

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

QUARTERLY MEETING

Alexandria, Virginia

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P R O C E E D I N G S

(1:00 p.m.)

CHAIRWOMAN ESCOBAR: So, it's the top of the hour. Can everyone hear and see me? Yes, I see Deputy Commissioner Peter nodding, so I'm going to assume everyone else can hear me, too.

Welcome, everyone. Good morning -- actually, good afternoon for most of us. Welcome to the third public quarterly meeting of the Trademark Public Advisory Committee, and our second meeting to be completely virtual. My name is Elisabeth Escobar and I am privileged to be the chairperson of the committee this term -- excuse me, this year.

Before I launch into our agenda I would like to take a few minutes to remember our dear friend and colleague Dinisa Hardley Folmar, who passed away last month. Dinisa was appointed to TPAC at the end of 2019 in recognition of her tremendous expertise and accomplishment in trademark law.

Most recently, she served as the second general counsel at the Hershey Company, where she

was in charge of the company's intellectual property matters throughout the world. Before that, she was in-house at both Coca-Cola and Nike. And before that, she served -- she was an associate at law firms in Washington, D.C., and Atlanta. But her very first job out of law school was actually right here in D.C. as a trademark examiner at the Trademark Office.

I asked Brian Winterfeldt, who is a TPAC alum and also a very long-time good friend of Dinisa's, if he could share a few thoughts about her, and I'd like to read to you what he wrote.

"Dinisa Folmar was the most rare and extraordinary kind of person, who truly brightened everything she touched. We all know about her professional accomplishments. However, where so many people, especially those who achieve so much at such a young age, that were there by focusing primarily on themselves, Dinisa was tirelessly devoted to the service of others. In all of her professional and industry roles, she always took the time to train and mentor junior team members and she had a keen eye for new talent. I have heard from many people who feel they owe



their success in their careers and in life to Dinisa's kind and insightful guidance.

"In her personal life, she was a devoted daughter, sister, and wife to Winston, who works here at -- or works with us at USPTO. She maintained lifelong friendships as a member of the Alpha Kappa Alpha Sorority. Dinisa had a grand sense of adventure. Not only did she love to travel in her leisure time, but she spent several years working abroad in the UAE and she was eager to embrace any challenge and to encourage those around her to join in and keep up.

"I will remember her keen insights, her bright smile, her infectious energy, and good cheer. While taken from us far too soon, she leaves a most wonderful legacy and example for all who were lucky enough to know her."

I only had a short time to get to know Dinisa, but I wholeheartedly agree with Brian. Dinisa brought a warmth and thoughtfulness to her work on TPAC and she was also a lot of fun and we will miss her terribly.

So, I'd now like to recognize Susan Natland, a TPAC member who would like to say a few

words about Dinisa.

MS. NATLAND: Thank you, Elisabeth.

Can you hear me okay?

CHAIRWOMAN ESCOBAR: Yes.

MS. NATLAND: Okay. Yeah, thank you so much. So, Dinisa and I started TPAC together. I didn't know her. We got sworn in together. We got our credentials together. And we spent a lot of time those first meetings kind of learning the ropes. And I thought, wow, this woman is sunshine. And I was so impressed with her. She had this great style. You know, she (inaudible) her favorite color was red. She always wore, you know, funky glasses, different glasses. And I thought to myself, I thought, wow, I really want to be this person's friend. I'm so excited to get to know this person.

And, you know, when we all heard the news, I think we were all shocked. And even though I only knew Dinisa a short time, I mean, I was rocked by this news and I'm still just devastated by it.

So, I just wanted to express those thoughts because she was such a special person,

I could tell immediately. And, you know, the world's lost a very special person, the Trademark community lost a very special person, and this committee lost a very special person. So, she will always hold a place in my heart. She made that kind of impact in just a few months. And I just wanted to wish her family the best during this time.

CHAIRWOMAN ESCOBAR: Thank you so much, Susan. I would like to introduce the members of TPAC at this point. First, Chris Kelly, who is the vice chair of TPAC and is a partner at Wiley Rein here in D.C.

Second, Stephanie Bald, a partner at Kelly IP. Stephanie's located in Chicago.

Jennifer Kovalcik, who is vice president of technology and intellectual property counsel for Community Health Services in Nashville, Tennessee.

Anne Gilson LaLonde, who is the author of the esteemed treatise Gilson on Trademarks. And she is in Vermont.

Susan Natland, who just spoke, who is a partner at Knobbe Martens in California.

Donna Tobin, who is a partner at Royer Cooper Cohen Braunfeld in New York.

And Kelly Walton, who is vice president of trademarks and copyrights for Dell in Austin, Texas.

We also have two representatives of great unions on TPAC. Jay Besch is the president of the NTEU 245 and he represents trademark examiners and interlocutory attorneys. And Pedro Fernandez, who is at POPA representing patent examiners.

Welcome to everyone and thank you for participating. Our first speaker, I'm pleased to say, is Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office Laura Peter. Laura is the principal advisor to the under secretary of commerce for intellectual property, Andrei Iancu, and director of the USPTO. And she's responsible for all agency operations. This includes oversight of the 4 USPTO regional offices, the management of the 13,000 USPTO employees, and executing the policies, programs, and priorities of the Office.

We are very honored that Deputy Director Peter has joined every TPAC quarterly meeting since she came to the office. And I am very happy to invite you to welcome -- to join me in welcoming Deputy Director Peter.

MS. PETER: Thank you so much. Thank you, Elisabeth. Hello, everyone. I am indeed honored to be here for the second all-virtual TPAC quarterly meeting.

And before we begin I would like to chime in on the heartfelt thoughts acknowledging the tragic recent passing of our esteemed member Dinisa Hardley Folmar. I'd like to read from a letter Director Iancu wrote as he was unable to be here today.

"On behalf of the United States Patent and Trademark Office I extend my heartfelt condolences upon learning of the sudden and untimely passing of our beloved TPAC member Dinisa Folmar. Her time on TPAC was much too short, but long enough to give us all a clear picture of how impactful a single individual can be.

"Dinisa was a person of extraordinary

inspiration, perseverance, and integrity. Her thought-provoking leadership, distinguished (inaudible), and deep passion for all things possible will forever remain in the hearts and minds of those who had the privilege to know her as a colleague, mentor, and friend.

"Dinisa's legacy and service to our nation will remain a source of inspiration for all of those committed to public service here and around the world. The record of her professional life is filled with the markers of generosity to academia and to the intellectual property community, as well as by her extraordinary personal devotion to those who knew her best.

"I know that she will remain in each of our hearts forever. Sincerely, Andrei Iancu."

To echo this I'd also like to extend my sincere sympathies to the family, friends, and colleagues of Ms. Folmar. Having started her career as a trademark examiner, Dinisa remained a part of our family here at the USPTO. As she went on to work at many prestigious law firms and companies, and recently during her time with us as a member of TPAC, wherever she went, she

brought an invaluable voice, joy, and enthusiasm and unmatched work ethic.

Though her time with us far too short, Dinisa's memory and her steadfast belief that anything is possible with dedicated commitment and kindness will continue to inspire us in the days to come.

Moving to today's agenda, in the unusual months since we met in April, 100 percent telework has become our new normal. Thankfully, due to the large percentage of our employees already accustomed to and on teleworking programs, the USPTO was able to accomplish the move to 100 percent telework in a very short period of time. I commend our OCIO and OCAO teams for a phenomenal job on both the equipment deployment and telework acclimatization support involved in this that enabled the USPTO and our employees all over the country to continue to work without barely skipping a beat.

I also applaud our employees who previously were not on a teleworking program for their can-do spirit and professionalism. Our smooth transition has been a real agency-wide

success.

As you may know, we recently began Phase 1 reopening on our campus in the Alexandria campus, Denver, and Detroit. And accordingly, those offices remain in a state of maximum telework. Our Detroit and Silicon Valley offices remain in a state of mandatory telework. All of our office remain closed to the public and the vast majority of our employees continue to work from home. As the numbers and predictive data with respect to local conditions continue to fluctuate, we will continue to monitor the situation carefully.

Along with the telework adjustments for our employees, we also have been hard at work to provide effective support for our stakeholders during this time. As you know, on March 31, the USPTO announced extensions to time allowed to file certain patent and trademark documents and to pay certain fees. We then extended the waiver of petition fees for filing petitions for revised patents -- or to revised trademark applications and to reinstate registrations that became abandoned or expired due to the pandemic-related



delays until June 30, 2020. Although these programs are generally phased out now, we still are considering requests through the normal established petition process.

On June 15, we started accepting petitions for prioritized examination of qualifying trademark applications related to COVID-19 medical products and services. We also set up the COVID-19 Response Resource Center linked on the USPTO Home page. That's the central hub for all of the USPTO's efforts in response to the COVID-19 outbreak. I encourage you all to visit this page for updates on these programs and for resources to help to identify and report counterfeiting. Unfortunately, we are seeing an increase in counterfeiting as criminals try to take advantage of the high demand for healthcare products.

Of course, pre-pandemic we conducted much of our business in person. This has changed. Our examiner interviews and TTAB hearings are all virtual and so is all of our public outreach. For example, our Trademark Assistance Center has continued to host their

monthly Link & Learn sessions in a new all-virtual format. These sessions include general information, including about what it takes to make a good trademark, how to file, and how to maintain a mark. And I'm happy to report that these events have recently had an upswing of as much as 50 percent attendance.

We also continue to host sessions geared towards small businesses that include information on protecting IT in other countries, the Madrid protocol, and considerations for post-pandemic protection of IT. And, in fact, our recent Madrid protocol webinar had over 700 online attendees. We also recently held a session on effective practice before the TTAB. So, we really have taken advantage of the virtual environment to reach out and engage with many more stakeholders and with great results.

With you our valued colleagues in mind, I'd also like to mention the Notice of Proposed Rulemaking, or NPRM, which published in the Federal Register on June 19. This NPRM does not currently effectuate a fee increase, but instead it seeks feedback and comments on the proposed

trademark fee adjustments. So, please, send us your comments.

Because this proposed fee rule is at the NPRM stage, the earliest the change could be implemented would be after the start of Fiscal Year 2021, and that will depend on the state of the U.S. economy and the operational needs of the agency, as well as public comments submitted in response to this NPRM. The USPTO will consider all of these factors and others and will make adjustments as necessary to the substance and timing of any final rule based on these considerations.

As the USPTO is a fee-funded agency, the NPRM is a step in a multiyear process that we have undertaken to effect Trademark operating costs and ensure that collections are sufficient to meet those costs. The Trademark cost, workload, and fee collection estimates contained in this NPRM are based on estimates submitted to Congress in 2019 as part of the agency's Fiscal Year 2021 congressional budget justification. Please note that all written comments on the NPRM must be received on or before August 3, 2020.

I'd also like to mention our continued efforts on IT stabilization and modernization. Given the current global economic uncertainty, we are carefully monitoring our expenses, including IT expenditures. You will hear more about our filing numbers in the next hour, but please rest assured that the stabilization of our legacy IT system, without impacting our service to our stakeholders, remains a top priority.

In closing, I'd like to thank all of you, all of our TPAC colleagues, for continuing this journey with us. I am optimistic that these challenging times and the work environment in telework will inspire new, perhaps even better, ways of working and will strengthen us.

President John Adams once said, "A problem is just an opportunity in disguise." And generally speaking, it is often during crises that (inaudible) and innovation comes. We've witnessed the rise of great brands during such times in the history of our nation. As it has been before, out of these uncertain times new businesses and innovations will arise, probably to our surprise and unexpected benefit.

Thank you for inviting me here today. Please stay safe, be well, and I look forward to seeing you all next time.

At this time, I'll turn things over to Dave Gooder, commissioner for Trademarks, who will update you on Trademark operations.

MR. GOODER: Thanks, Laura.

Greetings, everyone. How are you today? Happy Trademark -- or TPAC Friday. Trademark Friday, too, maybe. I'm Dave Gooder. I'm the commissioner of Trademarks and have been in that place for all of four and a half months.

We have a packed agenda today, which we'll get to shortly, but before we do, I'd like to say a couple comments, a couple of thoughts about Dinisa.

PTO examiners and the staff at the office are a really tight-knit group. And because Dinisa had been an examiner for a fairly -- a number of years, her passing hit a lot of people at the agency quite hard. I didn't know her, but in kind of working through this difficult time, I came to know her through other people, which was kind of an interesting thing to do. And

she clearly touched the lives of a lot of people.

I'm told by my own staff that when Dinisa would come to TPAC meetings she would just literally brighten up the room. She was optimistic, generous, compassion -- and large compassion for other people, and I think we'd all probably agree the world needs that now more than ever. So, we will all certainly miss her.

With that thought, let's move into the business of today. Next slide, Anastasia, thank you.

So, today, over the next 20 minutes or so we're going to talk about -- give an update about Trademark Office operations. Anastasia, go ahead and hit that forward button. There we go. We'll talk a little bit more detail about the NPRM, the fee rule, that Deputy Director Peter just mentioned, note the legal developments, and an update on a number of initiatives under the CARES Act, our priority examination for anti-COVID-19 products and services, the launch of the anti-counterfeiting campaign and a bit more background about that, and then talk a little bit about what's going on with these misleading

scams and solicitations that everyone's become a little too familiar with.

