

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, May 5, 2017

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P R O C E E D I N G S

(9:01 a.m.)

INTRODUCTION AND WELCOME

CHAIRPERSON WELDON-WILSON: I want to respect everyone's time. I am so glad all of you are here. This is wonderful. We're looking forward to a great meeting today. I think we are all a little bit soggy from the weather, we probably look a little soggy from the weather, but that's okay.

I'd like to welcome everybody, both on the Web and in the room, and of course, all of the people at the table as well, and do some quick introductions for our second meeting of 2017.

I'm Dee Ann Weldon-Wilson, and I'm Chair of the Trademark Public Advisory Committee. Our Vice Chair is Bill Barber. He is here on his second term on TPAC. He's a founding member of the law firm of Pirkey Barber, and they specialize in trademark law, and he focuses primarily on litigation and policing. He is also a past President of AIPLA.

Jody Drake is also in a second term, a partner at Sughrue Mion, and she is concentrating her practice on U.S. And international trademark law, does just about everything, I believe, counseling, clearance, and branding.

She has served as Chair of the Trademark Relations Committee for AIPLA, has chaired INTA and the District of Columbia Bar Association trademark committees.

Interestingly, for this purpose, she is a former USPTO trademark examining attorney and a former USPTO senior attorney.

Lisa Dunner is founder and managing partner of the firm, Dunner Law, and she counsels her clients in trademark, copyright, and unfair competition law. She is the immediate past Chair of the ABA Section on Intellectual Property Law, and is very involved in several IP organizations as well.

Jonathan Hudis is in his first term, as is Lisa. Jonathan is a partner at Quarles & Brady. He prosecutes and litigates matters before the courts and also does TTAB work,

which is very relevant to his work here.

He serves as a domain name panelist with WIPO, and is a dispute resolution panelist for the National Arbitration Forum. He has been very active in several organizations, including service on the Board of Directors for AIPLA, and he was Chair of ABA's IP Law Section, Continuing Legal Education Board.

Timothy Lockhart is in his second non-consecutive term. He's a member of Wilcox Savage where he is a lead of the Intellectual Property Group.

He's a Board member of the IP Section of the Virginia State Bar, and is a former Commander of the Navy Reserve Intelligence Area Fifteen, Mid-Atlantic, and a retired Captain, U.S. Naval Reserves. We want to get more stories of his service days from him. We'll work on that.

Mei-lan Stark is in her first term. She's Senior Vice President and Chief Counsel of IP for NBC Universal. Prior to this, she was at Fox and Walt Disney, and Kilpatrick

Townsend & Stockton.

She served as President of INTA, and in addition to her INTA service, she works on many different things, including she serves on the Board of the Western Anti-Counterfeiting Coalition. I believe you play the cello. Is that correct? Evidently, quite well.

Ilene Tannen is in her first term. It's your second meeting, I believe. She is Of Counsel at Jones Day. She was previously a partner at Jones Day and at Pennie & Edmonds.

Her practice focuses on trademark, copyright, and unfair competition law. Amongst her other many accomplishments, she is a member of the TM5 Subcommittee of the INTA Trademark Office Practices Committee.

Brian Winterfeldt. I think you are also here in your first term, second meeting. Brian is a partner and co-head of the Global Brand Management & Internet Practice at Mayer Brown.

He does many things in trademark, counsels clients on branding, handles portfolios, but he also works on Internet

issues, which includes ICANN's gTLD program, and he does, I believe, attend most if not all of the ICANN meetings, which means he is very well traveled.

We are also pleased to have our Union reps here today, Howard Friedman, who is representing NTEU 245. Tamara Kyle, who is representing POPA. I don't believe Harold Ross was able to join us today.

Thank you very much for coming. With that, I say let's start the substantive part of our meeting. Frank, will you be giving the -- we are starting with the legislative update. I'm sorry. Dana Colarulli is going to be giving us the legislative update. Obviously, fading eyesight must be a problem for me, Dana.

MR. COLARULLI: I'm just happy to have the support of Frank Murphy here to cheer me on.

CHAIRPERSON WELDON-WILSON: I was just thinking, I might have to switch things around today. Thank you.

LEGISLATIVE UPDATE

MR. COLARULLI: Absolutely. Good morning, everyone. Happy rainy Friday. I have a short update for you today. I'll go through some of the legislation that we have been watching that may be of interest to you, some of the activities as well that we're watching.

It's budget season on Capitol Hill, for the last few weeks. We have been focused on budget issues and ensuring the Federal Government stays open, and it did. As of yesterday, the Senate passed and the President has on its desk a bill to continue to fund the Government through the rest of the year.

We are looking to go up to the Hill and introduce and discuss our fiscal year 2018 budget. Frank is going to talk to you a little bit more about that later today.

I'll give you a short update of what's happening on the Hill. We're continuing to see Congress discuss a lot of issues, IP issues tend right now to be taking a little bit of a backseat. We have seen some copyright activity. I'll talk about that.

I'll start with a purely trademarks bill that has been reintroduced over a number of Congresses. It is one of a series of measures that we see introduced addressing the issue of trademarks and Cuba. This bill was reintroduced by Senators Nelson and Rubio.

We have also seen a couple of riders in the appropriations context. That would all go towards prohibiting trademarks to certainly the Cuban government related confiscated goods. A couple of different flavors of that. This is one that has not moved forward, but we are watching and will continue to watch.

I haven't seen anything in the fiscal year 2017 process that has a rider on trademark issues, which we are happy to not see. We will continue to watch it in the fiscal year 2018 process.

I mentioned there had been some copyright activity. A lot of discussion both on the policy issues over the last couple of years. The House Judiciary Committee has held about a two-year process reviewing the copyright statute. The focus more recently

has been on structure. Does the Office have the resources it needs, does it have the right structure it needs?

It's by a unique historical consequence it sits in the Legislative Branch, and the effort here is a very narrow one, attempting from Congress' perspective to get a little more transparency, a little more accountability of the Copyright Office to the Congress.

The mechanism to do that Congress chose is to make the Registrar a political appointee. Previously, they were appointed by the Librarian of Congress. Congress would suggest a slate of candidates, present that to the President, from which the President must choose. That person would still report through the Library of Congress, but the President would have some say, and I think Congress would have the ability to confirm that candidate.

That's about it for this bill. There is some language there as well that says the term would be limited for 10 years, that

the candidate must be able to choose someone who could run their IT system, which has been one of the critical issues for the Copyright Office.

The House introduced this bill in March. The Judiciary Committee passed it. The full House passed the bill in April. The Senate promptly earlier this week introduced an identical bill.

An interesting element on the Copyright Office, because it sits in the Legislative Branch, policy issues, and this is true in both the House and the Senate, go to the Judiciary Committee, but operational issues go to another entity in the House, the House Administration Committee, and in the Senate, it is the Senate Rules Committee.

When you introduce a bill that clearly focuses on structure issues, the bill doesn't get referred over to the committee that we work with a lot, it gets referred over to the Senate Rules Committee. Unclear how fast it will move in the Senate.

I think from talking to staff up

there, the Senate Rules Committee has a little different view of the best changes to help the Copyright Office. I'm sure they will discuss that with Judiciary.

It's something that we are watching, and it's probably the most active IP issue that is happening on the Hill right now.

A little bit more activity. We have seen one hearing. The Senate Judiciary Committee somewhat coordinated with WIPO World IP Day, which I'll talk a little bit more about, held a hearing on April 25.

Matthew Allen from the IPR Center and corporate witnesses really focused on enforcement issues, certainly focused on the importance of IP and different types of IP, but focused much more on the enforcement issues.

The theme of WIPO World IP Day this year was "Innovation - Improving Lives." That was a similar theme here at the hearing on the 25th.

Of note, the same day Senator Grassley introduced a bill that would enhance

USPTO's Patents for Humanity Program. Two of the witnesses were actually former award winners. We also featured one in the World IP Day event that I will talk about here in a second.

That bill would allow the winner of the Patents for Humanity Award to receive a voucher to accelerate examination at the PTO, allows them to transfer that voucher as a way to create additional funds, to fund their humanitarian efforts.

Innovative, something we have talked about here at the Office, something that Congress is interested in. We will see if that legislation moves forward as well.

One pending executive appointment that's relevant to PTO, that is the IPEC, Office of the IP Enforcement Coordinator. This will be the third official IPEC since that position was created. Vishal Amin, a long-time House Judiciary Committee staffer, who certainly supported the AIA and every IP issue, I think, since I've been sitting in this seat, nominated.

The Senate Judiciary Committee will take up that nomination once they have submitted all the disclosures, have a hearing. I think the likelihood is he would be appointed in that position. So, some time probably over the next few months.

