

UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

OPEN SESSION

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

2 (9:09 a.m.)

3 MR. SAMUELS: Good morning. I'm going
4 to call this meeting of the Trademark Public
5 Advisory Committee to order. I want to welcome
6 everybody. The first thing I wanted to do was to
7 introduce the new members of the committee that
8 were recently appointed to the positions by
9 Secretary Gutierrez. We are very pleased to
10 welcome to the committee Elizabeth Pearce, Jeff
11 Storie, and Jim Johnson, and we look forward to
12 their contributions to the work of the committee
13 over the next several years. I also wanted to
14 announce the resignation of Lorelei Ritchie de
15 Larena who has left TPAC to accept a position at
16 the PTO, so we certainly wish her well.

17 Since our last meeting, the annual
18 report of the Trademark Public Advisory Committee
19 was submitted to the President and to others and
20 I'm sure copies are available. I know they are
21 available on the PTO website for people to read.
22 And I wanted to thank the members of the TPAC who

1 contributed to that report. I thought it was at
2 the end an excellent work and it was the result of
3 efforts of everybody.

4 Future meetings. I think we have
5 already announced the next meeting of TPAC which I
6 think is it early June, June 10 or thereabouts.
7 We have gone to the practice now of setting the
8 dates far advance, that is, a year in advance, so
9 we can be assured of getting this room which I
10 think works a lot better than the other room that
11 we used to use. So I believe it's June 10, I will
12 check that, and certainly at the end of the
13 meeting I'll make an announcement.

14 I also should announce that we have a
15 new representative here from NTEU 245. Could she
16 introduce herself? 243, excuse me.

17 MS. BAYLOR: Tanya Baylor.

18 MR. SAMUELS: Welcome.

19 MS. BAYLOR: Thank you.

20 MR. SAMUELS: The first item on the
21 agenda are the remarks by the Deputy Director
22 Margaret Peterlin who has joined me here, and she

1 is going to provide us with a legislative update
2 and talk a little bit as well about some
3 international developments.

4 MS. PETERLIN: Thank you. Good morning
5 everyone and welcome to the first session of TPAC
6 for fiscal year 2008. I want to thank you, Jeff,
7 and everyone else for serving on this committee.
8 Today I want to just talk briefly about three
9 areas, Trademark's first-quarter results,
10 legislative updates for trademarks including
11 telework, patent modernization legislation sitting
12 in Congress, and some of the work that we're doing
13 in the Office of Policy and Enforcement areas to
14 help strengthen IP rights around the world.

15 As anyway, as you know last year first
16 action pendency of trademark applications was
17 reduced to the lowest level in 6 years, ending in
18 2.9 months, and the first quarter of fiscal year
19 2008 pendency was further reduced to 2.8 months.
20 Last year average total pendency was 15.1 months,
21 first quarter 14.7 months. Last year quality of
22 search and examination of trademarks with final

1 action quality rates exceeding 97 percent, the
2 first quarter shows us similar results.

3 I'm going to talk a little bit about
4 legislation. One of the things that we continue
5 to see here at the USPTO is that trademarks
6 continues to lead the agency and the agency
7 continues to lead the federal government and even
8 many private-sector agencies in the teleworking
9 program. We continually get requests from folks
10 from our trademark side of the house to come up to
11 the Hill and talk to people about the benefits of
12 teleworking and it is a very nice place for the
13 agency to be to be seen as a leader in the federal
14 government. I was called up to testify and it is
15 a rare and good occasion when the whole idea of
16 hauling you in front of Congress is so that they
17 can say be more like the USPTO rather than what's
18 wrong with you. So it is something that you will
19 hear about us. You will hear from us often. But
20 it is because it really is a wonderful opportunity
21 for the agency to sort of have an entrée with the
22 policymakers and then while we are there we can

1 say will you consider this change, we're having an
2 issue, will you trust us with fee-setting
3 authority. So it really helps in terms of the
4 agency's credibility. So I want to take a minute
5 to talk about the latest updates in the telework
6 area.

7 As some of you know Trademarks is
8 piloting a geographic expansion of our telework at
9 home program. This pilot allows participants to
10 work at home and live beyond the D.C. metro area.
11 Right now we have examining attorneys who are
12 voluntarily living as far away as Colorado and
13 Texas. There are some federal regulations that we
14 are seeking legislative changes for so that we
15 will be able to accommodate those who voluntarily
16 live outside of the region. There is a Senate
17 bill which is the Telework Enhancement Act which
18 is S-1000 which has a pilot authority for GSA, the
19 General Services Administration, to allow agencies
20 to pilot when and under what conditions the agency
21 when someone voluntarily chooses to live away from
22 the office the agency would bear the costs for

1 return. That language is in the Senate bill but
2 it is not in a similar House bill.

3 GSA had indicated to us that if this
4 legislation passes, it envisions granting the
5 USPTO the discretion to reimburse for travel
6 expenses when employees do voluntarily move out of
7 the area. It is very nice in these conversations
8 that we have already been able to talk to GSA and
9 say once you get this authority we are the type of
10 people that you hope you will consider partnering
11 with in terms of setting up the pilot. And in
12 January, so just last month, folks from
13 Trademarks, I think it was Debbie Cone and others
14 went up on the Hill to continue conversations to
15 support this legislative change.

16 Patent modernization legislation. That
17 is the accurate name of it, but there are actually
18 pieces of the patent modernization bill that
19 affect Trademarks so I just want to quickly
20 mention them, but first I will bring you up to
21 date on where we are legislatively. The bill has
22 already passed out of the House. It passed out of

1 the Senate committee and Majority Leader Reid is
2 saying that he is likely to schedule it either
3 before President's Day recess or after President's
4 Day recess. There is one very significant issue
5 in the bill. The administration released a views
6 letter yesterday opposing the bill in its entirety
7 because of the damages provision which doesn't
8 have an effect here on the Trademarks side. But
9 we are hopeful that we can get to a resolution
10 because there are some good things in the bill.

11 One of the best things in the bill in
12 terms of the Trademarks side of the house is
13 clarification of the fee-setting authority for the
14 USPTO. So despite the fact that we are a
15 fee-based agency, there are times when we would
16 like to be able to with the appropriate oversight
17 lower fees sometimes, consolidate fees, put fees
18 in different places and we were able in this
19 discussion with the House and Senate to have this
20 provision included through the sponsorship of
21 Senator Coburn. One of the things that we were
22 able to discuss is even though it is a patent

1 modernization bill, let's not just talk about
2 patent fees because the fee issue applies equally
3 to the patent side and the trademark side. So
4 they did include in the patent modernization bill
5 language regarding fee-setting authority generally
6 for the office. So the bill other than your
7 standard safeguards of rules through the APA, this
8 bill actually adds two additional safeguards. The
9 first would be that it would require us to consult
10 with you before publishing any fee changes. So we
11 would work with TPAC on the trademark side and
12 PPAC on the patent side before any fee changes
13 would be published. Then whichever body was
14 looking at it would be able to comment on that
15 proposed fee change, hold a public hearing about
16 it and write a written report. Then the bill
17 would also give Congress ample time to pass a
18 motion of disapproval if they did not agree with
19 the fee changes. And while we think that the
20 fee-setting authority is important because it
21 allows us to place fees more wisely especially on
22 the patent side where -- fees have them at a

1 better place in then examination process than on
2 the trademark side, it would allow us to lower
3 some fees as appropriate. Even though we think
4 that that is very useful, we are always cautious
5 about runaway fee agencies, so we actually
6 encourage and support two additional layers of
7 oversight which most agencies who have fee-setting
8 authority do not have in place as well. So we
9 strongly support this provision and we strong
10 support it with the relationship with TPAC or PPAC
11 and the requirement to give Congress to approve or
12 disapprove.

13 The second has to do with greater
14 authority for the USPTO to accept late filings in
15 the case of unintentional delay. We don't think
16 that this would have any more than a minimal
17 impact or minimal effect on trademarks, but those
18 are the two pieces of the bill that would have any
19 effect. One of the things I would like to say is
20 when I was talking about telework is it is very
21 nice to be up on the Hill talking with folks about
22 this bill when the recognize the agency as the

1 source of expertise. So it has been very helpful
2 when we say if you have questions about
3 fee-setting authority, please pick up the phone
4 and call our commissioner on either side and they
5 will be happy to talk to you directly. And people
6 do not always take you up on it, but they know you
7 are not bluffing, and so that has been very
8 helpful in terms of being able to get these types
9 of provisions in the bill because there were not a
10 lot of outside folks agitating for fee-setting
11 authority though there was a lot of interest in
12 ending fee diversion, so it is a bit of a separate
13 issue.

14 And on the policy and enforcement side
15 of the PTO, we continue to target IP trouble spots
16 around the world. One recent example is the U.S.
17 has been active in ongoing WTO session talks with
18 Russia and is focused on regulatory changes with
19 the Russian Federation. To that end I want to
20 highlight an innovative program that we are
21 putting together for 15 Russian customs officers
22 later this year. The USPTO will host a 2-week

1 study tour of the U.S. In which the Russian
2 officials will visit the following places, our
3 headquarters here for 3 days for an overview of
4 U.S. IP laws and practices, Long Beach,
5 California, for 3 days to see warehouse and
6 seaport customs work, Laredo, Texas, for 2 days to
7 see land border customs, and JFK Airport for a
8 1-day tour on airport express consignment
9 environment. Then they will come back here for a
10 closeout session.

11 One of the things that we liked about
12 this program is that it really gives a chance for
13 the Russians to not just come in and see one piece
14 or have a bit of a tutorial, but it also has a lab
15 element to it so they really see how the entire
16 system stitches together. Then as a follow-up to
17 ensure the maximum impact of the training, these
18 Russian customs officers will be required to
19 produce an IP enforcement handbook within 6 months
20 of the tour. So we hope that you agree that that
21 sort of program improvement over time is what we
22 should be doing at the USPTO in terms of IP

1 protection.

2 This is a really easy summary to give,
3 but in summary, Trademark continues to make
4 strides in achieving greater efficiency while
5 maintaining high quality. We think that Trademark
6 is very effective in helping pass and influence
7 useful legislation to benefit Trademark's
8 operation and that they continue to work
9 creatively to stop counterfeiting around the
10 world. Later on this afternoon John is going to
11 come around 1 o'clock and I know that there was
12 some interest in the letter that Jeff sent and the
13 report regarding some of the management decisions
14 that are made and funds at the office and I know
15 that he looks forward to addressing that with you
16 later.

17 MR. SAMUELS: Do you want to take some
18 questions?

19 MS. PETERLIN: Does anybody have some
20 questions for Margaret? You mentioned the
21 counterfeiting issue. Are there any developments
22 to report with respect to the proposal to create a

1 new international anticounterfeiting treaty that
2 the USTR announced?

3 MS. PETERLIN: The pro-IP bill? ACTA.

4 MR. SAMUELS: ACTA. Thank you.

5 MS. PETERLIN: There's a -- going into
6 the bill out there that actually takes the Chris
7 Israel at DOC and memorializes it in the White
8 House. Currently the administration doesn't
9 support that for those who may be wondering where
10 that was.

11 But in ACTA I know that we are meeting
12 regularly with folks and I don't have a specific
13 update to report, but I know that we're meeting
14 regularly with folks and last time I talked to
15 someone when we had the SEIR folks here they were
16 telling me about the most recent negotiations in
17 Geneva that were going to happen 2 days later but
18 there's not really a real data point to update on.

19 MR. SAMUELS: Any other questions for
20 Margaret? As she alluded to with respect to the
21 letter that TPAC set to Director Dudas in
22 November, John will be coming later today to talk

1 about the letter. I met with John and with
2 Margaret and with Barry Hudson yesterday to
3 discuss our concerns in a little more detail and I
4 think John will be in a position this afternoon to
5 listen to everybody's concerns and to respond with
6 some ideas that he has. Thank you very much for
7 coming. Appreciate it.

8 MS. PETERLIN: Sure.

9 MR. SAMUELS: We'll now move on to our
10 review of trademark operations and call on Lynne.

11 MS. BERESFORD: Thank you. In the first
12 page is the one page that I often talk from about
13 performance results. I think Margaret touched on
14 some of them. Also of interest to you will be the
15 fact that our application filings is ahead of our
16 projection. We projected 6 percent. This is the
17 third line down. And we are actually running at
18 7.2 percent on application filings. Examiner
19 production is excellent at this point in time.
20 Even though our FTE are below last year's, we are
21 still producing at a really good rate. And
22 pendency continues to be acceptable in that first

1 action pendency is in the 3-month range and that
2 pendency that Trademark controls, that is the
3 pendency excluding suspended and interparty
4 proceedings in quarter one was at 12.8 months
5 which is below the 13-month range that we usually
6 talk about when we talk about 313. So in terms of
7 our pendency goals, everything is where we want it
8 to be and our challenge this year of course is
9 going to be to manage to that pendency, not
10 letting it get too low and not letting it go up
11 again.

12 Two pages after that is a Trademark E
13 downslide and I thought you guys would be very
14 interested in seeing this because if you look at
15 the two charts down on the bottom, this shows the
16 percent of classes disposed for each type of
17 filing. So we have paper files, TEAS filed, TEAS
18 Plus filed, and requests for extension protection
19 when filing. It shows the percentage of disposals
20 for each one of these, but also underneath it
21 shows you the actual average pendency when we
22 register those files. You will note that for TEAS

1 Plus the average pendency is 10 months. So what
2 we're seeing here is the real benefit, the
3 efficiency gains of the TEAS Plus filing model.
4 So I thought that would be of interest to you.

5 The next slide is graphic showing
6 trademark application filings. Then several
7 slides back we have a First Action Approval for
8 Publication. Just keep paging back. First Action
9 Approval for Publication is the title and I
10 thought this would be of interest to you too
11 because this shows the percentage of applications
12 by type of filing that are complete and ready to
13 be published when we receive them. If you look at
14 it, paper filed is about 11 percent, TEAS filed
15 are 15 percent, TEAS Plus is 31 percent. So TEAS
16 Plus again, what an efficiency gain this has been
17 for the office. It's voluntary, it's cheaper, and
18 it's been a tremendous efficiency gain for us.
19 Then of course on the end there and holding down
20 the average is requests for extension from the
21 Madrid System.

22 We then have a slide showing pendency

1 distribution. The pie chart shows the percentage
2 of files by month that are at the end of the
3 quarter, where they were in the zero to first
4 month, how many in the first to second month, et
5 cetera.

6 Then the next to last side, efficiency,
7 this is something because we are constantly
8 monitoring costs, we are very interested in this
9 particular slide. It shows at the end of the
10 first quarter of 2008 our actual expenses, how our
11 budget has been expended throughout the various
12 parts of the organization. As you see, the
13 Trademark organization as of the first quarter had
14 spent 44.5 percent of our trademark fees on the
15 operation and that's everything from preexam to
16 postregistration examination, the Commissioner's
17 Office, all the trademark examining operation.
18 TTAB is 4.1 percent, OCIO is about 30 percent. We
19 pay about 6 percent of the rent, 6.4 percent of
20 MDE, CFOCAO takes up another 6 percent, and then
21 we have the Director's Office, Policy, Public
22 Affairs, External Affairs, et cetera. So this is

1 where your Trademark dollars are going. As
2 always, our concern here in Trademarks is that we
3 lower those indirect overhead expenses and give
4 more service we think for the Trademark dollars
5 that we get as fees.

6 The last slide is for telework that
7 shows the number of people teleworking are Grades
8 13 and 14 examiners, the ones that are eligible to
9 telework, and our total employees who are
10 teleworking. It shows that both in percent of
11 eligible examining attorneys and percent of
12 eligible employees, 85 percent of them telework.
13 Our experience has been that that is about the
14 maximum, that there are just 15 percent who do not
15 want to go home and work, they want to come and
16 relate to the people who are in the office with
17 them. So that's it on our goals that we report
18 out.

19 Another couple of things to update you
20 on, with Grant Thornton as you know we are doing a
21 process review and an organizational assessment.
22 That continues. We are in the process of

1 finishing up the program control piece and the
2 legal policy piece and they're working on the
3 Office of Trademark Quality Review. This project
4 has been expensive but I think we have seen some
5 real improvements in our process and we have
6 turned over some rocks that have revealed some
7 real problems that we needed to solve. We are not
8 happy to find the problems, but we are happy to
9 have the opportunity to solve them.

10 One of the questions that the Grant
11 Thornton project has come up with and which I
12 would like all of you to think about is about OG
13 review. We have at least equivalents, two
14 full-time employees, who review the OG every week.
15 It is actually 20 people, but when you aggregate
16 their time it's two full-time employees. They
17 find all kinds of things in the OG. This is
18 prepublication. They find all kinds of things in
19 the OG, everything from classification mistakes to
20 marks that should never have gotten published, a
21 couple of those every once in a while, and all
22 kinds of typos and all kinds of other things. Our

1 question which we will take up I think at the next
2 meeting because the at the next meeting I'm going
3 to bring cost estimates and everything else, the
4 question is should we be spending all this money
5 on OG review? Is it worth it for what we're
6 getting? At the next meeting we'll have a typical
7 error lists and percentages of errors and really
8 how much we're spending on OG review. Within the
9 office we're talking about eliminating certain
10 parts of OG review and maybe we won't be looking
11 for those double periods anymore and those extra
12 quotation marks and things like that which makes
13 the OG look better when they're not there and
14 makes your registration certificates -- because
15 sometimes this is what goes on the registration
16 certificates look better, but really is it that
17 important that we do that? So that will be a
18 question with some background information for the
19 next meeting on this process.

20 We continue with exploring our proposal
21 to eliminate automatic paper registration
22 certificates. I learned this past week that we

1 have apparently cut a deal with our archive agency
2 NARA and soon we will be able to not archive paper
3 but archive electronic records. This will mean
4 that we'll have to answer some other questions
5 about paper records such as do we want to continue
6 to support the paperbound volumes for instance,
7 that lovely historical artifact that people still
8 use, actually still use the bound volumes, but if
9 we can archive everything electronically then do
10 we need the bound volumes and that will be an
11 upcoming question.

12 One of the things though about no paper
13 registration certificates is we think it will take
14 about 4 weeks off of our pendency by the time we
15 implement this particular process because of all
16 the little steps that go with paper registration
17 certificates both historically and currently that
18 we will be able to eliminate from our process. So
19 we are seeing a real advantage in people getting
20 their registrations eventually on the average
21 maybe a month faster than they're getting them now
22 which is not to be sneezed at.

1 The other thing we're doing is we're
2 doing this with the patent side of the house, also
3 exploring the idea of getting ride of paper issues
4 of patents. This will save a lot of forests in
5 the future because there is a lot of printing,
6 lots more than we have, and we want to do an OG
7 notice together. So we will be continuing to work
8 on this and we will continue to update the
9 committee on the questions and issues that arise.

10 We also continue working on full
11 electronic workflow. Our FAST 1.14 which we
12 originally were scheduled to deploy in April 2007
13 is now looking like it's going to deploy in April
14 2008 and we have a number of issues there, but we
15 continue with small releases, David will talk
16 about them in his presentation, moving
17 incrementally toward full electronic processing.

18 As you looked at our statistics you saw
19 that we are about 96 percent paper filing. It's
20 interesting. I looked historically back and in
21 2005 we had about 14 percent paper filing. So
22 since 2005 we have dropped that by almost 10

1 percent. It is quite impressive. We want to drop
2 it even lower and we are getting ready to start a
3 project, I should say Craig Morris is getting
4 ready to start a project, where he will be
5 identifying law firms and businesses that file a
6 lot of paper applications and he will be
7 contacting them and he will be going down there to
8 talk to them, going to their place of work
9 possibly and talk to them gently about the
10 advantages, we are not sending him out toting a
11 gun or anything, of electronic filing and give
12 them some hands-on help in an effort to reduce
13 even further the percentage of paper applications,
14 even enough it's a small percentage, still it's a
15 fairly large number, that are being filed.

16 Just a couple of quick hits. For those
17 of you who don't know, there are no longer going
18 to be trademark official notices in paper
19 "Official Gazette." That has ended. Also we have
20 in place last best place legislation was in the
21 last appropriations language I think, I think that
22 was where it was, continuing the ban on spending

1 appropriated funds for examination of applications
2 that had the term last best place in the
3 application. This is a little spat between the
4 State of Montana and a particular private filer
5 that continues to show up in our legislation. So
6 I think those are the quick hits from my office.
7 If there are questions, I would be happy to answer
8 them.