We'll then have an update on our Improper Behavior Task Force and a bit about Trademark TSI (phonetic) group of offices. And then from there we'll move to other parts of the agency.

So, with that, let's move on to Trademark Operations. It's often said that, and you may have heard this, that trademarks are, A, a leading indicator, but they track the S&P 500 quite closely. This chart gives you an idea of just how tight that correlation is. If you look at it, going back as far as 1993 all the way to the end of 2019 and into this year, the two go hand-in-hand through a lot of ups and downs together. So, with the current economic situation, we felt it right away, just like the economy did in general.

Looking at trademark filings themselves, next slide, if you look historically, this chart will show you kind of applications approved through Fiscal Year 2000. And with the exception of what we all remember as the economic

recession in '08 and '09, the trademark applications have been on a growth pattern until this year. And what we originally had projected a 2.8 percent increase from Fiscal '19, which was pretty modest given that the 3 years prior to that we'd seen no less than a 5 percent increase.

Based on a lot of economic studies and domestically and around the world, we expect the filings to decline by about 7 percent this year. So, you see that far right with 625,000 filings, and that's where that comes from. And that has a huge impact on our agency.

Now, the next slide actually will show you something quite interesting. This is essentially our actual trademark applications filed. And you can see that the red line is this revised projection, the green line shows you what actually happened, and the yellow is where we (inaudible) until the end of the year based on the projections. And what you can see is that filings started to drop a great deal around January and February, but that's a normal drop compared to other parts of the year. It's common after the holidays to see that.



Where we really saw it, though, was in April, and you can see that dip, which was not what was expected at the time. Now, since mid-April, applications have continued to climb and we're watching that very closely because that's certainly encouraging. But as the economists all suggest, what happens next month may not be exactly what happens last month in terms of the economy right now. So, it's an encouraging sign, but we're watching it closely.

Now, the next slide will give you a bit more viewpoint into that. And what it does is it compares the U.S. Filings with filings from outside the U.S. The line across the middle is the sort of zero point. And you can see with the blue line, which is the U.S., it was doing fairly well in February and then, all of a sudden, in March and April it really dropped. What's interesting is when you look at the non-U.S. filings, you see the drop occurring in February, which when we think back about the way the pandemic was moving, that's pretty consistent with what countries around the world were feeling.

The good news is that literally for the U.S. as -- filings and the non-U.S. filings from May 1st -- early May, they both have consistently climbed, which is, again, an incredible optimistic sign that we hope continues and we'll keep an eye on it.

Now, the next slide is a slide that many of you are familiar with and covers pendency. There are two -- two of our biggest strategic metrics are pendency and quality, and we'll talk about those today. Pendency is not only important to the Trademark community, but it's also an incredibly important budgeting-related tool for us. Because when we can understand what our pendency was, we understand how many people we actually need to be working through the inventory of applications. So the targets for Fiscal Year '20 is to reach a first action within 2-1/2 to 3-1/2 months. We're currently, as of the end of Q3 at 2.7 months, so right where we want to be.

Disposal pendency, which is going all the way to the end, excluding (inaudible) application that's suspended or some (inaudible)

proceeding, the target is 12 months. And we're well ahead of that, which is some good news.

In the next slide actually what I wanted to show you was what actually happens with pendency because it's not a straight line and it makes simply sense when you think about it. But if you look at the pendency number, the blue line is the average pendency from Fiscal '11 to Fiscal '20, so over 9 years. And that is the current Fiscal '20.

And you can see that for a lot of the year we track very similar, which pendency tends to rise on the holidays, which makes sense, and then tends to drop back down. It did so in April, as we started to work through that -- the few real applications that we actually had. With all of that now climbing back up, pendency has risen back up a little, but still within the range where we're comfortable with.

Now, if you move on to quality, which is the next slide, quality is the second of the major metrics for us. And what's first action, you can read the slide here and it'll be in the deck, but first action compliance is actually a

bit ahead of the target. And this is an evaluation of all of the grabs (phonetic) or company (phonetic) raising grounds for refusal in the first Office action and evaluation of statutory bases, et cetera.

Final action compliance is also ahead of target. And so-called exceptional Office action, which means that would be rated at an exceptional level, is ahead of the target. There are multiple levels there.

So, these are important to us and certainly the Trademark community. We both share the same goals here, which is the higher level of quality, the better (inaudible) the registrations we obtain are, but also the better shape the actual register is in. So, this one is incredibly important to all of us, especially (inaudible) in the Office, but brand owners, as well.

Next slide. Let's move to the rulemaking or the Notice of Proposed Rulemaking, as Deputy Director Peter mentioned. And again, this is a Notice of Proposed Rulemaking, which means it's a request to understand what the

thinking is, to request comments. That period ends on August 3rd. The link to see it, if you want, is there and it'll be in the slide.

Oh, I want to mention it's a multistep process. And when I came into the Office, one of the things I had to learn immediately is sort of the flow of finances in the agency, et cetera. And what's interesting is that this began in January of '19, but, in fact, it's the first time seas have really changed since January of 2017, despite increases in cost.

The (inaudible) issue, what happens is that there's be the period of time for comments. We'll then make a (inaudible) study of comments, which we hope to get from a broad range of them. We'll study those. We're constantly monitoring the state of the U.S. economy and the needs of the agency, and we'll take all that into consideration before we implement any final rule. And then it is published again.

So, the earliest possible implementation date is going to be, as Laura said, not until the first quarter and probably by the time the work all gets done, it'll be late in

the -- when I say "first quarter of the fiscal year," toward the end of the fourth quarter of the calendar year, so in the winter timeframe.

And the next slide, I just -- there's a few things I thought would be useful to understand about it and to highlight. When you read the proposed rulemaking what you see is an increase in fee collection. And what that means is overall collection will potentially increase a certain amount, but that's because it's based on an increase in filings that were predicted at the time it started. When you look at the actual individual fees, many of them remain low, some didn't move, so very modest changes. They would get a TEAS plus application charge. It's less than a 3 percent increase on the average year over year since it was last changed.

A TEAS standard form is a 7 percent increase. As you know, TEAS standard forms require more manual work than a TEAS plus application does. Renewal will be increased about only 6 percent on average.

Historically, you'll see also fees increasing with regard to with regard to the PTOD.

Historically, up to two-thirds of the PTOD's cost were subsidized by Trademark filings. So what happens is this proposal reduces the subsidy and places the cost more in balance where the work is actually being done. And that's a common thread throughout a lot of it.

And one of the observations is that if you look across the world, the total TEAS in the U.S. even with the fee increase are still lower than many major Trademark offices around the world. So, we look forward to your comments by the 3rd and we'll move forward from there.

At this time, I'd like to turn it over to Sharon Marsh, who's the deputy commissioner for trademark examination policy, to talk a bit about the Booking.com case. Sharon?

MS. MARSH: Yes, thanks, Dave. Can you hear me? Can you hear me?

MR. GOODER: Yes, I can hear you fine, thanks.

MS. MARSH: So, yes, the Supreme Court issued their decision in Booking.com and (inaudible) the applicant was trying to register Booking.com for hotel reservation services. The

Supreme Court was still looking at the very narrow issue of when you have a generic term combined with the top-level domain dot-com, whether that results in a combination that's necessarily generic.

And in this case, the board -- the board -- the Supreme Court determined that Booking.com is not generic. But they also rejected any per se rule regarding these marks. They rejected the rule that a generic dot-com term is always generic. They also, though, rejected a rule that a generic dot-com term is automatically not generic. Instead, the focus has to be on consumer protection. And the Court held that whether a generic dot-com term is generic will depend on whether consumers perceive the term as the name of a craft (phonetic) or instead as a term that's capable of indicating source.

As a result, I think at the Office we think that the Court's opinion contemplates that the PTO will continue to assess these marks one at a time, these generic dot-com marks, and make decisions about whether they are registerable



based on the evidence of consumer perception that the record in the particular application filed.

The Court also indicated that the type of evidence that would show that a generic dot-com mark is generic is very broad. It would include, of course, consumer surveys, but also the type of evidence that we traditionally use at the USPTO, such as dictionaries and evidence of use by consumers or other consumers or competitors.

We're working on an exam guide and hope to have that issued as soon as possible. In the meantime, if anybody has particular questions or comments that we need to hear, you're, as always, welcome to send them to TM Feedback at USPTO.gov or TM Policy at USPTO.gov.

Next slide, Anastasia. Okay. We're going to cover a couple of initiatives here, yeah.

So, the first one is the relief that we have tried to offer to USPTO users as a result of the coronavirus outbreak. And as you may know if you've been following this, starting back in mid-March we started a series of incremental steps. The first one was to raise efficiency in certain cases. And then when we got CARES Act

authority, the director was able to authorize us to extend or accept late filings regardless of statutory deadlines. And that was the situation between March and June 1st.

At this point, now we have resorted to our more traditional petitions process. And so, users can still file petitions to revise. There's an application. Their application is where a late response was filed in a closed register matter. And users can file regular petitions to the director seeking to file in cases where there's a statutory deadline that was missed.

We so far have received about 245 of these petitions to the director and we're getting right to those. And as Deputy Director Peter, I think, mentioned, we do have the Response Research Center on the USPTO website.

Next slide. Deputy Director Peter also mentioned our Prioritized Exam Program. This is relatively new, just started it last month. And it will allow applicants who are seeking to register (inaudible) services to be used in the prevention, diagnosis, treatment, or

cure to COVID-19 to request that their application be advanced out of the normal order. There's a procedure to do this. You file a petition that explains why you need to have this special treatment. And if the application is for goods, you do have to indicate that the goods are subject to FDA approval and give us the relevant citations for that.

Right now we've received about 60 of these and we granted 46 of them. So, it's having the desired effect, I think, and it is getting a little bit of expedited treatment to these very important products and services while, at the same time, not slowing down (inaudible) applicants or registrants. There are FAQs about this on the USPTO website.

And I think we can move to the next slide. And I think David's going to pick up here. Yes?

MR. GOODER: Yes, back to me. So, a number of you have heard or you may have seen that the USPTO in partnership with the National Crime Prevention Council launched an anti-counterfeiting campaign. And it's aimed

at teens and tweens. And I think coming from an anti-counterfeiting background, the target is exactly the audience that we need to be reaching for trying to impact a generation in how they think about counterfeit and authenticity, et cetera. In that regard I urge you to also read the IGH paper, a study about counterfeit products, especially amongst younger people and their views about it.

There's a number of creative pieces involved in this campaign, but it's important I think to brand owners and the Trademark community in general. You may recall that a memorandum was issued by the White House in April of 2019, and basically ordering the DHS, Department of Homeland Security, to really look at the issue. And in January of this year, they came back with recommendations, one of which was a national consumer awareness campaign. We were kind of already ahead of the curve on that with this campaign. And PTO is really spearheading that whole effort from the Department of Commerce's perspective.

So, the campaign was originally

intended to launch in April, but with the pandemic, et cetera, it was delayed, and we were able to launch digitally in June. And both PTO and the NCPC have the campaign itself on their website.

Next slide. This is what you'll see when you go to the slide on the PTO site. The training image in the middle is lifted from one of the video commercials where the campaign is aimed at the kind of products that younger consumers would be interested in. This happens to be electronics. But the program is a combination of social media advertising; interactive content, even including a challenge quiz to test young people's knowledge of what's safe, what's not; printable posters; et cetera.

And the total impression so far has been quite positive. The first week alone it generated about 80,000 impressions on Instagram alone.

The next phase is the National Crime Prevention Month is October. There will be a (inaudible) developed and launched to be part of that and to keep this -- keep the program moving

with schools, et cetera, around the country. They help us get the word out about the campaign. We think it'll be quite effective.

The next thing I want to touch on are these misleading scam solicitations that have become all too common for trademark owners and applicants. And as a couple of the members pointed out to me yesterday, the law firms don't tend to see them because they're mailed to the owner of the filing. And these are -- these solicitations are designed to mislead the applicant or the registrant. They usually appear to originate from or be somehow affiliated with the PTO. They typically are offering unneeded or untimely services. For instance, offering renewal services before it's even timely to file it.

What a lot of people don't know, and I didn't when I came in, was that the PTO by itself has very limited legal authority to take action against these kind of solicitations. The cases have to be handled by the Department of Justice, U.S. Postal Inspection Service, the FTC, or state Consumer Protection Agency, et cetera. And the

good news is that we can and do engage in efforts to fight the scams in two ways.

One is through education and outreach. There are resources on our web page with a listing of all of the scam solicitations that have come to our attention, warnings to primer (phonetic) filers appear in Office actions and at registration, so the sheet that comes with the actual registration warns people about it. We try to make it the topic of discussion at events with business owners, bar groups, et cetera. And we just launched a dedicated mailbox for this, so that people, if they come across these scams, can send them to us and we can make sure that they're listed. That email address is [TMscams@USPTO.gov](mailto:TMscams@USPTO.gov).