I mentioned the World IP Day, April 26, in the Senate Hart Office Building. We held an event. The Congressional Trademark Caucus came and helped us support this event. We had about four members of Congress. Senator Coons joined us as well. Focused on the theme "Innovation - Improving Lives."

We had two wonderful companies there. One, Nike, and the other a company called Grit. Nike talked about both their patents and designs, and their trademarks, and how that has helped build the company, particularly around their Fly Ease shoe, a shoe that was developed to assist physically disabled athletes in particular, but it has a very cool design, and has been used by many who aren't competing in athletes. We were able to have the designer there and really

talk about the design and how the IP affected the development of that product.

Go-Grit. That was our other Patents for Humanity winner. They developed an all-terrain wheelchair that can go up hills, using levers that were created out of bicycle parts. They were able to develop a low-cost wheelchair that could go off road.

One of the founding partners, Mario Bellini, who came and spoke to us, made a point of saying they haven't trademarked the name of their company, but they have trademarked the phrase that they think is more important, and it is "They Move Beyond the Pavement." Trademarks is important for that company, as well as the patents they received.

They were an award winner. They received a voucher, and then they accelerated a second patent that has helped to build the company. A very small company, but really great story, and they were there as well.

Of course, we had representatives from WIPO. In addition to the Congressional Trademark Caucus, INTA, AIPLA, and the U.S.

Chamber all helped to support and pull together this event.

We had an event here at the PTO as well, record attendance for trademark and patent examiners, in the morning, and on the Hill, I think probably record attendance for a lot of the stakeholder community and a number of Congressional staff we have been reaching out to.

I'll stop there. I have a couple more slides that you have all seen before, they are generally resource slides. Leadership of our Judiciary Committee stayed about the same, and our core missions, they continue. We keep driving towards them.

I'm glad that Mary and I both in our individual capacities were able to celebrate World IP Day. Other than that, that's what is going on up on the Hill.

CHAIRPERSON WELDON-WILSON: It sounds like World IP Day was a great success and very interesting, so thank you for telling us about that, as well as the other developments.

MR. COLARULLI: Absolutely.

CHAIRPERSON WELDON-WILSON: Do any of the TPAC members have questions for Dana at this point? (No response) Thank you so much for coming, we appreciate it.

MR. COLARULLI: Absolutely. Happy Friday.

CHAIRPERSON WELDON-WILSON: I'm glad that despite the fact that I couldn't see you, you were here. (Laughter)

MR. COLARULLI: I'll wear brighter clothes next time.

CHAIRPERSON WELDON-WILSON: That's good. Thank you, appreciate it.

Let's move on to our next topic. Is Shira here today, Amy?

MS. COTTON: She's in Geneva.

CHAIRPERSON WELDON-WILSON: Well, she's not going to be able to make it back from Geneva for our very short meeting. We are very fortunate to have Amy Cotton with us today to talk with us about the policy and international update. Are you going to take us to a different part of the world today?

POLICY AND INTERNATIONAL UPDATE

MS. COTTON: Absolutely. Last time, it was Latin America. This time, it is South Asia. As I told you last time, OPIA's trademark, patent, copyright, and enforcement attorneys are assigned to each region, often times assisted by an attaché posted within that region.

My colleagues, Nancy Omelko and Attiya Malik cover the South Asia portfolio, which includes India, Pakistan, Sri Lanka, Nepal, Bangladesh, Bhutan, and the Maldives.

Although we do have funding for an IP attaché in New Delhi, the position has been vacant for two years due to unforeseen delays, including a security breach of a government website.

We do have two local Indian attorneys, Komal Kallha and Shilpi Ja. They are working on IP and trade issues at the U.S. Embassy in New Delhi under the guidance of the co-leads here at the USPTO, Minna Moezie for Patents, and Nancy Omelko for Trademarks. Komal covers India, and Shilpi is responsible

for the other six countries.

Today, I'm going to start in India. We are trying to reestablish our relationship with India's IP Office. Our Memorandum of Understanding, that is our sort of framework agreement for cooperation -- our MOU with the Indian IP Office expired a number of years ago, and they are reluctant to engage with us without a new MOU being concluded. Certainly, we are working to get the draft MOU through the approval process.

Without an MOU, in September of 2016, we held a training program here for the South Asia region. All countries in the region were represented, except the largest and most important trading partner, India, because of a lack of an MOU. The MOU is important.

We are, however, able to travel to India to engage in interactive exchanges of best practices. We don't call them "training." India prefers we don't call it "training." They have asked us to prepare slides that incorporate case studies so that

they can discuss them with us.

Nancy and Attiya will be traveling to Mumbai and Delhi in July for these discussions. The Indians are particularly interested in understanding how the U.S. uses the trademark system to implement its mandate to protect geographical indications.

In the past, the team has traveled to the Indian IP Offices in Delhi and Mumbai to discuss the Madrid Protocol, opposition proceedings, and geographical indications. They have certainly taken many of our suggestions on board, which is wonderful.

As you know, the Indian Trademark Registry has five branch offices, with the head office in Mumbai. They are responsible for handling the Madrid Protocol applications. Delhi houses the central server for its automated system.

The IP Office is working to become paperless, except for oppositions and rectification proceedings.

This will sound familiar, to encourage online filing of applications, a fee

reduction of 10 percent is offered to prospective applicants. The recent increase in fees is substantially lower for individuals, startups, and small enterprises, whereas for the rest of the general applicants, the fees have been raised substantially.

They are in the process of hiring 58 examiners and nine assistant registrars.

The Office has proposed a new rule to expedite application processing. Expedited applications will be examined within three months. Hearings, publications, and opposition proceedings will also be handled expeditiously.

In reaction to the extensive backlog in opposition proceedings, in October 2015, INTA's India IP Office Subcommittee on Trademark Office Practices provided suggestions in an attempt to help reduce the backlog and provide other efficiencies.

However, after an outcry from attorneys and applicants last year, the Delhi High Court reversed the decision of the Office

to abandon tens of thousands of applications that had gone missing.

During the fiscal year ending in 2016, the Office saw a 34 percent increase in trademark application filings.

The amended rules, notified on March 6, 2017 to the WTO cut the number of trademark application forms from 74 to 8, and scrapped several redundant and obsolete provisions. The new rules also provide for an official list of well-known trademarks.

The Office of the U.S. Trade Representative is engaging with the Indian government and tapping into the subject matter expertise of OPIA to discuss ways to improve IP rights acquisition and enforcement.

Moving on to Pakistan, USTR is very interested in working with Pakistan and is asking OPIA to provide technical assistance in the trademark and geographical indications areas. Officials from Pakistan attended both the regional GI seminar in India and the IP management program at the USPTO.

Our sister agency within the

Commerce Department, the Commercial Law Development Program, CLDP, provides training money for certain countries, including for Pakistan, and we work with them on those programs.

The trademark team has not traveled to Pakistan recently, although our enforcement team was just there in the last couple of weeks, but there are plans to set up a digital video conference to start the dialogue with possible in- country training at a later date.

The trademark laws are being updated, and although we have been asked to review them, they will most likely proceed with a sui generis system for geographical indications that are currently protected under their trademark system, not our favorite option.

Pakistan is not a member of the Madrid Protocol. Moving on quickly to Sri Lanka, they have not joined the Madrid Protocol, but has asked the USPTO to provide training and hold consultations to share information about our experiences with Madrid.

The trademark team was there a couple of years ago and not only met with officials but also held public awareness sessions open to lawyers. Officials from Sri Lanka attended both the regional GI program in India and the IP management program at the USPTO.

Moving on to Nepal. It is a Least Developed Country, called an LDC, as designated by the UN Committee for Development Policy. As an LDC, Nepal receives certain leniencies, including postponing its treaty obligations on IP protection and enforcement.

Nepal is situated, as you know, between China and India, and as such, is considered a strategic country for U.S. Trade issues.

The USTR and the Interagency Group, which includes PTO, were engaging in discussions through a Trade and Investment Framework Agreement, called a TIFA. TIFAs allow for consultations and further cooperation on, among other things, protection and enforcement of intellectual property

rights and capacity building.

Nepal is a member of Paris and the WTO, but has not joined the Madrid Protocol, the Trademark Law Treaty, or the Singapore Treaty. Nepal is interested in joining Madrid, and has asked USPTO for technical assistance in achieving this goal.

I will say that industry groups have complained that Nepal IP legislation is outdated and noted its lack of certification mark and multi-class applications, as well as the burdensome requirements for documentation for the application and registration maintenance processes.

This year, Nepal is finalizing its National Intellectual Property Policy, and has invited input from the U.S. As part of the new policy, protection of trademarks, service marks, collective marks, sound marks, color marks, smell, trade dress, well-known marks, and certification marks will be addressed.