9 MS. PETERLIN: When you are reporting
10 back in more detail on the OG review issue, do you
11 also provide us with information on what the
12 remedies and processes would be if there were no
13 review and the mistake were substantive rather
14 than a typo? In other words, what would happen
15 next if and when a party discovered that what was
16 published be it class or what have you was
17 incorrect?

18 MS. BERESFORD: If we publish furniture
19 for furniture for furniture, then it's an issue,
20 yes. That is the type of thing that's
21 occasionally caught on OG review, that is kind of
22 an extreme example, but that's fine. No problem.

1 We will definitely do that. Other questions?

2 MR. SAMUELS: Other questions?

3 MR. TEPPER: I would just like to make a
4 statement, Lynne. I would like to commend the
5 Trademark Office because of your tremendous
6 improvement in productivity and pendency, you're
7 keeping quality high and you've got your home work
8 program which is I guess a best practice within
9 the federal government and I'd just like to
10 commend you for another fantastic year.

11 MS. BERESFORD: Thanks very much.

12 MR. TEPPER: Lynne, just a quick
13 question. I amplify Jan's comments. It's a very
14 impressive set of numbers. I am really struck by
15 the increase in the efficiency measure, the
16 percentage to which costs of handling the
17 applications have decreased 37-1/2 percent down,
18 is that a seasonal number?

19 MS. BERESFORD: That is artificially
20 lower. We found some files that should have been
21 abandoned last year but for reasons that we
22 haven't been able to identify in our program they

1 weren't not abandoned, it was a couple- thousand
2 files, and that artificially drove that number
3 down. I think our efficiency number is continuing
4 to drop, but that is artificial. I would like to
5 claim it, but --

6 MR. TEPPER: As that number decreases I
7 guess in looking at the overall breakdown of our
8 spending on trademarks, obviously with any of
9 those savings I hope that we can find ways to
10 reinvest those in the operation and just wanted to
11 be mindful of that.

12 MS. BERESFORD: Thank you.

13 MR. SAMUELS: I have a couple of
14 questions. With respect to eliminating the paper
15 registration certificates, if somebody wanted a
16 paper certificate would they be able to obtain
17 one?

18 MS. BERESFORD: Yes. In part of our
19 discussions right now, Jeff, is how we actually
20 propose setting that up, would that be something
21 where if when you filed your application you
22 checked a box and said I want a registration

1 certificate at the end of the process? Would it
2 be a form online that somewhere during the process
3 you could send the form and say I want a paper
4 registration certificate? Or would be just be to
5 order them from the people who produce copies for
6 the office? You order your certificate, I want a
7 formal certificate, and they send you the
8 registration, probably on 8-1/2-by-11 paper
9 because we're going to change our paper size if we
10 have the opportunity to do that rather than buying
11 the very expensive special-sized paper we use now,
12 but allow you to order it that way. Those are all
13 part of the discussion of how we would set this up
14 which we wanted to have kind of fleshed out before
15 we put out the Federal Register notice.

16 MR. SAMUELS: With respect to full
17 electronic processing, I think especially for the
18 benefit of the new members but perhaps some of the
19 old including me, what part of the process
20 currently is not fully electronically processed?

21 MS. BERESFORD: Certainly
22 postregistration. I think we just finished IT

1 this year. Postregistration is not,
2 preexamination is not, the petitions process is
3 not, OTPC which we're not sure we need to, but in
4 terms of the process itself, it is examination is
5 fully electronic, LIE is fully electronic, ITU not
6 fully electronic, pub and issue not fully
7 electronic, and then postregistration is not fully
8 electronic. So the four areas are pub and issue,
9 exam. I can go through it and identify them, pub
10 and issue, preexam, postregistration, are not
11 fully electronic. And petitions, yes.

12 MR. SAMUELS: One of the reasons I asked
13 the question is I know that you're starting to
14 begin the process believe it or not or thinking of
15 initiatives for 2010.

16 MS. BERESFORD: Right.

17 MR. SAMUELS: I think perhaps it would
18 be a good idea for the members of TPAC, given the
19 list of those areas that you are not fully
20 automated or automated at all now, to have some
21 ideas to try to prioritize those aspects of the
22 registration process, that perhaps this is a good

1 opportunity to do this. One of the reasons why we
2 set the meeting when we did set this meeting was
3 to give us an opportunity to have input before the
4 train leaves the station with respect to
5 initiatives for 2010. So if anybody has ideas
6 just off the top of their head, they are certainly
7 welcome to express those, but if not, I think
8 maybe over the next couple of weeks if you want to
9 give it some more considered thought, you can send
10 in your comments to Lynne or maybe to Karen or to
11 whomever with respect to what we see as maybe the
12 higher priorities among those various aspects that
13 you mentioned. Maury?

14 MR. TEPPER: Jeff, I'm glad you raised
15 that. I think it would be helpful to see that
16 list and of course to comment on it. I am struck
17 by the fact that I think this was part of the
18 original bargain of what was the first 21st
19 Century Strategic Plan. We are coming up on a
20 decade into the 21st century and still have not
21 delivered on that part of the problem or at least
22 the bargain when the PTO came up with the

1 strategic plan. So I think there is cause for
2 concern in terms of the ability of the office to
3 meet some of its efficiency targets. Obviously
4 first action pendency, a lot of these measures are
5 doing great, but I think it would be time well
6 spent to look at the extent to which that system
7 does not yet exist internally.

8 MS. DEUTSCH: I was just going to say in
9 terms of feedback from the TPAC, I didn't know
10 whether Lynne you and your staff have given some
11 thought about prioritizing these areas and whether
12 that was ripe for sharing or not.

13 MS. BERESFORD: We have in fact given
14 some thought to how we would prioritize these
15 areas, but I think what I would like to do is
16 perhaps send something out to TPAC members to
17 define each of these areas because I might know
18 what they mean, but not everybody who is a Public
19 Advisory Committee member will know the difference
20 between pub and issue and preexam and what they
21 do. So a little discussion about what they do,
22 because if you're going to make a decision about

1 prioritizing, it is helpful to actually know what
2 folks are doing. And also with that some comments
3 on how we would prioritize and how we see them
4 within the office.

5 These are line functions. This is
6 moving the trademark application through the
7 process and then of course through
8 postregistration which is very much a part of our
9 process. So they are all important, they all
10 affect how we do things, but in terms of
11 prioritizing them it would be very helpful to have
12 Public Advisory Committee impact.

13 MR. SAMUELS: Elizabeth?

14 MS. PEARCE: Just one thing I'd like to
15 throw in. If you could tell us where the
16 low-hanging fruit is, which ones are closest to
17 being able to go fully electronic, if possible to
18 polish those off a little more quickly and then
19 tackle the more difficult ones.

20 MS. BERESFORD: I'm not sure about the
21 low- hanging fruit. Believe me, we have been on
22 the process since before the year 2000 and the

1 original plan was to have all the trademark
2 electronic processing fully done by 2003.
3 Obviously, we haven't quite met that deadline, so
4 now the deadline has moved a number of times since
5 then. The problem with such long IT projects, and
6 I'm sure David would echo this sentiment, is many
7 things change over the process of 7 or 8 years.
8 Technology changes, your process changes to some
9 extent because the law changes or the rules change
10 or other things happen. So it makes it much more
11 complex when it's drawn out over so many years,
12 but I will be very happy to prepare something and
13 we'd be very happy to hear from TPAC about these
14 issues.

15 MS. DEUTSCH: I don't know if you have
16 any cost projections yet even if preliminary
17 attached to each of these buckets. But again in
18 assessing priority, one of the things is the speed
19 with which the changes can be made, but the other
20 is the costs of those changes and helping us weigh
21 in on the planning.

22 MR. SAMUELS: David, did you want to

1 weigh in?

2 MR. SAMS: Yes. I'm going to talk about
3 it a little bit in a couple minutes, but there
4 seems to be more of an opportunity. Another part
5 is we are looking at the initial planning for
6 those four modules that Lynne mentioned and
7 getting a prioritization or a high-level estimate
8 is very useful. But one of the other things that
9 Lynne is looking into that has been very helpful
10 for us is looking at the number of applications
11 and how they go through her organization because
12 not every application touches every shop and it's
13 going to be useful on a priority-setting basis to
14 know what percentage of applications would hit
15 each of these areas and that might be useful in
16 helping set priorities as well.

17 MR. SAMUELS: Lynne?

18 MS. BERESFORD: Yes. What David is
19 talking about is one of the measures that we have
20 had for many years is applications managed
21 electronically which means applications that are
22 acceptable electronically and for trademarks it's

1 been 99 percent now for a number of years. We are
2 not necessarily happy with having a measure that
3 is at this point relatively stable so we have
4 decided that the measure we want to replace that
5 with and we're working on doing that is a measure
6 that looks at the percentage of applications that
7 come through the process fully electronically. So
8 obviously if they go to the petition process they
9 can't be done electronically. If they go through
10 parts of preexam, we have a preexam that does the
11 paper applications but also does some of the work
12 on electronic applications, they can't be fully
13 electronic.

14 So we are trying to come up with a
15 measure that actually looks at the percentage of
16 our applications where we never have to have a
17 paper filed or sent on those applications. We
18 think this is a measure that will be meaningful
19 for us, it will be way lower than 99 percent, but
20 it will be I think a very meaningful measure and
21 we're working on figure out how to get that
22 measure.

1 MR. SAMUELS: David?

2 MR. SAMS: I think this is a very
3 positive statement showing the quality in
4 trademarks. Most managers would be very happy
5 with having a measure that you consistently hit
6 and Lynne has been a frontrunner in looking for
7 how to improve the organization on metrics and
8 measures and I think this is a very positive thing
9 her organization is doing.

10 MR. SAMUELS: We certainly second that.
11 Two other areas, Lynne. What's the story on
12 Madrid? Do you see an increase in use both from
13 the U.S. and from non-U.S. Trademark owners on
14 Madrid?

15 MS. BERESFORD: Here comes the
16 statistics.

17 MR. SAMUELS: Here comes Sharon to the
18 rescue.

19 MS. BERESFORD: Thank you, Sharon. I
20 will have a copy made for everybody on the Public
21 Advisory Committee so that you can see how this is
22 going.

1 I would have said without looking at
2 this we have had a gradual increase, but what it
3 shows is that in total international applications,
4 that's U.S. filers, in 2004 we started that year
5 with 1,574, 2005 it went up to 2,772, then to
6 3,131 in 2006, and 3,629 in 2007. So one way of
7 looking at it is it's doubled since 2004. Another
8 way is it's gone from 1,500 to 3,600,
9 approximately. So I'd call that a gradual
10 increase.

11 In terms of the requests for extension
12 of protection coming into the agency from foreign
13 filers, we started 2004 with 4,700, again we have
14 had increases every year, and in 2007 it was
15 15,352. When you talk about the 400,000 classes
16 that we have filed here, this is still a
17 relatively tiny, tiny portion of what comes into
18 the office, but it is growing, and I will have
19 somebody make copies for everybody so you will
20 have this information.

21 MR. SAMUELS: Do you know where do we
22 stand vis- à-vis the other countries being

1 designated?

2 MS. BERESFORD: The last I looked we
3 were third.

4 MR. SAMUELS: Third?

5 MS. BERESFORD: Yes.

6 MR. SAMUELS: I know we don't have
7 anything on the agenda for international
8 discussion. Is there anything going on, Amy, with
9 respect to Madrid at WIPO?

10 MS. COTTEN: There will be a working
11 group meeting in May 4 through 10 on the Madrid
12 system and we will be hopefully be talking about
13 an Australian proposals to increase the level of
14 services provided by all offices. Presumably, if
15 all offices are doing roughly the same thing,
16 processing, handling these applications in much
17 the same way, then it is easier to harmonize the
18 system and hopefully improve the system down the
19 line. If everybody is doing different things, it
20 is much harder to get everybody to agree. So
21 we're going to slowly work on increasing the
22 levels of communication between applicants and

1 national offices where there are none now. So
2 that's the first thing that we're going to try to
3 do, just to get more notices being sent
4 electronically or otherwise by the national office
5 either to WIPO where it is in the international
6 register or to the applicant directly and we'll
7 see what we come up with. But there is going to
8 be a bit of a fight because there's certainly a
9 lot of countries that don't want to do more than
10 they have to. They only charge the standard fee
11 and they don't want to put more services out there
12 than actually -- fees for. So that could mean
13 that there is a push by some countries that
14 everyone should charge an individual fee and that
15 might mean higher fees for everybody, but
16 presumably as we have heard from many user groups,
17 more services they are happy to pay for so that's
18 what we've been hearing from user groups. I don't
19 know if national offices are really keen on doing
20 that, we'll find out in these discussions, but we
21 are hopeful that we can get real movement to
22 improve the system for users even if the national

1 offices are kicking and screaming, but we'll see
2 what happens there.

3 MR. SAMUELS: Thank you. The last
4 question I had for you, Lynne, and this may be
5 jumping ahead, I was looking at the CFO's report
6 and looking at I guess it's page 10 of tab 6 that
7 talks about the awards through December 2007 and
8 shows that we had planned 1.2 million and actual
9 is about almost 3 million. I'm sure Howard is
10 happy about that, but I just wondered what
11 accounts for that rather discrepancy.

12 MS. BERESFORD: I think we had a change
13 in mood of our 11s and 12s onto the same award
14 scheme that the 13s and 14s were on, and I think
15 Ron might touch on this when he talks about the
16 PAP negotiations. The award scheme and the PAPS
17 are separate and in effort to improve production
18 we moved the 11s and 12s after negotiating of
19 course onto the award scheme that the 13s and 14s
20 have. We did see an increase in production, but
21 also an increase in awards.

22 MR. SAMUELS: Are there any other

1 questions for Lynne? Ron, you're going to talk
2 about PAP negotiations?

3 MR. WILLIAMS: I was going to mention
4 it.

5 MR. SAMUELS: Are you the lead
6 negotiator?

7 MR. WILLIAMS: No, sir. Good morning.
8 As Lynne said, we are at the table with NTEU 245
9 regarding the PAP for the 11s and 12s.
10 Unfortunately, were not able to reach agreement.
11 Currently we are at the federal services impact at
12 this time and we submitted final briefs on January
13 30 and we hope to hear from them real soon
14 regarding the ultimate plan. There seem to be I
15 think two major issues that could not agree upon.
16 I think that if we had agreed upon the ramp-up
17 period for the new examining attorneys.

18 MR. SAMUELS: I'm sorry, say that again.

19 MR. WILLIAMS: The ramp-up period. We
20 have a 12- week training program and in the past
21 we have given examiners a period where they have a
22 reduced production initially and we were unable to

1 reach agreement with NTEU 245 regarding how long
2 that period would be.

3 The other issue that was outstanding was
4 the issue of the balance disposal transfers.
5 Currently 13s and 14s can transfer so many balance
6 disposals from one quarter to the next quarter if
7 they take a large amount of leave and because the
8 11s and 12s do not have -- authority we had some
9 concerns about whether or not it would be
10 appropriate to give them the same opportunity to
11 balance disposals. Those seem to be the two major
12 issues that we were unable to reach agreement on.

13 MR. SAMUELS: So in other words, to even
14 out their balance of disposals that they were
15 going to take 2 weeks off during one quarter?

16 MR. WILLIAMS: Right. Right.

17 MR. SAMUELS: They'd be able to move
18 some balance disposals from pervious?

19 MR. WILLIAMS: Yes, that is correct. I
20 don't want to go back to the table, but I think
21 those are the basic issues in terms of the
22 performance plans regarding 245.

1 Like Lynne said, we did however agree to
2 put them on the same awards structure as the
3 GS-13s and 14s up to the \$5,000 bonus if they
4 produce enough balance disposals in any given
5 quarter. So that may account for some of the
6 increase in the awards. For NTEU 243 we have
7 implemented some new performance appraisal plans
8 and awards structures in some of their units that
9 also provides them the opportunity to get larger
10 awards as well. Are there any questions on the
11 patent negotiations?

12 Moving on to staffing, you have heard
13 Lynne talk about the fact that we have achieved
14 pendency with about 2.8 at the end of the first
15 quarter and she mentioned that we are in a
16 maintaining mode as opposed to a driving-down mode
17 that we have been in for the past several years.
18 Two things that we've done that may seem somewhat
19 contradictory, one, we are hiring 15 examiners
20 starting February 19 and we're hiring, but our
21 belief is that these examiners will come on board
22 in February, they will be trained and will have

1 very little impact on production this year. So we
2 are actually hiring them for 2009 as applications
3 continue to increase, that even though we are
4 hiring them this year, they will have little
5 impact on production for this year.

6 The other thing that we have done for
7 the second quarter is that we have eliminated
8 overtime. This is the first time we have
9 eliminated overtime in many, many years. Again we
10 are not trying to drive down pendency as much as
11 we have been in the past so we are trying to
12 maintain production at an acceptable level. We
13 think we have the correct amount of examiners on
14 board that will enable us to maintain that
15 pendency in the 2.5- to 2.3-month range for the
16 year.

17 Another part of the overtime was that we
18 always say that we can count on overtime when we
19 need an extra push, but it has been very hard for
20 us to verify how much we actually get for overtime
21 because when we decreased overtime last fiscal
22 year from 32 hours a pay period down to 12, we did

1 not see a big difference in the production overall
2 from the examiners. So by eliminating overtime
3 for at least this quarter, it will give us a
4 better I think of what we're actually getting for
5 overtime. If we need to bring back overtime, we
6 have the money available to do that and we are
7 constantly monitoring that situation and if we
8 need to bring it back we will bring it back in
9 order to maintain that pendency in the proper
10 range.

11 Another thing that is affecting the need
12 to hire is that attritions are slightly higher
13 than we had planned for the year. We had
14 projected to have about 20 attritions for the
15 year, and I think we have already had 20
16 attritions. In fact, I think we've had 21 because
17 I noticed someone else was leaving. So we have
18 had more attritions than we had even anticipated
19 having throughout the fiscal year. So I think
20 that pretty much is our reasoning for why we're
21 hiring, and at the same time we have eliminated
22 the overtime. Any questions on that?

1 Moving to the Human Capital Strategic
2 Plan. Back in the fall of last year the Trademark
3 Office developed the Human Capital Strategic Plan
4 which grew out of the Human Capital Survey and
5 identified certain areas that we felt we needed to
6 focus on. If you look under tab 4, I have
7 included a copy of the Strategic Plan that we came
8 up with that lists our goals that we are looking
9 to achieve this year as well as it identified
10 several teams that have been established to help
11 us work toward achieving those goals. I would say
12 that we on many of the teams we have union
13 representatives who are participating and helping
14 us achieve the goals and objectives that we have
15 set forth.

16 One of the areas where it was indicated
17 that needed improvement was internal
18 communications between management and employees.
19 One of the first initiatives we've done is we've
20 come up with an e-magazine which I gave you a copy
21 of. It's paper, but this is actually published
22 electronically. The first issue went out last

1 week and we've gotten very good reviews about the
2 magazine. It is strictly about Trademark
3 employees, about what we're doing in Trademark,
4 and I think the young lady who did it has done a
5 very nice job in pulling the articles together and
6 putting the magazine together. We do not have a
7 set schedule for when that's going to come out,
8 but we anticipate every 2 to 3 months and
9 hopefully it will continue to be of the same high
10 caliber of the initial one. We do have a naming
11 contest going on right now, so if you have a
12 suggestion on what we should name it, we will be
13 more than willing. You can send it in through the
14 suggestion box and we will consider it along with
15 all the others. For those of you who have been
16 around a while, back in the late 1980s or early
17 1990s we had a "Tower Bell" that came out in the
18 South Tower that was a forerunner to the
19 e-magazine.

20 Lynne also mentioned the organizational
21 assessments in terms of being completed. I don't
22 know if she mentioned that as part of the

1 assessment, each unit they go into they develop
2 procedural manuals, they develop process guides,
3 and they also conduct work observations to
4 substantiate the production and quality standards
5 that we have set for the various units. One unit
6 that was first impacted were the legal instruments
7 examiners wherein we have reorganized them into a
8 separate structure and we've come up with a new
9 performance appraisal plan and at the same time a
10 new awards structure where they can get a bonus of
11 up to 10 percent of their salary if they have the
12 right amount of production and quality, and that
13 is one of the first units to do that in Trademark.
14 I will say on average the awards last year under
15 the new plan were about 1 percent higher than they
16 had been in the previous years and we did have
17 some LIEs, legal instrument examiners, that did
18 get the full top award last year.

