ID record data. Before you could only present the view that was allowed in your Internet browser. So now the application itself prints. So you can print in the desired display format that you want.

In addition, something that maybe is of interest to you is you can generate a URL of your search results and you can copy and paste that into documents and emails. And so what the URL is capturing is a storage search strategy. So if you say search for hand tools and you get 153 results, you can then send that out and you can use it again later as a search strategy for IDs.

And of course, it does not preserve your results. What it does is preserves a search strategy. But anyway, this is something new and we hope that people will be interested in trying it. We're going to leave the old one up for a while but we, at some point, we'll probably flip them and the beta will be your first choice and

you'll have to opt out to go back to the legacy.

So it's not coming down anytime soon but I wanted people to take a look at it and please give us comments. Again, tmfeedback is the easiest way to communicate if you have any comments because we are happy to make improvements as we can.

September 1st we announced a new pilot. This pilot will allow some changes post-registration to goods IDs that would currently not be permitted. So we've very excited about this. There has been a lot of interest from the bar. We have talked to people. We've talked to bar groups. We held a roundtable last spring. We put up a proposal. So there have been a lot of opportunities for people to comment on this. And what we'll have to do, well, we've gotten, I believe, one or two petitions in. So it's a little early in the process but we're only in the 25th of September so we'll have to see how many people use it and what issues come up. This, as I said, will be a pilot.

And what they're going to do if they want to change it, say you have a registration for

X, Y, Z, for 8-track tapes and you're now selling something besides 8-track tapes. So you're going to lose your registration. You have to show that you're basically selling the same thing but in a different format and you have to request a waiver and say that nobody's going to be hurt by it.

So this is all, of course, up on our Web site and we hope that people will be interested. We're trying to be very conservative with our pilot just to kind of see how it works out. But we're interested in feedback and we're kind of looking forward to this. This is kind of an exciting new development I think.

Yes, Tim?

MR. LOCKHART: Mary, I think it's a great initiative this pilot program and I'll be very interested to see how it works out going forward. I do have one question and to, again, don't want to put you on the spot but one thing, you know, downloadable software used to be very common. And now more and more people are doing software as a service.

Now that's transitioning from, you

know, a good to a service. Did you take a look at that and what -- do you have any idea what the view of the office would be on transitioning from a good to a service?

MS. BONEY-DENISON: I believe if you go to the Web site there is a list of things that we are going to say are automatically yes or automatically no. And I can't remember if that one was in the no category. I think it was in the no category. But you can look at the complete list on the Web site and we will be adding to that list as the petitions come in and we make decisions.

Yes, Jonathan?

MR. HUDIS: Tim raises a good point. I mean, I -- you've also got, for example, software that's provided on CD versus downloadable software. Now you're going from a good to a service. Manuals that were provided in paper form versus CD versus downloadable. I'm watching my clients do this all the time.

Are we to presume that if it's on the no list don't bother or should we try and see if we change your minds?

MS. BONEY-DENISON: Absolutely, it's a pilot. But I do recommend that you look at the list so you know what your chances are. Obviously, if it's on the no list, we have serious concerns about it.

Bill?

MR. BARBER: I just have a quick question. I should know the answer to this but how quickly do you expect these petitions to be acted on because if a registrant's coming up on a Section 8 deadline and needs this sort of relief or else it's going to have to -- the registration is going to be canceled or you have to cancel goods out, do you have any suggestions or thoughts on that?

MS. BONEY-DENISON: No reason for you to know the answer to that because I don't. So Sharon, within a couple of months? Yes. The -- it may -- well, the speed with which they are processed depends on the first ones are going to be harder because we're finding our way along. So it may be more slow and then, if we get inundated it may be more slow.

But perhaps if a steady stream just

comes in, you know, we'll find our rhythm. So I don't really want to commit the petition staff to a date at this point. I'm sorry.

MR. BARBER: So I guess the moral of the story is get these petitions in well in advance of the Section 8 deadline?

MS. BONEY-DENISON: Right.

MR. HUDIS: And these petitions would be under Section 7? These are Section 7 petitions?

MS. BONEY-DENISON: I don't think so.

MS. MARSH: It's a petition to the Commissioner and a Section 7.

MS. BONEY-DENISON: Oh, it's both, yes, okay, sorry. And we have a draft form. It's up.

CHAIRMAN TEPPER: Thank you. This has obviously generated a lot of interest. I do encourage anyone to take a look at the notice of the pilot. If you have questions or concerns it is very clear about the requirements, about what situations that may be appropriate where technology has replaced something. Meaning that the old goods and services cannot be sold and

where it has not. There are evolutions particularly in technology and software where you may be doing things differently but can also sell them in the old manner and I think that the PTO's given some very good guidance.

And I do commend you all, too, as usual on thinking about this, talking to customers and stakeholders and taking in all sides before starting this. So I do think you'll find some very good guidance in the materials announcing the pilot. And I commend everyone to look into that.

Since we have a pause, Mary, I want to do two things. One, to give an apology and correct myself; when I introduced our members here, I neglected to give an introduction because we have one member who is not able to be physically here but she is here at the meeting online, Deborah Hampton. Deb is responsible for trademarks at Chemours and she is, in addition to participating with TPAC, also looking after a family member today. So could not be physically present but did have a question and I just want to pass it on. I think I know the answer but she

was curious about the new law office and the pilot that you had discussed. And the question is do we know how applications will be assigned to these new examiners? Will they have the chance to develop expertise by product or class, particularly for more complicated classes?

MS. BONEY-DENISON: As you may know, years ago there were specializations and the decision was made long before my arrival here that in order to meet our pendency deadlines, we needed to get away from that. And so we do not have people specializing in certain classes and that would certainly be true of the new law office as well.

And what was the other part of the question? How are the applications assigned? Randomly is the answer. And if you have further questions, Deb, happy to answer them.

CHAIRMAN TEPPER: Thank you.

MS. BONEY-DENISON: Cathy?

MS. FAINT: I just also wanted to add that Robert Budens is attending via WebEx for POPA.

MS. BONEY-DENISON: Any other

questions at this point? Dee Ann?

MS. WELDON-WILSON: I just wanted to clarify you were saying that on the paper filings -- that paper filings may increase the chance of human error. So am I correct in assuming that not only do electronic filings save the PTO money but they save your client money and they also reduce the chance of error?