The second area is the one that you may not see quite as easily, but it's absolutely there, and that's how we cooperate with the agencies that are actually taking forward the criminal cases. You'll see a cite there, it's the United States v. Suhorukovs, which is a recent case that was here. And I wanted to take a second to tell you a little bit about it because I think

it's a great piece of work by law enforcement and by the PTO and people involved in the case.

So, an indictment was handed down against this gentleman, Victor Suhorukovs. He's from Latvia. And he had sent solicitation letters to a number of people using business names like Patent and Trademark Office with a D.C. address or Patent and Trademark Bureau, LLC, with a New York address. The solicitations were seeking payment for renewal. And the indictment alleges that Suhorukovs, his forms gave recipients the false impression that these entities were, in fact, the PTO. These registrants (phonetic) misrepresented due dates for registration, et cetera.

The indictment charges that he fraudulently obtained 916 payment checks actually from people across the country. In Canada, probably about almost \$1.3 million, .27. He's currently in federal custody and it turns out that the solicitation web page really played an important role in this because the banks who had initially opened his account became suspicious of the check movements. And they started to



research who this company was and they found online our reference to it. That then, in turn, led them to work with the DOJ and two attorneys from the PTO who were detailed to DOJ to work on this.

And what's interesting is that without the bank connecting with the PTO's website and then the investigation, they would not have been able to bring this case to (inaudible) and actually arrest Mr. Suhorukovs. So, we'll stand by and wait to see how that case proceeds, but we're really encouraged.

Next slide, please. The next thing I want to talk about the so-called improper behavior. And it encompasses a number of things, but I'll turn it over to Meryl Hershkowitz, the deputy commissioner for Trademark Operations. Meryl?

I think you're muted.

MS. HERSHKOWITZ: Sorry.

MR. GOODER: Hello.

MS. HERSHKOWITZ: Can you hear me now? Good afternoon, everyone. I'm going to talk a little bit about a topic that we discussed

previously.

And as you may remember, we've had an issue for the last several years with increasing numbers of filings from foreign countries where examining attorneys were noticing some interesting specimens of use that did not prove to be comportsing (phonetic) with our need for real use in commerce.

As a result of a lot of (inaudible) hearings on the Hill, in Congress, and other initiatives we've been doing, we decided to implement a new rule called the U.S. Counsel Rule, and it was implemented this past August. What that rule says is that any foreign-domiciled applicant for a trademark must have a U.S.-licensed attorney. And, of course, the reasoning for that is so that we could hold someone accountable for improper behavior and improper filing.

Next slide, please. So, this slide I think is indicative of some of the success with the rule. It goes from May of '19 through June of this year. And as you can see, these are the numbers of absolute and prospective first Office

actions with refusals and requirements for a new specimen because the specimen that was provided appears to be either mocked up or visibly altered, and not an actual use in commerce.

So, you can see that by now, we are down to less than 4 percent of these requirements in all first Office actions, and we think that's a pretty good decrease since our high in October of 31.2 percent of those requirements in Office actions.

Next slide, please. Some of the things we did to try to help examining attorneys and the public understand what we mean by "digitally created" or mock-up (inaudible). It did an exam guide in March of 2019. Sorry, it was issued in July of 2019. The number of the exam guide is 3-19, but it was actually issued in July.

And in that exam guide we explained how we decided whether a specimen may appear to be physically altered. And we also set for the procedure for the examining attorneys that when they issue a refusal for those specimens that appear to be digitally altered, they should also be inquiring of the applicant under 2.61(b) of

certain information to help us understand whether or not actual use is occurring.

Well, since implementation of that exam guide we have received a lot of feedback from trademark owners and practitioners concerned that the Office was going overboard in making this requirement. And also, by respecting various information that it's becoming too burdensome for applicants to respond to those actions. Obviously, we have to strike a balance between making a requirement and examining and, also, allowing actual trademark owners to proceed with their applications.

So, having received all that feedback, we relooked at that exam guide and we've made some revisions that we do think practitioners will be happy about because we eased up on some of the requirements. We will be publishing for your feedback a new exam guide -- basically, the old exam guide with revisions -- on IdeaScale and asking for, again, your comments to make sure that we're heading in the right direction and that we're meeting practitioners and trademark owner needs.

So, please be looking for that. We will send out a Trademark Alert with a link. Please comment and share your important feedback with us, so that we can meet legitimate owner needs.

Next slide, please. Unfortunately, although the U.S. Counsel Rule has been working fairly well, there's always ways around a rule. And unfortunately, we've seen a lot of those ways and some of them are very troubling. One of the things that we have seen, again, not a lot, but enough that it is a cause of concern and certainly if your name is the one being used improperly it's a great amount of concern, and that is the unauthorized use of attorney names and information in a file without the attorney's consent. We have seen improper signatures and use of public credentials. We've seen use of mail drops and false domiciles.

Again, we think these circumvent the rule because people are using, for example, a Mailboxes.com building for their domicile or we've seen hundreds of people allegedly living in the same apartment building and in the same

apartment. We've seen applicants with false names and false credentials. And unfortunately, we've also seen some people going into other people's files and changing correspondence information without permission or actual relationship with the attorney -- either the attorney or the applicant. We've been catching those last categories pretty clearly, but we do want you to know it still is happening.

Next slide, please. So what are we doing about this improper behavior? Well, we're trying really hard to catch it and deal with it as it comes up. And we have a special task force that was set up that consists of attorneys and IT people from all over Trademark to help us review the analytics and the behavior and try to catch these trends as soon as we can see them.

We've issued so far 341 show cause orders, especially in those cases where lawyers are used without their consent and asking applicants to explain to us why we shouldn't strike their papers.

We're also looking at a variety of other solutions, including IT solutions. For example,

as you know, for many, many years we have not required any log-in information to file applications until recently. And now that we started on that road, we're hoping to make it even more secure with authentication and authorization required before you can file with us. And that, of course, is to prevent these unauthorized changes in applications (phonetic).

Next slide, please. So, what can you do as an individual to protect your own name and your own files if you're representing other people? And so, we would like your help with that. We're doing the best we can and we'll continue to do that, but you also can help us out and yourself out by using some of the tools that we have set up for your use.

So, for example, you can set up an account in "My USPTO" where you have selections of your files and ask for notifications of a change in status. So, if someone goes into your file and changes an address or changes -- or a presentation or any change in the file occurs, you would be notified. In "My USPTO" the status changes are seen every 24 hours.

You can also use our mobile app, which is a USPTO app, and that little icon with the R in a circle is how you can tell it's our app. You don't have to have a USPTO account. You just go into Apple App Store or Google Play and download the app (inaudible), and it provides updates on status of files every 15 minutes or less. So, as soon as a change of status occurs, you could be notified.

We hope you'll use these two tools or one of the tools, so you can be sure that your files are being appropriately handled.

Next slide, and I'll hand this back to Sharon.

MS. MARSH: Thanks. Yeah, we just have one slide. You can go to the next slide.

To give you an update on our TM5 work, as you know, I think TM5 is an ongoing collaborative relationship that we have with the Trademark Offices in Japan, Korea, China, and the European Union. And this year, 2020, the USPTO is the secretariat of the TM5 meetings for the year. And normally, that means that we would arrange the midyear meeting and then host the



annual meeting at our offices here in Alexandria, Virginia. Of course, the coronavirus changed all that.

And currently, our staff in the Office of Policy and International Affairs is in ongoing discussions with our TM5 partners on how to perhaps set up a virtual meeting in the fall and try to have a real meeting. But the biggest challenge, of course, is the 12- and 13-hour time differences between the U.S. and the Asian countries. But they are being creative and you'll also be happy to know that they are talking about ways to have a user session as we do when we meet in person. So, we hope that will all work out well.

And you can go to the next slide and I think this is the end for Trademark Operations.

MR. GOODER: Yes, exactly. Thanks, Sharon, and thanks, Meryl.

That concludes the presentations on the Trademark Operations side. Back to you, Elisabeth.

CHAIRWOMAN ESCOBAR: Thanks, Dave, Sharon, and Meryl. That was very informative.

I had just one quick question and perhaps I missed it, but I was wondering if there was a target or approximate date when we could expect to see that new exam guide on digital specimens appearing on IdeaScale?

MS. MARSH: I don't have a date, Elisabeth. But we have a draft that is very far along and so there's just a little bit more agency approval process that we have to go through and we'll get it up as soon as we can.

CHAIRWOMAN ESCOBAR: Thank you, Sharon. As I think you know, practitioners are eagerly awaiting the revisions to the extent that they're aware that it's undergoing revisions. And I think those who don't know will be very pleasantly surprised when they appear.

MS. MARSH: Okay.

MR. GOODER: I'll go out on a limb and say we'll do our best to get it out there by the end of the month.

CHAIRWOMAN ESCOBAR: Oh, great.  
Thanks, Dave.

MR. GOODER: Well, wait a minute, that's a week. How about two weeks?

CHAIRWOMAN ESCOBAR: (inaudible)

better and better. I'd like to ask the other TPAC members if they have any questions for the commissioner and Sharon and Meryl.

MS. LaLONDE: (inaudible)

MS. NATLAND: Oh, go ahead.

MS. LaLONDE: No, please.

CHAIRWOMAN ESCOBAR: Anne, you first and then you, Kelly.

MS. LaLONDE: Just about the exam guide and revisions. And it seems to me it's rare for the Office to put up an exam guide for feedback before it goes to the examiners. And I wonder what the reasoning behind it is for this one and whether the Office would consider in the future putting up exam guides, not all of them, but some of them possibly, before they're issued and made official?

MS. HERSHKOWITZ: I'll take it. I'm sure Sharon will fill in, as well. It's not unusual, Anne. We often put out exam guides before they're actually published for public feedback on IdeaScale. Unfortunately, we don't get that many comments, but we particularly want

your comments on this one.

The times that we don't put it up, like, for example, the Bookings.com one we probably will not put up because it's just going to be to implement a case (phonetic), right. When the Supreme Court comes out with something, it's not really something we can change. The Supreme Court says something, that's pretty much it. So, there's not a lot of point for feedback on that one.

But on ones where we're setting new policies, we often ask for feedback. I don't know the percentage. I don't know. I don't know if Sharon does, but we have done it before.

MS. MARSH: Yeah. I also thought your question was whether we would give that to examiners for feedback first, and we have done that. And yes, that's something that we think is also very valuable to ask examiners for feedback.

MS. LaLONDE: Okay, thank you.

CHAIRWOMAN ESCOBAR: Thank you. So, was it Kelly who had a question or did I hear the wrong person?

MS. NATLAND: I think it was me, Susan

Natland.

CHAIRWOMAN ESCOBAR: Oh, Susan.

Okay, please, go ahead.

MS. NATLAND: So, just really quick, Meryl. On the U.S. counsel requirement, I couldn't tell in the rolls if there's a licensed U.S. counsel at that domicile abroad, does that qualify for that?

MS. HERSHKOWITZ: Yeah. The requirement in the rule pertains to the applicant, right? So, if the applicant is domiciled abroad, they need to be represented by U.S. counsel. But we don't -- where the U.S. counsel resides doesn't matter as long as they're licensed in the U.S.

MS. NATLAND: Okay, that's what I thought. I just wanted to confirm that. I've seen that a few times in filings as well as TTAB cases, and it's just hard to communicate sometimes with counsel when it's abroad, but understood. Thank you.

MS. BALD: This is Stephanie. Can you all hear me?

CHAIRWOMAN ESCOBAR: We sure can.

MS. BALD: Okay, great. I was really interested to hear Commissioner Gooder's report on the fraudulent solicitation litigation and the success that law enforcement has had in that area. I was wondering in terms of the bad behavior during trademark prosecution I know are worse than the obvious show cause order, but some of that behavior is similarly egregious.

I'm thinking, for example, of an instance where someone puts in a fake meme into a trademark application and files it. There's certainly language in the trademark application form that has -- that sounds very threatening and saying that all statements in the trademark application are punishable by fines or even imprisonment, which I like to always threaten when I teach my law school class, like be careful in trademark applications or you'll go to jail.

But I was wondering whether -- what happens after the show cause order? Obviously, there are ethical issues. If it's a lawyer, I assume that they could be referred to the Ethics Office and excluded from practice for the Trademark Office, but is there any similar

discussion about some sort of criminal prosecution for that type of behavior, which tends to be extremely egregious?

MS. HERSHKOWITZ: Stephanie --

MS. BALD: And that's a question for Meryl.

MS. HERSHKOWITZ: Yeah, that's fine. We're sorry. Stephanie, we feel the same way you do. We don't have any similar jurisdiction. All we can do is refer it and we do refer it to our Office of Enrollment and Discipline frequently. And they often take jurisdiction over certainly U.S. attorneys who do inappropriate things and often it happens -- I wouldn't say often, but it does happen that we will exclude people from practicing before the USPTO.

And non-lawyers can also be excluded. Unfortunately, a lot of the bad behavior is committed by people outside the U.S. jurisdiction and there's not a lot anyone of us can do about it except exclude them from practice before us.

The Office of Enrollment and Discipline does contact the Department of Justice when

things are very egregious. And I do not know how often that happens. I don't think they inform us, to be honest with you. But that would be the department that would handle it.