As for certification marks, they will not be available for geographical indications protection because a sui generis

GI system is contemplated. Again, sad face.

Words, colors, shapes, sounds, and commercial slogans will be acknowledged to be within the realm for trademark protection. Descriptive marks, which acquire secondary meaning among consumers because of long use and acquired distinctiveness, can be registered.

U.S. companies have not alerted us to any trademark specific infringement incidents. If you have any, let us know.

Bangladesh. We have had very little engagement with Bangladesh, although not for lack of trying. We have attempted on four occasions to travel there for trademark training, but things got in the way of each attempt.

Bangladesh is an LDC, but has joined the WTO under a waiver that allows least developed countries to delay their TRIPS obligations. The country has submitted its needs assessment document, which is more than most LDCs have done. It has not joined the Madrid Protocol.

Bhutan is also an LDC, and not a member of the WTO, but it has joined the Madrid Protocol. They are very interested in training on various topics. The trademark team went there a few years ago in conjunction with patent training, and we will add this country to our travel in July when we go to India. Bhutan has sent officials here for various training courses at the PTO.

Maldives, also an LDC, is not a member of the WTO. There is no specific trademark law in Maldives. I know you will love this - protection is acquired by publishing a cautionary notice in the leading newspaper. There is no term of registration but trademark, service mark, and collective mark owners can republish their cautionary notice annually.

The Nice classification system is used. In case of an infringement, a notice can be brought to the court.

We did have an official from the Maldives IP Office attend our GI seminar in India and our IP management program seminar at

the USPTO.

Another whirlwind tour here for you. This is South Asia. One final point. I think I've said this before, there is close cooperation between our IP attaches and our OPIA teams here. The IP attaché really does not work on a trademark matter without us directing their activities and supervising their engagement with a foreign government.

We collect that information from our IP attaches about problems U.S. companies are having in that region, and then we devise and implement regional action plans for addressing the systemic problems in the foreign trademark regimes.

We urge you to consult with us or with the attaches regarding problems you are having around the world so we can get a sense about where we should be focusing our efforts.

So, that's your next region. Stay tuned for the next one. Thank you.

CHAIRPERSON WELDON-WILSON: Thank you. Any questions? Bill Barber.

MR. BARBER: Hi, Amy. You mentioned

that India is instituting an official list of well-known marks, I think. I heard something about that. I was just curious whether the U.S. Government has any official position on that sort of list in countries like India, or is that just considered a matter of their own law?

MS. COTTON: We have a position that we do not favor them, we don't think they're a good idea. Lots of reasons, as you know, well-known status waxes and wanes. It is usually domestic interests that are going to get on that list and foreign interests that won't. Getting on the list or off the list can be a difficult issue, and it can be very frustrating.

We certainly have urged countries not to go that route. We understand why they do. When you're on the list, it's great. When you're not, it's not. From that perspective, we have taken relatively soft touch in our advocacy about it.

We have not put anything in trade agreements about that particular thing, that

particular issue, but we certainly have made numerous presentations, every time we talk about well-known marks, we talk about the problems with well-known mark registries and administering them.

The short answer is yes, we have taken a position. We have not put it in our trade agreements, so that tells you there are some nuances there that we're working with.

CHAIRPERSON WELDON-WILSON: Thank you. Any other questions? (No response) We appreciate our tour today. It was a whirlwind, but it sounds like you have a lot of interesting things going on. We look forward to our next region next time. Thank you so much.

We will now move to our Trademark Operation update with our Commissioner for Trademarks, Mary Boney Denison. Thank you so much for being with us today.

TRADEMARK OPERATION UPDATE

MS. DENISON: Thank you, Dee Ann. Glad to be here on this rainy Friday morning. Dana has already mentioned that the funding

approval has gone through Congress, and we are just waiting for the President to sign, so we're assuming that will happen today. If for some weird reason it doesn't happen today, we would not be terribly concerned as our Acting CFO, Frank Murphy, can tell you about a little bit later.

Let me move straight to filings. As you can see from the chart, we are expecting our filings to continue to increase for the foreseeable future. We are now at an estimated 5.2 percent increase this fiscal year over last year. Our forecasting team is projecting that we will be over 7 percent by the end of the fiscal year. Filings are definitely continuing to go up.

Our terrific examining attorneys have been able to keep up with the influx, and we are right where we want to be on first action pendency and disposal pendency. We shoot for 2.5 to 3.5 months, and we are at 2.6 months for first action, and for disposal pendency, we are at 9.8 months, so those are really great numbers.

Examiners are also doing a terrific job on quality. We look at first action and final action compliance. We are exceeding our goals on both of those. For first action compliance and final action compliance, we look at whether the examining attorney made the correct decision.

For the exceptional office action, we look at a whole lot more. We look at search, evidence, writing, decision making. That was a quality measure that we introduced about four/five years ago, and the number of office actions that meet that standard continues to climb.

Of course, one of my favorite topics is E- government. As everyone knows, we originally had a goal to increase our electronic applications. We are now at 99.7 percent of applications coming in electronically. We have shifted from the goal of applications coming in to staying electronic throughout the entire process.

We have done a few things to encourage that. In January of 2015, we

lowered certain fees to encourage electronic filings. In January of this year, we raised the paper filing fees. Some people are just reluctant to give up paper, so I have been personally making phone calls to people who are still filing on paper, and listening to their reasons for not doing that, trying to give them some technical help.

As you can see, we are only at 86.3 percent for our fully electronic figure. We are hoping that is going to climb. Of course, it's too early to tell whether more people will have gone through the process 100 percent electronically until we are a year out from the latest fee change.

Here's a chart showing the filings by type. I'm pleased to see that TEAS Plus and TEAS RF, which are two methods that require you to be fully electronic, are our highest methods of filing. We hope that regular TEAS will continue to decline.

This is a fun one. This shows what happened after we instituted the higher charges for paper. I got the stats for last

week. We only had five paper applications last week. That is a good trend.

Now, with regard to our staff, we now have over 800 people directly in Trademarks, and we have over 550 examining attorneys. We completed our hiring for the fiscal year before the hiring freeze was put into effect, so we are all set for the remainder of the fiscal year. We hopefully will be able to hire when we need them for the next fiscal year. That decision has not been made at this point.

When we hire people, traditionally we have split up the new hires to fill in slots in existing law offices, which traditionally had about 25 lawyers working together. We decided some time back to try some different experiments.

We decided to try virtual law offices, where everyone is remote, including the manager, and we also decided to try to put new examiners altogether in one law office. We are trying these out. It's too soon to tell whether we will keep these permanently.

As I said a minute ago, we are likely to hire, and we are in the process of evaluating these various management experiments, and we will be making a decision before too long about whether to continue or expand these various options.

There is something called the Telework Enhancement Act of 2010, which allows employees to waive the right to travel expenses for a reasonable number of mandatory trips to the USPTO when they choose to move at their own request.

We have about 109 employees in 31 different states for Trademarks who are participating in the program. We have recently added Puerto Rico but no one from Trademarks has moved there yet.

We are working with Congress, and Dana Colarulli has been helpful to us on that, to see if we can get the program extended because it is slated to end, I believe, December 8, 2017. That is an ongoing project that we have, and we ask for our stakeholders to help us on the Hill, if possible, in

extending this program, and eventually making it permanent for us, because it has helped us to retain employees and save money.

Next, I want to talk about the customer experience. As people know, I was a customer for many years of the Office before joining the Office six years ago, so I'm very interested in that.

We have brought in Deloitte and asked them to help us figure out how we can enhance the customer experience. Deloitte's report gave us a lot of recommendations. They suggested we improve the Web site, make searching easier, make the selection of identification of goods and services easier, and simplify the filing process.

So, we have taken that to heart. We have hired two plain language writers. They are helping us make the Web Site more understandable, make our forms more understandable, and ultimately make our Office actions more understandable.

We have over 30 percent of people proceeding without a lawyer, so it becomes

more and more important to speak in plain English to them. I think Patents is only at about 3 percent pro se, and we are 10 times that in Trademarks. It's a very different situation for Trademarks and Patents on that.

With regard to regulatory reform, there has been quite a bit of discussion in the press. We have formed a group within the USPTO, and on the slide is a link to something we have put up on our Web site about that.

We are reviewing and recommending ways that USPTO regulations could be streamlined, improved, and revised. The working group is meeting once a week here.

Sharon Marsh, our Deputy for Policy, is on that group and is representing us well. We also have the head of the group for the USPTO, Nick Oettinger, who is representing us at the Department of Commerce on this.