19 You have heard a lot about the TWAH
20 program, the geographical expansion, the pilot has
21 I think done a summary and they are going to
22 provide recommendations to the management team

1 later this week and I think they are going to
2 recommend a slight expansion in that. The other
3 area in which we are looking to improve in the
4 TWAH area is the collaboration tools that we use
5 that will increase the interaction between the
6 folks in the office and out of the office. I
7 think one of the shortfalls of the work at home is
8 people lose that contact with the people in the
9 office and don't feel a part of it so we are
10 trying to come up with collaboration tools wherein
11 we can interact with those individuals on a daily
12 basis. We are giving them multimedia
13 communications systems where they can have video
14 cameras of one or two people and you can actually
15 see the person you're talking to and it also has
16 instant messaging. Another thing that we have
17 been is we have been webcasting our meetings and
18 at our last all employees meeting we actually had
19 about 260 people signed on through the webcast and
20 we had another 200 to 250 in the room, so we think
21 we had about 500 people out of about 700 total
22 employees who either were at the all-hands meeting

1 or actually saw it through the webcast and that
2 again has received lots of positive comments from
3 the employees. I will answer any questions that
4 you have.

5 MR. SAMUELS: Does anybody have any
6 questions for Ron? Yes, Howard?

7 MR. FRIEDMAN: I wanted to make two
8 comments. I didn't want to break Ron's momentum
9 so I let him go through with the entire
10 presentation, but now I'll break the momentum. On
11 overtime, generally as a union you have no problem
12 with more hiring because it means more members,
13 but I did want to put the union's viewpoint out
14 there. We have always been staunch advocates
15 particularly when overtime has been reduced or
16 eliminated in not hiring and reinstating
17 overtime for the people who are here. So I wanted
18 to make sure TPAC was aware of our position, we
19 would have preferred that overtime remain and pay
20 the people who are already here to do more work
21 rather than bring on more people. And to the
22 extent TPAC wants to comment on that, obviously

1 feel free.

2 With the PAP we were very disappointed
3 not to get an agreement before the panel member --
4 Ron had talked about the 12-week training period
5 and had also talked about the 14-week ramp-up
6 period where you go through a reduced production
7 period. One of the primary reasons we were very
8 disappointed not to come to an agreement with the
9 office is that we've consistently taken the
10 position from the beginning of negotiations until
11 our briefs were filed earlier this week or I
12 should say last week that all we were ever asking
13 for for the first 26 weeks that someone walks
14 through the door is that they be treated exactly
15 the same way they've been treated for the last 8
16 years where you go through a training period for
17 12 weeks and you go through a reduced-production
18 cycle for 14 weeks, and we happen to believe by
19 having those tools available, that is one of the
20 primary reasons why every quarter Lynne stands
21 before this committee and talks about how we meet
22 our goals, and that is also why at least one if

1 not most of the committee members commend Lynne
2 and the Trademark Office for meeting its
3 production and quality goals, it is because people
4 get the type of training during those 26 weeks
5 that they are on board to become even better and
6 more productive examiners during the next 2, 3, or
7 however many years they are an examiner. So all
8 we were ever asking for our examiners to be
9 treated exactly the same way they have been
10 treated since 1999. Thank you.

11 MR. SAMUELS: Anything else? No?
12 Lynne?

13 MS. BERESFORD: I forgot to mention the
14 very important upcoming event, the Trademark Expo.
15 For those of with a member of Trademark facts
16 about the office, you may remember the Trademark
17 Expo from years ago when we would have it down at
18 the main building. I'm sure you remember.

19 MR. SAMUELS: My kids loved it, yes.

20 MS. BERESFORD: For those who want to
21 wear the Michelin tire costume or Tony the Tiger
22 or be a bunch of grapes for Fruit of the Loom, all

1 of us have fond memories of the costume-wearing
2 aspects of Expo and all that kind of stuff which
3 made it a lot of fun for kids. We are going to be
4 reviving Expo. It is coming back and it is going
5 to be here on campus on April 10, 11, and 12. We
6 already have a pretty stellar list of participants
7 from the private sector who will be having booths
8 and hopefully costume characters and inflatables
9 and all that kind of stuff. So just to let you
10 know we will be sponsoring Expo Lives and it will
11 be here on April 10, 11, and 12. Thank you.

12 MR. SAMUELS: Thank you. Is there
13 anything else for Ron or Lynne? We are falling a
14 little bit behind.

15 MS. PETERLIN: On ACTA, I just got an
16 email from someone in Dubai and I apologize for
17 stumbling, but the reason why I didn't have
18 anything to report is because now I am being
19 reminded clearly there still is nothing
20 significant. The latest is the USTR was in Geneva
21 last week to have informal discussions E.U.
22 members. They are not yet ready to enter into

1 negotiations. Also there is no text yet. While
2 many countries were interested, the countries who
3 are still on board are the same six, Canada,
4 Mexico, E.U., New Zealand, South Korea, and
5 Switzerland.

6 MS. COTTEN: You don't have a mandate to
7 negotiate yet?

8 MS. PETERLIN: Right.

9 MS. COTTEN: And that's why they are
10 still in prenegotiations.

11 MS. PETERLIN: Right. Just so you know
12 and that's why I was like I don't really think
13 there's anything to say, but no text with people
14 still feeling good about talking at some point is
15 sort of where that is. So I consider that an
16 nonupdate.

17 MR. SAMUELS: Thank you. A real-time
18 update. Thank you. We appreciate it. Jan?

19 MR. LEICHLITER: Just one more question
20 that perhaps could be addressed to Margaret. The
21 program to introduce Russian authorities to
22 customs is a great program. Do you have any plans

1 or does anyone have any plans to expand that
2 program to other countries, for example, China,
3 Dubai, or Ukraine?

4 MS. PETERLIN: I know that the Global IP
5 Academy has regular programs, I don't know if
6 someone else here can speak about them, with
7 customs officials, but I think this is one we were
8 trying to do a different type of program.

9 MS. COTTEN: We've done study tours
10 before particularly with Middle Eastern countries
11 taking them up and down the East Coast and to
12 various ports. It is difficult. We were very
13 fortunate to get the Russian customs officials to
14 agree to this. It's been very difficult to get to
15 the customs folks and the judiciary in the midst
16 of all their WTO accession talks and in the midst
17 of part four of the civil code discussions going
18 on. So we were very pleased to be able to do this
19 with Russia. We have been targeting them
20 specifically and because of the accession talks,
21 we have been in a better position to be able to
22 get them to agree because we have been having

1 pretty good relations. As for China, we have been
2 doing a lot of in-country work in China.

3 MS. PETERLIN: Are you familiar with our
4 IP --

5 MR. LEHRER: Yes.

6 MS. COTTEN: We've doing much more work
7 in- country with customs officials and have not
8 brought them here. There has been a reticence to
9 do that on the Chinese side, but we certainly are
10 exploring it. We are really targeting the BRIC
11 countries, Brazil, Russia, India, and China, with
12 programs like this, trying to bring them here to
13 this space for training programs on customs and
14 enforcement in particular and doing these study
15 tours as well and I think we are going to expand
16 them. But it is a significant chunk of time and
17 money to bring these folks here and then trot them
18 all around the country so it is not something we
19 can do lightly but I think it's an innovative
20 program that really lets them see what we do here
21 and maybe be able to take that home so I think we
22 will be doing more of that.

1 We have been doing it with the Middle
2 East quite a bit, not necessarily customs
3 specific, but judiciary focused with the Middle
4 East. Looking to see if we can get China to do
5 something like this, that would be great. I don't
6 know how open they are to it right now with our
7 WTO case against them on copyright and trademark
8 enforcement. That sort of put a damper on
9 bilateral relations. But we are interested in
10 exploring those sorts of innovative programs
11 because I think you get more bang for the buck
12 when you really engage them and let them see how
13 it works rather than just lecturing.

14 MR. SAMUELS: Thank you, Amy. Jeff?

15 MR. STORIE: To that same point,
16 Commerce has training headed up by Donda Keefer
17 who is an attorney in D.C. who is doing exactly
18 the same thing.

19 MR. SAMUELS: Ayala?

20 MS. DEUTSCH: I was just wondering, Amy,
21 as part of that program where either costs or
22 politics are such that a trip in person isn't in

1 the near future, whether there is any component of
2 this program that deals with translating and
3 providing written materials to customs offices in
4 other countries that may be helpful. I know with
5 respect to China that we had what at least
6 appeared to be receptiveness to our translation of
7 our typically U.S.- training materials into
8 Mandarin and making that available to China
9 customs and I'm just wondering whether that is
10 also a component of the program or whether it's
11 focused on some sort of interactive training.

12 MS. COTTEN: I think it depends on the
13 country. Whenever we produce any documents for
14 China, they ask for it to be translated before we
15 even hand it over. So they are very much
16 interested in shifting the costs to us on that.
17 With Russia, they don't necessarily want us to do
18 the translation for them, they would rather do it
19 themselves. Take what you will from that. I
20 don't know. But certainly in creating our
21 training plan for doing down in the future through
22 the -- programs, that is something to take into

1 account, creating standard modules that can be
2 translated easily into another language and as we
3 expand here and think about how we want to
4 proceed, certainly that is something I think that
5 will be considered and we'll take that back for
6 our folks as we move down the road.

7 MS. PETERLIN: Generally on the training
8 front we asked Lois and her group to come up with
9 a strategic plan for the entire organization
10 because we had a lot of history doing one-of
11 programs and what we said is let's take a step
12 back and talk to the folks who are doing some of
13 the training and folks who are providing the
14 sessions to support and say what type of modules
15 work in what countries as they're emerging based
16 on either political will or their economy is
17 growing. So we just got that plan I think a week
18 and a half ago and we're going to bring that to
19 the Management Council and say what is the best
20 way to roll out these programs based on their
21 acceptance in certain countries so we feel like we
22 have enough experience now that we can start to be

1 more sophisticated with how we target and what
2 programs we offer like do you to three judges
3 programs and then a customs, do you do two judges
4 programs, wait 6 months and do a refresher? Like
5 how is that information best absorbed. So any
6 ideas that you have on that would be very helpful
7 because literally after the first major stage of
8 her team developing a plan and about to analyze it
9 at the executive level to figure out the best way
10 to do these.

11 MS. DEUTSCH: I would say the experience
12 of the NBA in China is that although they can't
13 take the place of in-person interaction and
14 training, that the written materials are useful in
15 a couple of respects. I think first of all just
16 the vastness of the size of the force is such that
17 if you have something that can be distributed more
18 widely than the people who are going to attend
19 your events, I think that's very useful. I also
20 think we found that there is maybe a greater
21 comfort level in written materials that are
22 contained and can be signed off on by the powers

1 that be rather than a live event where they are
2 maybe less able to control the exchange and what's
3 covered. So although you have to jump through
4 some hoops such as translation costs involved to
5 get what it is you're distributing, I actually do
6 think there is some usefulness particularly in
7 China with respect to those kinds of materials. I
8 don't think it takes the place of interactive
9 training events, but I do think we found in that
10 particular market that it's pretty useful.

11 MS. PETERLIN: We're also looking more
12 at distance learning which is something that
13 haven't necessarily been good at in the past and
14 is also more economical. And it would have some
15 of the advantages as you were saying, we could get
16 it preapproved or translated.

17 MR. SAMUELS: We are running a little
18 bit behind schedule so I want to move us along.
19 The next item on the agenda is the report of the
20 Chief Information Officer David Freeland. I know
21 a number of us were at a meeting yesterday with
22 David and his staff and I know some people from

1 the CFO's office as well with respect to issues
2 relating to cost allocation and I know we all
3 found that very useful. Welcome again, David.

4 MR. FREELAND: Thank you. I wasn't
5 going to talk very much about yesterday's
6 presentation other than I do think that us
7 bringing a series of these types of big issues
8 coming in and talking about it just to make sure
9 that we all have a common understanding of some of
10 the issues that we're facing, on budgets and cost
11 allocation they are clearly a very important
12 factor in our jobs and where we're trying to do
13 and trying to improve here and we definitely are
14 looking for input from the TPAC on suggestions on
15 how we can improve the information that we're
16 providing to you and providing to the Trademark
17 organization also for improving business decisions
18 that we're making. I do believe that we're
19 heading on the right path right now, that we
20 significantly have improved the types of
21 information that we're gathering and starting to
22 do the reports on. I think in some cases it's

1 very positive some of the information we're
2 finding, in other cases it's not so positive, but
3 it's very useful in seeing how the monies are
4 being spent. I believe that that information can
5 be used to make better business decisions as we
6 move forward. I do not want to get the process
7 criticized for some of the information that we're
8 finding. I think overall that it's a very
9 positive that we're moving toward.

10 On the presentation that you have in
11 your handouts, I have made a couple of changes in
12 the way that we have been presenting information.
13 I'm hoping it's a little bit more useful to you.
14 If not, I would like your feedback. Instead of
15 tables with numbers, I was trying to look at maybe
16 some charts and some of the comparators or
17 relative values between years might be more useful
18 and jump out.

19 On slide 2, what we have is TDR,
20 tradeups, TARR and TICRS just showing the average
21 monthly filings or requests of service for each of
22 those areas. We went to an average monthly

1 because we were including FY 08 and we only had
2 the first quarter's data in there, so we had to
3 have a meaningful comparator between 2006, 2007,
4 and 2008, and we had to knock that down to a
5 monthly average. At the end of the fiscal year
6 we'll convert those to annualized numbers and
7 report on that. But it is interesting that
8 tradeups is relatively flat so far, but TDR, TARR,
9 and TICRS to somewhat lesser degree are showing
10 relative increases on an average monthly basis on
11 usage and requests.

12 On the next slide, we have the TEAS
13 system and so far it seems to be relatively on
14 track. We do project or Trademark does project
15 total TEAS filings for fiscal year and right now
16 we're showing an increase in the overall filings
17 through TEAS for this fiscal year in 2008. On the
18 Madrid charts, I do apologize that there is a
19 mistake. We were sort of rushing getting this
20 through the new look. If you can extend on the
21 projected for 2008 in Madrid on the hatched box,
22 move that up to 16,250, we just made a mistake on

1 the chart. The Madrid filings I think as Lynne
2 reported earlier are higher than what they had
3 been in the past and I think we had a flat number,
4 but they are actually higher. It's at 16,250 is
5 what we're projecting for this fiscal year.

6 On the search transactions at the bottom
7 on an average per month we're seeing that the
8 number of searches going through the systems are
9 on the rise too. I think in the future I'm going
10 to add another chart that shows maybe the last 12
11 to 18 months of searches. I just found it
12 interesting that the search patterns are very
13 cyclical. There is a 3-month cycle on searches
14 and I think it coincides with our work patterns
15 within the office. You can see the numbers where
16 it drops down real lot, ramps up and then drops
17 low, and ramps up. It is an interesting
18 opportunity for us to make sure that we have the
19 right capacity planning on time. I think we are
20 going to be as efficient as we need to be or
21 should be. We need to be a little bit more
22 flexible in dynamically reallocating resources

1 because I don't want to have dedicated resources
2 on months that are relatively low in usage. Why
3 have them just sitting there if there is a way to
4 dynamically reallocate those to maybe another
5 system with higher utilization for that month and
6 then reallocate. We're just trying to look at and
7 see this information to make better decisions on
8 how we apply our resources on a monthly basis.

9 MS. BERESFORD: David, I have a question
10 about the search transactions. Is this internal
11 searching, is this external searching, or is this
12 combined?

13 MR. FREELAND: This is total searches
14 that go through X-Search through the BRS system,
15 so I believe that would be a total.

16 MS. BERESFORD: So it's internal?

17 MR. FREELAND: Yes, internal through
18 BRS.

19 MR. SAMUELS: So this doesn't include
20 tests?

21 MR. FREELAND: I don't believe it does.
22 We would be tracking that right now through

1 document requests through TICRS or through TARR on
2 the number of requests for different types of
3 documents and images that are pulling up, but if
4 there are other systems that we need to be pulling
5 in and showing the charts, we can do that as well.

6 MR. SAMUELS: Does anybody have any
7 thoughts on that? Should we have a separate chart
8 for tests?

9 MS. PEARCE: I think that's not a bad
10 idea. It's interesting to me being a new member.
11 I am delighted. I use the system electronically
12 as much as I do and we use TEAS Plus and all that
13 sort of thing so I feel at least I can't be
14 embarrassed being here. But I would be interested
15 in knowing the test statistics. I use it a lot
16 for various things, sometimes ownership searches
17 and that sort of thing which I think it does
18 relatively well particularly now that they've
19 combined some of the assignment functions. So
20 from the outside I would be interested in that.

21 MR. FREELAND: I think it's always a
22 good idea to pull in and look at the impact of the

1 outside usage on our system so I think we're going
2 to look at not just tests, but we'll probably be
3 looking at any other public access to websites or
4 any other means of getting electronic access to
5 our information and maybe have a slide just for
6 public access to information and maybe there will
7 be something in there that's of use and we can
8 develop that over time. So we will try to get
9 that pulled together for the next TPAC.

10 MR. SAMUELS: Thank you.

11 MR. FREELAND: Slide 4 shows relative
12 spending over the last several fiscal years. One
13 change I would make on this slide is that in FY 08
14 there should be a stacked bar at 24 million 397 is
15 what we've already obligated for this fiscal year
16 due to the projects and I have a slide that shows
17 that later on in the presentation.

18 The projection of our total budget at
19 68.9 million is based on what our original budget
20 projection was. I know that our organizations
21 both Trademark and OCA are constantly looking at
22 that with the CFO's shop and I believe, Lynne, you

1 mentioned that you think that it might be somewhat
2 less this fiscal year, 62 or 64 I think is what I
3 heard you say yesterday. So I think if we can
4 work with Karen just to go through that to make
5 sure that we're in synch on what we're projecting
6 if that's okay.

7 MS. BERESFORD: I think I looked at a
8 budget projection and it as 66 million, so I don't
9 know. This is a different number and we will have
10 to look at these numbers with the CFO's shop.

11 MR. FREELAND: I just want to make sure
12 that we're all in synch on that.

13 On slide 5 I just wanted to reaffirm
14 what the IT priorities are for the Trademark
15 organization. Clearly TRAM is one of the systems
16 that we're working on and improvements are coming
17 out or are already coming out, TICRS as well,
18 X-Search, FAST, as you all have heard, you know
19 important the FAST system is to electronic
20 processing so there is quite a bit of activity
21 there, and on the TEAS. With the FAST system and
22 having such a long-lived history, maybe an

1 interesting history, I think it would benefit from
2 the type of scrutiny that we just did with cost
3 allocation and drivers, that perhaps at the next
4 TPAC session if it's agreeable we might come with
5 a full history of FAST and how it started, where
6 we are today, and then what the plan is on moving
7 forward. I think that might be useful.

8 MR. SAMUELS: Will you be proceeding
9 simultaneously on all of these initiatives?

10 MR. FREELAND: Yes. These are
11 concurrent initiatives that we have several
12 activities working on this fiscal year, but FAST
13 is a very big effort with a large number of
14 modules and it needs to be broken up into multiple
15 phases as are each of the others and we tried to
16 intermit those phases and we have some lessons
17 learned on intermixing of phases and resources on
18 both sides in trying to get them out so I think
19 that will come out as part of the lessons learned
20 too.

21 MR. SAMUELS: Are these going to be
22 carried over into 2009?

1 MR. FREELAND: On the next couple of
2 slides we can show accomplishments and what the
3 plan currently is. In the first quarter of 2008
4 in November we did release TEAS 4.1, new forms and
5 new functionality there. We have also on TICRS
6 the color specimens was added in 1.7 in November.
7 In December we had 4.1(a) on TEAS, and the forms
8 paragraph editor was added.

9 MS. BERESFORD: May I just say
10 something? The TEAS 4.1 was the new Section 7
11 request form and a new response to a suspension
12 inquiry or letter of suspension. The December
13 release of the Trademark electronic TEAS 4.1(a)
14 was a server upgrade and miscellaneous wording
15 changes, so that is what encompassed in these
16 particular releases.

17 MR. FREELAND: With 4.1(a) it was a
18 system upgrade. Primarily we have security
19 requirements for all of our systems so it as a
20 Federal Information Security Management Act
21 compliance update that we had to apply to the
22 system at that point.