MS. BALD: Thank you. That's really helpful. I'm just wondering if there's a potential deterrent opportunity in the same way that (inaudible) had success in the fraudulent solicitations area.

MS. HERSHKOWITZ: That's a great point and I know Director Iancu is very interested in that and we'll continue to look into it and see what we can do.

MS. BALD: Thanks, Meryl.

CHAIRWOMAN ESCOBAR: Thank you. So, we are running a little bit behind. If there are no other questions, I propose we move along to the next speaker, who is Shira Perlmutter, the head of the Office of International Affairs -- of Policy and International Affairs.

Shira, take it away.

MS. PERLMUTTER: Thanks, Elisabeth. Hello, everyone. Good afternoon. I'm assuming you can hear me and see me.



CHAIRWOMAN ESCOBAR: Yes, we can.

MS. PERLMUTTER: Good, good, good.

So, what I will do is just update you on four areas relating to policy and international. One is trade negotiations that the U.S. is involved in. Second, some of our upcoming Requests for Comments. Third, the legal issues involved in plain packaging internationally. And fourth, what we're doing in terms of training programs in the current environment.

So, just to start with trade negotiations, you may have seen in the press, you probably did see in the press, that Phase 1 of the U.S.-China trade agreement was concluded on January 15th. And since then, there's really been a flurry of activity. Both the China National IP Administration, CNIPA, and also the Supreme People's Court has been very actively issuing proposed measures and guidelines and judicial interpretations, and a lot of them are aimed at implementing China's obligations under Phase 1 of the agreement. So, that means that we've been very busy, too.

The provisions include implementing

obligations about determining genericism and the protection of geographical indications. They include suits over online infringement. And they also include enhancing sanctions for infringement. So, a number of very important issues.

And our China team is very busily reviewing and giving comments on all these measures and interpretations. And they've also been supporting USTRs and conducting technical calls with CNIPA on the implementation, and also engaging in outreach to stakeholders for prolific feedback on stakeholders' views of how this will work, how the implementation will work.

The China team is also planning, I should say, a number of programs in the United States, including a two-day, three-city program on trademark examinations training and also a seminar on bad-faith trademarks. And depending on the circumstances, this is currently, they're both planned for November, so they'll either be done in person or virtually.

And we continue to look for information from stakeholders about what's working and what's

not in terms of the bad-faith trademark problem in China. And we're very interested in any suggestions for improving examination and opposition proceedings at CNIPA.

In terms of the USMCA, the United States-Mexico-Canada Agreement or USMCA, was signed by President Trump and the leaders of Canada and Mexico in November 2018. And USMCA, of course, both revises and updates NAFTA, which dates back to 1994. And the USMCA went into force on July 1st, so very recently. And we've been working with USTR and our Mexican counterparts to make sure that their legislation meets their obligations under the USMCA.

So, we've had a series of digital-video conferences with Mexican IP officials to talk about the various pending bills there. They've been going well, the discussions. And our assessment is that their implementation of the trademark and geographical indication obligations under the USMCA generally look good and we're just engaging on a few remaining technical questions.

On the U.K. Free Trade Agreement

negotiations, these negotiations are still in the early stages. There's been sort of conflicting reports in the press about how quickly they might be completely, whether it can be done this year or not. But we've been quite involved and, so far, there have been a few rounds. They're still on a fairly high level. We haven't yet gotten down to the nitty-gritty of text, but we expect that will happen soon.

And then finally, on Kenya, on July 8th, the United States and Kenya formally launched a trade negotiations on an STA. And the first round was supposed to take place July 17th, starting July 17th, but negotiations have been temporarily suspended because there have been a number of COVID-19 cases in the building where the Kenyan negotiators are working. So, that's on hold at the moment.

So, if we can turn to the next slide. And by the way, please feel free to interrupt at any point with questions.

We have three requests for comments that we will be issuing in the coming months. So, the first one is on state sovereign immunity.

And this is the result of a recent decision by the Supreme Court in a case called *Allen v. Cooper*, which struck down the Copyright Remedy Clarification Act of 1990, which allowed states to be sued for copyright infringement as an unconstitutional abrogation of state sovereign immunity. And so, Senators Tillis and Leahy have asked both the USPTO and the Copyright Office to study the extent to which IP owners are suffering from infringement by state governments or state entities in a way that can't be dealt with through state offices.

So, the Copyright Office has recently issued a Request for Comments on the copyright issues, with comments due by August 3rd. And we will be issuing similar Requests for Comments on both patent and trademark infringement. So, again, the question is to what extent is there infringement for which the IP right holders are without adequate remedy for under state law?

And under the Supreme Court's decision in *Allen v. Cooper* there's pretty much a roadmap for Congress to follow if they want to abrogate state immunity. And it has to look at a

legislative record that clearly links the scope of the abrogation to the proportionate prevention of injury to right holders. So, we'll be examining that.

And we're very interested, also, in hearing from stakeholders about the extent to which any such infringements seem to be based on intentional or reckless conduct.

The second request that we'll be issuing has to do with secondary liability. So, in January of this year, the Department of Homeland Security issued their report on combatting trafficking in counterfeit and pirated goods. And it put forward a number of action items, and for two of them the Department of Commerce was assigned primary responsibility. And USPTO is taking a lead on both of them.

So, these are the additional two elements here on the screen. So, the first one is that we are assessing the application of secondary trademark infringement liability in the online environment, and particularly with respect to platforms and other intermediaries. So, we'll be publishing a Federal Register notice

seeking input on this issue and it would be great to get as many comments as possible, so we invite you to submit.

And then finally, the second action item also identified in the DHS report, we will issue a Request for Comment on how best to develop an effective public awareness campaign related to online counterfeiting. And this will be with the involvement of both the government and the private sector.

Dave talked about the campaign that's already been launched with the NCPC, and that is clearly one element of this overall campaign, but this will be a broader one that will involve both all the different agencies of the U.S. Government and the private sector.

So, we can turn to the next slide, please. So, this is really just an update. In a prior TPAC meeting I talked about a 2018 panel decision at the WTO that upheld Australia's plain packaging regime for tobacco products. And as you may recall, that regime requires retail packaging for all tobacco products to be in a uniform, drab, brown color with standard typeface

and very graphic warning labels. And on the cigars and cigarettes themselves, there can be no distinguishing marks.

So, the regime was challenged by Honduras and the Dominican Republic and Indonesia and Cuba, but unsuccessfully. And one of the grounds for the challenge was that the regime violated Australia's obligations, trademark obligations under the TRIPS Agreement, but those arguments were rejected by the panel.

So, what has now happened is that the appellate body of the WTO has upheld the panel's findings, so they left the Australian regime in place. So, we wanted to note this, again, because as we have discussed before, this seems likely to encourage other countries to adopt similar packaging restrictions not only on tobacco, but possibly to extend them to other products. We've already seen these discussions like infant formula and food products that are high in fat or sugar or alcohol.

And we should note that similar tobacco restrictions, packaging restrictions, have already been adopted in 15 other countries which



includes France and the U.K., New Zealand, Norway, Ireland, I mean, the list goes on and we can give you a full list. So, this is a clearly a trend around the world that's worthy of attention.

So, if we turn to the last slide, you can see this is a list of webinars on trademark issues that we have either completed. I guess we've completed all of those by now. What had happened is that the PTO's move to maximum telework has effected the way we deal with and interact with foreign IP officials and provide technical assistance to other IP offices. And you can see from a list of these webinars how we've adjusted.

We've continued our training efforts through targeted webinars with specific offices. And this list goes to actually 14 such webinars just in June and July. And as we geared up to virtually engage with foreign Trademark offices, many of whom have limited online webinar capability, we started out by offering Trademark programs for U.S. Government personnel stationed in U.S. embassies around the world. And with the

help of our IP attachés, OPIA's Trademark team has offered programming on both trademarks and geographical indications to better equip foreign service officers around the world to identify and understand these issues when they come up in their country. And this project is going well and we're hoping it will pave the way for more regular virtual engagement in whatever the new normal ends up looking like.

So, and I just wanted to add finally one quick note because I know we're short on time. But Dave and I think Meryl had talked about it, maybe Sharon had talked about the USPTO's COVID-19 Response Resource Center that's available on our website. I just wanted to note that there are two other trademark-related links there that you may want to be aware of, and one is a link to government resources dealing with how to avoid and how to report trademark counterfeiting and other types of scams that relate to COVID-19.

And there's also a link to the White House Policy Tracker, which has information about what other Trademark offices around the world are

doing in response to the pandemic, such as deadline extensions. So, there's a lot of very useful information there, as well.

So, those are all the updates I wanted to cover. And if there's any questions, I'm happy to answer them.

CHAIRWOMAN ESCOBAR: Just giving my colleagues a minute to get off of mute if anyone has any questions for Shira.

So, I had one quick question. That was an impressive list of webinars. Some of them appear to be for specific, limited audiences, but others looked like they might be something that practitioners or the general public might be interested in. Are any of those webinars recorded, so those of us who may not have been able to see them when they took place, can we catch them online?

MS. PERLMUTTER: Very good question and I'm going to turn it over to Amy, who I think is on the phone and has more information than I do.

MS. COTTON: Yes. A few of them that we offered for U.S. industry was the China Road

Show, for example. I believe that we have recorded that, but I will have to check and I will get back to you on which ones are available. We are trying to beef up our virtual library with recorded sessions that others could view later on. So, let me get back on which ones we have. I think the China ones will be of most interest to you all.

Actually, yes, my colleague Lee Larry tells me that the China one was recorded and it will be posted. But I will check on the other ones, as well.

CHAIRWOMAN ESCOBAR: Great, thank you. Anyone else have questions for Shira and Amy while we have them?

MS. NATLAND: Hi, it's Susan Natland. This actually follows up to your question. It's similar to what mine was. And is (inaudible) link that list upcoming webinars and which ones the public can access and listen to live? Is that something on the PTO website?

MS. COTTON: Well, if there was one available, we would have pushed it out in various communications, but I don't know that we have a

list up. Many of these were, you know, U.S. Government internal or foreign government internal, so they weren't ones that U.S. industry would get access to. But the China ones in particular, they would be out there. If a China one were available to practitioners, we would be sending it out in a Trademark Alert, which I think we did with this last one.

I love IM because I'm getting updates from my colleagues who are watching, so I can share with you.

MS. PERLMUTTER: But that's a good point. We should look into whether we might post a list of those webinars that are recorded and are available to the public to see.

MS. NATLAND: I think that would be terrific to have a web page that just has it coming up for people that (inaudible) or aren't on the list or --

MS. COTTON: Absolutely, we'll look into that.

MS. PERLMUTTER: That's a great idea. Thank you.

MS. LaLONDE: Briefly, I just have a

quick question. It's my understanding that the USMCA doesn't require changes to U.S. law, is that correct?

MS. COTTON: That's correct.

MS. LaLONDE: Okay. Thank you.

CHAIRWOMAN ESCOBAR: Great.

MS. PERLMUTTER: Makes my job easier.

CHAIRWOMAN ESCOBAR: Yeah. All right. Well, thank you so much, Shira and Amy.

And we are running 10 minutes behind, so I'm going to move it right along to the director of the Office of Governmental Affairs, Branden Ritchie.

MR. RITCHIE: Hello. How are you all? I have Kim Alton. She's the deputy director of the Office of Government Affairs here with me and we're going to go through this update together. And we'll try to be brief, but leave a little time for questions. I know we're a little behind. Maybe we can help get a little closer to the schedule for you guys.

So, and basically, we had a lot of activity, a lot of interactions with Congress since the last meeting and in many signs of

progress we've had so far. And one of the biggest things that we're working, one of our top priorities right now is to permanently extend the TEAPP program to allow examiners, both on patents and trademarks, to be able to work from anywhere in the country, so that we can get the best and brightest examiners from everywhere in the country. And it also helps with recruitment and retention.

So, I'm going to turn it over to Kim, who's done a lot of work on this issue for us to give the very good update that we have on this so far.

MS. ALTON: Thanks, Branden. Good afternoon, everyone.

So, as Branden said, we have been working hard on receiving from Congress a permanent authorization of one of our major telework programs at the PTO. They call it TEAPP. And the TEAPP program is very popular. It allows employees to work from anywhere in the United States, including Hawaii and Puerto Rico, and, you know, working from that home address that then becomes their duty station.

The program is very popular, as I said. The employees love it. The management loves it. And so we are very excited that we were able to work to have legislation introduced earlier this month in the House and in the Senate, and it was bipartisan legislation, so that was really awesome to have that type of support.

This past week, there was a lot of activity. The House of Representatives did vote to approve the permanent extension. It was rolled up into a larger bill that's not related to PTO issues or IP issues, but it was included in the House of Representatives in a vote that was taken earlier this week. And then on the Senate side, the committee that has jurisdiction over federal workforce issues voted and it was a unanimous vote, voice vote, in support of the bill to make it permanent.

So, we will continue to keep you all updated. The program does expire at the end of this year, December 31st. And we're hoping that we'll be able to get a permanent authorization before that deadline his at the end of the year.

That's all.