MS. BONEY-DENISON: Thank you for that pitch. And every time you file a piece of paper, it's being subsidized by the electronic filers. Yes, Kathryn?

MS. BARRETT PARK: But it looks like on your chart, the one we looked at earlier, if you add up TEAS RF and TEAS PLUS, you're going to get to about, I don't know, I don't have the exact numbers but 86, 87 percent fully electronic pretty soon you would think based on those filing percentages?

MS. BONEY-DENISON: Yes, (inaudible) this year we've been -- I think we might be at 81.8 percent right now but yes. Yes, well, I hope so but it's a little early for me to be making predictions. Any other questions? Yes?

MS. BARRETT PARK: Could you tell us what sort of other efforts, I know this is a -- the TEAS RF was a great effort in trying to get people to file electronically. What other kinds of efforts have been or might be made?

MS. BONEY-DENISON: -- for that question. Two years ago I printed out the top 20 paper filers and called them and some people called me back and some people didn't. Those that called me back; I generally had success where people agreed to at least try it. And yesterday we printed out the top 20 paper application filers and none of the original group was in it. So that was excellent. So I mean, someone has to be in it but, you know, it was not the original group. There was zero overlap.

So that was just a random bi-week that we pulled but I thought that that was interesting. So it was, in the past, it was large law firms and corporations and now it is not. So that was interesting.

CHAIRMAN TEPPER: Thank you, Mary. I think on behalf of TPAC we'd be interested in seeing the list. I'm very encouraged for the

former 20. Congratulations for joining the rest of us in using the efficient systems. We'll be interested to see who the current 20 are and on behalf of the 80 percent of us who are, in fact, subsidizing that practice, shame on you all. You are, in fact, costing the rest of the filers some additional revenue.

I think we've seen and heard and we'll be looking at more presentations on some changes. Everything that the office does that takes away from these projects costs money, you know, impedes our ability to continue this type of progress. So I do hope that we'll see that list shrink. I'd love it if we couldn't come up with 20. I'm trying to think of the last time we found a need to submit a piece of paper to the office.

And I know that in the past, Mary and others have invited folks who find that to come and let them know about it so that the PTO can look at ways to enable full use of electronic systems. But we certainly hope to see full end-to-end electronic processing continue to increase.

Yes, Bill?

MR. BARBER: Since we're perhaps

considering a fee proposal soon, I would just suggest on this issue of subsidizing that consideration be given to charging a fee for filing a response to office action or other paper by paper, not as a penalty but just to cover the Patent and Trademark Office's extra cost to handle paper.

MS. BONEY-DENISON: Thank you. I'm not in a position to comment on what is under consideration but I do appreciate your input. Thank you.

CHAIRMAN TEPPER: I don't know if that would be tithe, fair tax or a flat tax or where we're at but thank you, Bill.

MS. BARRETT PARK: I just want to say I can't help myself particularly since it's my last meeting but I remember the hurdle when Anne was the Commissioner just getting people to consider filing electronically at all. And GE got a prize, an award down here for filing the 100,000th electronic application which sounds like nothing now. So it's pretty amazing.

So I have confidence that when I am tuning into the WebEx this time next year, those

numbers are going to be way up. I also want to say, Mary, you have the power of persuasion if the first 20 calls you made resulted in everybody changing their strategies for how they file.

MS. BONEY-DENISON: Thanks, Kathryn. We'll see what happens. I did run into one person who didn't return my phone call and he was mortified. And he has since changed. That was really great. I said you're from where? It was great.

Okay. Moving on. As you know, did a post- registration pilot to assess the accuracy and integrity of the register. We've now concluded that and our final results are up on the Web site. The pilot required 500 lucky people to submit additional specimens in connection with Section 8 or section 71 affidavits of continued use. And as you can see from the chart, the results were quite upsetting.

The report, as I mentioned, is up on the Web site. And we have had a roundtable to talk about what we should do next. There are lots of ideas out there. We, you know, people have said we should have specimens of use for every single

good. People said increase the solemnity of the declaration, random audits permitting third-party challenges on an ex parte basis.

We have not ruled out much of anything at this point. We're still considering all of our options but random audits are what you're most likely to hear about in the near future because the bar is very supportive of us proposing random audits. And I think people in private practice think that it would help them with their clients if there is this threat of a random audit that could result in your loss of your registration. So we are continuing to work on that. And stay tuned. You'll be hearing from us before long on that.

MR. HUDIS: Mary?

MS. BONEY-DENISON: Yes?

MR. HUDIS: Could you update us on the PTO's consideration of a Canadian-style Section 45 expungement proceeding?

MS. BONEY-DENISON: Yes, we are still looking into that. We have appointed a team to look at it. It's more complicated than doing random audits which could be done by rulemaking.

That would require a legislative change. So we have met with Canadian practitioners. We've met with the Canadian government and so we are still trying to look at it and see whether we think it would be a good idea or not for us.

Okay. The next thing is TM5. As you may know, it consists of the five largest trademark offices in the world which I think have about 80 percent of the filings worldwide. So it's the JPO for Japan, the Korean Intellectual Property Office, OHIM for Europe, SAIC for China and us. And in the past we have covered designs. That is now being split off and it will be in a different group called ID5 which does not stand for identification. It stands for Industrial Design 5.

So we are the host this year. And we will be having a meeting in December at this office. The December 1st and 2nd will be the TM5 and the 3rd and the 4th will be the first ID5 meeting. We held a midyear meeting, excuse me, during the INTA meeting in California back in May.

We have a number of projects going on. There is a nice Web site now that's up. It's

tmfive.org and just to mention a few of the projects that we have going. We have an ID list project which the USPTO leads and if you go to either our old ID manual or our new ID manual and you see a T that means that that is something, a term that is accepted in all the offices that are members.

And one of the new developments is that China has recently joined as a full partner on the ID project. And there are, I think, close to 15,000 IDs that are now acceptable to all the partners. And we have a number of other countries that have signed up to participate including Canada, Philippines, Singapore, Mexico and the Russian Federation plus, I think Colombia and Chile are new members.