1 In January 2008 another version or
2 update to TICRS was adding documents. Another
3 major effort was a migration from the TWAH
4 environment and on the CITRIX, over to the ERA
5 environment for the work-at-home program and
6 supporting of them. So far, my understanding is
7 that service has been very stable and good. We
8 haven't seen any issues to be honest on that, and
9 there has been a significant reduction in the
10 number of outages. Any improvements are always a
11 good thing, so I think this was a very positive
12 change.

13 Another item in January was the bulk
14 data downloads. In the past it had been a
15 purchase service where we were providing
16 subscription fees and prior to January there were
17 13 subscribers to bulk data downloads. Ten of the
18 13 have switched over to using the free downloads
19 now. I am not sure what the other three are going
20 to do at this point, but they have until March I
21 think is when their subscription runs out to make
22 a choice on how they're going to handle that.

1 Since the new product went out we've had 14 new
2 subscribers going to the free downloads. We have
3 increased the number of people who are getting the
4 bulk data downloads and as far as meeting our
5 information dissemination requirements, I think
6 this has been a very positive thing for the
7 office.

8 MS. BERESFORD: This was a project that
9 we started because we wanted to have fewer people
10 hitting our system causing us problems because
11 they were using robots to download data out of our
12 SURF (?) system. They crashed the system and do
13 other bad things like slow it down. So we really
14 wanted to go to free data for anybody who wants it
15 in bulk. It was relatively inexpensive to do this
16 and I think as David says, it has been very
17 successful. The more we can give it away, the
18 fewer problems we have with our other systems
19 being up and running. Thank you.

20 MR. FREELAND: Another very positive
21 part of that free bulk mechanism that we're using
22 here, it is a registration system where people

1 come in and they're registered users so they're
2 allowed to freely bring down whatever they want.
3 But if we ever did have issues with hitting it too
4 hard or whatever, we have numbers and contacts to
5 talk to them to see if there is a better way for
6 them to maybe get access to that information, but
7 we have not had any issue here. It's just been a
8 very positive effort I think on our part and on
9 the public and I think we have been meeting their
10 needs there.

11 On the second-quarter initiatives on
12 slide 8, clearly we are continuing to move with
13 TDR, X-Search, and additional TEAS forms. We have
14 a scheduled in February for TEAS 4.2, the Section
15 7 request for amendment form or correction or
16 registration certificate form. Lynne is going to
17 have to help me on this one part that has to do
18 with 66(a) entitled to claim priority under the
19 Paris Convention. Apparently there is a response
20 to action form associated with that that is also
21 going to be included in TEAS 4.2.

22 In March we're looking again at TICRS

1 updates on fax images. Speaking of faxes, in
2 general I would like to be reducing the receipt of
3 fax information coming into the office because we
4 have so many other vehicles whether it's through
5 PDF or electronic imaging or scanning and sending,
6 are there any thoughts from the TPAC organization
7 on how fax and how essential it is to the
8 operations of the public on us being receiving
9 submissions in fax form? Because often times with
10 information dissemination we had been getting
11 requests for copies of certified materials or
12 assignments or whatever in fax form and we're
13 looking to move to either electronic submissions
14 or just moving away from the fax as a general
15 vehicle for receiving. We're just exploring that
16 right now. Are there any thoughts on that?

17 MS. BERESFORD: David, we looked at our
18 fax and I think Tom can probably speak to his more
19 accurately than me, but I know patents is
20 interested in getting rid of having the ability to
21 fax papers to the office. Trademark looked at our
22 fax program thinking we would probably join

1 Patent. But what we determined is we spent such a
2 small amount of money on faxes, 1,500 a year or
3 something like that, or 15,000 on tax receipts,
4 and in certain instances it is such a help to the
5 folks that need the fax us something right then
6 and there, for some reason or other they can't
7 attach it to an electronic document. But since
8 you have raised the issue, I promise that on the
9 next Public Advisory Committee we will bring the
10 information forward so you can actually see what
11 we spend on faxing, where the faxes coming from,
12 and what it's used for. It's a very small program
13 within Trademark. Patent has a much more robust
14 fax issue than we have, so I am more than happy to
15 bring the facts to the Public Advisory Committee
16 so we'll do that next time.

17 MR. FREELAND: I know that in our
18 documents in the assignments and information
19 dissemination group in my shop we receive requests
20 for certified copies or for assignment submissions
21 and they come in through three different vehicles
22 right now and faxes are the least reliable of all

1 of those vehicles. The clarity on the request is
2 sometimes smudged, often times there are blank
3 pages, they were inserted into the machine
4 incorrectly, sometimes they're just solid black
5 pages. When the filer or the requester sends
6 them, they believe it has gone through
7 successfully and sometimes when we get those, you
8 can't tell who it came from so there is no contact
9 information. So we're just looking at ways of
10 trying to improve that service and we can talk
11 about that more.

12 MR. SAMUELS: Elizabeth?

13 MS. PEARCE: Just quickly from somebody
14 from the outside, and I prefer not to use faxes
15 but have done it, there are times when all the
16 people who know how to use the scanners in my
17 department and not available. Or, and this
18 happened recently, the email system will crash.
19 If an examiner calls for instance and they've got
20 a problem or I think I needed to sign something
21 for an extension of time for a subsidiary, it was
22 a strange and unusual thing, but there were

1 problems with getting the emails to go through on
2 some end. It's not a huge expense just as a
3 safety valve sometimes, it is useful to those of
4 us who are quasi- dinosaurs. So at any rate,
5 there is some compassion on that.

6 MR. FREELAND: That's useful
7 information. Thank you.

8 Looking into April on slide 9, we have
9 FAST 1.14. I am happy to say we did have some
10 issues with the current release, but yesterday on
11 1.14 I think we are ready now to go into user
12 acceptance testing so hopefully we can get that
13 tested, accepted and keep it moving and then we'll
14 continue on with the rest of FAST. Again, at the
15 next TPAC session I think we will have a little
16 bit more elaborate history of all of the FAST
17 releases.

18 MS. BERESFORD: And just for everyone's
19 information, FAST 1.14 makes our tag 4 paragraphs
20 available online. So when we're talking about
21 incremental steps here, we're really talking about
22 incremental steps. This is something that we want

1 to do because it will allow us to look at how many
2 of each -- paragraph are used to do quality review
3 across the whole organization to see how are we
4 doing with a particular 2D situation or 2E
5 situation. So we see the tag 4 paragraphs as
6 something that we'll really be able to use to help
7 the organization to focus more on its quality in
8 examination. But it is a really small part and
9 when we're talking electronic processing this
10 where we are really talking about a tiny increment
11 of the processing here. So when we talk about
12 incremental steps we are really meaning really
13 incremental steps.

14 MR. FRIEDMAN: Also for informational
15 purposes I think it is important for TPAC to know
16 that we have an arrangement with the office and we
17 have about 10 or 15 beta testers testing 1.14. So
18 the union is working with the office to make sure
19 that when it is pulled out to everybody it would
20 be in the finest shape possible and the beta
21 testing will continue when the next rollout
22 occurs.

1 MR. FREELAND: In May we're looking at
2 1.15 going out and that's providing examining
3 attorneys improved capability of processing office
4 actions using full text search functions. In June
5 we're looking at another release of TEAS for a new
6 electronic form, postpublication amendments, and
7 there is some increased online filing capabilities
8 also in that system. And TEASi, improvements to
9 the Madrid protocol forms offered through TEASi.
10 In July 2008 the release is currently scheduled
11 for FAST 2.2 which is for intent to use. This is
12 another that we have significant delays on and
13 definitely would benefit from the review and
14 discussion ongoing through that.

15 On slide 11 it's talking about other
16 initiatives that we have within the office such as
17 business continuity and disaster recovery where we
18 are currently at there. We have some of the
19 equipment up in Boyers right now where we are
20 copying all of the work-at-home people when they
21 have online storage that when they sign on into
22 our systems here they have their network attached

1 storage that is virtual storage that is attached
2 to their virtual desktop. That storage is being
3 backed up into Boyers right now so that we have
4 access to all of the information in their work
5 that they are using as part of their jobs. We're
6 also looking at moving additional storage up there
7 for the rest of our systems on the critical
8 systems to have a hot electronic capability for
9 recovery. Also we have ClearPath machines that we
10 have here for disaster recovery for the Trademark
11 systems. We are intending to move that up to
12 Boyers at the end of this fiscal year so that we
13 will have the ability to recover that hardware
14 because that's a one-of-a-kind here, the ClearPath
15 system, and we bought a second one just to have
16 for disaster recovery and it would be better to
17 have it physically located at a different site.
18 So we're going to do that by the end of this year.

19 There are other efforts on the on the
20 business continuity disaster recovery that we are
21 still looking at. We went out with a couple of
22 reviews of our requirements for a second site and

1 we came up with a review of our initial process.
2 Last summer or last year we went through an effort
3 of looking for a second site. San Antonio, Texas,
4 is where the bidding process went through. There
5 were some flaws in that bidding process. As we
6 went through that process, we came out with only
7 one really viable bid technically, but financially
8 it was just outrageous. It was like \$80 million.
9 Because we have to obligate all funds up front, we
10 would have had to obligate a 10-year in the first
11 year and it would have come with like \$80 million
12 to do all the build-out which is completely
13 outrageous. So we backed off and asked did we
14 have a seriously flawed system, this process was
15 it wrong? We went through and brought in some
16 experts on data center designs and build-outs and
17 did a review of the solicitation for offers, the
18 technical requirements. We wanted them to come
19 back with a good, better, best type scenario for a
20 data center design and compare the SFO that was in
21 the original. The bottom line is we were
22 requesting things in the SFO that were beyond best

1 in some cases. There are things that we were
2 looking at where if good is going to be adequate
3 and allows us to do an incremental update over
4 time and we're truly fine, then we should be going
5 in with good. If it turns out that you can't do
6 those incremental updates and there is a
7 compelling need for a higher- performance data
8 center, then we have that information to make
9 those choices. It ranged in cost for building out
10 a date center from about \$22 million to \$29
11 million, so significant increases. When you look
12 at it from that standpoint, it is almost a
13 50-percent swing in cost depending on what options
14 you put into a data center on building it out.

15 My intent is we validated the cost that
16 it should be. We looked at the costs that were
17 coming in on that \$80 million total bid and all
18 the leases. They were wanting not the \$28 to \$29
19 million that this review thought it should be,
20 they were looking at it like \$40-something-
21 million for the build-out, so it was not a good
22 offer and we didn't really even seriously consider

1 it and stepped away. So now we are going through
2 and starting that process again to develop a
3 better contract vehicle, do lessons learned from
4 that process, and take another run at trying to
5 get a better product.

6 Another area that we thought we made a
7 mistake on on that initial bid is we were trying
8 to stay off of the first floor for flood plain
9 reasons but found that that was preventing most
10 people from bidding old grocery stores or old
11 warehouse type situations because they thought
12 that that precluded them from bidding. It didn't.
13 There are ways to use those facilities very
14 easily. We're having to change the wording and I
15 think coming in with a warehouse type situation or
16 an old grocery store would have been a much more
17 cost-effective solution for us, so we're pursuing
18 those options.

19 On the public website USPTO redesign,
20 we've awarded that contract for that. We're
21 moving forward. There are two phases planned for
22 that right now. The first phrase is looking at a

1 refresh of the look and feel for how the public
2 would see the website, but phase two is also
3 looking at more of the underlying infrastructure
4 improvements to our website and the data that's
5 there. I believe we are also looking at the
6 Spanish translation or Spanish access to the
7 website that would be available at that point in
8 phase two. USPTO data access, we have had as I am
9 sure you are well aware issues with data access
10 and data mining issues. We had TDR and patents
11 and public pair (?) were on the same server at one
12 point. Access or data mining through the patent
13 system was causing horrible response times for
14 performance on TDR. We split those two systems.
15 There were some suggestions internal that it might
16 have been the instability of the TDR system that
17 was causing all the issues. It was quickly proven
18 that that wasn't the case because the problems did
19 not follow TDR, they followed the public pair and
20 the primary issue was just the sheer volume of
21 individuals, robots actually, that were coming
22 into the operation and just pounding us on data

1 access. Literally millions of requests were
2 coming from single points on a daily basis and our
3 systems just couldn't keep up with that load on
4 those systems. So we ended up as a stopgap having
5 to implement the capture system which has pros and
6 cons. The pro side is it allows individuals who
7 need to get in and get access to the information a
8 way of doing it without being impacted. The
9 negative side is you have to contend with those
10 two characters that are on a fuzzy background when
11 on the best of days I have a difficult time
12 reading those things. We are going through
13 looking at improvements to that system. There are
14 ways to be able to detect on a request coming in
15 whether it's from a robot or whether it's from an
16 individual. You can tell by frequency of hits,
17 the amount of data that goes to a site. There are
18 ways to do it. And there are ways then to
19 redirect the requests from automated sites to go
20 to a different server to process those requests
21 than for individuals. So one of the things that
22 we're going to be looking at doing is if we can

1 redirect automated requests to a server that has a
2 better governance model to regulate the data input
3 requests so it doesn't kill it, that would be a
4 positive, while we allow individuals to go through
5 the system with fewer restrictions or fewer
6 barriers to them to easy access the information I
7 think are ways that we are looking at pursuing
8 that there.

9 The last thing on there was staffing.
10 We have almost all of our positions filled for the
11 Trademark side that are dedicated to development,
12 so quite a few, 22 out of the 23.

13 MR. SAMUELS: What's your FTE in your
14 shop?

15 MR. FREELAND: My total FTEs is 550 and
16 I think we have spots for 526, so I think this is
17 a little fuzzy right now. We have the budget for
18 550. A lot of that is associated with the
19 business continuity disaster recovery, the
20 different number there. Out of that, 140 roughly
21 are for information dissemination that are not
22 really part of your traditional IT organization.

1 So as far as IT shop, below 400, about 380, is the
2 number that we have.

3 MR. SAMUELS: Does that include
4 contractors?

5 MR. FREELAND: No. Contracts that are a
6 large number that are attached on top of that and
7 across my organization we're probably looking at
8 about 7- to 800 additional contractors depending
9 on the area and information dissemination has a
10 large number of contract labor, our operational
11 areas do too, as does system development which is
12 almost entirely contracted out.

13 MR. SAMUELS: So you have about a
14 thousand people who are working some aspect of
15 information systems both government employees and
16 contractors?

17 MR. FREELAND: I think that's a rough
18 number, but, yes, I think it's close to that.

19 MR. SAMUELS: And how many on a
20 percentage or actual number basis are being
21 devoted to trademarks?

22 MR. FREELAND: I don't have that number

1 off the top of my head. I could probably get it
2 before the end of the day just to show you how the
3 compensation budget breaks out between trademarks
4 and patents, and I can look at the contractors too
5 I think. I'll see if I can get that pulled
6 together for you today.

7 MR. SAMUELS: Just looking at the issue
8 of costs, I was looking at again the CFO's report,
9 page 7 I think of whatever the tab is, tab 6,
10 shows that for the first quarter 2008, a little
11 over \$25 million trademark fees go into the CIO's
12 office. I'm just wondering, because extrapolating
13 from that, we're well over \$100 million and I
14 thought the budget is \$66 million. What accounts
15 for the heavy expenditures in the first quarter?

16 MR. FREELAND: Typically that's going to
17 be for the application and development projects
18 that we have kicked off at the first part of this
19 year. That means that we've obligated the funds
20 for the rest of the year, so there are forward
21 obligations.

22 MR. SAMUELS: So it's just typical?

1 MR. FREELAND: Yes.

2 MR. OLECHOWSKI: If I could add one
3 thing, one of the things we've been working with
4 not only at the CIO's shop but with all the
5 business units is to fully fund the contract
6 through a 12-month period of performance so that's
7 accounted for a lot of Dave's obligations through
8 the first quarter and a half as we have been fully
9 funding his contract so that at the end of the
10 year we're not shortchanging or anything else.

11 MR. SAMUELS: Does anybody have any
12 questions for David?

13 MR. STORIE: I don't know if this would
14 be helpful for anybody else on the committee, but
15 based on our subcommittee assignments, I'm going
16 to be spending a fair amount of time looking at
17 quality and automation. As a user, I only have
18 access for the most part and understanding of
19 those public-facing programs and so it would be
20 helpful to me, and I run a risk by asking a
21 systems for this kind of information, but if we
22 could get a flowchart that would give us sense

1 about the interrelationship between the modules
2 that you guys develop and maintain and which way
3 they face, who has access to them. Then I think
4 it would also help us understand the challenges
5 that you face in interface and in terms of being
6 able to move us from partially automated to fully
7 automated in terms of the areas that we just
8 talked about earlier, so if I could get that maybe
9 at a very high level.

10 MR. FREELAND: Those are great charts, I
11 love those charts, but they do need to be raised
12 up a level. I think just to make sure I
13 understand what you're asking for, we are going to
14 list then the different systems that we have and
15 then show how they are interrelated because there
16 will be interfaces between those systems and then
17 identify where the use of them comes from. Some
18 of them will be public facing, some of them will
19 be internal, so we can list all of those systems
20 out so you can have a general feel for all of the
21 automated systems that support the trademark
22 organization.

1 MR. STORIE: That would be very helpful
2 to me personally so that I understand exactly
3 where you guys are coming from.

4 MR. FREELAND: I think that that's a
5 great set of information that we should have
6 readily available and we'll pull that together for
7 the entire TPAC.

8 MR. SAMUELS: Anything else? We are
9 about a half-hour behind schedule and while I'm
10 tempted to just plow through, I think it might be
11 a good idea to just take maybe a 5- or 10-minute
12 break to use the facilities, make phone calls or
13 whatever needs to be done. So how about picking
14 up at 11:10?

15 (Recess)

16 MR. SAMUELS: The next item on the
17 agenda is the report of the Chief Financial
18 Officer. We have the Deputy Chief Financial
19 Officer with us again, Mark Ojchowski. Mark,
20 welcome again.

21 MR. OLECHOWSKI: Thanks, Mr. Samuels. I
22 do have a couple guests with me. At the last

1 meeting you met Carol Bryant. She is our chief
2 executioner. She is the director of the budget
3 execution staff in the Office of Corporate
4 Planning. And behind me in the red shirt is Mark
5 Krieger. Mark is our new Director of Finance, and
6 prior to Director of Finance he worked in our ABI
7 division. So he is certainly familiar with a lot
8 of the questions that TPAC normally has on cost
9 allocations and everything else and he has been a
10 great asset to our leadership team. Thank you.

11 Budget highlights. Slide 2. This is
12 the current status of both FY 2008 and 2009 and
13 what we plan on doing. You can see down bottom
14 the appropriation was passed. Right after
15 Christmas the president signed it giving the USPTO
16 access to \$1.915 billion. We do anticipate
17 collecting around that amount. However, we
18 believe that trademarks is going to overcollect
19 and patents will slightly undercollect and we have
20 already started to engage Lynne and Karen and her
21 staff about keeping an eye on that and see what we
22 want to do and as the year progresses if it does

1 come to be that we're going to overcollect
2 trademarks to see how we can best use that or fee
3 changes or something like that, but we will
4 monitor that closely. There is a significant
5 change in the appropriation language in FY 2008
6 that Congress gave us that said if we collect over
7 1915 we can keep until expended up to \$100 million
8 above that. So essentially it ends diversion. Of
9 course, the USPTO would like to permanently end
10 diversion, but this is certainly a great new
11 amendment for us, allowing us to keep up to \$100
12 million should we actually collect that this year.

13 MR. SAMUELS: This is a follow-up to
14 that. Last year I understand I think it was \$12
15 million in trademark fees that were diverted to
16 the treasury at the end that was overcollected and
17 you didn't have the authority to keep.

18 MR. OLECHOWSKI: That's correct. That's
19 unintended diversion.

20 MR. SAMUELS: That money goes to the
21 general treasury?

22 MR. OLECHOWSKI: I don't know the name

1 of the account. It goes to our special account in
2 treasury and it's been collecting for years and
3 years and years. There's probably close to \$500
4 or \$600 million in that account that's unavailable
5 to us unless we get some sort of act of Congress.

6 MR. SAMUELS: It is available to anyone?

7 MR. OLECHOWSKI: Not without an act of
8 Congress.

9 MR. SAMUELS: So it's just sitting
10 there?

11 MR. OLECHOWSKI: Yes, sir, offsetting
12 the public debt.

13 MR. SAMUELS: I'm encouraged by the new
14 administrations language. The ability to keep the
15 additional \$100 million if collected, are there
16 other steps that would be required for the PTO to
17 be able to spend or to utilize those funds?