We are very interested in hearing from TPAC, bar groups, the public, anyone who would like to comment. We are very open and would ask that you please send us comments as soon as possible about things that you think

we should be changing during this review of our regulations.

I forgot to say we also have hired a Chief Customer Experience Administrator, and she is working on our customer strategy. Jill Wolf is in the back. Raise your hand. We're delighted to have her.

We have been making some IT improvements. TSDR now has a maintenance tab, which I'll show you in just a moment. It will be displaying a notice. It looks like that (Indicating). It has the word "Maintenance" on there. If you are in the post-registration time period, then you will be able to see that tab for a certain registration.

Here's an example for a registration that had been in our system for less than five years. It will display three different dates. It will display the earliest date you can file your maintenance, the latest date, without paying a fee, and then of course, the grace period deadline.

We think this will be particularly helpful to people who do not have a docketing

system because it takes the brain work out of calculations, so we hope people are going to like this.

MR. HUDIS: Mary, you provided an example for fifth to sixth year registration maintenance. If we then advance in time, would that then be replaced by the registration renewal window?

MS. DENISON: Yes. We have also been making a lot of improvements to TEAS. We are sending out new alert messages when the payment system is unavailable. We have simplified the filing receipts. We have added information on fraudulent solicitations so people are aware right when they start doing business with us that they may be getting these fraudulent solicitations.

In the filing receipt, we have an introductory paragraph to explain what's in the receipt. We have reduced the wording by two-thirds, by referring people to Web sites. We're trying to make it cleaner and easier to read and to present the information in as clean, simple plain language format as

possible. Please take a look the next time you file something.

We have also changed some things on the Web site. We used to have a button that said "Download Portable Data." Again, plain language. What does that really mean? Save Form. It now says "Save Form."

You will start to see more and more changes like that. We are really delighted with the progress that we are making. These people haven't been on board very long, and we are already starting to see concrete improvements.

MR. HUDIS: Mary, are you referring to the button that when you click on it, you are downloading the ".obj file?" Is that what this is?

MS. DENISON: Yes. Thank you to the peanut gallery.

(Laughter)

MR. HUDIS: That's the electronic file which contains the metadata that will repopulate the form.

MS. DENISON: My.USPTO.gov. For

anyone who hasn't seen that yet, I would urge you to please go take a look at it. We have been asking people to give us feedback, and they have, and we are starting to make improvements.

We are delighted to tell you we had applications or registrations that were originally in separate groups, and now you can put them all in one "collection", which is just a group of your files.

We also got a lot of feedback. Initially, the developers had put in a maximum of 20 cases per collection. That is going to be going up to 1,000 cases per collection. That will dramatically, I think, increase the usability of this system for people.

Please stay tuned and please take a look at it. We are trying to be responsive, and we want to hear what you need. It's very important that you let us know.

One of the other things that is going to be coming is you can save a search each week of the Official Gazette. It will notify you by e-mail when there are new hits.

I think that is going to be a really cool thing for paralegals who are watching the Official Gazette every week.

Here's how you sign up. You have to sign up one time, register. Then you can go in and put your cases in, as I mentioned, in collections. You can add cases. You can delete cases. You can see status changes. You can subscribe or unsubscribe to e-mail updates.

We have circled the feedback button. Please give us feedback so we can make this as you would like it to be.

I also want to tell people -- I think we have announced this in the past -- if you go to github.com, you can get a free app for your phone, and we will send you a push any time there is a status change on any application that you enter. I think that's a fun thing. We have developed the code at the USPTO, and have made it available to everybody through this portal.

Moving on to some of the projects we're working on. There is a project that we

have had going since 2015, post- registration amendments to identifications due to technology evolution. This was something that users wanted, and we responded by starting this pilot program, which will permit people in certain circumstances to change their goods in the post-registration context.

Say, for example, you had been selling Elvis music on cassette tapes. You're still selling Elvis music but the technology -- no one buys cassette tapes any more-- has changed for delivery. That is the kind of thing where in the past, you would have been forced to re-file because you could no longer say you were selling cassette tapes, but now we're offering you an opportunity.

I would urge people to take a look at their portfolios and see if there's outdated technology where they might be able to use this program.

We also published a Notice of Proposed Rulemaking last fall on revivals of abandoned applications, that kind of thing. The comment period closed. We have been

working on the final rule. It's in clearance now. We are hoping this summer to get the final rule out.

In addition, we have a new exam guide out on incapable information matter. If you missed the deadline and still want to comment, we are always open, so please think about it.

The merely informational issue has been coming up more and more, and that's why we thought it was appropriate to give some more instruction. A lot of people didn't understand what was "merely informational" and what was "generic." This is a clarifying document that we hope will be helpful to everyone.

Proof of Use Initiative. You may recall several years ago, we did a pilot of random audits, and we asked 500 recent filers of maintenance documents to give us additional specimens. Unfortunately, more than half of the people had to delete goods. That left us in a dilemma.

We were going to have to do

something to clean up the register, because people were either being sloppy or lying to us or maybe a combination. Since we are a use based register, it's very important to us that the register be accurate.

We had a lot of meetings with different bar groups, and we hit upon a three-pronged attack for this. We wanted to increase the readability of the declaration, which we suspected no one was reading.

We wanted to continue the random audits, which was just a pilot program, and we wanted to consider whether there were other proceedings that we could implement so people could get rid of marks that they thought were not really in use.

Here is an example. On the left, you can see what the old declaration looked like. We put it up on Idea Scale and got basically no comments. Once we put it into effect, the one on the right, we got a lot of comments, which was great because it meant people were actually reading it.

Now you actually have to check four

boxes, and we think that encourages reading, and apparently it does because people complained. On April 29, we implemented revisions to the one we put out in January. You will see highlights on the right the changes that we have made, and we think these are going to make people feel a little bit more comfortable signing.

We added the word "basis" to the first check box. We added "and/or," because people were a little bit confused about that. We added a few more little things.

If you have further comments, if you don't think we got it right, please comment to us. We are happy to take another look at it. We think this satisfies everyone from whom we have heard at this point.

MR. HUDIS: Mary, this is a very minor change, but I think it would go a long way. The "basis" box, if you could put in red "Based on use" and "Based on intent to use, ." and in .bold text. That is the one item that is tripping up clients.

MS. DENISON: All right. We will

take a look at that, Jonathan.

MR. HUDIS: Thank you.

MS. DENISON: Thank you. When I can get a readable copy. That was part one, readability of the declaration. Part two is making permanent the random audits. We have the new law in effect as of March 21. We have not actually started the random audits. We are working on a plan. We are hoping to roll that out later this year, so stay tuned on that.

In addition, we have been interested in getting you a tool. Those are two things we have been able to do, but we want to give you a tool, so if you see something that you want to get rid of on the register, you could do it quickly and inexpensively.

We had a lot of meetings with user groups, and we had four different options that we considered. We decided that the best thing to do is not pursue an option that required a statutory change at this time, but to stick with things that just required regulatory changes.

Chief Judge Rogers will be giving you more information, I suspect, when he talks in a little while, but we are just going with the streamlined cancellation proceedings for abandonment and no use at this time.

One thing we heard loud and clear from our users was that it needed to be fast and cheap. If you get a default, you should get a decision from the Trademark Trial and Appeal Board within 70 days, and even if there's an answer, it's likely to be around 170 days, I believe. Judge Rogers will talk more about that in a few minutes.

Fraudulent solicitations. Another one of my favorite topics. We get a lot of complaints from people who are being solicited constantly about this. We have a video up on our Web site. We have a Web page up that has examples of many of the solicitations.

If you look on our website—and you don't see a letter like one that you received, please send it to us because we'd like to add it.

In addition, we have filing receipts

now containing the warning, so the very first interaction, you have it. Each office action e-mail notification has the warning in it. When you get your registration, we still have an orange sheet of paper, which we hope will draw attention, saying please be aware that these scams are out there.

We are doing what we can in terms of public warnings. We have also been cooperating with the Department of Justice. There were two men who pled guilty in the Central District of California to ripping off people to the tune of \$1.66 million. Since the last TPAC meeting, a third man has been convicted. He was the Wells Fargo branch manager who laundered the money. We hope that this criminal prosecution will act as a deterrent to others who are doing this.

In addition, we are participating in an informal interagency working group to cooperate with other agencies.

Finally, we are holding a joint roundtable with TPAC on July 26 at 2:00 p.m., and it will be at the Office here. We invite

the public to attend. We have invited the Federal Trade Commission, Customs and Border Protection, U.S. Postal Inspection Service, Small Business Administration, and the Department of Justice.

We hope that most of those other government agencies will actually be here. It's a great opportunity for us to raise the awareness of other government agencies of this big problem for anyone involved in trademark registration.