So what they have to do if they're not a member of the TM5 is they have to agree to take 90 percent of what the TM5 members have accepted. And there are also invitations out to a number of other countries as well. So we think that people, as the list expands and as more countries sign on for this, we think it will be more and more helpful to our users.

We also have a project called Bad Faith Filing. It's akin to cybersquatting. People take a well-known trademark in another country and then, they register it and they try to ransom the owner. We have been working closely with JPO, the Japanese who are leading the project. And we have a summary or questionnaire we sent out to all the partners to determine practices in the various countries.

And we have hoping to publish this report on the Web site fairly soon. The US also leads another project which is the indexing of non-traditional marks. We found that it was difficult to search non-traditional marks around the world. So we are trying to work on that and make it easier for our users. We are planning to develop a questionnaire and poll the other partners to determine their current practice for indexing. And then, we'll have a working group formed and hopefully this will lead to a consistent way to index the non-traditional marks in the various members.

We have a lot of other projects going on. I think there are 14 in total at this point.

Another one that may be of interest is improving the convenience of applicants under Madrid Protocol. So we have devised a chart for presenting information about our respective procedures when our offices are designated by Madrid protocol applications. And so we're working on filling that chart in. And as soon as that's ready that will go up on the TM5 Web site.

So those are just a few of the highlights. As I said, there -- I'm not going to go through all the projects. But there -- I'm very excited about the progress that TM5 is making. The, you know, things internationally, as Shira will tell you, don't always move as quickly as one would like. But they -- we are starting to get some traction and I'm feeling really quite good about the progress that we're making on the TM5 front.

Does anyone have any questions about that? Outreach? We are reaching out to, of course, our regular lawyer groups, bar groups and we also, since 2011, have been doing much more outreach to small businesses and entrepreneurs. We do it through speaking engagements and we do

it through videos.

So we have a lengthy video that's up for about 45 minutes and we're now over 340,000 hits on it. So if you're a small business and you want to know trademarks 101 before you get started, it's a great place to start. We -- sorry. As you can see from the slide, we've been doing stuff all over the country.

I believe we have now, since we started, I think we launched this in January of 2012. We have had programs in 49 states. So we hope or maybe that's as of next week it'll be 49. I think Craig Morris is going to Alaska next week. So and then, hopefully -- Hawaii is what's missing. Hopefully, we'll have funding and can get some events going in Hawaii so we can have hit all 50 states in a three-year period.

MR. LOCKHART: Mary? Excuse me.

MS. BONEY-DENISON: Yes.

MR. LOCKHART: Don't you think it would be a good idea for a member of the TPAC, maybe me for example, to go with Craig to Hawaii? Just something --

MS. BONEY-DENISON: You'll make an

excellent baggage carrier.

MR. LOCKHART: Thank you. Thank you. Just something to think about.

MS. BONEY-DENISON: Okay. Thank you, Tim, for that generous offer. Was that for Fairbanks? Yes. Okay. Just wanted to mention as was mentioned earlier, we do have openings coming up for the regional offices. And so there's going to be an inter-roundtable in connection with the California opening and an ALPIA roundtable in connection with the Dallas opening.

We're also -- we've sent out brochures promoting our trademark assistance center to the satellite offices so people know how to get more information about trademarks. And we're also doing annual visits to the satellite offices by me or one of the deputies. And that is all I have but I'm happy to answer any more questions.

CHAIRMAN TEPPER: Thank you, Mary. Do we have other questions for Commissioner Denison today? How about questions from the public? Well, we are a bit over but I would be negligent if I did not commend Mary and her entire team for

the outstanding work. And I think a presentation like this one, we see when things are going great, a lot of us would be satisfied with that. And Mary's team continues to look for ways to improve the experience piloting how to better, you know, sort of train, hire and house our examining attorneys, looking at ways to improve customer experience.

I encourage all of you to take her up on her offer. It's wonderful that the Office seeks your feedback, they value it and I know that it will be considered and acted upon to the extent they can. That's been a hallmark of the PTO. I think it's one of the things that makes it such a pleasure to work here. We know this is one of the top government agencies to work for and to work with the group.

You all may have your frustrations from time to time getting your applications through but nevertheless very happy to see the strong finish to such a great rookie season and we'll look forward to seeing more (inaudible). This is everyone's favorite part, I have to admit. We're a little bit behind time but if I didn't give you

the 10 minute, at least a partial break but since we are behind, I'm going to ask everyone, Shira will be giving us an update.

Last June we had a fascinating story so I know you'll want to be back to hear more news. If you can be like a Rolling Stone, hurry out and hurry back. We'll get back underway as soon as we can.

(Off the record.)

CHAIRMAN TEPPER: As you've seen there is a lot going on this time of year so although I apologize for our running a bit behind, there's some excellent content and I think this has been a very important day. So I want to thank you all for sticking with us. We'll do our best to catch up.

We do have now an international and policy update and I see Amy Cotton and Shira Perlmutter here so thank you, ladies, for joining us today.

MS. PERLMUTTER: Great, thanks very much. I thought when we were trying to decide what to cover in this meeting that it would make sense to focus on two main topics. One is our

strategy for dealing with the fait accompli of the new Geneva Act of the Lisbon Agreement on GIs and the other is the new European Trademark Reform Directive.

I also know, Dana told me, I wasn't here for his presentation but that questions came up about the Copyright Office restructuring and placement issue. So if at the end anyone wants to discuss further, ask any questions, I'm happy to talk about it. I spent five years at the Copyright Office so I know a lot about that institution as well.

On the Lisbon strategy, to recap where things were last time we spoke: As you know, the Geneva Act was adopted at a diplomatic conference in Geneva that did not allow for equal participation by all WIPO members and we were not able to make formal proposals. And we were not entitled to a vote.

So the result was obviously over the strong objection of the United States and many other countries. Unfortunately, it enshrines an EU-type of sui generis approach to geographical indications that is fundamentally inconsistent

with the trademark-based approach in the US.

So of course, both the process and the result were bad for the United States. They also raised institutional questions that we're grappling with for WIPO about how it handled this and how things developed, both in terms of procedural rules and financial questions.

There were a number of process fouls in terms of specific treaty requirements. I won't get into them now because that's sort of inside baseball for people who are truly WIPO geeks. But I will say that the financial aspects are quite troubling and I'm sure will be of interest to all of you.