18 MR. OLECHOWSKI: No, sir, just in the
19 same manner we do now. We tag every dollar that
20 comes in whether it be patent or trademarks and if
21 we did not spend it this year, it would remain the
22 right color of money that we could do with it the

1 next year or the year after. It is no year
2 dollars so it doesn't have a year attached to it.

3 MR. SAMUELS: Does the 2009 budget
4 request also have that provision?

5 MR. OLECHOWSKI: The request does, yes,
6 sir. Page 3. This is the 2008 administration and
7 this is the patent and trademark split into the
8 business unit. So how much of the patent and
9 trademark dollars will be budgeted to each of the
10 business units. It adds up to 100 percent going
11 down as opposed to the next chart which is going
12 to go across. I don't know if you have any
13 particular questions or comments on this. This is
14 the 2008 budget. It still adds up to 1915.

15 Just to comment on the 2008 budget, I
16 think during the last TPAC meeting, patent fees
17 were estimated to be significantly down through to
18 2008 because of the claims and continuation
19 package that was going into effect. The claims
20 and continuation package as most of you I'm sure
21 know has an injunction against it so we are
22 actually still collecting patent fees that we had

1 not anticipated collecting when we put the budget
2 together. The spend plans that are out to the
3 business units are somewhat less than 1915 so
4 we're monitoring that as we go along. We consider
5 that to be one-time dollars and not dollars that
6 will ultimately go into a business unit base
7 because once claims and continuation lawsuits are
8 exhausted, we will start not collecting, I guess
9 is the way to say it, those patent fees. Part of
10 deputies' meetings is we try to determine how much
11 money we're going to have, what to do with that
12 that is currently not allocated out to the
13 business units today.

14 Pages 4 and 5 are the pie charts that
15 show you the total dollar amounts of both the
16 patent and trademark business lines broken up by
17 the business units themselves.

18 Page 6 are 2008 operating plans. This
19 is the same dollar amount sliced a different
20 direction. It's the business units split into the
21 patent and trademark split to show you how much of
22 any particular business unit, what the patent and

1 trademark share is.

2 Page 7. This actually came up in Mr.
3 Freeland's presentation. This is the spending
4 status through the first quarter 2007. I think,
5 Mr. Samuels, as you mention of the fact that the
6 CIO had the trademark share of that and I
7 mentioned also that that's what we've been trying
8 to do with not only the CIO contracts but all the
9 business unit contracts. We want to fully fund
10 those contracts on an annual basis, and I will
11 make mention when we get another slide on the
12 Fence Report that it's caused us to keep a very
13 close eye on our spending as we go through the
14 year because what we do not want to do is fund a
15 contract for 8 months. We would rather do that
16 for a whole year to keep the period of performance
17 in tact so we can have year- to-year and
18 annualized data on the expenses on those
19 contracts.

20 MS. BERESFORD: I have a question about
21 that because I note that the trademark share that
22 has been funded is 42 percent but the patent share

1 is 19 percent for CIO in looking at these
2 organizational dollars. I'm surprised patents is
3 for the first quarter below 25 percent and yet it
4 would seem that if we were fully funding all of
5 our contracts for the year they would be above 25
6 percent too.

7 MR. FREELAND: I will certainly take an
8 action to go back and dive into those numbers. It
9 might also have to do with which projects are
10 current authorized and currently be worked and
11 obligated. I know that patents has the major one
12 being PFW, but I would have to go back and dive
13 into the numbers, Lynne, and I'll do that for you.
14 It is just that. There is a base percentage below
15 at the bottom of those two that are for those
16 contracts that are getting renewed like help desk,
17 handsets, telephones, those types of things that
18 are part of that base cost. But trademarks has
19 funded and initiated several projects at the
20 beginning of this year. The PFW project was
21 actually obligated and initiated in 2007 and so a
22 lot of the funds that we're working from with

1 monies on that side are actually going against our
2 2007 obligations. So I just think that some
3 additional information needs to go through that.
4 That would be easy to grab and we'll do that and
5 get back to everybody.

6 MS. BERESFORD: Yes, but I also know we
7 have a lot of 2007 funds that are being used to
8 fund OCIO endeavors at this point so, yes, I will
9 be curious to see where that money really is
10 going.

11 MR. OLECHOWSKI: We'll provide the
12 breakdown to everybody. Page 8 is the pie chart,
13 the graphic in which we're depicting the same
14 information for both trademark spending and patent
15 spending through the first quarter. Remember
16 that's 2008 dollars.

17 Slide 10 is actually a new slide that
18 just indicates through the first quarter how
19 trademarks is spending according to the plan. The
20 planned expenditures are slightly under \$25
21 million. The compensation dollars is almost
22 exactly to plan being spent. Noncomp is somewhat

1 under. I guess Karen probably has a few more
2 details on that. It could have things to do with
3 preobligating contracts and spending 2007 dollars.
4 But once again you can't just take the number at
5 face value, you have to do a little digging in to
6 determine why, but essentially compensation is
7 certainly spending right on track.

8 MR. SAMUELS: I'm looking at this and
9 looking at contractual services seems inconsistent
10 with what we had discussed earlier where you
11 seemed to suggest that you have to fund in the
12 first quarter contracts at a higher rate than if
13 you had a pro rata application, yet in contractual
14 services you show you plan 2.4 and an actual of
15 516. Do they relate to different things or is
16 there some disconnect here?

17 MR. OLECHOWSKI: Karen you can help me
18 out here. These are trademark contracts whereas
19 the other thing was the CIO contract. Karen and I
20 have had this conversation, I know we don't like
21 to pre-ob.

22 MR. SAMUELS: Karen, could you come to

1 the table?

2 MS. STROHECKER: Without actually having
3 the reports right in front of me, my suspicion on
4 this is that we had planned what we would actually
5 need to fund 2008 contract requirements but in
6 fact we had forward funded those same contracts
7 using 2007 money in the fourth quarter. So we
8 have covered out first-quarter budget obligation
9 requirement with 2007 funds that were available to
10 us.

11 MR. OLECHOWSKI: I think in general
12 we're trying to get away from pre-ob being a
13 significant amount of the contracts and we've been
14 able to do that in past years because we've had
15 dollars left over at the end of the year so we
16 forward fund through a portion of the year. What
17 we're trying to do is get the annual funding
18 locked into the budgets and then fund those on an
19 annual basis. If the contract goes from January
20 to January, yet in August or September we throw
21 money on it for the next year, it doesn't allow us
22 do at least as detailed financial analysis as we

1 would like to do to know what we're going to spend
2 it on annual and then it just snowballs. At the
3 end of the next year now you've pre-obbed but you
4 had money in your base to fund it on an annual
5 basis and so it just keeps going. I think
6 trademarks has done that, we've done that, I mean
7 the PTO, and we're trying to get away from that.
8 We'd rather not pre-ob as much as we have in the
9 past. We'd rather have annualized money in
10 everybody's base so we can fund those things for a
11 12-month period, but what also what we're trying
12 to do and where pre-ob can help us is if the
13 contracts are from 1 October to whenever, we never
14 have the money on 1 October since we have to
15 generate fees. So what we're trying to do is we
16 may have 12 months of funding, so we'll pre-ob
17 money onto it to get the contract started in 1
18 January, so it has been a ongoing couple-year
19 effort to do that but I think we're still seeing
20 some residual of that.

21 MS. STROHECKER: In fact, given the
22 downside that Mark just discussed, the upside is

1 when you're operating under an continuing
2 resolution and you don't have any idea of how long
3 that will last, it's actually somewhat
4 advantageous to at least have those substantial
5 contract amounts obligated at the start of the
6 year using prior year monies so that you can
7 actually continue to fund operations under a
8 limited CR spending level.

9 MR. OLECHOWSKI: What we've tried to do
10 with the CIO contracts is take them so that, I
11 will use some rough numbers, a quarter of them
12 start every quarter so that they're not all
13 bunched up on any one particular quarter, that the
14 start of the period of performance is spread out
15 over the year so that as we generate fees and we
16 renew contracts and we repeat them, it's a more
17 smooth evolution through the year of expenses.

18 MR. SAMUELS: David?

19 MR. FREELAND: Maybe it was stated, but
20 if you look at the slide on 10, the 22693, that
21 compares to slide 7, the 22693, just for the
22 trademarks portion. This doesn't include anything

1 from any of the other organizations.

2 MR. OLECHOWSKI: Slide 11, this is the
3 Fence Report I guess we call it for the first
4 quarter of the fiscal year and I the point I want
5 to make here we with the Office of Finance and
6 Carol's group generate this every day and this is
7 what we use to monitor the spending across PTOs.
8 So as requisitions come through our shop we know
9 exactly how much money is available to use before
10 we obligate it. You can see that at the end of
11 the first quarter we had about \$9 million
12 available and what I was mentioning before I
13 alluded to it is this is why we have to pay so
14 close attention and it is one of the down sides of
15 fully funding contracts. So as not only the CIO
16 contracts but the CFO and trademarks and patents
17 come in, we have been trying to fully fund those
18 on an annual basis, but like I said, the flip side
19 of that is it's really used up a lot of the fees
20 we were generating throughout the first quarter
21 and even now. So we do do that. When a contract
22 or requisition or anything comes through Carol's

1 shop, they look at this and determine if they can
2 actually obligate those funds and we have had
3 conversations with the business units to hold
4 things until a day or two or three where we
5 generate more fees. So another challenge through
6 the first quarter is also our continuing
7 resolution. Our continuing resolution really
8 handcuffed us this year. The first part of the
9 language to spend on last year's seasonal rate and
10 the seasonal rate was very low because we had
11 pre-opped contracts the year before so we didn't
12 spend much money in the first quarter. We were
13 limited to the amount we had spent the year
14 before. We actually asked OMB to go to a daily
15 rate which is essentially how much money we think
16 we will collect through the whole year divided by
17 the first quarter and that freed up some spending
18 room for us. We also carried over last year \$28
19 million that we had not carried over in the past.
20 In the past we would pre-ob or try to spend it as
21 we could. We actually carried over around \$28
22 million which gave us a little bit of maneuvering

1 room and we plan on doing that at the end of 2008
2 as well. We have had a CR 12 out of the last 13
3 years and I imagine we'll probably have another
4 one.

5 MR. LEICHLITER: Just a question on
6 that. You have total expenses of 618067 on this
7 chart on page 11. It looks like you have actual
8 collections through December 31 of 56929 which is
9 a shortfall. Do you anticipate that shortfall
10 continuing through the rest of the year?

11 MR. OLECHOWSKI: I'm sorry, sir? You're
12 correct. Actual collections through December was
13 569, but we also have other income. Part of the
14 carryover was trademarks. We split the parking
15 and all the other things would come in. So this
16 actually shows trademarks having a surplus on this
17 particular day a snapshot of \$2.7 million.

18 MR. LEICHLITER: My question was, in
19 your total expenses versus your actual collections
20 there's a shortfall. If you look at the
21 collections and you anticipate that shortfall
22 continuing for the rest of the year, in other

1 words, you're going to have to use your carryover
2 for the rest of the year.

3 MR. OLECHOWSKI: No, sir. Especially on
4 the patent side there's a seasonal effect more to
5 patents I think than trademarks and we were down
6 in the first quarter on patent collections we
7 think for a couple of reasons. One certainly was
8 we instituted the CPI in fees on September 30. I
9 think we mentioned this at the last TPAC, we got
10 about \$30 or \$40 million in bulk maintenance fees
11 which we would have received in 2008, but we got
12 them in 2007, so our 2008 fees are slightly down.
13 But I mentioned also that we started to talk to
14 the trademark organization and we believe that
15 trademarks is going to overcollect to what they
16 say, but we're starting to pick up every day. We
17 monitor and every day and we're starting to pick
18 up our fees and overcome our funding of our
19 contracts. We expect to have a surplus at the end
20 of the year and we monitor that like I said on a
21 daily basis.

22 MR. SAMUELS: I think the answer to the

1 question then is the other income is prorated so
2 they're going to get that \$7 million.

3 MR. OLECHOWSKI: And that shouldn't
4 change. Obviously the carryover is a set number
5 and that's not going to change. We'll collect
6 some parking fees and reimbursables and things,
7 but that's a small amount as we go forward. I
8 think the answer to your question is, no, we
9 expect at the end of the year to have both patents
10 and trademarks in a surplus and then we'll have to
11 work with our deputies and management counsel to
12 determine if we're going to carry over, if we're
13 going to fund projects, whatever Lynne decides to
14 do with the trademark dollars and we'll work
15 through that.

16 MR. SAMUELS: Ayala?

17 MS. DEUTSCH: Are there ever any
18 cash-flow issues in terms of the money coming from
19 collections and the money coming from other income
20 in meeting the expense obligations or is there not
21 really?

22 MR. OLECHOWSKI: No, I think doing it

1 very carefully we know on a daily minute-by-minute
2 dollars how many dollars we're taking in and
3 Carol's group and Mark's group we pay attention to
4 how much money is in there. All the requisitions
5 flow through our shop and so we keep a close eye
6 on that. We had to keep a very close eye on it
7 through the first quarter. I don't think we're
8 out of the woods yet because like I said we've
9 obligated a lot of dollars in an attempt to
10 annualize contracts. But I think it would be safe
11 to say we're getting out of the woods. Payroll
12 and PTO is around \$40 million. Obviously we
13 wouldn't have been able to make payroll on this
14 date, but it was probably 2 weeks later. A round
15 number I keep in my head is about \$4 million for
16 trademarks and \$35 for patents to make payroll.

17 MR. SAMUELS: Howard.

18 MR. FRIEDMAN: Mark, the managers are
19 interested in this. Is there any consideration to
20 reducing parking fees in view of the fact that
21 there is a carryover? The office was kind enough
22 to do that a year or two ago.

1 MR. OLECHOWSKI: We just went through an
2 analysis on parking fees and we think it's about
3 right with the maintenance we have to do and the
4 contracts we have, so I don't think there's a plan
5 yet to decrease parking fees. Is Jonathan here?
6 Jonathan Rupp is in my office and in Carol's
7 office our trademark examiner who did the study on
8 parking fees and I think our CFO reported out to
9 the management council. I think we are about
10 right. We have done some things in the parking
11 garages, put some speed bumps in, put some mirrors
12 in to make it safer and do lighting. But if that
13 comes up and we're overcollecting on parking we
14 will lower them as quickly as we'd raise them if
15 it were the other direction, but it is something
16 we keep an eye on.

17 MR. LEICHLER: Can you give us an
18 example of what unliquidated commitments are in
19 the budget there?

20 MS. BRYANT: They are documents that are
21 in the pipeline that are with our contracting
22 office that have not yet been awarded to a

1 contractor. Technically they do not count against
2 us by OMB, Office of Management and Budget.
3 However, we count them against ourselves because
4 we know that they are with contracting officers
5 and they could push a button at any moment and be
6 awarded. So they're our safety net if you will.

7 MR. LEICHLITER: So in other words
8 they're contracts that you fully expect to be
9 awarded during the fiscal year?

10 MS. BRYANT: That's correct. In fact, I
11 expect them to be awarded anytime between an hour
12 to 2 weeks from now. So that money on that line
13 item is my safety net. I count it against the
14 bottom line. When I find that things are a little
15 too close for my comfort, I will go to the Office
16 of Procurement and work with them to see about how
17 long I think it is until the documents are going
18 to be awarded to see which items maybe they can
19 hold off a couple of days, and I have a very close
20 relationship with them.

21 MR. OLECHOWSKI: We just put out a
22 dictate that they couldn't award any contract

1 through the first quarter without first coming to
2 see Carol which normally as we get through the
3 year would happen, but they actually had to, and
4 maybe it was just the thing we had to do because
5 we were monitoring things so closely between the
6 CR and our fees.

7 Page 12. I'm sure everybody on TPAC is
8 certainly familiar with this, but this is the plan
9 performance with the enactment of the 2008 budget
10 between the number of applications and how many
11 first actions are going to be complete -- the
12 actual amount of work that the trademark
13 organization is going to get done this year, these
14 are the budgeted numbers for performance.

15 Page 13 is an accounting document that
16 has all yea dollars in it, so it's not just 2007
17 or 2008, it's all year dollars that are actually
18 expended through the first quarter of 2008 and
19 it's just an indication to our accounting group of
20 how many dollars is spent by each business unit,
21 but it's just one of our accounting documents. I
22 think it's called the statement of net -- is that

1 what it is?

2 MR. KRIEGER: Yes.

3 MR. OLECHOWSKI: And really it's just to
4 make sure that we're spending and counting our
5 revenue because all of our dollars are no year
6 dollars, we get to keep them until expended.

7 MR. SAMUELS: Have you benchmarked your
8 allocated indirect or overhead against other fully
9 fee funded agencies? There are several I believe.

10 MR. OLECHOWSKI: No, sir, not that I
11 know of.

12 MR. SAMUELS: Would it be worthwhile to
13 engage in that exercise, because it seems to me
14 and so I think the sense of the TPAC is a lot of
15 the trademark fees are going, over one-third, to
16 allocated indirect overhead and it might be an
17 exercise at least for us to see how that compares
18 with other agencies in the government that are
19 100-percent fully fee funded.

20 MR. OLECHOWSKI: We could go look at
21 that. We can go down that path. It think it
22 would be certainly worthwhile to see how we're

1 doing.

2 MR. SAMUELS: Going back to the fact
3 that if you collect over \$100 million more than
4 what's appropriated and you can still spend that.
5 Let's say one year you overcollect \$50 million and
6 the next year you overcollect \$70 million. Can
7 you keep that money in your account even though if
8 you add it all up together it's going to be over
9 the \$100 million? It's a \$100 million a fiscal
10 year, not a total?

11 MR. OLECHOWSKI: Yes, sir. They totally
12 changed the law which is why we'd like to get out
13 of the annual appropriation process, but that's
14 another subject for somebody.

15 MS. BERESFORD: I just want to say
16 something about slide 13. If you look at the
17 total of expenditures and expenses and revenues,
18 you note that the \$400 million in \$48 in million
19 in trademarks, is that what we're looking at here?
20 So we're talking about 12.2 percent of the total,
21 trademarks is, and I note if you look at the
22 allocated indirect, for instance, patents is

1 paying about 17 percent, we're paying about twice
2 that out of our budget. So these are the kinds of
3 things, and I think Jeff's idea is a good one,
4 when you're talking about economies of scale and
5 all that kind of thing it raises questions about
6 what the benefits are here for the trademark
7 organization because it appears that our share of
8 everything is quite substantially more than the
9 patent side of the house -- quite a substantially
10 larger percentage. Thanks.

11 MR. OLECHOWSKI: Page 14. The
12 president's budget was released Monday, yesterday,
13 so this is now public. I'm glad to see everybody
14 has a copy of it in their desk. I appreciate
15 that. We've worked hard with all the business
16 units to put the budget together. A couple of the
17 highlights, changes between 2008 and 2009, it's an
18 increase of about 8.3 percent and that's an 8.7
19 percent increase in patents and about a 5.3
20 percent increase in trademarks for a total of 8.3,
21 an increase of almost \$160 million over the 2008
22 enacted appropriation.

1 Some of the changes just at the high
2 level, \$115 million of that is the adjustments to
3 base which is inflation, annualization, retirement
4 and health benefit costs, increases of pay raises.
5 We had some program growth mostly on the patent
6 side. \$30.9 million is the FY 2009 cost of hiring
7 1,200 patent examiners. Of course, the
8 annualization of those examiners would be in next
9 year and so part of the \$115 million is the
10 annualization for the previous year's examiners.
11 There is a small increase to support some
12 trademark workload and staff increases. Then the
13 \$35 million, the two most significant parts of
14 that is our OPM transfer. The USPTO if you call
15 is one of the only two federal agencies that pays
16 this bill. OPM pays the bill for all the other
17 federal agencies, but transfer money to OPM for
18 postretirement and health insurance benefits. And
19 the other is about \$12 million. Our South Tower
20 contingent of people is relocating at the end of
21 this year and the beginning of 2009. We also in
22 the budget identified some cost-saving measures to

1 reduce the amount of spending because originally
2 patent fees were down. There is a small trademark
3 share of that as we made program cuts. It is pure
4 patent dollars if the cut is right out of patents,
5 but if we were reducing the program dollar level
6 in a support organization, there is also a
7 trademark share. So when we were trying to reduce
8 the amount of patent spending, trademarks went
9 down slightly as well just because they absorb a
10 share of those programs that would not be funded.