MS. DUNNER: Excuse me, Mary. Who should we send notices to specifically if we find any that aren't on your site?

MS. DENISON: TMfeedback@uspto.gov.

MS. DUNNER: Thanks.

MS. DENISON: We are also very interested in learning more about what other governments are doing about this around the world. We have been reaching out. I believe we have reached out to JPO and EUIPO to talk about this problem. We are also considering discussing it at the TM5 meeting, which will be in Barcelona in a couple of weeks.

We are not only just wanting to bring this to the attention and raise the awareness of the U.S. Government agencies, but also try to learn what other people are doing to combat this around the world. Please consider joining us at 2:00 p.m. on July 26.

If you have a victim or you were a victim, we really welcome you coming to testify or send us a written statement. We need to hear from people who have actually been impacted for it to seem real to people. Please, please think about it.

If you have clients who might have been impacted. Sometimes they are embarrassed, and there is nothing to be embarrassed about. It's a big problem, obviously. Just in this one case, they had taken \$1.66 million from people. A lot of people are getting caught in this. We want to cut that down as much as we can. Please help us find who the victims are.

I just mentioned there is going to be a TM5 meeting. It will be held at the same time simultaneously with the INTA meeting in

Spain. We have a lot of work going on there. On the ID list that the five have agreed to, we have over 17,000 terms now, so we are very excited about that. We continue to add more and more IDs each month.

In addition, we will be having a user session on bad faith on May 21 in Barcelona at 11:00. If you are going to the INTA meeting, you are welcome to attend. All the partners will be attending that. We continue to know that our users are very interested in bad faith filings, so we keep this on the agenda and continue to push for this to remain a high priority for TM5.

The common status descriptors, these were created by the USPTO. They have now been adopted by the EUIPO and JPO. We are delighted two of our four partners in TM5 have actually started using these on their Web sites.

The idea was even if you don't speak the language, if you know what these symbols mean, you will be able to figure out what the status is. Say it's midnight and you want to

go on the JPO Web site. You know your serial number. You don't speak Japanese. Now, you can at least see what the status of your application is.

We are continuing to talk about it with Korea and China, and hope that before too long, one or both of them will be moving to add these to their Web sites.

I want to conclude with just mentioning outreach. We continue to do a significant amount of outreach to small business and entrepreneurs. Our Basic Facts video continues to be a hit. It has over 687,000 views. Obviously, the video is reaching people who we can't reach by simply going around and giving speeches. We think those are important, but we love this video and think it has been very helpful to many people.

Again, we don't know every group that is out there that would like to hear from us, so if you have a group, it could be a Rotary Club, it could be a venture capital group, it could be a group of entrepreneurs,

it could be a university where you are teaching a class, a business school. Anybody out there who you think needs to know about trademarks, please, please let us know and we will be happy to meet with them.

Last night, I ran into the guy that invented the digital camera. He told me he was working now in Rochester Institute of Technology, and all anyone ever asked him about was trademarks, not patents, but trademarks. He said there was really a real need for information. I said, well, let me give you my card, we'll send you somebody that will be happy to talk there.

That's the kind of thing that we are constantly trying to do--reach out to people to give us new venues. If there is a contact -- it's fine for us to send out e-mails to people that we find on the Internet, but they don't respond. If we have a personal contact, it's much more effective. Please consider giving us names of groups that would be interested in learning more about trademarks.

That is all I have. Thank you very much, Dee Ann.

CHAIRPERSON WELDON-WILSON: Thank you so much. It sounds like you have a lot of exciting developments going on in your area, a lot of exciting projects. I don't think we can overstate how wonderful the progress is on decreasing the filing of paper documents because we know that increases not only the efficiency for the Office but provides better service to the users as well. Thank you.

Does anybody have any questions for Mary?

MR. LOCKHART: I just have a comment. We on the TPAC, I think, are known to some extent for keeping a close eye on the development of TMNG, and we often ask probing questions about the progress and the status and so forth.

We like to give credit wherever we can. I really want to commend the Trademark Operation and OCIO for all these great initiatives with the legacy systems. You have the app. You have the docketing system now.

You have the maintenance tab and all these other things.

You add all those up, it really has made the legacy systems, I think, much more user friendly, much more efficient for trademark practitioners and owners, and the cumulative effect of all those things, I think, is really significant.

I just want to commend Trademark Operation and the OCIO for working together and getting those things done. Any one of them is not getting the kind of attention that TMNG does, but you add them all up, it really is significant. I consider that to be very important progress, and I just want to applaud you for doing that.

MS. DENISON: Thank you very much. I do need to correct one thing that you said. TSDR is actually a Next Generation system, but yes, we are continuing to make some improvements to our legacy systems. Thank you so much for recognizing that.

CHAIRPERSON WELDON-WILSON:
Jonathan, you had a comment?

MR. HUDIS: One comment and one request. First, we have another compliment to your side of the Office. Even with increased filings coming in the door, the examining corps is keeping its first action pendency within your allotted statistics, which is commendable.

Second, I lost the piece of paper that I keep in my office on drawing requirements. I went to the FAQ page to try to find the requirements. If you can put that information further up in the FAQ list, that would be really helpful, especially to make sure that you get a good JPEG image which is acceptable to the Office, in file size and clarity. That would be really helpful. Thank you.

MS. DENISON: Absolutely. Thank you for the suggestion.

MR. CYRUS: I am John Cyrus, the Portfolio Manager for Trademarks from OCIO. I'd like to thank you for your comments, and ~~OCIO will continue to work with the Trademarks Office to make improvements, both in legacy~~

~~and eventually getting the Next Generation products in place.~~ Thank you.

CHAIRPERSON WELDON-WILSON: Thank you, John. We look forward to hearing more from you a little later in our meeting. Thank you. Are there any other questions for Mary? (No response) Thank you very much. We're going to move on to Frank Murphy, who I consider our swing person who can fit in and help us anywhere. He is actually the Acting Chief Financial Officer, and he is here to give us the OCFO update today. Thank you, Frank.

OCFO UPDATE

MR. MURPHY: Thank you. I will say it was quite a surprise when you first asked for a legislative update, and I thought now that's something out of my swim lane, but luckily Dana was here and I was very pleased to see that. (Laughter).

The slide shows the agenda we have already addressed to a degree, the fiscal year 2017 status, but I'll bring you up to speed on that. Also, the status on the 2018 budget,

the 2019 plan, and a fee review snapshot.

It was mentioned earlier in today's meeting--the fiscal year 2017 appropriation. We are still in a continuing resolution. However, both the House and the Senate have signed off on an omnibus, which is on the President's desk, and we expect that to be signed today, so we will have full funding for the balance of fiscal year 2017.

We also have the Federal hiring freeze. The Administration/Office of Management and Budget put guidance out, put a pause on hiring. As Mary alluded to earlier, within the trademark line of business, the actual fire power to bring on the workforce occurred prior to that hiring freeze, so it's a de minimis impact for trademark operations.

USPTO is currently evaluating our overall hiring needs in conjunction with our long term strategic plans, so we are not under a hiring freeze but we want to make sure we do things prudently going forward.

Looking a bit at the status of the fees, you can see that the planned fee

estimate is \$306 million. We added a couple of historical charts just for purpose of comparison so you can see that in fact, as was also alluded to earlier, the growth on the Trademark Business line is continuing. You can see compared to last year, we are about 4.9 percent above the corresponding time period in fiscal year 2016.

Our projected end of year funding is to end the fiscal year with an operating reserve of \$106 million. That is the target optimal level, which is good news for the Trademark Business line. We have a very solid financial posture, and that is a great position to be in.

Looking at the fiscal year 2018 budget, TPAC received, as well as the Department and the Office of Management and Budget, our budget for final review in April, and we are anticipating that the President will release the Budget to the Congress at the end of May--on or about May 22 is the current time line. At that point, we can talk specifics as to what is contained within the

Budget.

The last budget update is the 2019 budget. We are already starting the plans for building the fiscal year 2019 budget. We will receive the official guidance from the Office of Management and Budget in the May/June time period.

This will put us back onto regular order, and this is typical that when you have a new Administration, that first year's budget is oftentimes off schedule. We will be back onto the traditional schedule.

We intend to submit our fiscal year 2019 budget to the Office of Management and Budget in September, and TPAC will be provided a summary of that information in late August/early September, concurrent with the development of that budget.

The last slide is just looking at the fee review. We don't have a fee package, but as part of our requirement of the CFO Act, fee funded agencies need to do a biannual fee review, and we are in fact doing that.

The intent is to make sure that we

have consistent, effective, timely review to make sure the fee schedule is accomplishing what we need it to accomplish.