Both in the Lisbon Agreement itself and in a 2003 agreement about WIPO's overall financial structure, it was confirmed that the Lisbon system was supposed to be entirely self-funding. But unfortunately that's not what has happened. The Lisbon members have not raised funds as they needed to to cover their operations, and they haven't assessed contributions to make up the deficit as they were required to, for quite some time. Instead, what they've done is to

cover their operational deficit by drawing on money collected for other WIPO unions.

In other words, a large part of that is coming from American patent and trademark owners who are paying fees to the PCT and the Madrid system. Another serious concern that all of what happened creates is looking at the organization's role, what WIPO did and how they handled it. They showed a marked lack of even-handedness on an issue that is a very contentious topic with major trade implications for a lot of their members as they were well aware.

If you look at the result, WIPO allowed its resources to be used by a very small group of its members to adopt a treaty that enshrined their own disputed approach to GIs. No question that they allowed that to happen. And if you look at the role of the European Union in the global chess game that we are playing with them on GIs, they've been very successful. They've been able to block work on GIs to be done by the full membership at the Standing Committee on Trademarks because they've blocked consensus to be able to move forward on the issues.

At the same time, they've been able to control what was done within the Lisbon Working Group even though they were saying this isn't the European Union. It's just a few of our members that are Lisbon union members. So they've managed the process quite adeptly.

As I discussed at our last meeting, we've put together a strategy that has both a negative and a positive component for going forward. The negative component is to, what word are you using these days?

MS. COTTON: The Lisbon Annihilation Campaign?

MS. PERLMUTTER: The Lisbon Annihilation Campaign. The negative component is to diminish the legitimacy of the treaty, diminish its significance and impact and in particular, to diminish its attractiveness and appeal to third countries that aren't yet members.

We're doing that in a couple of ways. First of all, it's financial. We want to make sure that Lisbon members have to pay for their own treaty and it's not a free ride for them and

they're not getting subsidies from other stakeholders and other registration systems or subsidies from other WIPO members in any form. I'll talk a little more about that. Second, we are trying to make sure that we communicate adequately the shortcomings of the Lisbon approach, and in particular, its unfairness to prior trademark owners and also to those who produce products using common or generic names.

On the positive side, we want to make sure that we put forward and promote alternative approaches so that countries don't feel this is the one internationally sanctioned way to protect geographical terms. That means, first of all, ensuring that there can be a discussion going forward of alternative approaches. We will start by trying to do that at WIPO. And if we can't do it at WIPO, we'll think about where else we might do it.

Second, to make sure that whatever WIPO does do going forward is done in a balanced way, whether it's education, technical assistance, promotion of the treaty, whatever it is. We want to make sure they're not suggesting that this is

the approach that they prefer and are recommending.

We have upcoming the week after next the annual General Assemblies at WIPO, the annual meeting of all the member states. We are pursuing both sides of that strategy there with a whole barrage of different proposals that we have submitted. On the financial side, what we've done, first of all, even before going to the General Assemblies is through the Program and Budget Committee. We've set a number of conditions that we've said we need to have met if we are going to join the consensus to approve the program and budget going forward for the biennium which will be 2016-2017.

And we're saying we are prepared to block the budget unless our conditions, are met, which involve increasing financial - accountability of the Lisbon system and also transparency in how the WIPO budget is handled, so we can see what money is coming from where and going where because right now the Lisbon expenses are not clearly broken out. It's a very opaque system.

You may have seen press coverage on this and the WIPO Secretariat has been complaining to the press about the United States being willing to block a \$700-something million budget over a \$1.-something million issue. But of course, it's not just the WIPO budget amounts, it's first of all, principles that are at stake and second of all, much bigger trade impact for us internationally.

What we do want to make sure we do is that we reassure people we're not acting in a reckless way. Because first of all, we are hoping that our conditions may actually be met during the course of the General Assemblies and we won't have to block the budget. But if we did have to, we've researched this and it's pretty clear there won't be any negative implications for US stakeholders.

If this budget isn't approved because of our blocking consensus, WIPO will continue to operate with their current budget, which means that there will be full funding of the PCT, Madrid and Hague systems. So it should not have any negative fallout from that respect. It will get

some political fallout.

We've also tabled four very specific proposals for consideration at the general assemblies that relate to both the financing and the balance questions. First of all, for the assemblies of both the PCT Union and the Madrid Union, we are looking for decisions to be made that those unions will refuse to subsidize the Lisbon system from their fees. We want them to formally adopt resolutions that block that from happening.

And then, on the positive side of the strategy, we are asking the General Assemblies to require that the Standing Committee on Trademarks move forward and look at what happened in the Geneva Act negotiation and consider a truly global and inclusive system for protecting geographical indications. We're trying all of these things simultaneously. Finally, it also occurred to us that because the Geneva Act was adopted by such a small group of WIPO members, 28 out of 188 members, it was inappropriate for everyone to assume that the Secretariat would devote the resources to administering the treaty

and the new registration system it would create.

So we are saying that that has to be decided by an affirmative vote as well by the relevant unions. We did a lot of research into all the WIPO treaties and we are convinced that we have a pretty good argument for that. So we are putting that forward, too, which is a bit of a bombshell at WIPO because everyone's been assuming that the Secretariat would administer the treaty.

So that's where things stand. We'll see. It could be a very exciting week, the week after next, and we'll, of course, report back on what happens. Any questions on that?

CHAIRMAN TEPPER: Thank you. I see we have a question. Jonathan?

MR. HUDIS: Sure. The costs of Lisbon, is it made principally of costs for a world-wide registration system of GIs or is it more? Is it, for example, cost of enforcement? I mean, I'm trying to figure out where that money is going?

MS. PERLMUTTER: It's mostly administering the registration system and also

some promotion and technical assistance that the Secretariat would do. Some of the cost in the last year, of course, was the cost of the diplomatic conference itself. But they don't do any enforcement.

MR. HUDIS: Okay. So would, for example, this Lisbon agreement GI system operate functionally the same way that the Madrid system does where you're registering on a national level, that becomes the hub for an international registration and then, extensions of protection which are the spokes coming out of that, that's my understanding of Madrid. Does Lis -- would Lisbon operate functionally the same way?