11 Slides 15 and 16 are the same splits
12 that you've seen for 2008. The first one of
13 course is business unit split into patents and
14 trademarks for the 2009 budget, and then the same
15 for slide 16. It's the patent and trademark
16 dollars split into the business units. Both still
17 add up to the budgeted number of
18 two-thousand-and-seventy-four billion dollars.

19 Then on page 17 is just performance data
20 supporting the trademark portion of the budget.
21 The number of applications, first actions, how
22 much the trademark business line is going to get

1 done in 2009 with the budget submitted. In
2 general I would say business is good.
3 Applications continue to rise and performance
4 continues to be out the roof. Comments or
5 questions?

6 MR. SAMUELS: Any questions for Mark?

7 MR. TEPPER: As a follow-on to your
8 suggestion, actually, I think you raised the issue
9 of perhaps benchmarking other user fee funded
10 agencies in the way we deal with the allocation of
11 costs. You can see it most obviously in slide 7
12 and somewhat in 13 where you've got the vertical
13 breakdown in terms of the breakout of expenses.
14 In slide 7 actually we spend more on CIO than we
15 do on examination, 38 percent. Of course, patents
16 reinvests the 65 percent. I have asked the
17 question several times and we do get I think in
18 response a good explanation of the methods how we
19 apply drivers and that's a good, interesting, and
20 helpful discussion, but to get behind that
21 information it's difficult for us with the amount
22 of time we have here.

1 It may be in addition to benchmarking,
2 it is good to know that we take the drivers very
3 seriously, we have committees discussing them,
4 nevertheless, when application of the drivers
5 leads to a counterintuitive result or something
6 that on its face just seems to be what you would
7 not expect, rent allocation. Full-time employees,
8 how much of the office space we take up since many
9 of them work at home and I know there are costs
10 attributed to that. Could we maybe get some
11 summary or some analysis of why the drivers might
12 lead us to those answers?

13 In particular, OCIO. The T system I
14 know is complex, but it's a mature system. We've
15 been talking about adding a few forms here and
16 there but some of the bigger enhancements I would
17 expect at this point we're more in a maintenance
18 made and bringing some new releases out, but some
19 of the more ambitious development projects that we
20 would like to undertake and have been trying to
21 fund just are not getting started.

22 I'm interested in if we could at least

1 explain once and for all why is it that right now
2 when I file an application or whatever costs we
3 submit in for trademark processing, of that dollar
4 more money goes toward IT support, IT projects,
5 than it does toward substantive examination, just
6 so we have an understanding of that. I've done my
7 best to understand drivers and look at the
8 analysis. I still look at slides like this and
9 it's not at all what one would expect
10 understanding that we are 10 percent of the
11 overall income here, 12 percent, our breakouts,
12 our contributions, assuming there are some
13 differences in what this office does than what the
14 patent side of the business does, and perhaps
15 these can't all be explained, but it would be
16 helpful to maybe get at just if your group has
17 done an analysis as to why we're getting those
18 types of results consistently.

19 MR. OLECHOWSKI: Certainly, sir. I
20 think this is the fourth time I've presented to
21 the advisory committee and I have made the offer
22 each and every time that we'd love to sit down you

1 guys. I know you're pressed for time and you only
2 have a certain amount of time to spend with us,
3 but we have the details behind each and every
4 number. Slide 7, I think I mentioned when we were
5 going through it, this is spending to date of FY
6 2008 dollars and it's really not an indication of
7 how much any particular dollar spent on a patent
8 or trademark or CIO, it's the amount of 2008
9 dollars that we've spent to date. But behind each
10 and every dollar, behind each and every driver,
11 behind each and every report we do, we do have all
12 the details. You mentioned rent. We have an
13 incredibly complex rent allocation methodology
14 which we have reviewed with not only trademarks
15 but all the other business units. We made some
16 small tweaks to it, but certainly if a person is
17 at home we don't count them as being part of
18 occupying space here. We've gotten to the point
19 where we're down to the tenths of square feet in
20 rent documentation. So the question is, and I
21 think it came up in David's briefing, how accurate
22 you are versus the cost of getting that accuracy.

1 If you could spare us some time, sir, we could put
2 together some briefings, do them by conference
3 call, do them when you come through here we'd love
4 to do that. We can set that up and going over our
5 ABI system to make sure and tie that to our
6 finances and everything else so that there is a
7 good understanding on our part so that you can
8 either get a comfort level or not and then we'll
9 dive into each and every one of the numbers and
10 we'll be the first to raise our hand and if it's
11 not right and if it's not correct and if there is
12 a better way to do things we'll absolutely love to
13 do that.

14 MR. TEPPER: You're probably prefer that
15 than my asking the same questions --

16 MR. OLECHOWSKI: I keep coming back.

17 MS. DEUTSCH: Maybe there is some way
18 not only on a one off but on a going forward basis
19 to build that kind of a more detailed dialogue
20 into some of the subcommittee meetings the day
21 before the TPAC.

22 MR. SAMUELS: That's probably the

1 appropriate time. So whenever our next
2 subcommittee meeting would be, I think June
3 something or other, the 9th, that might be an
4 appropriate time to go through this exercise.

5 Looking at the 2009 budget versus the
6 2008, I see, David, you might be the only one
7 that's going to spend less. Is that right?

8 MR. FREELAND: That we're going to spend
9 less?

10 MR. SAMUELS: It likes you're going from
11 246 to 240.

12 MR. FREELAND: We have reduced our
13 operating budget by over \$50 million annually from
14 what was originally planned and requested over the
15 last 2 years. My budget at this point based upon
16 the 2005 plan submission for 2007-2008 was well
17 above \$300 million and now I've been pushing to
18 get the cuts and we're below \$250 million on plan
19 to operate budget at this point and we're
20 continuing to move in that direction as we clean
21 up our budget and continue to strive for
22 efficiencies. So I'm not sure about the

1 organization. I am familiar with mine.

2 MR. SAMUELS: Howard?

3 MR. FRIEDMAN: Mark, in slide 14 you
4 talked about \$2.4 million being earmarked to
5 trademarks for workload and staff increases. Then
6 when you go to the budget document on page 28 it
7 lists between 2009 until 2013 how much is
8 earmarked projected-wise anyway for increase in
9 trademark application filings. Can you give any
10 insight as to what are the numbers for 2010
11 through 2013? There's a jump to \$4 million and up
12 to \$13 and I don't mean for inflation, but do you
13 have any idea what it applies to as far as
14 staffing increases?

15 MR. SAMUELS: I was referring to the
16 fiscal year 2009 budget request booklet and not
17 the material in the binder. What page? You were
18 on 28.

19 MR. FRIEDMAN: The material in the
20 binder refers to \$2.4 million for 2009 and if you
21 go down to page 28 under initiatives you see where
22 1.744 is earmarked, so obviously from another line

1 item it's added to 17. But I guess I'm curious to
2 look at the 4 and the 6 and the 9 and the 13
3 million as to getting some more information as to
4 what's in those figures.

5 MR. OLECHOWSKI: If you go to page 11 in
6 the budget. On page 11 is the waterfall document,
7 but Howard, we get the initiatives from the
8 business units and they fill out a form with the
9 justification so that we have background and
10 justification for all the initiatives. But is
11 your question more what does the future hold in
12 2010 and beyond?

13 MR. FRIEDMAN: I guess I was curious for
14 2010 and beyond how did you derive those figures.
15 How much staffing were you projecting to add.

16 MR. OLECHOWSKI: We work with the
17 business units and Karen and her staff to project
18 out what we think filings are and applications
19 whether it be in patents or trademarks and try to
20 make sure that the budget covers the anticipated
21 workload and that's a much more complex process
22 than I thought it was in terms of the econometric

1 matters and what the dot-com industry is doing and
2 what the economy is doing and what the world is
3 doing. So those projections are our best estimate
4 about what we think the workload is going to be in
5 the out years and we do have some projections in
6 terms of both trademarks and patent FTEs are going
7 to be through 2010 to 2013. I'm not so sure if
8 that answers your question.

9 MR. FRIEDMAN: Is it possible to see
10 that information?

11 MR. OLECHOWSKI: It's normally in the
12 budget. We don't put it in, but absolutely we
13 have that information.

14 MR. SAMUELS: Is there anything else for
15 Mark? It is noon. Here's the quandary we're in.
16 Director Dudas is scheduled to be here at 1:00 and
17 I don't know what his schedule is like for the
18 balance of the afternoon but I don't want to risk
19 having him not be able to be with us this
20 afternoon. I know Sharon has indicated to me that
21 her presentation won't be too long. On the other
22 hand, I know people want to have an opportunity to

1 grab a bite to eat. So I'm open to suggestions as
2 to how you would want to proceed. Sharon?

3 MS. MARSH: One option I think would be
4 to break for lunch after John's presentation -- if
5 there is still a little time I could do my piece.
6 If not, if we run out of time, we could perhaps do
7 it by email after the meeting.

8 MR. SAMUELS: I think we should have
9 time because the public session right now is
10 scheduled to conclude I think around 2:00 and we
11 only have a real small matter to discuss in closed
12 session. I know in talking to people over
13 breakfast that people don't need to catch flights
14 until 5:00 or thereabouts. So I think we would be
15 in good shape if we hold over your presentation
16 until the afternoon, so why don't we do that. We
17 will recess now for lunch at come back at 1:00.

18 (Whereupon, at 12:03 p.m., a
19 luncheon recess was taken.)

20
21
22

1 little bit about the letter and about what the PTO
2 is facing and also talk a little bit more about
3 the context. So if you will indulge me for a
4 moment, I had a number of prepared remarks that go
5 into a various of things all of which are talking
6 about what we're doing strategically in
7 trademarks, all very important, but I guess I'd
8 really like to talk a lot about what I see from a
9 management perspective, what we see from a
10 strategic perspective, and that launches right
11 into the letter that you had written. I would ask
12 again from TPAC I want to say thank you for the
13 letter, than you for the report, thank you for the
14 way you've been involved. The goal has been to
15 get TPAC to be as involved as TPAC can possibly be
16 to get the kind of expertise that you provide
17 which is understanding the trademark world but
18 also understanding other worlds in ways that you
19 could help us. So the two probably best ways that
20 we think are the most productive ways you can help
21 us is talk to us about what we can do as a better
22 job administrating, better job managing, what are

1 some of the best practices, you have, and some of
2 the best practices we have and we'll share. This
3 is an organization that really does want to dig
4 down deeper so we appreciate that.

5 The second thing is strategic planning
6 more generally. The other thing is under Lynne's
7 guidance and leadership and under the guidance and
8 leadership of the strategic planning in our
9 executive team we have had a wonderful set of
10 years. I want to show you this just because it
11 goes in the right direction. When we go up on the
12 Hill to try to get our budget, we just got a
13 budget the other way, it's \$2 billion, a little
14 over \$2 billion. What's significant about it is
15 it's the fifth year in a row that the president
16 has said the PTO should have all the resources
17 that they bring in and in the last 4 years
18 Congress has followed the lead. This is percent
19 of goals met. The reason I raise this is because
20 the diversion issue, administrative issues,
21 metrics, benchmarking, all those things have meant
22 that the goals that we report we have moved up

1 from 50 percent up to 90 percent. If this were a
2 trademark-specific chart it would go up to 100.
3 This one only goes through 2006 because we're
4 watching user fees -- but we figured we could show
5 you this as well. I'm sorry, 2007.

6 This is what's happening with goals in
7 large part because of what we've been doing
8 administratively with benchmarking, what we've
9 been doing in terms of making sure we're getting
10 things done. There's another chart I won't show
11 you, but all of you have this mug and a pin. Did
12 you get a pin? There's also a USPTO pin. That
13 essentially was just one thing to say thank you to
14 our employees because it's the second year in a
15 row that trademarks broke every major record in
16 the history of the trademark office. Some of
17 those you would expect. We hired more people so
18 production is going to go up. But to be able to
19 increase production to the level it's been
20 increased and increase quality and know that all
21 that our examiners are doing and to know that
22 we're the gold standard for the world really has

1 meant a lot. A lot of that has been because of
2 strategic planning, because of metrics and
3 benchmarking, and that is where we would like to
4 bring you all in.

5 I think one of the most important
6 questions that came up in the letter is how do we
7 make certain that we are aligning the goals of the
8 organization with the spending of the
9 organization. I will go back again to give you a
10 little bit more context. I certainly felt when I
11 came in the office as deputy about 6 years ago
12 that we had a problem within the USPTO and that
13 was very easy for us to point at each other. It
14 became quickly clear to me when I was invited to
15 Congress that I didn't have that option. I
16 couldn't say the patents organization is upset
17 with the CAO, that this is not an effective way to
18 do things. We really needed to change the way we
19 were doing things, the way we benchmark, et
20 cetera. We made management changes. We made
21 strategic planning changes. We started
22 instituting benchmarking in ways we haven't in the

1 past, but we haven't completed that.

2 When I first came in the office there
3 were a couple reports that came down. One said
4 for the last 30 years you've had some spending
5 issues in CIO and I felt really fortunate that I
6 could be there for a year and get that 30-year
7 letter from that group of folks particularly. But
8 at any rate, that was an important thing to get.
9 And we also had gotten some other issues that had
10 been raised with long-term planning. So what I am
11 more excited about is that you're talking about
12 how we can do those.

13 Some of the things that we're doing now,
14 and not just looking into, we have been putting
15 much more transparency into how we do things. In
16 our CIO organization for instance what we're
17 aiming toward, what we want to get to is
18 eventually where every cost is associated with the
19 business unit itself so that there's a charge-back
20 type of a system. We're not there yet, but we
21 want to get there. We are doing things in our CAO
22 organization and in our CFO organization. I think

1 in our CFO organization, one of the things that I
2 found troubling when I first came into the office
3 is we had no internal auditing function
4 whatsoever. I had worked at the Federal Reserve
5 Bank as an internal auditor and recognize how much
6 internal auditors are hated. But I also
7 recognized how much value they brought to an
8 organization. One of the things that troubled me
9 always was when we looked at budget issues, I know
10 how we handle this in the room, everybody around
11 the room has the most important budget item and
12 theirs is the single budget item that can't be
13 cut. At one point we even talked about we can't
14 give bonuses unless we can cut into our budget at
15 the right time and actually we came around and
16 found the cuts that we needed to find.

17 But the bottom line is what we have now
18 I think in our CFO shop is a real ability to
19 analyze all the different costs. We're testing
20 new measures including efficiency measures that we
21 need to perfect. We're doing a lot to bring that
22 through. I think the specific question you had is

1 how do you make certain that trademarks is
2 spending trademark dollars and making sure that
3 there is an opportunity for the trademarks
4 organization to really measure what's happening.
5 When it gets down to the very specifics of how we
6 measure each of the different areas, what's direct
7 spending and what's indirect spending, how much
8 patents and trademarks has direct control over, I
9 have to admit, I just turn to our CFO and I turn
10 to patents and trademarks for that and primarily
11 to the CFO organization to talk about how do we
12 measure those things, how do we measure rent, how
13 do we do those kinds of things, and how we measure
14 drivers. It's a big issue for us even in the
15 office of intellectual property policy and
16 enforcement because how do you break that down --
17 our general programs?

18 What we're asking you to do and what I
19 think you've been doing over the last couple of
20 days is help us analyze all the proposals that we
21 have on improving the business models that we have
22 in place; our budget and cost management. We want

1 to continue to provide detailed cost information
2 on all the activities we're providing. We want to
3 be completely transparent, I think we are
4 transparent, but I've discovered that sometimes
5 when we're transparent we give too much
6 information so we need to be both transparent and
7 also be able to summarize very well and engage on
8 the specific issues.

9 We also had a discussion about 4 years
10 ago about what do we want to do, what kind of
11 agency and organization do we want to be. As you
12 probably know, the USPTO is a performance-based
13 organization. There is only one other one in
14 government and they really don't have the level of
15 independence that the PTO has. So we are
16 constantly in this discussion with the Department
17 of Commerce as to where do we fit in and we're
18 often talking about how we need to have certain
19 autonomy because we're a different agency.

20 We also in our own organization have
21 that discussion. About 4 years ago what we
22 discussed was, and I'll talk a little bit about

1 patents and bring it back to trademarks, was that
2 we didn't really have the best organization in
3 terms of what we were doing on IT because we had a
4 CIO organization and then within the patent
5 organization we had one that kind of mirrored a
6 CIO organization. What we agreed upon as a
7 management team was you know what we need to do is
8 get the most effective CIO organization and bring
9 Sierra back into that and that's the path that
10 we've been on.

11 Since that time we've had people raise
12 issues. The commissioner has raised should we
13 have a CIO organization. This goes across the
14 board, CAO, CIO, CFO, should we look at a model
15 based on business unit and bring those
16 organizations within? We're open to that on a
17 strategic planning level but I have to say that
18 quite honestly I don't think we've given nearly
19 the chance to the model that we think is really
20 going to work which is to have an effective CIO
21 organization. We have done a lot. I think in the
22 last year alone we had a 20-percent reduction in

1 the overall budget in CIO and a 10-percent
2 increase in work. So in some of the broader
3 issues I think we're seeing some real gains.
4 We'll see another 10-percent increase in work next
5 year and probably a 3-percent decrease in our
6 operating budget.

7 What I think most important for me to
8 make clear across the board is we are engaged in
9 the kind of strategic planning group meetings that
10 everything is on the table. What's the right
11 approach, how should we do things. We definitely
12 have a management team that can measure just about
13 everything. So on two fronts, strategically and
14 philosophically we're open to just about anything.
15 From an administrative and management perspective,
16 we are very focused on making sure that we can be
17 as efficient, effective, and productive as
18 possible. One of the paths that we're on right
19 now is really the more we can do to offer
20 flexibility and opportunity to examiners the more
21 we see better satisfaction among examiners and the
22 more we see even higher production. To me it's

1 like a low-fat cheesecake, people are happier,
2 more work is being done. I don't know how many
3 times you can get to that. But the bottom line is
4 one of the things that we'd like to reach out to
5 you is, and I know that it's been happening today,
6 I know it happened yesterday, I know there have
7 been several meetings, we really want to bring you
8 in as much as you're willing to come in and look
9 at what we're doing, look at what we're doing on
10 specific projects, look at what we're doing on how
11 we're benchmarking, and telling us what you think
12 will work and won't work. Our biggest successes I
13 think in a lot of ways in trademarks and in
14 patents have been because we've brought people in
15 to look at that. So we're open on every front.
16 But I'm happy to answer as many specific questions
17 as I can although you'll see my quickly turn to
18 Lynne or Barry as you get into some of the -- I
19 swore off -- after my internal accounting
20 experiences at the Federal Reserve Bank, I try to
21 be a more likable guy after that.

22 MR. SAMUELS: Any questions for Jon?

1 One question, Jon, and it relates to the letter.
2 There are a couple of issues that are raised in
3 the letter and some of them you touched on. No
4 one is going to argue about a more effective, more
5 effective operation, whether it's CIO or any other
6 organization as well. But at least a lot of the
7 concerns that prompted the letter had to do with
8 more structural questions. The management
9 structure of the PTO, that it be structured in
10 such a way that in the view of the TPAC would
11 provide the commissioner for trademarks or the
12 commissioner for patents for that matter as well
13 with the authority if you will to control their
14 own budgets and make the decisions with respect to
15 how trademark or patent fees are spent.

16 I think that's the fundamental question
17 that the letter raises. I know we discussed it
18 briefly yesterday and you had some ideas all the
19 way from leaving things the way they are to making
20 trademarks an independent agency. I don't know
21 whether you want to elaborate on those ideas or
22 whether members of the committee want to weigh in

1 on any of those options or other options as well.
2 But it seems to me that's the fundamental question
3 on the table and how far do we want to push it I
4 guess is the question that I pose.

5 MR. DUDAS: I would say on a couple of
6 fronts, one of the things we have to do is make
7 sure we're all speaking exactly the same language.
8 I know when I looked at the numbers that were in
9 the letter, now again I need to know exactly do we
10 define direct costs and indirect costs. Is rent a
11 direct cost or an indirect cost? There are a
12 number of things that I would have to turn to
13 Barry and Lynne for that matter to talk about what
14 matters as a direct and indirect costs. Because I
15 think some of the costs as I understand it are
16 costs that trademarks would direct but they
17 wouldn't come in through the trademark
18 organization. So that's one thing, particularly
19 if the numbers we're talking about are below 50
20 percent or are more closer to two-thirds.