The second bullet is one that was also alluded to earlier. Our fee setting authority under the America Invents Act would expire absent congressional action next year, September of 2018. We are actively working to see if we can have that extended or made permanent.

That's the update on the financial side. I am willing to take any questions that you may have.

CHAIRPERSON WELDON-WILSON: Mei-lan?

MS. STARK: This is less a question but a comment. Frank, thank you so much for your very informative presentation as usual.

I wanted to go back to a comment that Mary made earlier about yes, we're expecting that the bill is going to go through appropriations and that the funding will come through for the Office. Obviously, we have seen in recent years that timing doesn't always work to the advantage of agencies like

ours.

I want to commend you on how you have been able to manage the operating reserve for the Office, and how that can help insulate us, the PTO, from when these kinds of budget issues don't go as hoped.

I want to emphasize that for brand owners it's really critical because the timing of the filing of your trademark applications is often one of the critical strategy pieces involved in product development and product release schedules, as well as when you go to press announcing a new service or a new product. Having a fully operational Trademark Office that is consistently operating is really, really fundamental and critical to economic growth in the country. We really appreciate that.

I also want to commend you on the efforts that you're taking to take a hard look at the level of those reserves to make sure that they remain optimal given sort of different factors and risks that may be present in the market.

So, great work.

MR. MURPHY: Thank you.

CHAIRPERSON WELDON-WILSON: I believe Jonathan Hudis has a question.

MR. HUDIS: Frank, very good presentation, thank you. This is actually by coincidence a follow on to Mei-Lan's comments. In TPAC's report that was issued in December of 2016, we had recommended (in light of comments that Mei-Lan just made) that the Office look at possibly increasing its operating reserve.

As I understand the \$106 million that you mentioned in your presentation, that's about four months reserve of operations. Is that right?

MR. MURPHY: That's correct.

MR. HUDIS: What thought has the Office given to possibly increasing that reserve to six months?

MR. MURPHY: Thank you, Jonathan. For the benefit of all that haven't necessarily been involved in the detailed discussions, let me just give a bit of

background on the operating reserve to make sure we are all on the same playing field.

The fee collections that are available in the operating reserve are set aside to enable the Office, USPTO, to address the inherent uncertainty that is associated with estimating economic factors, patent and trademark production quality indicators, fee collections, much of what Jonathan was just talking about, the risk factors that are associated with some of the volatility that could occur in the revenue stream.

We have both an optimal operating reserve level and we have a minimum operating reserve level. The TPAC in their annual report addressed the optimal reserve and recommended that increase to six months, or that the Office review that to evaluate if six months would make sense.

We are in the process of doing exactly that. That is part of our operating reserve policy as well, that we will look at the environmental risk factors at least every two years to determine the optimal operating

reserve sizes.

That is necessary because those environmental risks or the risk scores as appropriate in a prior year may not be appropriate in the current year. We want to make sure we look at that every two years at a minimum.

Just for further clarification, on the minimum level, which is currently set at two months for the Trademark Business line, we actually assess that every year for the next two fiscal years, to make sure the assumptions supporting the costs and fee estimates are still applicable, because beyond the 24 months we recognize they are not as precise, so we want to make sure we stay on top of that.

Internal discussions are going on with the trademark organization to determine those risk factors, to make sure we are adequately and accurately capturing what the risks and consequences of those factors would be as an input into our risk modeling and determination of what the optimal operating reserve level should be.

It's a great question. Thank you.

MR. HUDIS: Frank, TPAC will be having two more meetings, one in July and one in October. Do you have a sense of when the Office's internal discussions will have concluded and you will be making a decision based upon your two-year review of the necessary operating reserve?

MR. MURPHY: The current plan is that we will have this resolved in time for inclusion in the 2019 budget, which would be in September. We plan to continue working this through the spring and summer to have a recommendation going forward at that point.

Certainly, if we have that sooner, you will find that out sooner. The current target is to make sure we have that addressed so we can submit that as part of the fiscal year 2019 budget.

CHAIRPERSON WELDON-WILSON: Are there any other questions? (No response)
Thank you, Frank. Your presentation today has just continued my confidence that you could have done that earlier in the day or later in

the day.

(Laughter) Thank you so much, I appreciate it. We will now take a break, 10 minutes. Let's get Back and start promptly at 10:25.

Thank you.

(Recess)

CHAIRPERSON WELDON-WILSON: I'm very pleased that Judge Gerard Rogers is here to give us our TTAB update today. Thank you for coming, and we look forward to hearing from you.

TTAB UPDATE

JUDGE ROGERS: Great to be here again with you and all the TPAC members, Dee Ann. It's a pleasure to be here at this time in particular because we can report how smoothly things have been going since our rule package and fee changes went out in January, which we will get through.

I had an occasion recently to kind of look back at where the Board was 25 years ago, and I thought I'll just take a minute since I did this and share it with the TPAC.

We so often run through numbers that are just focusing on the last quarter or the last six months or something like that. I thought it might be illuminative to look at this.

In 1992, when I joined the Board -- it is just coincidence that I happen to join at that time, I'm not looking back on my career or anything like that. (Laughter)

We had 15 combined attorneys and judges, and there were about 3,000 oppositions, 1,000 cancellations, based on 125,000 application classes. So, 25 years later, we have now almost tripled in size, our staff of professionals, the judges, the chief judge, the deputy chief, the managing attorney, the TBMP editor, et cetera.

On the bottom of this slide, you can see what the increase in application classes has been over this period of time. On the second bullet point, you can see that appeals have largely kept pace with the increase in applications. Oppositions and cancellations have doubled, but not increased at the same rate as appeals.

So, just some interesting factoids I thought I would share with you.

Now, to your current numbers. It's basically all good news here. I won't spend too much time on the numbers because I think we really want to spend a little more time talking about the rulemaking that we went through in January and the potential rulemaking that could occur within the next year or so if we roll out a non-use proceeding at the Board.

The current numbers, staffing is pretty much where we need to be. We have positions on the books if we need to fill them and we are able to use those positions, but based on the inventory control number, controls and pendency measures, everything seems to be fine with our staffing levels for judges and attorneys.

At the bottom of this slide you can see appeals have gone up and notices of opposition petitions to cancel, expected, and that's been happening in recent years based on the increases in trademarks.

Extensions of time to oppose, slightly down, but we don't think that has anything to do with the fact that we are now charging for some extensions of time to oppose. We think it's just normal fluctuation.

Production, pretty much according to plan. We're down a little bit in terms of the number of decisions on the merits issued in the first six months, and on the lower end, half of expected precedents. We usually do more in the second half of the year than in the first half of the year. So, this is not a surprise to me.

On the bottom of this slide, there are a couple of numbers that are wrong, and anyone who is really quick with math will see the rate of increase in the number of calls answered and the number of service requests increased at much greater rates than these percentage numbers, which were just inadvertently carried over from some previous slides.

In fact, the increases were almost

15 percent in the number of calls answered, and 50 percent increase in the number of service requests. Service requests is basically what we call anything that our information specialists log when they get an e-mail or an incoming call, so we can kind of keep track of what people are calling about, what they need assistance with.

Those increases may be attributable to the fact that we deployed the new rules in January, but the quality of our responses to the calls which we monitor has increased. This quality assessment of the information specialists is something that we have really just been getting into in the last year or two. We hope that it is going to be a useful measure going forward and that your experience is reflective of what we see on the slide.

In terms of the main measures, the main performance measures that we focus on for attorney work and judge work, the contested motion processing, all of the three goals. We have average pendency to decision on contested motions, having no contested motion, no case

with contested motions older than 12 weeks when we take the quarterly snapshot, and the inventory control, all either within target or better than target. So, just where we want to be.

In terms of what the judges are doing on the final decisions, again, average pendency, better than our target range, and inventory control while in hand. Good news, but not much to talk about there.

On end-to-end pendency, slight reduction in the first half of the year on appeal pendency which has been dropping for the last four years. We have realized slight reductions each year in overall processing on end-to-end pendency in appeal cases.

We had a 10 percent almost increase for the first half of this year in end-to-end processing on the trial cases that were decided in the first half of this year. Again, that could fluctuate. We could realize another reduction this year.

But if we don't, I'm not going to be surprised because we have had five years in a

row of dropping end-to-end pendency on trial cases, and at a certain point in time, we're not going to be able to squeeze much more out of it without agreeing with stakeholders and practitioners that we're going to limit discovery or we're going to limit motion practice or something like that.

We know our stakeholders and the practitioners who are before the Board prefer us to be a more relaxed alternative to district court, so we're not likely to push any further restrictions on discovery that might have restrictions that were included in the January final rulemaking or any further restrictions on motion practice or tighten down on the number of suspensions to accommodate settlement talks, things like that.