MS. PERLMUTTER: Yes, it's similar but, Amy, do you want to add any more detail?

MS. COTTON: The difference is there's no designation system. So if there is an international registration, it has automatic effect in all contracting parties. But unlike the Madrid system, it has substantive protection requirements. So whatever term goes through the system, it has to get this level of protection in all of the contracting parties, absolute

protection some call it. And it also can never go generic.

So that means then that there are no use requirements that contracting parties can impose and there are no renewal fees that contracting parties can -- like maintenance requirements to keep it on. You just have to take it and it is perpetual protection at an absolute level of protection and it can never be found to go generic.

MR. HUDIS: I can see now why Shira wants to throw that bombshell. This is -- everything you just described, Amy, is antithetical to US law.

MS. COTTON: Correct.

MS. PERLMUTTER: Absolutely.

MR. HUDIS: Wow.

MS. PERLMUTTER: Absolutely. And I will say Amy made valiant attempts at the diplomatic conference to try to explain all the ways in which this didn't work, would be inconsistent with US and other trademark-based laws. She put forward lots of proposals to try to make it minimally, at least, consistent and every

single one of them was rejected. At least the important ones were rejected. Yes. Minor ones were adopted.

CHAIRMAN TEPPER: For a detailed summary of those proposals, you are all free to order a transcript of our June meeting which I believe does contain a pretty -- a fascinating walkthrough of all the good effects that the US made to address this so.

MS. PERLMUTTER: I will say part of the good news is that it is not yet in effect, the Geneva Act. Unfortunately, it only takes five countries to bring it into force and they've already gotten two or three. Very small countries but a few. It's always the small ones that find it much easier to join because they don't have to go through the whole legislative process in as time-consuming a way as we do.

CHAIRMAN TEPPER: Thank you. Do we have other questions?

MS. PERLMUTTER: So shall I turn to the directive?

CHAIRMAN TEPPER: Please do.

MS. PERLMUTTER: Okay. As many of you

know, the EU has been working with its member states on harmonizing trademark laws and practice within the EU through a Trademark Reform Directive. The objectives of the directive were threefold. One was to reduce fees, second to streamline and harmonize the registration process, and third, to strengthen remedies against counterfeit goods in transit.

A lot of progress has been made at this point. A provisional agreement has been reached among the Member States and they are awaiting confirmation from the Council of the European Union. So that's essentially political level sign-off and the final draft is expected to go into force in the second quarter of next year barring anything unforeseen.

Once the Directive is in force, the Member States will have three years to implement most of the provisions. We are happy with many of the reforms and troubled by a few of them, so we thought we'd give you a bit of an overview.

Here's the ones that we see as either positive or neutral. They mostly relate to filing fees, nonvisual marks, the identification

of goods and services and streamlining administrative procedures.

First, the good news: the filing fee has been reduced. Even more importantly, they've eliminated the "three for the price" of one feature that had essentially allowed an applicant to expand its protection to two other classes of goods whether or not it intended to actually market them.

Other good news: all of the offices will be allowing registration of nonvisual marks such as sound and scent. And identification of goods and services will be limited to the explicit wording in the application. So broad class headings can still be included but if a product is not a subset of the class heading, it will no longer be presumed to be included. So for example, class 41 is education, providing of training, entertainment, sporting and cultural activities. Translation services are also covered but under the new policy, translation services would have to be explicitly identified in the application and would no longer be presumed as included. So we'll have more certainty as to

what the goods or services are that are actually being applied for.

In other good news, there will be less expensive administrative procedures in the national offices for revocation and invalidation. And it used to be that court review was required. Now that will change, and the transitional period for this provision for implementation is six years instead of three. So this will take a little bit longer because they have to set up procedures and staffing experts to decide the cases.

Last and probably least, OHIM is going to be renamed the European Intellectual Property Office, which is interesting. I haven't quite figured out how they're going to pronounce it. EIPO or something like that, I don't know.

There's one major troubling issue and that is similar to our concerns about geographical indications. Trademark applications will be able to be refused on the basis of traditional terms in addition to geographical indications. Those are terms typically used with wines and spirits like

"Chateau", "Clos", "tawny", "ruby." That means if an American producer tries to register a mark with a traditional term like Chateau Saint Michel, it could be refused for containing a traditional term in addition to refusals for containing GIs.

So that's of concern.

And then, there's one that deals with goods in transit. That's really a double-edged sword. Goods in transit that bear a trademark or geographical indication protected in the EU will be subject to seizure. This is good for American marks that are already protected in the EU but it's a problem for American labels displaying generic terms that may be going in transit through the EU to a country where the generic term would not be protected.

So for example, bottles of California champagne transiting through Europe to a country where "champagne" is not protected could be seized as counterfeit. This practice already existed but now the regulation provides authority for it.

There were a couple of changes that were

not adopted, one of which we like and one of which we don't like. First of all, relative examination: the Member States that perform relative examination already have refused to discontinue it. We are pleased with that because, of course, examining for prior confusingly similar marks is a service we think the offices should provide given that the certificate will be prima facie evidence of the exclusive right to prevent others from using the mark.

On the less positive side, the Directive as proposed had included a ground for an interested party to object to registration on the basis that the filing was in bad faith. That was not included. The original rationale was that the applied - for mark would have a reputation in the EU even though it was not yet registered or used there. But as Mary mentioned, we are working with other countries, including the EU, to try to counter these types of bad faith filings. We are told that the Member States didn't agree to this provision, shockingly enough, because they saw it as primarily

benefitting foreign applicants rather than EU nationals.

Finally, to mention one other major omission, we'd hoped to see a requirement for use in the EU or at least inclusion of statement of a bona fide intent to use. That was not done. So as it stands now a mark can be registered and never used in the EU, unless a third party can prove that within a period of five years the mark has not been put to use in any member state.

That's an overview of the highlights and lowlights of the Trademark Directive. Any questions or comments? Yes?

MS. WELDON-WILSON: Actually, mine's a substantive question to which I should probably know the answer but it sounds like there's some really good things going on. On the class heading issue, if someone already had a registration that was meant to cover translation services, do they lose it? Is this a backward-looking thing or only a forward-looking regulation?

MS. COTTON: I don't believe it's backward. I don't think it's retroactive. I

mean, there is definitely that question out there but I don't think it's retroactive. I would have to research that a little bit more to get the details for you which I can do, Dee Ann.