21 The other thing that we are constantly
22 looking at is, again, how we are most efficient.

1 There are different extremes, actually there's
2 probably even an extreme even beyond that, but
3 let's say the issues are leave things exactly the
4 way they are and not even try and improve
5 efficiency. I should be run out on a rail if
6 that's the case. And the other extreme would be
7 make the trademark agency completely independent.
8 There are policy reasons why that would be good,
9 there are policy reasons why that would be bad.
10 There are all kinds of issues beyond that. But
11 just from an administrative I think that either
12 side of those are probably not that realistic
13 because we just have a team that's always going to
14 try to become more efficient and I think it's
15 probably not possible to split off our agency in
16 any meaningful way at least not from what I've
17 seen. We would like to even become a stronger PBO
18 but I don't know that that's really possible right
19 now. But we need to make sure we're talking about
20 exactly the same thing.

21 The other thing I would say is just to
22 give you my sense, I still feel strongly although

1 I'm open to what our management team has to say
2 because that's the most important people here, the
3 most important people here are all the employees,
4 the people who will last no matter what
5 administration is in and will be able to really
6 make a lot of policy changes is our management
7 team. So it matters a lot how our management team
8 things on any of these administrative issues,
9 management issues, and philosophical issues. But
10 on that front I still remain committed to the idea
11 that we are on the right path, that we can have a
12 CIO organization that can have the right
13 transparency. I think there's a lot of
14 transparency there, the right CFO organization,
15 the right CAO organization, that has the right
16 level of transparency and a meaningful way to
17 measure what they're contributing down to the
18 trademark efficiency number. We don't have that
19 now but I think that we will actually be more
20 efficient along those lines.

21 One of the problems we're having a
22 management council now, I don't know if Margaret

1 raised it, is we don't take full advantage of the
2 efficiencies of scale even in ordering computers
3 if we order the same computers across different --
4 that problem will get worse and not better if we
5 start separating in a variety of different ways.
6 If we have lots of budgets shops around, quite
7 honestly I think it will lead more toward what I
8 felt like I saw when I first came in the office
9 which is not anybody working for the USPTO but a
10 lot of people working for CAO, CFO, patents,
11 trademarks. When we had a problem there was a lot
12 of that's not my problem, that's this person's, et
13 cetera. I think that that can be exacerbated even
14 if you put more individual functions within there.

15 So I can tell you that's my personal
16 philosophy that we're on the right track, that
17 what we need to be able to do is measure within
18 every business unit, never forget what we're here
19 for, fundamentally it's to register or reject
20 trademarks, to issue or reject patents, and then
21 also what we do on an international front from a
22 policy perspective and bring those numbers

1 throughout. So I am asking you to look at that
2 but I'm also saying that we're very open to
3 anything. But if you have questions, thoughts,
4 constructive criticism, and then unconstructive
5 criticism, in that order, I hope we run out of
6 time before the unconstructive criticism.

7 MR. SAMUELS: Maury then Howard.

8 MR. TEPPER: Jon, we very much
9 appreciate your being here and I think we all need
10 to applaud you for your openness and for the
11 progress that has been made in the office. The
12 chart speaks for itself, but there has been a real
13 change in the dynamic here. I think a lot of the
14 concern that you lay out, we share your
15 philosophy. The question is how best to get to
16 that point.

17 MR. DUDAS: Right.

18 MR. TEPPER: I hear and acknowledge the
19 difference of if we completely separate these
20 agencies, there is some duplication of effort and
21 there is some potential for waste or not
22 maximizing the synergies that we otherwise could

1 in a unified organization.

2 I would submit, and the issue we're
3 trying to focus on too, that by creating too many
4 I'll call them cost centers if you will or fee
5 films (?) or whatever term you like to use, you
6 can generate that division that also allows for
7 some inefficiency.

8 MR. DUDAS: Right.

9 MR. TEPPER: Our goal in the letter is
10 to encourage the office to look at a management
11 structure that enables those with operational
12 responsibility to know how best to invest the
13 dollars in that operation. We have spent a lot of
14 time talking and looking at the budget and trying
15 to learn about concepts such as drivers but some
16 of that impact really seems to be looking at how
17 we're going to explain the balance sheet after the
18 fact, at the end of the year to explain how things
19 have been spent. Where we need to be focused, and
20 I know your management team is working on this,
21 but part of the letter is to come to a concept
22 where we can put control beforehand of spending

1 and investment in the hands of the people who will
2 have operational authority and I think the fewer
3 of those you have in general the better or the
4 more one can become truly performance based.
5 Nothing in an organization this size is simple and
6 it's a lot easier to say and express the thought
7 than to actually think about how one makes that
8 happen.

9 MR. DUDAS: But it becomes simpler when
10 everybody knows what value they have to add and
11 they know exactly what they're doing. There was a
12 time in history where the office had one goal in
13 patents and it was to reduce pendency and
14 everybody knew exactly what they needed to do. It
15 had some other negative effects, but everybody
16 knew what it was. If you get the right goal
17 though and the right goal is what contribution do
18 you make to issuing patents or registering
19 trademarks or not at the front end, and I think
20 that's exactly where our management team is at
21 philosophically and now how do we get there
22 practically and how do we get there quickly

1 practically. You're right, it's hard to have
2 chance, but I think again I'll use CIO as an
3 example, what the goal to get into CIO is where
4 patents and trademarks say here are the
5 requirements I need and the CIO organization says
6 this is what it will cost and it will come out of
7 your budget and have a charge-back type of
8 mentality. But we don't have that now and that
9 leads to a lot of tension, and quite honestly,
10 I'll look to IT and this goes back 30 years but I
11 think it's a whole lot better now, also how much
12 expertise do we want in-house and how much do we
13 want outside. That's not a trademark-specific
14 issue, but it is a very serious issue particularly
15 in Washington. I never fully understood why
16 people were so worried about contractors and
17 consultants until I found out some of the games
18 that get played in Washington and so we need a
19 certain amount core expertise within.

20 In the ideal world again in my opinion,
21 the most efficient system is one where people can
22 provide services of what they're asked for that

1 are clearly more cost- effective, but we need to
2 find out, you're right, from the front end what's
3 the best way to get there. And including
4 considering do we have the right model or don't we
5 have the right model which I still feel that we
6 do. I don't think we've gone far enough along to
7 find out if we don't, but I will also say we're
8 actively looking at what other models might make
9 sense.

10 MR. SAMUELS: Howard?

11 MR. FRIEDMAN: Jon, I'd just mention
12 that the happier the employees the more productive
13 they are, so in that vein, any update on the
14 administrative agency order for the loan repayment
15 program?

16 MR. DUDAS: I don't have an update.
17 I'll put Eleanor on the spot. I don't have an
18 update on that, but I know that people are looking
19 at it, that it's going through. And actually you
20 and I talked about that probably about a week ago
21 and I haven't found an update along those lines,
22 but I don't know if there is anybody else in

1 trademarks that does have an update. I'm sorry
2 that I don't have it. I'll get you an update.

3 MR. FRIEDMAN: Because if we sign off on
4 it, I'm happy to carry you a big sign around -- on
5 the Hill, the atrium, three times around here.

6 MR. SAMUELS: Ayala?

7 MS. DEUTSCH: I think I also support the
8 philosophy of working together instead of at cross
9 purposes, but I guess in listening to you
10 summarize the pluses of some of the efficiency
11 measures we're using, there's a tension here
12 because what's a net efficiency upswing for the
13 PTO is coming at a price for the trademark
14 component in terms of efficiency. Your job on the
15 Hill or otherwise is you get to give the good news
16 that net efficiency measurements are up for the
17 office, but since we are only advising one side of
18 the equation, the question is how to you balance
19 the tension between net positive results but those
20 positive results coming at the disproportionate
21 expense of one part of the office?

22 MR. DUDAS: I guess the bottom line on

1 my front is I haven't seen that disproportionate
2 issue. There are different ways that things are
3 being allocated, how you go through that, I would
4 tell you that trademarks has a smaller budget than
5 patents, but if you were at a PPAC meeting people
6 are going to say these cost drivers have been
7 wrong. There are people who have raised that
8 issue. Our job is to make sure we get them
9 exactly right. So there is no question of that.

10 There have been some changes in cost
11 drivers and that's a worthwhile conversation to
12 have under any circumstance because we have to get
13 that right. And I would argue and I think I could
14 say this at PPAC as well that if you have to err,
15 don't err, how's that? Just leave it at that. If
16 there's a smaller budget versus a larger budget,
17 there is a disproportionate impact. But there are
18 still arguments underway. There's an argument
19 underway about whether or not trademarks is
20 allocated enough of the cost for what happens in
21 OIPPE. That's an argument, that there are some
22 who believe that there should be more of a cost,

1 that what our office of policy does often weighs
2 heavily on trademarks more than what it's being
3 allocated along those lines. We do have to get
4 that exactly right or as close to exactly right as
5 we can possibly get.

6 So I think that what we have to be able
7 to tease out, and it should be fairly easy to do
8 so it shouldn't be complicated, is if you see a
9 number change, why did it change? Did it change
10 because we measured it wrong in the first place or
11 did it change because it's disproportionately
12 causing the problem? What I look at is, I look at
13 overall that we're increasing productivity, we're
14 increasing production, we're increasing. I don't
15 want to say that we have to wait until we start
16 not doing well. That's the wrong way to do it.
17 We have to get every measure right. But that's
18 what I have yet to be convinced, but since you are
19 more convinced of that, I think I need to become
20 more focused on it.

21 MR. SAMUELS: Any other questions for
22 Jon?

1 MR. DUDAS: I just want to note for the
2 record this is the first time that Howard had the
3 easiest question and I still couldn't do it.

4 MR. SAMUELS: Is there anything else
5 that you want to cover, Jon?

6 MR. DUDAS: No. Everything else was
7 really going into more specifics about what we're
8 doing. But again, I would ask that you continue
9 doing exactly what you're doing which is asking,
10 not just asking, getting involved in how we're
11 measuring, what we're doing administratively, and
12 also quite honestly, get involved very much so on
13 what the strategic direction of the patent and
14 trademark office should be. I would argue that
15 there's been no other time that I've seen in the
16 12 years that I've been up in Washington that the
17 patent and trademark office has had a better
18 opportunity to really effect policy on an
19 intellectual -- and quite honestly effect policy
20 that happens within the office. So there's a lot
21 going on on both the patent side and the trademark
22 side where the U.S. Is clearly taking the lead

1 because of people in the office and it's a real
2 opportune time for people at TPAC to help us with
3 our strategic direction along those lines. We
4 need three times a week as senior executives to
5 talk just about strategic planning, not management
6 and administrative issues, so there's probably
7 nothing that you can tell us that we won't want to
8 review and we won't want to look into and probably
9 in a very timely fashion. Thanks a lot.

10 MR. SAMUELS: Thank you very much for
11 being here and for your time.

12 MR. DUDAS: Thanks. Appreciate it.

13 MR. SAMUELS: Thank you. We'll now move
14 on to the briefing on regulatory/legal matters and
15 Sharon Marsh.

16 MS. MARSH: I'm going to keep this brief
17 and start with a very quick overview of some
18 current issues regarding rule making, examination
19 policy and guidance, and training. Then after
20 that we have two issues that we would like to get
21 some feedback from the committee on and we'll
22 cover those issues as well.

1 We currently have three rule-making
2 notices under development. The first one I think
3 we had mentioned earlier, we are planning to make
4 it a requirement for all applicants to provide a
5 description of the mark in the application. We
6 did a notice of proposed rule making last fall.
7 We got a few comments and have prepared a final
8 rule-making notice addressing those comments and
9 moving forward with implementing the change. If
10 you recall, this change was to improve our ability
11 to apply design search codes to marks. If the
12 applicant tells us what the mark is, it really
13 aids our coders in deciding how to code the mark.
14 This description we decided will not be printed on
15 the registration certificate. We will continue
16 current practice where in certain limited cases
17 the examiner determines that you need a
18 description of the mark on the registration
19 certificate to understand the nature of the mark,
20 but in normal cases the description will only be
21 used for coding purposes and will not be printed.

22 The second rule-making notice is a

1 follow-up to our earlier notice regarding requests
2 for reconsideration after final. If you recall,
3 we were going to make those mandatory, mandatory
4 use of TEAS required from those, and also that
5 they be filed within 3 months after final. We got
6 unanimous negative comments about that notice and
7 so we decided to head in a different direction.
8 So we're going to go forward with a notice of
9 proposed rule making requirement if you request
10 for reconsideration after final on paper, you will
11 be charged an additional \$50 processing fee. That
12 would be the only change and we will see what the
13 reaction is to that.

14 The third rule-making notice I think we
15 might have mentioned at the last meeting also, the
16 certificate of mailing procedure. We've decided
17 that in order to encourage electronic filing of
18 papers where there is a TEAS form available that
19 if there is a TEAS form available you will be
20 required -- not be required to use TEAS, but you
21 will not be allowed to use the certificate of
22 mailing procedure. In addition, since we issued

1 the requirements that express mail only be allowed
2 to be used when there isn't a TEAS form, we've
3 added seven or eight new TEAS forms, so we're
4 going to expand that rule as well.

5 The other thing, in the area of policy
6 and guidance as a result of some changes in
7 workload and staffing, we are moving forward with
8 some expansion of the TMAP. We have got a number
9 of teams working, cross- functional teams composed
10 of managing attorneys and training and quality
11 office attorneys and our legal policy attorneys.
12 We're going to cover areas such as trade dress
13 (?), service mark applications, certification
14 marks, Madrid protocol issues, 2(a) deceptiveness
15 issues. All these teams are working on looking
16 what's in the current TMAP and figuring out how we
17 need to expand and improve it. We continue with
18 training efforts. Our office of training and
19 quality issues tips. They have a periodic
20 publication called "Reminders" where we try to get
21 some examination issues discussed. I think Mr.
22 Samuels sent you, we have compiled a list of

1 training lectures that will occur during FY 2008
2 and sent those around. That's the quick overview
3 of those issues.

4 We have two issues that we wanted to
5 discuss with the group, two proposals that we're
6 considering and wanted a little bit of feedback.
7 The first is we have on an infrequent but regular
8 basis applicants who file applications on TEAS,
9 new applications, and within a very short time, a
10 matter minutes, hours, at most a couple of days,
11 discover that it was a huge mistake, that the
12 partner had already filed the application the day
13 before or that they had made a mistake in what the
14 mark was and hit the send button before they
15 noticed the mistake, et cetera. So our TEAS staff
16 gets these very sad phone calls from somebody who
17 just moments before has filed their TEAS
18 application and they're just full of remorse and
19 begging us for their money back. We have taken a
20 very strict approach this far that if you file the
21 application, it's filed, you can't change your
22 mind. But we are discussing the possibility that

1 we might give a grace period. If you let us know
2 within a certain amount of time, I think the
3 current number of hours is 72, that you've changed
4 your mind that we would cancel out the application
5 and refund your money. It seems harmless enough.
6 The complicating factor is that we are also
7 considering uploading new application data more
8 quickly so if the automation part of it can be
9 worked out, we might be able to load TEAS
10 applications onto the public databases pretty
11 quickly, within a few hours after they're filed.
12 So we would have a situation where this
13 application might go up on the public database and
14 a day or two later be taken down. So we're still
15 kind of batting the idea around and trying to
16 figure out if there's any negatives to that.

17 MS. PEARCE: -- and I know from a domain
18 name perspective that the whole idea of a grace
19 period for very similar reasons was started with
20 good intentions and has turned into a complete
21 disaster because the system has been abused. I
22 couldn't tell you why somebody would want to game

1 the system except there always seem to be people
2 who can figure out how to make money on it,
3 whether it's blocking other people from being able
4 to file, you could probably chart domain name
5 filings and figure out what trademark filings
6 might result from that, and because we've used the
7 word robots for filings before because they figure
8 out ways to do things electronically I would just
9 be very careful. Whether or not it's a matter of
10 making them submit a reason why the filing was
11 done erroneously, that would certainly work for
12 individual applications, it would be very
13 difficult to do if you had made bulk filings which
14 you then wanted to withdraw and get your money
15 back. Seventy-two hours doesn't seem like much
16 and I would never be able to do anything illegal
17 or unethical with it, but there are people out
18 there, a lot of them based in countries that have
19 very little to do with the United States, who
20 might try to do it and then that could cause once
21 again electronic problems with your system if you
22 got overloaded with people who were playing around

1 with it.

2 MR. SAMUELS: Ayala?

3 MS. DEUTSCH: I guess I have a couple of
4 questions. One is if the grace period is that
5 long, are there any costs the office is incurring
6 in that 72 hours before you get the last-minute
7 never mind? Because whether they are human
8 resources costs or otherwise, you're not going to
9 get those back when you refund the fee. So that
10 would be one question I would have.

11 My other question is what about TEAS is
12 prompting this grace period that was not necessary
13 in paper applications. I understand hitting the
14 send button too soon, but that's something you can
15 figure out a lot more quickly than 72 hours. If
16 it's just a matter of two people filing the same
17 application because they didn't talk to each
18 other, I'm wondering what's driving this
19 assessment in the TEAS world that didn't drive it
20 in the paper-filing world.

21 MS. MARSH: I think the same mistakes
22 happened in the paper world but we just maintained

1 a very strict policy because in the paper world it
2 was a nightmare to try to pull an application out
3 of the system. The thinking is that with TEAS
4 it's been filed, it's sitting there in our
5 database, but to refund money would be the only
6 cost, the cost of filing the credit card refund or
7 depositing the check. The 72 hours is arbitrary
8 and we could change that. I think we've had a few
9 cases where the paralegal or the partner files the
10 application on Friday and they don't figure out
11 the mistake until Monday, just trying to cover the
12 most common types of errors.

13 MR. SAMUELS: Monday is a federal
14 holiday.

15 MS. PEARCE: Certainly in the domain
16 world, and there are different issues at play
17 there (off mike) during the grace period has been
18 a concern. I guess I would be more interested in
19 knowing even if it's from a narrative perspective
20 how many more of these sad stories you're hearing
21 have to do with the technology and people pushing
22 the wrong button or what have you as opposed to

1 rethinking or discovering the mistake. So I'm
2 just wondering how much is new and how much isn't.

3 MS. MARSH: I don't think you can blame
4 much if any of it on technology. The system has a
5 lot of "Are you really ready to do this" like all
6 the websites do. It's human error where people
7 make mistakes.

8 MS. BERESFORD: That alternative that
9 Sharon didn't mention but which is also a
10 possibility here is even if we get the ability to
11 automatically upload, we can just hold the
12 applications for 24 hours or 48 hours. There is a
13 tension here because our general practice is we
14 want to get the information and make it public as
15 soon as possible because that's certainly most
16 helpful to trademark owners I think and people
17 trying to clear rights. So if we put it out there
18 immediately when we're in the position where if we
19 institute this and you've done a search and you
20 then have told your client you can't file this
21 because of so and so, unless you go back you don't
22 know it was withdrawn. And again we're talking I

1 think about relatively small numbers. They're
2 very sad stories, and believe me I think the
3 people who get these feel deeply for these folks
4 because they're unhappy and they've made a mistake
5 and it's just human error, but there are other
6 things we could do.

7 If we had the ability to upload things
8 almost immediately and make them public, to me
9 that would be a big step forward for trademark
10 owners because you just have more accurate
11 information. But on the other hand, we could just
12 hold it and say there's a 24-hour grace your
13 period. If you change your mind, we'll withdraw
14 it and nobody will be any the wiser. So that
15 would be an alternative to this methodology. But
16 really the question is this is a change from our
17 paper practice and it's not being driven by
18 technology except that it's easier to do with the
19 technology. So that's really where the question
20 is.