MR. RITCHIE: Yeah, and, you know Kim, she's not doing it justice all the work that went into it because she's being modest. But a lot of work went into making it look easy, but there's still a lot of steps to go. And it's been in the works for about a year already to try to get this extended, so to the agency have certainty. It saves tens of millions of dollars for the PTO and for our stakeholders. And so, it would be great to lock in those benefits. So, thank you, Kim.

So, the other thing that we've been doing a lot of is consulting with Congress and educating them and doing briefings for them on our fee revenues, both the history of fee revenues since COVID and then also our -- how that translates into what the projected revenues will be. And so, there's a lot of talk, there's been a lot of action there. We've been doing regular briefings with both the Appropriations Committees and the Judiciary Committees on that.

And, you know, Jay Hoffman either has or will get into the details on that. I'm not going to even try to do that. But it plays into whether Congress feels like the PTO may need

additional appropriations. So, that is an ongoing process.

But we've been doing a lot of work and I think we've made a lot of inroads in making sure that folks know how our process works and how the appropriation works itself. It's complicated, but I think we've got a lot of good explanation and brought people up to speed on that and answered lots of good questions on that. So, stayed tuned on that.

The other thing is that the House Appropriations Committee did pass the Commerce, Justice, and Science Appropriations Bill that has our appropriations language in it. And it provides approximately 3.7 billion. And the way it works is they provide the appropriations and then as the fees come in, it offsets those appropriations. And so, that was approved by the House Appropriations Committee. We're hearing that that might be on the floor as early as next week, on the House floor. So, they may actually pass that one in the House.

Speculation is that there'll be a CR at the beginning of the fiscal year that'll carry

everybody through until November or December, but we'll see. They're working on these appropriations bills, but that's the speculation.

The next thing, I guess we talked about the update, the Trademark Modernization Act. So, I'm sure you all are familiar with that, but it was an effort -- it is an effort by the House and Senate to make some updates to some procedures to help address the fraudulent and inaccurate trademark filings, especially those from overseas, that we experienced in the past years.

So, it was introduced on a bipartisan, bicameral basis in the House and the Senate by the Judiciary Committee leadership. And it would do a number of things, one of which is that it creates a rebuttal presumption of irreparable harm when a plaintiff shows infringement in litigation. That's one of the big provisions in that bill.

It creates -- it codifies the PTO's letter of protest procedure, so that people can -- third parties can file information during the examination process. So, it codifies that.

It creates two proceedings, an

expungement proceeding and a reexam proceeding, for third parties to be able to challenge marks that either were never in use or were never in use by the relevant date as appropriate. And then it has the procedures laid out in the bill for how the PTO would administer that. It gives the PTO some discretion on how to administer that, as well.

And then it also requires a report. And it also allows the PTO to reduce the response times for certain Office actions, but, on the other hand, it gives applicants the ability to request extensions up to the six months that they have now.

So, that's what the bill does. It's been introduced and it hasn't had a hearing. There was a tremendous amount of process before the bill was introduced. And we've been providing technical assistance and, you know, with the help of the Trademark team and OPIA and others here at the PTO just giving them feedback on -- to make the bill -- you know, to perfect the bill in terms of technical assistance. And we're monitoring that one.

What we're hearing is that they want to move forward with the bill. The Judiciary Committee has a lot of jurisdiction, so all the bills compete with each other. It covers everything from criminal laws to immigration to, you know, regulatory law and everything, everything in between, federal crimes and the federal courts. So, we think that it's possible that they can mark that bill up in September, but we haven't heard a confirmation of that.

And then the Shop Safe Act is another bill that was introduced in the House. And it would -- basically the concept is that for online platforms it would create liability for trademark infringement for online platforms unless they adopt certain enumerated best practices. And our understanding is that there are ongoing conversations about that legislation and consultations with stakeholders and others. And that one doesn't look like it's imminent for a hearing or markup, but I think there is a lot of interest in that one, so there could be action on that this year later.

All right. Let's see, we can go to the

next slide. Okay. Another thing that we helped with is we got a rare, but important, communication from the Hill. It was a letter signed by the chairman and ranking members of the Judiciary Committees, the House and Senate Judiciary Committees and the IP Subcommittees. And the letter was to the PTO and it asked us for more information about how our transition to telework went, mandatory telework during the COVID outbreak, and also what's the fee needs and what compensating measures we've achieved to try to mitigate the impact of revenue decreases.

And so, we -- OGA did help and worked with all the business units to prepare that response. And it was actually a complimentary letter to the PTO. It started with thanking the PTO for the work they had done in transitioning the workforce to mandatory telework. And as we all know, that was made somewhat easier, we think, than other agencies just because of the investments we've made into the telework equipment for the telework programs that we do.

So, when I was on the Hill, it was always -- and had been a trademark examiner before

I went to the Hill, I was always thinking that the PTO just seemed like they were lightyears ahead of all the other agencies on the technology and the telework, and I think that is true. A lot of other agencies ask us for advice on how to set systems up. So, that was a nice complimentary letter. But they also were looking for information and we provided that, so we can go to the next slide.

I won't go over -- we can skip this because Shira did an excellent job of explaining this one, which is the state sovereign immunity study. That request came from Senators Tillis and Leahy. And Shira, I think, handled that one perfectly. I have nothing to add to her great description of that, so we can skip to the next slide. That'll save us some time, too.

And then, okay, so, let's (inaudible) priorities. This is no surprise here. This is what we usually have, continuity of service issues.

So, when the fee revenues were going down, it was a big concern. And we aggressively were responding to Hill inquiries because there

was a time when it was possible that we could have needed supplemental emergency funding. So, we spent a lot of time on continuity of service issues. And part of that was briefing the Hill on those predictions and the revenue analyses.

Another thing is, as part of the CARES Act, we were able to secure an update to our -- to the law to allow the director to grant relief to applicants and the trademark owners. And so, it was very narrow and only applies during the COVID emergency. And so -- but it was very welcomed and we worked with Congress to work on that, the language of that. And I think it's been pretty beneficial with the stakeholders that we were able to have those additional authorities.

We still want to look at the statute that allows the director to make adjustments in cases of emergencies because that one probably could use some additional clarification. So, we will continue to be looking into that issue.

And then moving on, okay, moving on to IP attaché rank, we continue to work with OPIA and others to just elevate the importance of the IP attaché in the international context. I won't go



too far into that. I think Shira did a good job of explaining the work the IP attachés are doing. But suffice it to say that if they could get a rank increase, they would be able to have a larger impact in these meetings and international fora. So, we're on the lookout for ways to make that happen.

We've talked about the TEAPP extension. A lot of great work on that. And then, yeah, just monitoring the bills as they come and providing technical assistance to them.

There's also legislation that we expect will be introduced that would require the PTO to collect demographic information. That isn't -- I think it's exclusive to the Patent side, but it would be for patent applicants, so that there could be more information upon which to build a record and to build efforts to make sure that innovation is -- that we're enabling innovation from people from underrepresented groups to create a richer and deeper diversity and innovation. And so, we're looking at that, as well.

That is more Patent-related. I don't

think it applies to the Trademark side.

Let's see, and I think that is it. With that, we can answer any of your questions.

CHAIRWOMAN ESCOBAR: Thank you, Branden and Kim. I would like to ask you, we got a question from a member of the public and it was asking about the -- so, just to back up for one second. Back in April, TPAC and PPAC had sent a letter to Congress asking for the release of the funds that were -- fees that were collected several decades ago by the Office and are currently stuck in a Treasury account.

And then in responding to a congressional inquiry, Director Iancu also mentioned that those fees would be mutual for the Office at this point. And they used -- the member of the public asked about the status of the efforts to get that money that's in the Treasury account released to the PTO.

MR. RITCHIE: Okay. That's a good question. Yes, so, first of all, there's been a lot of progress made there. The fact of -- the fact that there is money in our Treasury account was something that we were able to discover, which

was a big deal because I think that a lot of folks thought that the money was spent a long time ago. But to know that there was actually money in the account was a big bit of progress. And so, we're continuing to work with Congress on that and help make sure that they understand the nature of the money and where it came from and see if we can access that.

So, I would say it's a work in progress. We're continuing to have talks and we're making progress. But that's about the extent of an update at this point. But we are continuing to work on it aggressively.

CHAIRWOMAN ESCOBAR: Great. Thank you so much. I'd like to turn it over to my colleagues. Do any of the other members of TPAC have questions for Branden and Kim?

Okie-doke. Thank you so much for coming. We really appreciate your time. And in the interest of time I am going to move it right along to Jay Hoffman, our chief financial officer, to give us his words of wisdom from the (inaudible).

MR. HOFFMAN: Happy Friday afternoon

to members of the TPAC and members of the public who are joining us this afternoon. We're running quite a bit behind schedule, so I'm going to just dive right into it, if you can please advance to the next slide.

So, just a very quick agenda. I'm going to give you a quick status on where we're at with our FY 2020 finances. As most of you know, the federal government operates on a fiscal year that runs October 1st through September 30th, so we are getting close to the end of Fiscal Year 2020. I will give you an update on what we are expecting for FY 2021, which begins October 1st, our progress on developing the FY 2022 budget and subsequent assumptions there, and where we're at with our fee rulemaking. Laura Peter provided an excellent update of that, however, in her opening remarks, which my remarks virtually parallel what she said.

Next slide, please. Okay, so FY 2020 status, our Trademark financial outlook. First let me talk through where we're at with fee collection revenues. Trademark fee collection revenues are forecast to be in the range of 331

million to 339 million by the end of the fiscal year. Our original revenue plan was closer to 362 million. So, through June 30th, trademark fee collections are 93 percent of plan; we're a little bit below where we expected to be. And we expect that trend will continue through the end of the fiscal year, but generally things have improved quite a bit since our last TPAC meeting. And Dave Gooder's charts on application filings I thought were an excellent graphic of that recovery.

On the expense side, Trademark expenses are currently tracking at \$372 million for FY 2020. This was reduced from \$427 million where we started the year. Obviously, as the economic downturn and uncertainty of the recovery took hold in the spring, the agency calibrated to reduce (inaudible). And we had been relying somewhat on the operating reserve, but, for the most part, we've taken a very conservative approach.

The reduction that we took in the spring totaled about \$45.4 million in the Trademark (inaudible). Those spending reductions are best

categorized as business unit support hires were reduced. We put a hiring cap in place. We differed trademark examining attorney hires and those are still being differed. We haven't lifted that deferral yet. And lastly, we took a fairly sizeable reduction to our trademark spending on IT projects. We're still very much committed to those, but we're having to reassess the scope and timing of them.

Go ahead and advance to the next slide, please. So, this slide shows that the trademark collections through June 30th are currently \$252.9 million. That's the revenue that we've collected through the end of June. This is 6-1/2 percent or about \$17.7 million below the year-to-date planned collection. We had expected to be closer to \$270 million by this time. (inaudible) on the prior slide, we're obviously recalibrating our expectations.

I would note that the fee revenue in May and June were stronger than anticipated out of the current economic environment, especially application fees.

Next slide, please. Let me take a

moment and talk about the trademark operating reserve. This is a slide I have not presented before, so let me just very quickly acclimate the TPAC members and the public to what they're looking at.

What this slide shows is the trademark operating reserve. The Y axis is the reserve level in millions of dollars. The X axis is in time. It shows three prior end-of-year point actuals and then by month figures, Fiscal Year '20. And then the bars, they are the projected end-of-year reserve, whereas the line is the current reserve.

So, currently, the trademark reserve is projected to be between 95- and \$98 million by the end of FY 2020. And you can see that as of the end of June, it was just above \$100 million. This is very good. So, the minimum trademark reserve level of the agency is established at \$75 million. So, we're above that by about 25 million.

We are taking a conservative approach to spending. And we're trying to put the trademark reserve in the strongest position we can to begin FY 2021, to continue to hedge against

potential revenue uncertainty.

Next slide, please. This is also a new slide and I think it looks very similar to one that Dave Gooder showed in his presentation. So, this is our -- similar to the application slide he showed. This is a slide that compares revenue, FY 2020 revenue, versus FY 2019 revenue, 20-day moving (phonetic) average, so it's comparing this year to last year, 20-day moving average.

And what you can see here if you can identify the zero line, which is the red line running across the middle, you can see it kind of bounced above and below that line until we hit roughly the March timeframe when the economic downturn and subsequent health crisis happened. You can see it takes a V-shaped drop where it dropped barely 15 percent below the prior year. And this was very concerning to us and a reason why we, in fact, adjusted our spend plans and took a more conservative approach to spending.

The thing you can see in the April timeframe, really it was late April, early May when the trend finally took hold. We started to see a fairly pronounced increase in our revenues



relative to FY 2019. And by the time we got into June and July, surprisingly, we were actually exceeding our revenues relative to the same period prior years.

This was very encouraging to us. There's still a tremendous amount of uncertainty, though, on how the economic recovery will unfold. So, while I'm encouraged by these numbers, we're continuing to track them literally every day and will continue to adjust accordingly.

Next slide, please. This is just an update from last time. As you know, the USPTO implemented targeted relief for trademark-related deadlines and fee payments as authorized by the Coronavirus Aid, Relief, and Economic Series Act, often referred to as the CARES Act. The relief that the agency was offering related to trademarks ended at the end of May, and not all eligible fees have subsequently been paid yet, the way the (inaudible) actually occurred.