CHAIRMAN TEPPER: Thank you. Do we have other questions for Amy or Shira today? All right, well, thank you all. I feel a good bit smarter than a few minutes ago when we started and it's good to know even in difficult circumstances you all are doing everything that can be done to look out for our interests. We certainly appreciate that.

You're both smiling today which must indicate that you're not in the middle of negotiations at the moment. But we certainly look forward to the next installment and we do appreciate both the efforts and keeping us informed of this. So that being said, we're going to move on to our closing act today.

And I apologize, gentlemen, for handing over to you so far behind schedule. So we'll see what time we can catch up but you've heard several times and we've talked about our budget. We talked about the review boards, certainly the

importance and the investment that we've made at the office in IT over the years. So I do want to give that its due.

Very happy to have John Owens, our Chief Information Officer, and Raj Dolas, our trademark next generation portfolio manager, here to bring us an update today.

MR. OWENS: Oh, thank you very much. Looks like -- oh, that one came on. All right, well, thank you very much and I'm just going to hand it right over to Raj to get into the slides and then, we'll handle questions quickly since we're so far behind.

MR. DOLAS: Thank you, John. The first slide should be very familiar to all of you. This describes how we split our investments for trademark next generation. TMNG and TMNG-2 focus on internal users, application and capability development for them. TMNG external focuses on developing capabilities for external stakeholders and --

UNIDENTIFIED SPEAKER: Can you either speak up or bring the microphone to you?

MR. DOLAS: Sure. Is that better?

UNIDENTIFIED SPEAKER: That's fine.

MR. DOLAS: All right, thank you. And then, TTAB focuses of capability development for Trademark trial and appeal board. As far as TMNG recent accomplishments go, our focus has been on developing capabilities for examining attorneys. We have developed first action approval for pub and several other office action capabilities specifically office action editor and notification services, viewing the trademark data in a concise, easy-to-view widget, if you will.

We use a new content management system where all documents and all images have been migrated from legacy. We're in the process of migrating all multimedia content as well from our mainframe system into the content management system.

One thing that we'll -- I'll point out later when we talk about our legacy content management partner migration project is using the next generation content management system with our legacy applications that are available to the users. One of the benefits we already see with

the next generation content management system is the performance improvement some of our legacy applications have seen such as XSearch, accessing images from next generation content management system has proved to be a performance boost for the legacy applications.

The other thing that we have to do and we must do is maintain our legacy data, the data mainframe in sync with the next generation databases. It is tremendously difficult amount of work but we are continuing and proving several aspects of that work, we do need to improve some capabilities in there but it's an ongoing process that we'll continue to work on.

Focusing a little bit on non-examiner abilities for our internal users, we have started working on international trademark applications. The Madrid group that we have internally is driving the application development, the capability development for this. The focus has been on certification process, so certifying applications that are filed in US for international protection.

The software development for that is in

progress right now. And then, the second portion that we'll continue to work on is notices of irregularities when they come from IB to us.

Work for trademark petitions is in its infancy and we have just started determining and defining the workload that we need to develop the software for. This will be our next priority when we are done with our examination capabilities. Any questions or can I move forward? Okay.

Today's the baseball theme I hear, as a tribute to Yogi. So we're in the bottom of the ninth cleaning up. As far as external accomplishments go, TMEOG or OG as we call it, it has been in production for quite a while now. We released two enhancement releases this year based on customer feedback towards improving user experience of the application as well as improving the process, the workflow process, that is used internally towards creation of the OG.

TMNG ID manual, you heard about it earlier. It was in beta for quite a while. It will be a production release now and there were two releases for that before that, that were

focused on improving user experience and search results based on customer feedback.

TMNG eFile, this is our new application for filing. And our current focus for the new app on the e-file has been improving new capabilities for attorney-related forms. We are trying to actually get away from the form metaphor and provide an easy-to-use user interface which will be self guiding for most users. We're hoping that the attorney forms will be ready for alpha and beta testing fairly soon. And we'll engage you folks and get your feedback when we are ready for beta testing for the attorney forms.

MR. HUDIS: Raj?

MR. DOLAS: Yes?

MR. HUDIS: Are we looking for that rollout, at least in beta, this calendar year 2015 or are we looking at 2016?

MR. DOLAS: We may have a limited release of the attorney form in the first quarter of next fiscal year for us which is the last quarter of the calendar year but it will be very limited at this point.

MR. HUDIS: So that would be spring to

summer of 2016?

MR. DOLAS: That is more likely. And this -- the focus will be on attorney forms only not everything else that we're doing in e-file. Just want to clarify that.

Our legacy system work that we have been doing, TEAS, there are two main things that we did for TEAS. One was to increase the size of attachments that can be uploaded from 5 Megs to 30 Megs. This was one of the things that we heard from user feedback very loudly and clearly and we're able to get this done in a fairly short amount of time.

The other was a release for updating several TEAS forms, help pages, notes, et cetera, et cetera, towards adopting the rule-change packages for certifications. Legacy content team management migration project, this is one I touched on earlier. As we develop capabilities in trademark next generation content management system, we are at the same time making enhancements to legacy applications.

So content created in next generation as well as content that is available in our legacy

application is visible to folks who use legacy applications. So we have developed a capability, a user interface, that is a subset of trademark next generation Web site. We call it the content management viewer. And we will embed that viewer as a link into our legacy applications, so internal users can view next generation content and legacy content in one single place.

We are -- and from the external stakeholders' perspective, TSDR is your user interface for that where we enhance TSDR to do exactly the same. You can view content created in TMNG as well as legacy content in TSDR today.

So what we have on plate for us in the next few quarters? There is a tremendous amount of work in front of us now. Deploying the TMNG examination capabilities so they can be used in production by examiners is the biggest thing that we want to do. There are several things here that we already have accomplished such as deploying the case content viewer for feedback from internal users. That has been deployed already in beta version.

We have deployed our TMNG code to production environment. Once we deploy it, we want to make sure that the code works well in production, the configuration has been done correctly, the databases work well, the content management system works well and basically are doing what we call a smoke test. We discovered a few challenges in there and we're continuously working to resolve some of those challenges. But the next goal that we have in front of us is ensuring that the trainers are trained properly. That will happen in the next quarter.