We would certainly work with stakeholders and practitioners if they thought it was necessary to drive this end-to-end pendency figure down even further, then how would we do that. I'm not alarmed by the figure, the slight increase in end-to-end

pendency, and I think most practitioners would be willing to live with this.

ACR cases, pretty much the number of them is on pace with what we had last year. The increase in end-to-end pendency in ACR cases, that fluctuates a lot. It always has fluctuated a lot because there are many things that we characterize or consider to be ACR cases, and some of them are very short, and some of them become ACR cases only after they are two years old, so you don't realize a lot of time savings in some of those cases.

That number fluctuates a lot, but every one of the cases that is included in that category is a case in which the parties have agreed to some more efficient way of doing something, so we will never turn away any practitioners who want to denominate their case as a ACR case and can point to some efficiency that they've agreed to, to have it qualify as such.

That said, I think I've already said in past meetings here, I won't be surprised if the number of ACR cases kind of plateaus and

doesn't continue to increase because we have leveraged into our rules for all trial cases many of the efficiencies that people in the past have agreed to, to have their case be an ACR case. I think that's where we stand.

Any questions on the numbers before we go into anything else? Yes?

CHAIRPERSON WELDON-WILSON: Bill Barber had a question.

MR. BARBER: I just had a question about the new fee for extensions of time, and whether you had enough data yet since January to see any trends or draw any conclusions. For example, one might expect more people would take the free 30- day extension of time instead of doing the full 90 days for the first extension. One might expect people would file oppositions earlier, after the first free extension instead of the next 60 days or the 60 days after that.

Do you have any data yet or have you drawn any conclusions based on the extensions of time that have been filed since January?

JUDGE ROGERS: No, we don't. I

think that's simply because we haven't looked into it in any detail yet. I think we've been more focused on staying on top of and being aware of problems with electronic filing across the board, whether it is with extensions or oppositions or notices of appeal, et cetera, because of our mandated electronic filing and other issues.

We haven't taken the time to do a significant analysis of the filing trends on the extensions of time to oppose, but we're certainly willing to do that, I think, once we have a longer period of time after the rule change has been in effect.

MR. BARBER: Just one follow up question. I think it would be helpful to maybe look into that. Also, of the 9,152 extensions of time that have been filed, do you know what percentage of that has been the free extensions versus extensions you are actually getting paid for?

JUDGE ROGERS: Again, no, we don't. I'll get some figures on that before the next meeting and get them out.

One of the things that we have talked to various people about anecdotally is whether the fees for extensions of time to oppose would change practices and result in oppositions being filed sooner or not. Many practitioners have told us, again, this is just anecdotal, that the fees are not so significant that they would really change their practice about it.

I'm not sure that when we do look at the data, it's going to show any significant changes, and frankly, I don't know that we have a lot of historical data to be able to compare anything we assess to, so we may not be able to indicate whether there is a significant change. We will do the best we can to try and figure that out.

CHAIRPERSON WELDON-WILSON: Thank you, Judge Rogers.

JUDGE ROGERS: Before I run through a few slides, I won't belabor you with what we tried to accomplish in the January rule change. I think everybody is very familiar with that. I will quickly run through some of

the IT changes that we made to accommodate the deployment of the January rule package, and what is anticipated to come in a few weeks, in June, some further refinements to IT issues, and of course, we will then get into the possibility of a Request for Comments and future rulemaking on a non-use proceeding.

I do want to just take a moment to mention that our experience with the amended rules that were deployed in January has been very uneventful and very smooth. I think this is a testament to the input and collaboration that we had within the Board, with our paralegals, our attorneys, our judges about what to include in this package.

Of course, all of the interaction that we had with stakeholders and TPAC before we actually even got to the Notice of Proposed Rulemaking, and then the comments that were received in response to the NPRM, and what survived and was included in the Notice of Final Rulemaking.

I think the smooth roll out of it is a testament to everybody involved, inside and

outside the Office.

I do have to credit as well the work of Cheryl Butler, our senior attorney, and the core team she has had working with her, Judge Lynch, Cynthia Lynch, Judge Susan Hightower, Judge Karen Kohlke. Who am I missing? Of course, our Chief Clerk, Denise DelGizzi, has also been working with them.

They have served as kind of desk officers during this transition period where they have been available to our paralegals and our judges and attorneys for any questions that may come up in cases that are pending about transition issues.

Largely, they have gotten very few questions. Again, things have been working very smoothly. They will continue to be accessible to everybody in the Board to make sure that any issues that come up are spotted quickly, and we can resolve them as equitably as possible.

Let's quickly take a look at some of the enhancements that occurred to accommodate the rule change, and then the ones that are

planned for next month.

Of course, we had to do changes to accommodate the collection of fees for extensions of time to oppose, and because we are now doing the service on the defendants and trial cases, we have to include a link to the Notice of Opposition. Those changes were made and are working fine.

We also changed the Certificate of Service options for the ESTA filing forms for consent motions to extend or suspend, and the changed correspondence form because we had to include on those the indication that e-mail is now the way in which those filings were being served between the parties.

We have expanded party e-mail address fields, and positioned ourselves so that we can do more automated processing of cases, oppositions and cancellations, as we have more e-mail information for parties, and we have more authorization to correspond with parties by e-mail.

We are positioning ourselves for more automatic processing. I'm sure everyone

here is aware of the largely automatic processing in institution of oppositions. All cancellations are now done by hand, but we will shortly be instituting some of them automatically as well, and we're hoping to institute more cases automatically in the future.

I'm sorry. The two slides on the June updates were added after I sent these slides in, so I will just have to read those to you. I did bring them so we could talk about those.

The June changes will include automatic institution of petitions to cancel where the registrant has an authorized owner e-mail address in TRAM. We realized that this does not mean we will have a lot of cancellation cases instituted automatically because there are not many cases where owners have an e-mail address that they have authorized the Office to use to communicate with them.

It is a possibility now, and if owners have given us an e-mail address and

it's authorized for us to use it, we will try to institute cancellation cases using that information.

This assumes there is no domestic representative of record. If there is a Dom Rep, we will communicate with the Dom Rep.

There is also going to be deployed in June, which will explicitly be for TTAB internal users, a current proceedings schedule. This will in the long run have some utility for parties practicing before us, but initially, what we will have is essentially kind of what is the current schedule field for each case, each trial case.

Each time the parties file a consented motion to extend dates or a contested motion to extend dates but it's granted, this will be updated so that our staff whenever they look at the case will always know what the current schedule is. For years and years and years, for probably those 25 years we have been talking about, we have always had to look back in the file when we get a consented motion to extend and say okay,

what was the last schedule? Now, this is what the next schedule will be.

This will be a great utility for us to have one automatically updated schedule, and we hope in the future that this is the kind of thing that we will be able to have visible and available to all practitioners so that when you are filing a consented motion to extend or to reset dates, you won't be simply prompted to answer questions that say well, what was the next due date in the schedule, and then the practitioner has to know what the next due date is in the schedule based on the last approved schedule.

Instead, you will be able to just pull up the schedule that is going to be maintained in the record, and then work from that. Hopefully, that will be an improvement. We will have to kind of test it for a while internally to make sure it's working the way we want before we can roll it out and make it accessible to everybody.

Also, in June, when you're filing a motion for summary judgment via ESTA, which

everyone, of course, will do, because that's required, no paper motions for summary judgment, the filer will be prompted to answer questions to assess the timeliness.

Essentially, it's going to be have you made any initial disclosures, and are you filing this before pretrial disclosures, because those are the bookends within which you can file your motion for summary judgment. That will help ensure that any motion for summary judgment that's filed vis ESTA is timely.

When parties are seeking review of a Board decision in a trial case, appellant review at the Federal Circuit or in a district court, any information that they are filing with the Board, they will be prompted to choose between informing us they are filing a Request for Reconsideration or an appeal.

In other words, when you go into ESTA and you want to let the Board know that you're dissatisfied with the decision at the trial case and you want post-decision review, you will be prompted to say okay, are you

doing a request for recon or are you doing an appeal. If it's an appeal, where are you doing the appeal? That will help us coordinate with the Solicitor's Office the data on appeals.

Any questions on anything we have talked about so far before we get into the possibility of a non-use proceeding? (No response)

As Commissioner Denison alluded to earlier, we are looking forward to the possibility of a non-use proceeding as something that petitioners have told us would have utility. Of course, the devil is in the details. It is only going to have utility if it's going to be widely used and it's going to work for everybody.

We're in the process now of drafting a Request for Comments. There is a group that includes Trademarks, TTAB, Solicitor's Office, OPIA, to make sure that we adhere to treaty obligations. They are working on the draft Request for Comments. Actually, that is done, and it's in the clearance process. We hope to

have clearance and be able to publish the Request for Comments very soon. We will have to see how that goes.