What was interesting about the relief, however, is that the impact was fairly modest. We estimated that the total impact to the agency

was only about \$2-1/2 million, which was considerably less than what we had originally estimated.

Just to acclimate you to the table at the bottom, if you're interested, what this table shows is on the left-hand side where it says, "Total Trademark Fees, Planned versus Actual," there are the monthly revenue numbers in the aggregate that we expected for trademarks. And as you can see, we're tracking, you know, 13 percent below plan in April and 3.6 percent below plan in May.

To estimate the CARES Act impact or potential CARES Act impact what we do on the right-hand side is we only look at those fees where the CARES Act relief was being offered. So, we separated out the two types of fees. And for here you can see we were \$1-1/2 million below plan in April and just about a million dollars below plan in May. And that's how we're extrapolating the CARES Act impact. No doubt some of this impact is economic-related, but we don't have the ability to separate that out with the data that we have at this time.

Next slide, please. So, the FY 2021 execution is upon us. The agency has reviewed and revised it's FY 2021 spending requirements in consideration of projected revenue collections and targeted operating reserve levels. To that end, the agency projects that the current economic environment will still impact trademark applicants and registrant behavior in FY 2021. In other words, we do expect revenues to be depressed as a result of the continuing economic downturn and subsequent recovery.

With respect to the appropriation process for FY 2020, the House Subcommittee on Appropriations markup (inaudible) part of the process has already occurred. That happened on June 8, 2020. The Senate has not yet conducted their markup, but we're expecting that that will happen sometime later this summer.

Next slide, please. With respect to the FY 2022 budget, the agency is finalizing its requirements for the FY 2022 budget's position. We are taking into consideration the revised economic forecast and changes to demand. And we're making adjustments to our 2022 budget.

The TPAC and the Department of Commerce will receive a draft of these budget documents for their review in August. And the final documents are scheduled to be submitted to OMB on September 14, 2020.

Next slide, please. Lastly, Laura Peter largely briefed this. As you recall, that with respect to the fee rulemaking, the TPAC initially held a public hearing on September 23, 2019, to notify the public of our intent to adjust the trademark fees. The Notice of Proposed Rulemaking is currently available for public comment through August 3, 2020. Anyone who has comments on the proposal could make those.

Subject to the public comments, the USPTO does anticipate to release the final rule sometime in FY 2021, although the exact timing is not known at this time.

Next slide, please. I think that concludes the remarks that I had for folks, so I'll (inaudible) if there are any questions.

CHAIRWOMAN ESCOBAR: Thank you so much, Jay. Folks in TPAC have any questions for our OCFO?

MS. NATLAND: Hi, Elisabeth. It's Susan. Actually, I don't have any -- I just want to thank you and your team for putting together such user-friendly materials and making the finances of the Trademark Office easy to (inaudible) and transparent. I really appreciate the time you put into those.

MR. HOFFMAN: That's the nicest compliment I've gotten all week. Thank you very much.

MS. NATLAND: Okay.

MR. HOFFMAN: I'll certainly pass that along to everybody.

MS. NATLAND: Thank you.

CHAIRWOMAN ESCOBAR: And it's well deserved. I second Susan's comments.

MR. HOFFMAN: Thank you.

CHAIRWOMAN ESCOBAR: So, last call before we break. Okay. Well, so we are running almost a half-hour behind, so we are definitely not going to take more than 10 minutes. There'll be a timer counting down on the screen during our 10-minute break. See you soon.

(Recess)

CHAIRWOMAN ESCOBAR: Well, welcome back to the TPAC meeting. We're going to -- we're in the final leg of the meeting and the first person on our agenda is Chief Administrative Judge Gerry Rogers from the TTAB.

Thank you, Gerry.

JUDGE ROGERS: Thank you, Elisabeth. I'll dive right into it. I'm going to try and save time for your questions later on and for Jamie Holcombe to give you the IT update. I will actually give you a little bit of an IT update in relation to some TTAB matters. And I understand I will be getting a question from one of the TPAC members, and I've been researching the answer during the break, so, hopefully, I'll be ready for that on TTAB IT stuff.

Next slide, please. So, I wanted to, before I get into some of our numbers and our performance measures, and, of course, we've had a lot of discussion today about filing levels and revenue levels and things like that, I will mention one thing about the fee package before getting into these numbers that has been discussed earlier. As Commissioner Gooder

pointed out that we're trying to have TTAB recover more of the cost of this operation through the NPRM. So, there certainly were some new TTAB fees and some raised TTAB fees.

I can assure the TPAC and all members of the public who may be listening that those increases in those new fees will not make us a profit-producing operation. We will still need a subsidy from trademarks. It will just be somewhat less of a subsidy.

But we know that many of our stakeholders are common stakeholders in trademarks and TTAB, and that there is a desire among many to have barriers to entry into the TTAB processes of those appeals and opposition be relatively low. You don't need to use them often if you've done your homework and your searching and your due diligence between filing your trademark application. But when you do need to use them, I think stakeholders have often made it clear that there should be some kind of a subsidy for trademarks and we have the fees spread out over our trademark and TTAB operations to keep barriers to entry at the TTAB somewhat low. So,

that's just a little bit more context for the NPRM.

In terms of the filer levels and the performance measures, the first slide is really just to remind us all of what the context was at the end of last fiscal year and what we were facing as we started into Fiscal '20. Over the previous three fiscal years we have seen these dramatic increases that you see on this slide in all of the incoming types of documents and proceedings that are commenced at the Board.

Next slide, please. Okay, and so, this is a slide that will show us what's been happening this year. So, it's a little bit more mixed than the last three years. Certainly, it's mortgage-moderated some. I wouldn't -- we certainly have some decreases, but the decreases are compared to what was a very high filing level of last year, so they're still a pretty substantial level. There's still a lot of activity going on and the drops are not really significant, really physically significant.

The "NA" for Notices of Appeal basically just means that appeals are coming in



at pretty much the same rate as last year. So, there's no real increase, there's no real decrease in terms of the total number of appeals we'll expect to have received this year by the end of the fiscal year.

Opposition and extensions of time to file a Notice of Opposition certainly have gone down. And petitions to cancel, while up, are not up nearly as much as they were increasing in each of the previous three years. We were seeing double-digit increases in petitions to cancel in previous years, so it's now a much more moderated increase in petitions to cancel. So, that's the state of this year's filings.

Next slide, please. I just want to highlight for those who have the slide accessible to them or want to look at them in more detail later on, this will give you a little bit more detail about quarterly comparisons last year to this year. The only thing that I've highlighted on this slide are what is essentially an inverted V for oppositions and extensions of time to oppose. On a quarterly basis in Fiscal '19, things were going up quarter after quarter. And

in Fiscal '20, they're going down quarter after quarter.

So, the overall drops have not been really significant just yet, but we will keep an eye on this and we'll see what the fourth quarter brings and how we start next year and whether this is a trend that's going to continue or whether it will be more of an up-and-down curve. And the numbers for appeals and cancellations kind of are up and down quarter to quarter.

Next slide, please. On the other end of our process, the first few slides are focused on just what's coming into the TTAB at the beginning of all of our potential processes and our cases. At the other end of the process, which is something that we are often focused on, for good reasons, those cases that are going to be decided on the merits by a panel of three judges, which are, of course, a very small percentage of all cases that are filed, but those are the ones that are important to attorneys and their clients and who want to know once that case has been tried or that an appeal has been prosecuted and briefed, how long is it going to take for decisions to get

out? So, this just focused on the workload and the change in the workload for the panels of judges who are deciding cases on the merits.

In Fiscal '19, we saw a very large increase in the number of cases, both appeals and trials, that were maturing to Ready for Decision. A very significant increase that kind of was a big shock because there were decreases in the previous two years. So, that left us playing catch-up most of this year.

And what we've seen is the number of cases maturing to Ready for Decision this year has moderated. So, we had a big increase last year, a 14.5 percent increase over the course of the year in terms of the number of cases maturing to Ready for Decision. But this year it's down almost 11 percent. I don't know if that means that there were fewer people who are carrying their trial cases through to a disposition on the merits. Maybe they're settling those. Maybe economic conditions are influencing behavior in trial cases and possible settlement of those cases. I just don't know. Those of you who are practicing before us would probably have a better

idea about any of those observations would be true.

But significantly, in terms of the percentage of cases, the overall percentage -- over numbers of cases maturing to Ready for Decision, in previous years we had very high percentages of them being trial cases as opposed to appeals from examiner refusals. This year, we're only seeing less than 23 percent of the cases maturing to Ready for Decision are trial cases and more than 75 percent are appeal cases.

So, our inventory at the end of the third quarter was reflective of that, so we had about three appeals waiting to be decided for every one trial case that was waiting to be decided. And that's a good thing for us and it's a good thing for those who are waiting for decisions on the merits because we can process appeal decisions more quickly than we can process trial decisions.

Next slide, please. So, this is for the trial cases the slide that shows you what the measure is for processing of contested motions. Some of our traditional performance measures have

always been how long does it take contested motions to be decided at the Board and how does it take decisions on the merits at the end of the process to be issued, whether in appeals or trials cases? And then, of course, what's end-to-end pendency look like? And we'll get through all of these measures in these next few slides.

So, we have a goal for this year of deciding contested motions within 8 to 12 weeks on average from the time the motions are Ready for Decision. And we were within the goal for all filings made over the course of the year and the end of the third quarter. Again, that's an average, so some motions are going to take longer. Some are going to be done much more quickly 8 weeks; some are going to take longer than 12 weeks. But we are trying to hit an average that puts us within that target range.

And we are, I'm sure, going to be within the target range by the end of the fiscal year because the inventory has come down significantly, in part based on the fact that we hired a number of attorneys last year and a number of attorneys just during this fiscal year. So,

the inventory has been reduced where we can keep up with the contested motions and get them processed more quickly.

Next slide, please. This is a little bit more detail on the contested motions. And you will see that even though we reduced the pendency on contested motions and we're within our target range, we still have had a significant increase in motions, almost 11 percent increase, compared to three-quarters of what we got last year. So, we've got a 10.6 percent increase in the number of motions maturing to Ready for Decision.

And that kind of runs counter to what I observed earlier about trial cases not being prosecuted through to the point where they require a decision on the merits. But, of course, these are different bodies of cases that were filed at different points in time over the course of many years, and so this might be an indicator that we are going to see trial cases that need to be decided on the merits go up at some point in the near future based on the number of cases in which we're seeing contested motions.

So, if that's going up, that's something of an indicator that trial cases are still being actively pursued by at least quite a few parties.

The attorneys, as I said, we brought on new attorneys last year and new attorneys this year, and that's why our production is up. And also, some of the attorneys who were brought on last year and were getting training for a significant portion of that year are now ramping up to full production. So, these are all good signs for processing of motions.

Next slide, please. The final decisions, again, one of the performance measures I mentioned earlier that we focused on. We had targets for this year that we set at the beginning of the year for processing appeals on average within 10 to 12 weeks of the time they're Ready for Decision; and processing trials cases within 12 to 15 weeks, recognizing that trial cases often involve more evidence and larger records that need to be reviewed before we can decide them.

At the end of the third quarter, our cumulative average over the course of all cases decided over the course of the year was 13 weeks

for appeals and 18 weeks for trial. What you don't see on this slide, but what I will add, is that the numbers have been coming down over the course of the year. We were above both of these goals at the end of last fiscal year. You can see 12.7 weeks for appeals and 15.3 weeks for trials. And they continue to go up in both categories during the beginning of this year, the first half of this year, because we were working off that large body of cases that matured to Ready for Decision in Fiscal '19. But we've done -- the judges have done a great job doing that.

And in the third quarter, for example, the average time to disposition of an appeal case that became Ready for Decision was 9.3 weeks. And for a trial case that became Ready for Decision, those that were decided in the third quarter, the average time for disposition was 13.8 weeks. So, again, we hit both of the annual measures, the annual goals, within the third quarter and we're hopeful that these measures will be continue to come down and that these cumulative measures by the end of the year will be within goals or very close to them.



Next slide, please. This is just the inventory. I think we've covered this. We can go on to the next slide because this just shows the change in the makeup, which I discussed on an earlier slide.

This is just a quick look to show those who are not familiar with our Dashboard. These slides that I've been showing you with just kind of charts and performance measures are generally available on our website, but we also have a Dashboard on our website where we have illustrations of a lot of the filing levels and performance measures.

And this is an example of for those appeals that are in inventory, have not yet been decided, what's the average age of them? And the greater the section of the pie that's the light color blue, the younger they are. So, you can see that as we work off inventory, the cases left in inventory become younger and younger and fresher.

The next slide, please, is just a trial pie chart. And so, this shows a little bit of fluctuation is pretty the same, but a few trial cases that have gotten a little bit older in the

third quarter.