Once the trainers are done, we will do a control production beta test with select users. That is also planned for next quarter. And then, once everything has -- everything looks good, the issues have been resolved, we're confident that the system works the way it's supposed to work and provides all the capabilities to examiners, then we'll start rolling out to the law offices starting second quarter of this fiscal year which is January timeframe.

Once we're happy with the first law office, then the remainder of the law offices will

be rolled in. The one nice thing about trademark next generation is since this is a Web site, a browser-based system; we do not have to do any deployments to our end users laptops. So enhancements that are done on the back-end side, on the server side, become immediately available to all our users.

As for TMNG Madrid capabilities goes in the future, we want to follow the same methodology that we have done here is develop capabilities and iteratively deploy them in the next two fiscal years. The priorities of what we develop and what we deploy is driven by our partners, our business partners, and we'll follow the same priority list that we have in today. It can be changed at any time we want. And the same thing holds true for petitions. When we start developing capabilities we'll deploy them iteratively to our production environment.

TMNG external, e-file as I mentioned, we'll start doing some beta work, beta-testing work for attorney forms. We have several other things in the pipeline that we want to do. We have not identified anything for alpha or beta

testing yet but as we do, we'll share that information with you.

On the legacy side, trademark trial and appeal board, there are two enhancements that are planned for this fiscal year. Work is ongoing right now but will be deployed in production environment next fiscal year and they're related to TTABIS which is an internal system and ESTTA which is an external facing system.

One thing that did not get added here accidentally was work that's being done for TEAS for a fall release. And there are several things that are being done in TEAS. The primary thing that we're doing is integration with TMNG ID manual, especially focused on search. So searching the ID manual through TEAS and making sure that results are consistent, results are reflective of what you're searching and the sort order of the results is appropriate.

Anything else? Any questions for me?  
Yes?

MS. WELDON-WILSON: I have just a clarification. It's just showing my ignorance, as usual, Raj. I see that sometimes we use the

word "deploy" when it's just going out -- sort of as almost as a test or for waiting for feedback. And what is the word that is used internally to means it's final, it's done? It's deployed and it's done as opposed to it's deployed and we're still working on it?

MR. DOLAS: So that is a -- you are not alone. This is a confusion that happens on a regular basis because deployment is -- in agile terminology, deployment is you develop some capabilities, you deploy them in production, you test them out and you move on. You develop more capabilities and so the deployment is on a continuous basis.

What we're trying to do is put some bookends around it to make sure that everyone understands what deployment means. Deploy in production environment is deployment of capabilities that are developed and we're going to smoke test them in production environment. When we say deployed in production environment, it means we deployed capabilities that were developed but are not being used in production by the end users.

I'm hoping that this explains it.  
There's a fine difference. Maybe John can help me here. What do you think, John?

MR. OWENS: I'll try. So the concept of agile is, you know, we continuously develop. It's taken a while, many years for us, to reach feature parity using agile. Normally agile would time box a series of requirements and then, after so many what's known as sprints or periods of time, they would do a release. But because we had a legacy product and we had a -- we couldn't deliver less functionality than that legacy product had, it took us a lot more time to get something to delivery.

Now that it's been delivered into production, we have to make sure it synchronizes with the legacy systems which is the current trouble that we're in. So think about it this way. We took the most modern environment and engineering we could. We built a new, a brand new system fast based on trademark NextGen and the content management system and all that infrastructure that no one really understands and it's kind of background voodoo, magic all this

time.

And then, we said okay, it has to operate in the same world as the legacy system, particularly TRAM that started in 1970-something. And it has to keep in sync. Well, that was easier said than done.

We found a few problems with that, with keeping it in sync with that model T Ford we have back there and, you know, and we're picking away at those issues because it has to be perfect. Every transaction that happens when part of the office is on the new system and part of the office is on the old system has got to be in sync. We can't miss anything because if we miss something, it would detriment the office and of course, our customers, you all.

So I wish it was as easy. I wish I knew everything about that system that's well, almost older than I am, but it is a problem. The typical term, by the way, if we finally get to it, the final release of the final product when it is done, done, done is typically in industry known as "the golden master" which is based off of a record terminology where they used to press gold

records to be the final record before they'd send it out to press.

That golden master product is not scheduled because we have so many integrating pieces that have to be together before that transition is made and that final system is in production alone and we shut off the legacy systems. And because we have to be so careful, I am in agreement with Mary. We stretched out the schedule a little bit to accommodate quiet time and the unknowns that we keep hitting until it is done.

Now I would like to say that it's not unsurmountable. We haven't found one of these problems that we haven't immediately, within a couple of weeks, been able to solve. But it is tricky and we have to find them all. So that process seems to just take time. So does that answer your question a little bit better? Go ahead.

MR. HUDIS: John, this explanation was very helpful because without putting parameters around that the answer to the increased schedule of rollouts seems to be, you know, an answer

that's blowing in the wind so to speak. What I got from your explanation to Dee Ann's question on the agile definition of deploy is it's on a continuous basis. We start with the background work which becomes a beta with an interim production.

The interim production ultimately synchronizes with legacy systems out to a final production. Then we get to the golden master where at some point we can tell the bar it's out there. It's ready for you to use. It's been no secret we press you on an interim basis for timelines because the outside bar is pressing us.

You know, we've had this conversation that next generation was a concept that was introduced in '09, 2010 and what we're looking at is for external and including the Board which is something near and dear to some of our hearts. I mean, we're looking at probably FY17, 18. So I just want to make sure that on the record as we keep going to monitor the progress of the CIO that we are in sync with the timelines that you believe and Raj believes are realistic.

MR. OWENS: Well, it's not just our

belief. I like being aggressive trying to set a strong mark but in reality when you don't know what you're going to find tomorrow, like we're in -- all right, so the system's in production. We hook it up to the synchronizer and we find a bug. So then we unhook it, fix the bug, hook it back up, run again and then, we test it. And it's like just being ready to go. As soon as that last bug is found, and we see a decrease in them, too, every cycle right? So it's not like I keep getting the same number.