21 MS. BAYLOR: I wanted to say something.
22 I actually work in the trademark assistance center

1 so actually deal with these customers firsthand.
2 They are very, very irate when they submit an
3 application and they call and they want the status
4 and we're trying to retrieve the data and they say
5 they just filed yesterday or over the weekend and
6 the weekend had gone by. But if they realize they
7 made an error, it is usually within minutes of
8 them submitting the application. I would say 72
9 hours would really be a long time for someone to
10 realize that an error was made and they want to
11 withdraw their application or receive a refund.
12 Normally when I'm dealing with customers they'll
13 say that either the system froze up on them and it
14 deleted their application or they didn't save it
15 or they submitted the application and then they
16 realized they put the description of goods inside
17 their mark or it's minor errors and I think it's
18 just from the lack of knowledge of understanding
19 the TEAS applications versus the paper
20 application. I actually went through the TEAS
21 application on the website just to see what the
22 external customer sees when they're on the website

1 versus the paper application and the paper
2 application, even though it's the same information
3 that is being requested, the paper application is
4 not as complex as the system. With the system you
5 really have to know what it is that you want to
6 submit and the reason for submitting. So I would
7 say 72 hours as far as the grace period would be a
8 little extreme. I think if they had 24 hours to
9 submit this request to say they want to withdraw
10 because they made an error, but right about now
11 they're pretty much aware that they're not going
12 to get refunds, not unless their application is
13 misassigned because they missed one of the major
14 requirements for the application. And we get the
15 sad stories and a couple of people crying and
16 things of that nature and we have to be really
17 stern where the office does not give refunds. I
18 usually just advise my customers if they're
19 first-time users I tell them to play with the
20 online application, go through the process into
21 which you need to enter to get to the next stage
22 but don't submit any money because if you don't

1 submit money then we're not going to take the
2 application and it's not going to go any further.
3 We're not able to take them by the hand to fill
4 the application out, but usually when they do that
5 and we provide them with a service request number,
6 they will call back with specific questions and
7 usually a positive response because they are more
8 familiar with the system. But I really would say
9 that 72 hours goes into them getting their money
10 back and we lose out on money because they're less
11 likely to actually go back and file the
12 application.

13 MR. SAMUELS: Elizabeth?

14 MS. PEARCE: What I'm concerned about
15 possibly would be a company or an applicant filing
16 let's say a dozen applications because they won't
17 think about it over the weekend.

18 MS. DEUTSCH: Placeholders.

19 MS. PEARCE: Placeholders. Somebody is
20 out of town so let's file all of these and then if
21 we can get under the window, we can cancel out the
22 ones that we don't need. If we do institute

1 something, and I like what Tom said about a
2 smaller window, could we do it on a trial basis
3 just to see how it goes? And then if that's
4 successful and the system doesn't get abused,
5 that's fine, but if it turns out there's something
6 out there that we never thought of, this whole
7 problem self-liquidates in 3 months.

8 MR. SAMUELS: Ayala?

9 MS. DEUTSCH: I would say a couple of
10 things. I think human error always exists, but
11 generally speaking, and I don't think it's
12 specific to the TEAS form, I think people are more
13 likely to overlook their mistakes on electronic
14 things than when you print out a hard copy and
15 look at it. So I actually think there is a fair
16 amount of human error going on here. It might not
17 be a technological flaw, but I think the use of
18 technology probably increases the human error and
19 those phone calls we're getting are the paralegals
20 who've printed out the application and look at it
21 and have a heart attack, so I think there is some
22 of that.

1 I also would say that I wouldn't be
2 surprised to discover if you did implement
3 something like this that you actually got more
4 requests because I think there are a fair number
5 of very experienced practitioners who sad though
6 they may be don't even bother calling at this
7 point, and I think once you made this option
8 available I suspect you'd have an awful lot of
9 people, more than you're getting the phone calls,
10 who would seek to take advantage of it. So I'd
11 really think pretty long and hard about what that
12 would entail if anything from a manpower
13 standpoint even if it's reprocessing the wire
14 transfers from the deposit account. I don't know
15 what would be entailed, but I would think about
16 potential volume here because my guess is it would
17 go up if people knew this was something they could
18 do.

19 MR. SAMUELS: Jim?

20 MR. JOHNSON: I think if we're going to
21 implement such a process, there has to be some
22 cost to the person who does it to cut back on

1 abuse. So I think the trademark office should
2 figure out what the costs are and maybe even build
3 in a little profit. That way people are a little
4 less prone to make mistakes. If it's their
5 mistake, there should be some cost associated with
6 those mistakes and then that makes it less likely
7 that you're going to have the kind of abuse we're
8 concerned with. But I worry about what happens to
9 the person who does a search on Friday and finds
10 the mark there and you tell your client you can't
11 use it, then they do a search on Monday and it's
12 not there. I guess if you're going to take it out
13 you would probably need to have some statement
14 that says application expressly abandoned or
15 something because otherwise you start to lose
16 credibility and say how come I didn't find it as
17 you point out.

18 MS. MARSH: Those are both very good
19 comments, Jim. We have discussed those issues,
20 the processing fee and some kind of place marker
21 so that someone can go back and find out what
22 happened to the applications. Those are both very

1 good comments. I think we should move on.

2 MR. SAMUELS: I think Lynne had a
3 comment.

4 MS. MARSH: I'm sorry.

5 MS. BEREฟอร์ด: Just one more comment. A
6 number of years ago it was costing \$50 for a
7 refund so that's not inconsiderable, and then of
8 course there will be IT changes that will be
9 necessary in order to do this. So all of this is
10 part of what we have to think about if we're going
11 to do this, what the costs are, and we'll have to
12 look into that and report back. Thank you.

13 MR. SAMUELS: Would it be helpful to
14 have a show of hands of how many people think we
15 should go ahead with it under any circumstances?

16 MS. MARSH: Sure.

17 MR. SAMUELS: Philosophically how many
18 people on TPAC believe that this is a program that
19 the office should go ahead with in one form or
20 another?

21 MR. LEICHLITER: I think we should. I
22 think we could marry the point of the reprocessing

1 fee with holding it for 24 hours so that you don't
2 really publish it for that holding period.

3 MR. SAMUELS: Let me ask the question
4 the other way. How many people think we should
5 not go ahead with this under any circumstances?

6 MS. DEUTSCH: I come closer to that
7 answer. I would say with very careful exploration
8 there may be a little bit more room here, but if I
9 had to make a decision today, I'd vote that way.

10 MR. SAMUELS: We're roughly fifty-fifty,
11 so whatever guidance that provides you.

12 MS. MARSH: These comments have been
13 very useful. Thank you very much. In our last
14 few minutes we'll cover the last issue which is a
15 classification issue under the NEES agreement.
16 I'm going to ask our administrator for
17 classification Jesse Roberts to come up to the
18 table and quickly explain the matter to you.

19 MS. ROBERTS: Good afternoon. Did you
20 get any documents on this issue?

21 MR. SAMUELS: No.

22 MS. ROBERTS: Do I have to start from

1 scratch? We had a meeting of the working group
2 under the NEES agreement in late November or early
3 December. One of the proposals on the table was a
4 very large proposal from the Norway. The proposal
5 was to combine classes 29 and 30 into a single
6 class and to combine classes 32 and 33. Twenty-
7 nine and 30 are the two food classes, 32 and 33
8 are the two beverages classes. There was also a
9 proposal to make some changes to class 5. There
10 are some food products in class 5 and they were
11 going to pull those into the food and beverages in
12 class 5, they were going to pull those into the
13 food and the beverage class, and there were also
14 some cleanup things they were doing. The class 5
15 issue is really the minor issue at this point.

16 There was a lot of support for combining
17 classes and 30. There was less support for
18 combining classes 32 and 33. In order to do
19 something like this -- 29 and 30, the food
20 classes, and 32 and 33, the beverage classes. In
21 order to do something like this, it is considered
22 a transfer and in order to effect a transfer you

1 have to have a fourth-fifth's majority of the
2 countries that are present at the NEES meeting and
3 that's a very large majority. The goods classes,
4 29 and 30, came closer than the beverages classes,
5 but they both failed. Norway was encouraged to
6 come back with some comments that they made with
7 another proposal.

8 So it's not completely dead, we think
9 that they will come back, but some issues were
10 raised after the fact. We did talk about this
11 briefly in the office before I went over and
12 represented the U.S. position on this. The
13 general feeling was that these combinations would
14 make the NEES agreement more logical if that's
15 possible, it would be more efficient because
16 you're not doing those fine-line drawings
17 especially in the food area, and cost-effective as
18 well because you would be paying one fee for all
19 your foods, paying one fee for all your beverages.

20 We late got some feedback particularly
21 in the beverage area that this was a concern by
22 certain factions in the beverage industry. There

1 were some interesting comments made at the meeting
2 itself that did make some sense of combining
3 alcoholic and nonalcoholic beverages and that's
4 essentially the difference between classes 32 and
5 33. Another issue is that beer although an
6 alcoholic beverage is in class 32 and this would
7 have eliminated that dichotomy and that's part of
8 where the concern came in.

9 One of the issues that was raised by the
10 industry that we did hear from is that in
11 countries other than the United States,
12 classification is often used to effect rights. If
13 you have rights in class 29 for any goods in that
14 class or class 33 for any goods in that class or
15 any other international class for that matter you
16 have protection against any other goods in those
17 classes regardless of how unrelated those goods
18 may be to yours. Perhaps there's not as much
19 concern in the food classes because most foods are
20 cited against each other, but there was more
21 concern in the beverage class, that if you come in
22 for bottled water in whatever the beverage class

1 would be, you could then block a later filing for
2 whisky in the same class.

3 That's not a concern in the U.S. We
4 don't do that. But given that our users use this
5 system in other countries and could be affected by
6 that, we wanted to get some feedback from TPAC.
7 If this comes up again in whatever form it may in
8 both the food area and the beverage area, just
9 some input from you about the U.S. position on
10 this. As I said, in the U.S. that's not a concern
11 because we look to the goods themselves when
12 determining likelihood of confusion, but we also
13 understand that for our customers there's an
14 impact in other countries because of the policies
15 in the other country even though all the
16 international agreements that we see say don't do
17 that, don't use classification to determine
18 substantive rights, but they do.

19 So that's what we're looking for for
20 you. This may be short notice, but if you do have
21 any feelings about it or any questions because
22 I've explained it fairly quickly and it is a

1 fairly complicated proposal that was made, and the
2 impact of it is even more complicated, but if I
3 can answer any questions or if you have any
4 immediate feedback, we'd be glad to hear it or if
5 you want to think about it and get back to us or
6 bring it up at another meeting. There will not be
7 a meeting of the preparatory working group until
8 next October so we do have time, but documents
9 will be coming out over the summer and if this
10 Norway proposal does come back onto the table, we
11 want to have some idea of our basis for discussion
12 before we go back to the meeting next fall.

13 MS. DEUTSCH: Someone should relay this
14 to Jackie. She would be very useful.

15 MR. SAMUELS: Jim?

16 MR. JOHNSON: I can tell you that in the
17 beverage world, sometimes some of the agreements
18 are based on 32 versus 33. Even though the
19 trademark office may cite them against each other,
20 people have made decisions about coexistence based
21 on the classification process. So that is one
22 thought to think about, one issue to worry about.

1 MR. SAMUELS: Have you determined how
2 much money you'd lose?

3 MS. ROBERTS: We're not quite as
4 concerned about that because as soon as a goods
5 class opens up we're going to fill it with other
6 stuff. We're going to try to divide out 9, we're
7 going to try to divide out 16, some of the other
8 goods classes that are overloaded with things that
9 don't relate to each other anymore. So for a
10 period of time there might be some loss of
11 revenue, but eventually I think we'll make it back
12 because we'll use those classes for other very,
13 very populated areas of goods.

14 MR. SAMUELS: Ayala?

15 MS. DEUTSCH: How would you deal with
16 renewals?

17 MS. ROBERTS: The same way we deal with
18 it now, whatever system you're registered under is
19 the system that continues unless you choose to
20 make a change.

21 MR. SAMUELS: I think Ayala's idea about
22 getting Jackie's input is probably a very good one

1 since she's the one probably among TPAC who is
2 most effective. So we'll send her an email and
3 see what she has to say. In the mean time, we're
4 going to meet again in June so maybe we can put
5 this back on the agenda and that will give you
6 enough time to prepare something.

7 MS. DEUTSCH: I was going to ask if we
8 could have more specifically what the items under
9 consideration are in the various classes. That
10 might be useful.

11 MS. ROBERTS: Sure.

12 MR. SAMUELS: Anything else for Jesse or
13 for Sharon? Thank you. Now I think the last item
14 on the agenda is the report on the operations of
15 the trademark trial and appeal board. David Sams?

16 MR. SAMS: Thank you, Jeff. I will take
17 just a few minutes to give you an update on more
18 or less a quarterly report from the TTAB. First
19 in the area of workload pendency and personnel,
20 our filings for the first quarter of this fiscal
21 year are up a bit. We had 1,022 ex parte appeals
22 filed in the first quarter which is up 36 percent

1 over the first quarter last year which is
2 explainable by the fact that the number of final
3 refusals in the examining operation increased by
4 40 percent from 2006 to 2007 so that those
5 applications are now more or less up in the appeal
6 process. Oppositions, we had about 1,827. That's
7 up 12 percent over the first quarter of last year.
8 And we had 446 cancellations which again is about
9 12 percent over the first quarter of last year.
10 So we have a lot of work to do.

11 Pendency. For the first quarter of
12 fiscal year 2008 our average pendency for final
13 decisions on the merits and contested motions was
14 about 14.5 weeks from the date the cases become
15 ready for final decision or the motions became
16 ready for decision. That puts us a bit short of
17 our goal for this year so far which is to decide
18 cases on the merits for the year within 12 weeks
19 of the date they're ready for decision. We do
20 expect to make up, and in fact even this month
21 have up some ground, and expect to do even more
22 during this quarter and the following ones. But

1 to do that we have made some hires, and I will
2 announce those. We have an additional
3 interlocutory attorney who joined the board,
4 Jennifer Crisp. As was alluded to earlier today
5 by Jeff, we have a new TTAB member whom we poached
6 from this committee, Ms. Loreli Ritchie de Larena,
7 is going to be a TTAB judge effective in March of
8 this year. So that's where we stand in workload,
9 pendency, and personnel.

10 In the customer-services area we have
11 implemented at the very end of last fiscal year a
12 new customer-service center following the TAC, the
13 trademark assistance center model, and using the
14 technology that's used there, the USPTO customer
15 contact management system known affectionately as
16 UCCMS, and that allows us to route calls for the
17 most prompt and efficient service with very
18 important documentation for managers who are able
19 to monitor the system as well. So far we love it.
20 We're still in the training mode and still in
21 staffing up that group that's going to be doing
22 the customer contact but are confident this going

1 to result in quicker and better service with fewer
2 dropped calls and overall better service for TTAB.

3 Our e-filing is still on the upswing.
4 We are up to 98 percent of our extensions of time
5 filed electronically, about 88 percent of
6 oppositions and about 85 percent of our petitions
7 to cancel, and 75 percent of ex parte appeals. I
8 don't think that we've seen the end yet although
9 we may be approaching the end, we're not going to
10 get any higher than 98 percent or so for
11 extensions of time to oppose, but the others we
12 have a little bit more ground that we can cover.

13 One feature of the PTO website is the
14 FOIA reading room and I just want you to alert you
15 that we did have some changes made to that which
16 make searching TTAB decisions a lot easier than
17 they used to be. You can actually search text of
18 all of our decisions including those that are not
19 marked as precedential by using the search feature
20 which now appears on the FOIA website. It is
21 perhaps not so sophisticated as some of the legal-
22 services providers, but it does have some

1 capabilities for searching and it also covers all
2 of our decisions. So I would say that that is
3 something that we are very proud of in the
4 customer-service area of late.

5 I thought you might be interested in the
6 implementation of our new rules, and I will cover
7 that last here. As you know, we had several new
8 rules that went into effect in November and some
9 of them actually in August. Service process, we
10 have had a few little glitches not from our point
11 of view but from mistakes being made by those who
12 are getting caught by the new rule requiring
13 service by the opposor or by the cancellation
14 petitioner. Our filing form asks you to record
15 whether or not you have made proper service on the
16 defendant. We have had at least once case and
17 maybe even more than one in which somebody checked
18 it without having done the service which resulted
19 in the fact once we'd learned it of finding the
20 filing to be a nullity. We have also had some
21 cases that were filed on paper where there was a
22 failure to include a certificate of service when

1 in fact there actually had been service but again
2 we have decided that the rule is pretty clear on
3 this and that these will also not be entertained.
4 With all of these where there are oppositions, of
5 course the possibility of a petition to cancel
6 still exists so that it's not a complete disaster
7 for those who have run afoul of that new rule, but
8 I think generally speaking it's working well.

9 We have, I won't say it's a problem, but
10 one issue that we're going to be solving in the
11 near future. We have as you may remember a
12 consented motions form in our ESTA (?) electronic
13 filing system which automatically approves
14 contested motions and sets new dates for you when
15 you file it using that form. The form is set up
16 with the filing regime we had prior to November 1.
17 That is, if you file a new case after November 1
18 and our new rules apply, there are going to be
19 different dates that will be set up when you file
20 a consented motion for dates for changes in the
21 case. We are working on forms. We had hoped to
22 have the new ESTA form up by the time this went

1 into effect, we were not able to do that, but it
2 will be in place I am told by April 30 so that if
3 you file now a proceeding and then later want to
4 file a consented motion to change dates and get
5 extended dates, the new form will be able to
6 accommodate that in the way that the old form has
7 done for proceedings filed prior to November 1.

8 We have started participating in
9 discovery conferences which was the most talked
10 about part of our new rules package. Our
11 interlocutories have begun to receive requests for
12 participation in the discovery and settlement
13 conferences that are required under the new rules.
14 The interlocutories who have participated in these
15 have been in charge of the discovery and
16 settlement conferences between the parties. We
17 have provided them with second chairs in the form
18 of some of our judges who sit in on the conference
19 and if asked will contribute. At some point the
20 managing interlocutory attorney has also sat in on
21 the conferences. So far I think in general we can
22 say that although we've only had a handful of

1 them, we have been pretty successful with them.
2 As you might suspect, several of them involved pro
3 se cases and we find this particularly useful and
4 I think we will from here on because as you
5 probably know sometimes when pro ses get involved
6 in litigation particularly complicated litigation,
7 procedures which they don't understand, it can be
8 a problem. Having these conferences at the start
9 to explain what's going to be expected has been
10 very helpful and I think from here on out will be
11 an important gain that we get from these kinds of
12 conferences.

13 It also is a great chance to clarify the
14 pleadings. In one of the cases we had there were
15 some issues about the pleadings because a pro se
16 was involved and gave a chance for the board to
17 get the issues focused in the pleadings properly.
18 In at least one case the interlocutory attorney
19 found that there was a great chance that the case
20 should be settled, there was no reason that it
21 should go forward, sent the parties back to
22 consider settlement, even suggesting a possibility

1 that an amendment to the identification of goods
2 might help settle the case. It's this kind of
3 focused early intervention that we really hoped
4 would happen. It's a little early to say that
5 it's going to happen a lot, but it's at least
6 happened once or twice so far in the early days of
7 the rules taking effect. So that's where we're
8 headed. And also I want to point out that after
9 each of these conferences we do issue an order
10 that summarizes what happened so that it's pretty
11 clear on the record what the responsibilities of
12 the parties are from that point forward. Overall
13 I'd say that using the conference has helped us so
14 far to manage the case toward settlement and if
15 that's not possible at least toward focusing some
16 of the issues for trial and we look forward to
17 having some more of these and possibly having the
18 result that some of our cases don't get out of
19 hand and don't grow to large records like they
20 have done in the past.

21 That's all I have for you this
22 afternoon. I'd be happy to take any questions you

1 might have.

2 MR. SAMUELS: Any questions for David?
3 Thank you. Before we go into closed session just
4 for a minute, Lynne pointed out to me there was a
5 loose end that relates to David Freeland's
6 presentation. David, on page 14 of your tab 5 you
7 have there are major issues to be resolved and I'm
8 not sure we ever got to that for whatever reason.
9 Did you want to discuss that?

10 MR. FREELAND: I'm very glad that Lynne
11 brought that up because the word issues is
12 actually an inappropriate word. It is really
13 decisions to be made and it's not a concern, it is
14 just these are two systems that are coming up and
15 in March are due dates for the requirements to be
16 nailed down and the projects to be funded for
17 those two efforts. So it's just an upcoming major
18 milestone for us for continuing efforts in those
19 areas. That's what that's about. Thank you.

20 MR. SAMUELS: Anything else that we need
21 to discuss in public session? If not, I'll just
22 mention that I just checked my calendar and the

1 date of our next meeting is Tuesday, June 10,
2 which means that the subcommittees will be meeting
3 Monday afternoon June 9. So if you would put that
4 down on your calendars now I'd appreciate that.
5 If there's nothing else to discuss on the public
6 session, I will adjourn the meeting and we'll go
7 into closed session. So for those of you who
8 should not be here for the closed session, I would
9 ask you to leave.

10 (Whereupon, at 2:14 p.m., the
11 PROCEEDINGS were adjourned.)

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