Next slide. And focusing on end-to-end performance times, for those who need to counsel clients about how long it might be for you to get into and out of a Board proceeding for appeals, we are running at about 49 weeks from beginning to end of the appeal process, which is a fairly significant increase compared to where we ended on Fiscal '19. But, again, some of these appeals got older as we were working off that very significant backlog of trial cases and inventory that came in during Fiscal '19. So, we expect this stat to go up. It did go up, but we expect that it will come down, as well, as we move forward. And for trial cases that we have to decide on the merits and have gone through the full process, we've actually been able to reduce the overall average time.

ACR trial cases are those trial cases in which the parties have agreed to some use of some form of ACR, some form of accelerated case resolution. The numbers are generally a small subset of all trial cases cited and so, they're not particularly significant. The numbers can

bounce up and down from one year to the other.

But what is pretty clear is that from year to year you will normally get an ACR trial case done in about two-thirds of the time it takes a regular trial case. So, there is efficiencies to be gained and time to be saved for those parties who are willing to discuss and agree to use some form of accelerated case resolution.

Next slide, please. Staffing, I bring this up simply because we've talked about additions of attorneys. We've also added judges. We've promoted two attorneys to judges last year. We added two more judges this year, so actually, we're at 25 judges. But one of them recently left to go become a law professor, so we will have a vacancy announcement issued at some point in the near future. That's in the works, it's being processed now. And we will continue to monitor our filing levels and our performance measures and then make a decision somewhere in the near future about whether we need to fill that position or not.

And as Jay Hoffman pointed out, every business unit has some kind of a hiring cap in

place now based on the revenues that's coming in, and TTAB is no exception. So, we would certainly not add any judges until after the new fiscal year starts, but we want to be in a position to do that if necessary, so that's why we'll issue the vacancy announcement and at least have a list of applicants who will be available to us.

Next slide, please. IT update, we have had an enhancement package that went out recently. And this was in large part because we needed to stabilize our system. We had rewrite some code. We had to move some things, some systems to a new server. But we also had to implement some of the requirements under the U.S. Counsel Rule. And so, this points out that there are certain ways that you can process correspondence updates in our system and how you will be directed to enter your bar membership information if you're a U.S. attorney and you're representing a client before the TTAB.

We also know that there was concern about the possibility of registrants' emails being harvested by scammers. And so, one of the other parts of this enhancement package was to

shield registrants' email addresses during the process when someone is completing a Petition to Cancel form. You will see it in the TTABVue record after the petition for cancellation has been filed. But you will not see it during the process of filing. And so, this way no scammer can go in and complete the form to get the email address, but then exit out without paying the fee to complete the process.

Next slide, please. This slide explains that we have transitioned to the same structure that Trademarks uses. And we have a primary email address and up to 10 secondary email addresses. Having the same structure as Trademarks means we can more easily pull that information from applications and registrations. When emails go out, they go out to the primary and the secondary email addresses at the same time and it's the same email.

The only difference is that the firm address at the USPTO is going to be different. The primary email recipient will receive an email from ESTTA@uspto.gov. The secondary email recipients will receive emails from

ESTTAnoreply@uspto.gov. That's just to manage the number of bounced-back emails and the returned as undeliverable emails. We will focus on the primary email, so this way if we see a primary email that bounces back to us, we can more actively review those when we're only taking bounce-backs from those emails from the primary emails. And then we can be sure that a registrant is going to be provided with notice of cancellation proceedings, for example, that has been filed.

Next slide, please. And this is the last one for TTAB. We will be deploying a week from today a new reading room, which we shared with some of the members of TPAC yesterday; we had a demo of it. It was very well received, I can say, during that meeting. It was the first time I had seen it myself. It's going to be a great replacement for the e-FOIA web page that some of you may have been used to using in the past. Much greater functionality, much easier to search for precedents and non-precedents from the Board by text in the decision or by any number of categories of information that will be listed in

a grid form for, at this point, 15,000 or so TTAB decisions that will be in the database.

Please send feedback and any IT issues that you have to [TTABfeedback@uspto.gov](mailto:TTABfeedback@uspto.gov). We're always thankful to receive your comments on how we can improve our system.

That's it. Haven't left as much time as I had hoped for Jamie, but I'm finished if we don't need to take any questions.

CHAIRWOMAN ESCOBAR: Thank you so much, Chief Judge Rogers. I think we have at least one question maybe from Chris. Is that right?

MR. KELLY: Yes, Elisabeth, thank you. And I know we're running late, so I'll be brief.

Judge Rogers, by the way, thank you for that presentation. And just to tell everybody, a shout-out for the reading room. I got to see it yesterday and it is outstanding. It's going to be a great tool for practitioners and others.

I do have a quick question and I guess it's along the lines of an IT question. As you probably know, when you file a trademark or you're preparing application, a legal assistant can

forward it through an attorney for review and signature, and then the attorney can send it back to a paralegal for filing. And I don't believe, unless I've missed it, that you can do that on the TTAB side with TTAB forms. Is that something that you anticipate having available at some point in the future?

JUDGE ROGERS: I will say, based on the research I did during the break, we have something similar on the TTAB side. It doesn't work exactly the same, but we might be able to accomplish the same result by using this particular mechanism.

Someone can go into ESTTA and complete or partially complete a form, so for, let's say, a Notice of Opposition, and then save the session. And when they save the session they will be prompted to enter email addresses for the recipients to receive a link to that same session, so they can go back in later on to continue with it. That link, you can specify multiple people who would receive that link.

So, a paralegal could start the form and then save possession, and say that I want the link



sent to myself and to an attorney here at the firm. And then either one of you could go into that same session, resume it, and continue including, by adding an attachment or adding a signature.

It doesn't -- I mean, technically, it might also allow you to have the paralegal do the filing if the attorney goes in second and does another "Save Session," and then the paralegal goes back in to do the final filing. So, you would have to go in twice to ESTTA and save the session twice, and the third time that you went in, then that could be the filing.

The caveat for using that mechanism is when the second person goes in, you want to be cautious and you want to make sure that the system is communicating with you. Because if you're saying you want to save -- as the second person you want to save your session, it will ask you, do you want -- this has already been saved once before, do you want to save it again? Do you want to save the new session? You don't want the system confused about saving multiple sessions. So, if you wait, the system will allow you to just exit out of the session that was originally

created and saved and with the second person access. And then, again, you can go in a third time to sign it or to file it, whatever you need to do.

That said, we are working on and we have received comments about having something that's more akin to what you're experienced with in Trademarks. And we will be working on that. Right now, our focus is on stabilizing TTAB IT systems, but part of the planning for next-generation systems involves coordination with Trademarks. Of course, when IT project funding goes down, maybe the next-generation systems don't get worked on as quickly as we would like. But the TTAB Center within next-generation systems that would be shared between Trademarks and TTAB would likely include the kind of functionality that you're talking about.

MR. KELLY: Great, thank you. Thank you very much. And then just a very quick follow-up.

Assuming someone's not adept enough to navigate what you've just described, if they

review and electronically sign a form that's pasted into an email, is that sufficient? Will that comply with rules?

JUDGE ROGERS: Well, certainly, if you take an email, add an electronic signature to it, and then make a PDF of that email, you can attach the PDF to the ESTTA form just like you could attach any other document. So, yes, we would accept something that was embedded in an email if you then took that and rendered it as a PDF and included it as an attachment to the ESTTA form.

MR. KELLY: Very good. Thank you so much, Judge Rogers.

JUDGE ROGERS: Thank you.

CHAIRWOMAN ESCOBAR: Any other questions?

MS. BALD: Hi, Judge Rogers. This is Stephanie. I'm hoping this can be quick.

On the new email system, I do understand why it is set up the way it is from the TTAB's end. But from a practitioner endpoint, it's really changed what we're seeing because we're now receiving two emails to the firm instead of one. And the primary email that comes, say I was the

primary email address, I don't have visibility when I receive that email that the secondary email people also received the email.

So, what I'm saying is it would come directly to me as Stephanie, the attorney, but I wouldn't see on my email that docketing was copied, that the paralegal was copied, that the (inaudible) was copied in terms of the secondary email. And the same would be true for them. They're going to receive the email and they're not going to see that it came to me.

So, what's happening, and other practitioners may be experiencing this, too, is we're all forwarding these emails to each other, so we're not only getting now two emails instead of one from the TTAB for every extension of time that's granted or anything else, which is a lot of emails in a day for a big firm. So, we're all sending it to each other. And I know we have the benefit of an IT person on this call and I was just wondering whether there is any way to appease the TTAB's objectives in terms of bounce-back, I understand why that's being done, but to consolidate those, so that only one email is being

received with everyone on the email, so there isn't this kind of logistical nightmare on the other end?

JUDGE ROGERS: I don't know how quickly that could be done. I think it was particularly important for us to get in sync with the Trademark structure of a primary and a CC, set of CC email addresses. Because one of the greatest problems that we've had with IT systems for many years at TTAB is that we developed our system independent of the electronic filing system developed in Trademarks. And ever since, for 15 to 20 years ever since, we have been trying to make them work well together and talk to each other well.

So, this change to mirror the structure that Trademarks is using and to allow us to more effectively review undeliverable email addresses, it's just impossible to do if we're getting undeliverable email addresses from multiple people in a firm because attorneys move so often or they're taken off the case or there are changes in representation or firms merge and we get new email addresses. It becomes pretty much impossible to monitor all of the

bounced-back email addresses or the undeliverables.

So, we really do have to focus on sending an email address that we know we can monitor if it comes back to a limited number of people. Whether we can expand it from the primary to, say, the docket email, but not all the associates or the primary -- the paralegals are the primary or something like that, we can certainly look into it and there may be options for us. We will need to engage in regular stabilization efforts for our IT systems moving forward because it will be a while before we have a next-generation system.

And so, you're not the first one who has raised this question. And I've been researching this subject this week once I became aware of it. And we will certainly look into it and see what we can do in the future.

MS. BALD: Great. Thank you so much. And just one other aspirational comment. In terms of --

JUDGE ROGERS: I have to say, and I'm sorry to interrupt, but for you and for Chris

Kelly, please all of you, send your comments to TTABfeedback@uspto.gov, so that we will have these all collected in one place. It's really important for us to get the feedback.

MS. BALD: I'll do that. And then I think this comment I think is going to go to our next speaker and I think it is kind of aspirational. I know that I've talked many times with Judge Rogers about the limitations of TTAB IT systems. But surely, with the new requirement to add the attorney bar information, you know, like the Federal Court system, if you were using PACER, your login is tied to that information. So, there's a way that it's kind of going to auto-populate or it's going to be remembered once you're using your login.

And I know we have different phases of upgrading the security of the trademark filing systems and the TTAB filing systems in terms of logins and dual authentication and so on and so forth. And I think my comment on the IT side would be is there a way to let the system remember some of that information that's always going to be tied to me. Anytime I file something, it's

going to be my same D.C. Bar information, it's going to be my same admission date to the D.C. Bar. And if we're filing, you know, 10 to 15 extensions of time (inaudible) the day and my name, that would be auto-populated. So, again, I know all of this can't be done right away. It's more of a comment in terms of how to sustain, from a customer's standpoint, what we have to do and how much time it takes to file a simple form.

JUDGE ROGERS: And I've just gotten a pop-up from my crack analytic and IT staff that says, "We are considering that for the TTAB Center," and, hopefully, you'll be able to make one change across the board of all of your existing filings; that, yes, the system would recognize you when you came in and would show you everything that you're involved in. And if you needed to make change or an update, you would be able to do it for everything.

MS. BALD: That's great, thank you.

JUDGE ROGERS: So, we're focused on it.

MS. BALD: Thank you.

CHAIRWOMAN ESCOBAR: Okay, somebody's got some noise going on. Could we ask whoever is



thrashing about to mute? Thank you.

Any other questions for Chief Judge Rogers before we move on to our last, but definitely not least, speaker?

MS. NATLAND: Elisabeth, I have a quick question. Susan Natland.

Judge Rogers, thank you so much for that great presentation. This is really quick and it's not IT (inaudible). You mentioned that the pendency of contested motions is targeted at 8 to 12 weeks. And I'm just curious if there's a different target for contested motions to extend time -- or extend deadlines.

JUDGE ROGERS: There is not. The reason why the range for contested motions is 8 to 12 weeks when those of you who have been practicing before and for years know that we had a much narrower range, 8 to 9, 8 to 10 weeks before. The previous measures, the previous goals, were not reflective of the wide variety of motions that we get. And so, we get large record summary judgment motions, really large record discovery-related motions, and we also get contested motion to extend. And I really just

focused on contested motions to extend because that's what we're measuring, not uncontested or consented.

Are you also focused on contested? I'm sorry, you were muted.

MS. NATLAND: Yeah, exactly, Judge Rogers, especially from the defendant side because, obviously, the defendant is opposing that in a contested motion. And, you know, three months or even two months to decide kind of defeats, you know, the purpose a little bit.

JUDGE ROGERS: Yeah, we understand. You know, please, if you think of a contested motion that should have been decided more quickly -- and I would think that normally a contested motion to extend is going to get decided pretty quickly. And it may be because of a situation, an attorney was on leave. We have an attorney on maternity leave at this point in time, for example, and some other attorneys have been out from time to time.