So it gets lower and lower and lower. I agree with Mary. We kept putting the deadline too close. We thought it was going to be too easy. And it has proven not to be. So our timelines are now stretched out. Of course, I'd be happy if it was all fixed tomorrow, no one found any bugs and then, our production release would go to the first law office and then, I'd be ecstatic, right?

But then we might find the first law office gets something and might find not a bug in the synchronizer but a bug in the product because they can't physically use the product for real

work until that synchronizer is done. So it's not just John and Raj with the eight ball sitting in my office trying to figure out what date to put on things. It's actually a conversation with trademarks and that goes right to Mary and I sitting down and having a conversation.

So the dates we put before you are the ones that we feel are correct but they're subject to change with the things that we've learned. And you know, I wish I had a better understanding. Maybe years from now when I leave here I'll write a book on the things I discovered with transitioning such old operating legacy systems to modern systems but --

MR. HUDIS: If they let you publish it.

MR. OWENS: It's been quite a challenge. Well, maybe I'll do a blog, you know, I don't know. But I have learned quite a number of things about what I thought when I first came in here knowing nothing but what I know from industry. My time at General Electric or Martin Marietta or America Online and I got to tell you, my perspectives have significantly changed on what it takes to take one of these federal legacy

systems that have been pieced together over time and what it takes to really modernize them. And it is not as easy as I originally thought. Not even close.

MR. LOCKHART: Thanks. Well, John and Raj, as always we really appreciate a very comprehensive review of where you are in terms of the trademark next generation and your other initiatives affecting trademarks. Good report. I thought we had a very productive IT subcommittee meeting yesterday. In particular, I want to thank you for the demonstration of your prototype of My USPTO on the trademark side.

It looks like it's going to be a great product as we said to you in the subcommittee meeting. So thanks to both of you and your team for putting that together and doing the demonstration. We'll be interested to see how the alpha and beta testing go as you continue to develop that product. I want to just echo what Craig Morris said yesterday and I think Maury chimed in on this, too. It probably will be helpful if you have two or three default trademark portal patterns so that the people who are most

interesting in filing, they've got a pattern.

The people that are more sort of maybe in the TTAB, they've got a different pattern but and as both those gentlemen noted, not every user out there has the same level of expertise in terms of customizing the screen. So anything you can do to give them a useful pattern for people that may not want to do a lot of customization, I think that would be helpful.

And we had a good discussion yesterday about the fact that your hiring challenges continue. I appreciate the fact that you seem to be doing all that you can do in terms of advertising these vacancies with the OCO and trying to fill those. I appreciate the rather lengthy timeline to identify a billet, have a billet description, run the ads and get people in. But we just -- we would encourage you to continue to press hard and do all you can do because I know you have a pretty significant shortfall with unfilled billets. And so that's something that we are interested in and we would welcome any positive news that you might have to offer.

But it does seem that you're doing all

that you can do to fill those billets and we appreciate that. Just so I'm clear on the timeline.

I know previously you had said you had hoped to have all of the TMNG finished and rolled out by the end of fiscal '17 and now it sounds like in conjunction with trademarks, you've tweaked that a little bit. So now there's going to be some TTAB development in fiscal '18. But will you have everything but the TTAB part done, you think, at this point by the end of fiscal '17?

MR. OWENS: Again the dates that we put together and with trademarks and put up before you are our best estimates of what we know today. As you were undoubtedly briefed by the Chief Financial Officer, there are financial constraints and things that we're going through now. I wish I could say that that is a perfect estimate. I'm not.

I would like to be able to do that. I probably would be more lucky, you know, betting my money on the stock market right now but to be honest, that is what we're pushing for and we'll continue to push for it, to get those

deliverables. We are also looking at some of the technology we built for the PTAB to be transferred over to TTAB and since they operate on, it just so happens that the PTAB product for patents was actually built on the same technology stack that trademarks uses. So there's a lot of similarity there.

So we are also trying to find ways to smartly go about getting things done. Please do not read that as is they would operate in the same environment, separate servers, separate systems but reusing some of the same development work has always been a good idea. So we're trying to find good avenues of saving time and money for that.

But there's a lot of unknowns right now for me. Every time it gets clear and all I can say is compared to years past, we're the closest we've ever been. We do have products out there that are shipped and do work and you all love. And we have -- I personally have a close working relationship with Mary and the team does as well and we make these decisions not lightly but we do them together.

CHAIRMAN TEPPER: John, thank you. I

want to note I think this is probably a surprise to know when we're asking for things and we're pushing but the acknowledgment that we understand the difficulties you all are facing and the obstacles that come up as probably as close as we can give you to shelter from the storm. We do understand, you know, none of us know what we'll find next.

We are grateful to know, however that you do have an ongoing dialogue with trademarks and with Mary's group. We appreciate your candor and your openness in keeping us up-to-date on those issues as they arise. I'm sure you're not a bit surprised that we're all asking for the product and we'll keep doing that.

MR. OWENS: I want to give it to you.

CHAIRMAN TEPPER: I think we all share a common interest. I'm going to come out of retirement when the golden master hits. I was looking forward to that. Do we have other questions for our CIO today?

Well, with that, gentlemen, thank you very much for the update. I believe we've addressed everything. I want to make sure I did

not leave anything out.

MR. OWENS: No, everything has been addressed.

CHAIRMAN TEPPER: Great.

MR. OWENS: But I would like to say thank you very much, Maury, for all your efforts and being in the team, the subcommittee and everything. You will be missed.

CHAIRMAN TEPPER: Thank you. We're not quite done yet. I do want to just ask any questions at this point from the public? Thank you all for staying with us then over time today. We went into extra innings. I do want to remind you all to stay tuned. TPAC has been working hard on our annual report. The fiscal year will close next week and within 60 days we're due to submit the annual report to the President. I hear he's looking forward to his copy.

I cannot confirm rumors the Pope came by hoping to get an advanced copy this week. But that will be published in the official gazette so those of you who are interested can be on the lookout and let us look forward to further developments. Thank you once again to everyone.

This has been a singular honor to work with this group. Although I will not see you all in person, we'll still be hard at work until December so at this point we'll declare the meeting adjourned.

(Whereupon, at 12:04 p.m., the  
PROCEEDINGS were adjourned.)

\* \* \* \* \*



CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

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

**My Commission Expires: August 31, 2017**

**Notary Public Number 122985**