If something falls through the crack, please, you know, let us know. Contact the paralegal who's assigned to the case or feel free

to contact Ken Solomon, who's the managing interlocutory attorney, so that we can move work around and make sure that it gets done. If something takes too long, we want to know about it.

MS. NATLAND: Okay, thank you.

CHAIRWOMAN ESCOBAR: Great. Thank you so much, Chief Judge Rogers. We really appreciate your time and your availability to answer all these questions.

We are going to move along to our final speaker. First, I just wanted to mention that if you hear snoring, it's not me. It's the dog in the background. It's no comment on the presentation.

And with that, I'm going to pass the baton to Jamie Holcombe, our chief information officer. Thank you so much, Jamie.

MR. HOLCOMBE: Thank you for having me today. Usually I have on a suit and tie, but, as you can see if you're looking in the video, I have an Aloha shirt on. So, why? I meant to say aloha. Hopefully, that wakes everybody up.

All right. Once we got that done, my

next intent is to make sure everyone goes out and gets some sunshine. We have been isolated way too much on the inside. We've got to get out and we've got to exercise.

I know that Judge Rogers gets out there and rides his bike all the time. So, what I wanted to do was say everybody needs to get out and get some sunshine in order to remain healthy.

Now, with that, I'm going to go to some slides and I'm going to turn it over to Eunice Wang in a second. But I'm happy to tell you that even though I might have an Aloha shirt on, it's in celebration of the great progress that we've made in IT.

Judge Rogers mentioned some of the things about stabilization, specifically with TTAB. Well, I'm here to say we believe in something that's more significant from an agency point of view. We actually were able to operate out of our backup facility in Boyers, Pennsylvania, over the July 4th holiday. That means not just storage and backup files, but we actually created different applications and we verified that the machines were talking back and

forth over the Internet from Boyers.

Now, that's a great thing because in the future we're going to have resilient operations around the nation. My intent is to have a hot site west on the Mississippi and a hot site on the east of the Mississippi, so that each can fulfill and have a lower-balanced operational resiliency. If one goes down, the other one picks up, and nobody knows the difference. We're going to maintain our Alexandria data center for development and testing, but we're going to have those two hot sites out there in the Cloud, so we take advantage of all the new technology.

And I'd also like to talk about the whole COVID-19 and the fact that work will never be the same. As mentioned before in our telework, we are currently at about 14,000 simultaneous VPN connections every day. We have on average 1,200 Webex meetings every day with anywhere between 13 and 42 people on each of those Webexes. We are doing a lot of work in the remote area and virtual conferencing.

We intend to keep that pace in the future. But the future will be different and we

are ready to adapt it to that. So, there's a great thing about the stabilizing events that have taken place in our past because we now have the opportunity then to leapfrog. And that's what I'd like to do, I'd like to leapfrog into the future. And we're going to talk about some of those in a minute with Eunice's presentation.

So, if Eunice is ready to go, you got the ball.

MS. WANG: Thanks. Thank you very much. Thanks, Jamie. And I guess I'm the last presenter before, hopefully, you can get out and get some sunshine this afternoon and the weekend.

But, again, we want to thank the TPAC community and Trademark and TTAB for the opportunity to present our OCIO update today. I am Eunice Wang and I am the trademark codifying (phonetic) manager. And so, I'll be giving some updates on what we've been up to since our last TPAC meeting.

If we can go to the next slide, you'll see do we really value our customers in the user community? And so in this task order we've made a concerted effort to engage our stakeholders in

order to improve the experience of our customers.

The first thing that we did was that we modified TEAS to support the COVID-19 Prioritized Examination Program, which was spoken about and talked about earlier by Deputy Commissioner Sharon.

We also -- there may be changes to allow TEAS to allow trademark applications. We need (inaudible) for the examinations be pertaining to the (inaudible) of COVID-19.

Another thing that we did was that we optimized TESS. In the fall of 2019, we had notice of an increase in data mining, which negatively impacted the performance for end users. So, in this past quarter we implemented a technical solution to stop users to exceed a specific bandwidth. Since then, we've been able to achieve a stable environment and have not had any reported performance issues since then.

The third bullet, we had a TEAS enhancement released just a few weeks ago (inaudible). And included in this release was that we retired (inaudible) that were replaced by the (inaudible), Office action (inaudible). We

also included changes to all TEAS and TEASi forms for the addition of a clarifying note reminding customers that the forms must be pushed through and signed by the individuals listed and the signatories (inaudible).

We also did beta testing for the updated post registration response for Office action forms. And here we did the data testing and we allowed for feedback and comments to be incorporated, and so that we can incorporate that into a later release.

And here, in the last quarter, we also had two TSDRs and ATI chain sessions (phonetic) in this past spring. And clearly, it (inaudible) and (inaudible) and we're still looking into areas where we can increase the rate of a PDF and zip file downloads without impacting the overall performance.

Something that we're all trying to do is that we're always trying to improve the technology that we have at the USPTO to support Trademarks and PTO needs. So, we implemented the new 90 series records. We've been monitoring the usage of the 88 (inaudible), but before that ran



out we implemented the series. We also continued our artificial intelligence work for potential incorporation into (inaudible) solutions, so we've been looking at various AI and machine learning capabilities for the application into areas of image search and IP (phonetic) classification and court goods and services.

And lastly, we resolved critical and high security findings by completing operating system packing. So, we did a significant amount of packing to our TEAS and TESS systems, and that closed out a lot of the high level security findings.

All right. On the next slide in our road ahead, (inaudible) scheduled maintenance activities coming up. So, on August 22nd to 23rd, we have system (inaudible) that will be impacting numerous systems. They'll be -- the systems, there will be systems available at various times. So, as we get closer to the date, we will provide additional information either (inaudible) or other needed communication to ensure that people are prepared and know when their system availability (inaudible).

Also, (inaudible) in August, we will be releasing the TSDR ATI (phonetic). And here, with the TSDR, your (inaudible) will still be the same, but you just will need to have a (inaudible) PTO and register it in order to obtain a fee before there's an (inaudible) ATI.

And lastly, in sort of a continual improvement, we're continuing our efforts to reduce (inaudible) filings by developing proof of contract for the log-in (inaudible). So, the goal of this initiative is to (inaudible), which will provide the ability to verify a person's identity.

And the last thing, we'll continue with the Trademark infrastructure modernization and stabilization as directed by the (inaudible) priority. But, of course, this is subject to the financial resources.

So, with that, that was a quick update given that we are over time, but I'd like to open it up for questions.

CHAIRWOMAN ESCOBAR: Calling on TPAC, do you have any questions for Eunice and Jamie?

Okay. Well, thank you both. We very

much appreciate your taking the time to share this information with us and we're looking forward to the great things that you will be doing in the weeks and months ahead, including (inaudible). All right. Thank both of you. So, that brings us to the end of the prepared presentations. Commissioner Gooder has a few concluding comments before we address questions from the audience.

Dave, are you ready to go?

MR. GOODER: Yes, sure am. Am I back?  
Can you hear me okay?

CHAIRWOMAN ESCOBAR: We can hear you.

MR. GOODER: Good, okay. I want to thank all the speakers and everybody for working through this with all of us. We've heard a lot, so I'm going to keep this brief. I'd like to say a big thank you to the team who was putting this together: Anastasia Johnson (phonetic); Christine (phonetic) Cooper; and Tom Melcheck (phonetic), who is one of the group directors, who is the one who creates these outstanding slides with the metrics and our filings, et cetera. His analysis has really helped us kind of see things in a much more clear way.

The other person I'd like to mention just briefly who you didn't hear from today, but is always working in the background is Trademark's sort of head financial person, Karen Strohecker, who is retiring at the end of July and has been with the agency for well over three decades, I believe, and been working in all parts of it. We rely on her immensely and we'll miss her greatly and wish her well.

Elisabeth, I want to thank you for your leadership and guiding hand in this. I want to thank the TPAC members for all the time you put in, your dedication, your commitment in truth, et cetera, as we work through lots of really important issues.

And I want to -- I'll turn it back over to you, as I said, the time, to Elisabeth, so we can get to the questions if there are any.

CHAIRWOMAN ESCOBAR: Okay. We did get some questions. They came in really two flavors. I think we addressed most of the questions concerning the extraordinary times that we're in and the efforts of the Trademark Office to respond to the pandemic in a responsible way.

The other set of questions that we got from quite a few people revolve around the letter of protest, the fee that is proposed to be charged, and the letter of protest process. And underlying all of that, a concern about how the Office examines applications for -- oh, sorry about that -- for words that have a common meaning.

To address the letter of protest question first, so the proposed fees have a \$50 line item for letters of protest in recognition of the fact that the Office is a fee-funded organization and letters of protest take time to process properly. Letters of protest are quite valuable. They help the Office make sure it's doing its job properly and we appreciate them, but nothing in life is free. And, frankly, 50 bucks is, I think, a pretty good deal. The original proposal, the initial fee proposal before the NPRM that just came out, had proposed a \$200 fee for paper letters of protest and a \$100 fee for electronic letters of protest. So, the Office certainly heard concerns at that time and came out with an NPRM with a \$50 fee for all letters of

protest.

That being said, here were a couple of people who suggested that the Office should give some consideration to the possibility of refunding the letter of protest fee in the event that the Office found -- or sustained the letter and found that the examiner may have overlooked something. And I would like to -- I know that refunds are a pain and, frankly, manual, therefore, costly. But I'd like to encourage the Office to give some consideration to that, the possibility, but refunds in cases where the protestor is, in fact, helping the Office correct something that it overlooked.

The last theme that has come up in these questions -- oh, and there was also a suggestion that people who filed letters of protest should be able to speak directly with the trademark examiner, just like the applicant. I don't think that that's going to happen. They are not in the same situation as the applicant and their channel of communication is through the letter of protest and not directly with the applicant.

It seems to me that if, in fact, they

continue to disagree with the Office after it has duly considered the letter of protest, they always have the option of filing a Notice of Opposition. And at that point, they'll be in direct communication with the Office.

But the other category of issues that these folks commented on and asked questions about is the fact that it is possible to get a trademark registration for a term that has a common meaning. And there's a lot of consternation out there amongst the public and amongst stakeholders about that fact.

I need to point out that the Trademark Office has to follow the law. And it is, in fact, true that it is possible to have trademark rights in words that have commonly understood meanings in other contexts. Apple, you know, is a generic term for fruit, but a very powerful trademark for computer software and hardware and for a lot of electronic devices. Dial is a commonly understood term for things on clocks and other machines, but when applied to soap it is distinctive.

And there's a limit to -- well, let me

put it this way, the Office will properly refuse a trademark application if the term is descriptive of the goods or services identified or deceptively misdescriptive or geographically descriptive. There's a whole slew of rules around when a mark may or may not be a proof of registration. But if the application meets the standards of the statute, the Office is obliged to approve it.

And if the problem is the statutory rules about what can and can't be registered as a trademark, it seems to me that this should be taken up with Congress, not with the Trademark Office that is carrying out the statutory mandate.

That being said, I'd like to ask Dave if he or his team have any further comments on that batch of questions that we got.

MR. GOODER: I think we've covered it. I'll ask Sharon, who understands the letter of protest process better than I do, especially in the issue of whether someone gets to speak with the examiner who's not the applicant. As I understand it, it's an ex parte (inaudible)



process, so it's not -- that's not the place where that conversation would occur.

Sharon, do you want to comment on that?

MS. MARSH: Well, yeah. I mean, you and Elisabeth are both correct that when the registration was set up by Congress, the idea that the application review is just what is called an ex parte proceeding where it's between the applicant and the Office. And if the Office decides that something appears to be registrable, we approve it and then it's subject for opposition. And that's why -- where the public at that point can step in and object.

Looking at some of the other questions they're about why do we need a pre-review of these letters of protest by our Petitions Office? And that office serves a really valuable function because a couple things.

We try to make our system as streamlined and efficient as possible. And that way it weeds out things that the examiner doesn't need to see and, in some cases, should not see because, again, it's not a place where there can be advocacy for the position by a protestor. So, the system

is -- you know, works pretty well for what it's intended to do.

And I know there's frustration out there about the fee, but I would urge anyone that's listening who objects to the fee, the Notice of Proposed Rulemaking is still pending and you should submit your comments in response to that notice.

CHAIRWOMAN ESCOBAR: Good point.

MR. GOODER: Yeah. Another thing I'd mention is I'm pretty sure in the Trademark -- on the website there is a video or something written that talks about this what is protectable and what isn't. And I'd urge people who have questions about, you know, what is descriptive and is that generic or protectable, or et cetera, to find that. We can find the link to that, but I'm pretty sure it exists.

CHAIRWOMAN ESCOBAR: Okay, thank you. I just want to give a last call to the other members of TPAC to see if anyone has any last comments or questions before we wrap up.

All right. That's it then. We're a half-hour over. Thank you so much, everyone, for

your time. To our USPTO leadership, we are very grateful for your participation and the valuable information that you shared with us. And we look forward to seeing you at the next public meeting, which is scheduled to be Friday, October 30th.

Have a good weekend, everyone.

Bye-bye.

(Whereupon, at 3:02 p.m., the  
PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

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**Attorney, District of Columbia BAR #41135**

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