We would encourage everybody to think of this very broadly because we know from our past rulemaking experience that getting as many thoughts and comments and as much input as we can is the best way to ensure that we ultimately develop a proposal that would be included in a Notice of Proposed Rulemaking that will be of the greatest utility for all practitioners.

We know the Request for Comments will be just the first step, and then there will be a lot of subsequent engagement with stakeholders about what to do with all the comments that we expect to receive.

This would establish essentially a streamlined cancellation proceeding that would be limited to abandonment and non-use claims to serve this goal of improving the accuracy of the use-based register.

It's expected that the substantive issues of abandonment and non-use will be

handled in pretty much the same way they are handled now in petitions to cancel that involve abandonment or non-use claims.

The significance of the streamlined proceeding would be it would be limited to assertion of these two kinds of claims, abandonment and/or non-use. The non-use claim would be focused on there was no use as of the filing date for a use-based application or as of the filing date of an amendment to alleged use or a statement of use. Abandonment would be the traditional abandonment alternative claims, either no use with no intent to resume use, or a prima facie case of three years of non-use.

The petitioner pursuing this future possible streamlined proceeding would be required to allege facts with particularity regarding their standing, and this petition would have to be supported by evidence. You're not going to have a separate trial period. You would provide your evidence of abandonment or non-use with your petition for cancellation.

The respondent would have to answer within 40 days, their defenses would be limited. There would be no counterclaims.

We have to, I think, discuss with practitioners what the defendant would have to do other than answer. Right now, a defendant doesn't have to put any evidence in in a cancellation case at the Board. They could hope the plaintiff will not ultimately prove its case. We will have to discuss with practitioners whether that should be an option for a respondent in this kind of proceeding.

That might be a roll of the dice where if they don't want to put any evidence of use in and they think they can convince us the plaintiff has not set forth a prima facie case, then maybe they will win, maybe they will lose. If they do put their evidence in, then that will be it. The evidence will be limited to what the petitioner gives us and what the respondent gives us. We will decide the case based on those options.

There is one further possibility for submissions, and that is that the petitioner

when it receives the respondent's answer, could reply with rebuttal evidence or withdraw the petition without prejudice to bringing a later cancellation action on other grounds, but it would be with prejudice as to the abandonment or non-use ground, or the petitioner could choose to convert to a full cancellation proceeding once it saw what the respondent had come forward with in its answer to the petition.

The converted proceeding would be a full traditional cancellation proceeding.

Process provisions. The respondent, apart from the answer, could seek discovery on standing. This is the only possible discovery that would be allowed in this proceeding as it is now envisioned.

There would be no stay of the deadlines that we have already talked about in terms of the respondent having to answer and the petitioner having to reply or withdraw or convert, but the Board would handle in a very quick fashion whether the defendant was in a position to possibly have this case be

determined solely on the standing issue if it got discovery on the standing issue.

It would be permitted only if it could be considered outcome determinative. We would work with the parties to set that schedule up very quickly.

I say there is no stay of deadlines, but we do see on this additional timing issues' slide that each party could get one extension. Presumably, if you're a respondent and you're thinking of asking for discovery on standing, you might choose to elect that extension while you take your discovery.

We would have to work this all out, of course, after we get comments in response to the Request for Comments.

Suspensions would be rare for court litigation, and as Mary alluded to earlier, defaults would be handled pretty quickly, within 70 days, and we would hope that we could get out a decision on the merits within 170 days, not including extensions.

That is what we are thinking about now. Again, we are willing to take questions

now if we have time or after, we will take them in response to the Request for Comments.

CHAIRPERSON WELDON-WILSON: I think if we have a very short question, and if not, if you could take it offline.

MR. HUDIS: Judge Rogers, if you could go to page 83 of the presentation slides. When the Board publishes its Request for Comments in the Federal Register, there are two issues that are of concern, regarding the proposed Streamlined Cancellation Petition that must be accompanied by supporting evidence. First, is that supporting evidence a declaration of the petitioner's attorney, and would that make the attorney a witness? That is number one.

Number two. If the required supporting evidence is to be an investigator's report, is that forcing the petitioner to make public what would otherwise be considered attorney/work product?

CHAIRPERSON WELDON-WILSON: It sounds like you have some interesting issues to consider.

JUDGE ROGERS: I'm sure this is just the start; yes.

(Laughter)

CHAIRPERSON WELDON-WILSON: Are there any other quick questions? (No response) I would just like to thank you so much for being here and appreciate all the information. It does look like you have some actual fun challenges ahead of you, some interesting work. Thank you very much, Judge Rogers.

JUDGE ROGERS: Thank you.

CHAIRPERSON WELDON-WILSON: We will next turn to the presentation on the OCIO update. We are fortunate to have with us today the new TMNG Portfolio Manager, John Cyrus, that we heard from a little bit earlier today.

OCIO UPDATE

MR. CYRUS: Chair, ~~David Chiles is representing John Owens. I will let David start us off.~~

MR. CHILES: Thank you, John. I'm here this morning for John Owens. He regrets

not being here today, had a conflict. He may be online viewing, I'm not sure. On behalf of John, thank you for the opportunity to speak with you all today.

To my right, John Cyrus, who just spoke, is Portfolio Manager for Trademarks. To his right is Rob Harris, who is our Program Manager. Today's presentation will be done or started by John, and then followed up by Rob. John?

MR. CYRUS: As David explained, I took over as ~~Portfolio Manager~~ about three weeks ago. I've been working with the stakeholders to understand the challenges and the opportunities available to move us forward, and appreciate your feedback ~~both yesterday and today~~. We look forward to working with Mary and her team to make sure we support the goals of automation, which were explained, and also the eventual goal of moving to a paperless transaction system, which is very important. Thank you for that, and I ~~will continue to work on it~~.

Because of the short time frame

which I have been on the portfolio, I'm going to defer to Rob Harris, the Program Manager, to walk through the details. If there are questions, I'll be happy to answer them. Thank you.

MR. HARRIS: Thanks, John. Good morning, everyone. I'm going to walk through the slides that we've prepared that are in front of you, starting on the overview. This is a slide we have seen before.

It is a way that we group all of the work before us here from a Trademark IT perspective, the investments we have are TMNG, which closed in fiscal year 2015. The follow-on TMNG II is what is active now and what we will be talking about today. The TMNG II investment is intended to deliver not only the examination capability, which we will talk about in detail today, but also all the non-exam capabilities, so we have a full end-to-end TMNG capability.

The third investment is also active, and that is our external facing investment. There are three products under that, the ID

Manual, which has been delivered in January. We'll talk a bit more about that. The electronic Official Gazette, which has already been delivered, and lastly, our eFile capability, which we know there is a lot of interest in, and that is in the process of ramping back up.

I mentioned briefly last time an investment for the Trademark Trial and Appeal Board NextGen capability. We are in the process of rolling that and combining it into TMNG II because we see the efficiencies available to address very similar capabilities for the Board and Trademark Business at the same time, but until our CRB Review Board actually makes the decision to do that, I'll list it here separately.

Those are the chunks of work. The next slide takes us to our accomplishments since we have last been together. From an examination capability, we have processed now upwards of between 17,000 and 18,000 office actions using TMNG examination. I've heard recently that is about one percent of the

total transactions processed for comparison purposes.

I do have a correction to make here on the second bullet. I mention an increase in the number of beta testers to 70 plus. I made that same claim last time, in January, so we have remained consistent. The number of beta testers hasn't grown but remains consistent with where we were when we were together as a group in January.

We have in the last three months completed three deployments, which included some enhancements to capabilities but most importantly significant defects. That is trying to incorporate and address the feedback that we are receiving from our beta testers.

In parallel, there has been an effort that has made significant progress, and there was a recognition in January with a product delivered that we needed some more rigor around our requirements associated with dockets. We created a stand-alone team consisting of both CIO and Trademark individuals to analyze the docket workflows.

As a result of that, there were identification of some additional requirements referred to here as "user stories," and also some refinements. That process is completed for all but a few remaining cats and dogs. Development is in progress. The revised or complete docket capability is expected to be deployed over the summer.

The last piece here is that we have continued to try to involve our service desk much more frequently so that we are in a better position when we do deploy into full production, that we have a service desk ready to respond and support the needs of the trademark examining attorneys.

Turning to our external accomplishments, it was just about the time that we had the January TPAC meeting that the legacy ID Manual was pointed to the TMNG capability, so we are fully 100 percent reliant on the TMNG ID Manual. The second piece, eFile, I mentioned earlier, there is an acquisition in process to bring on a new development team to restart the eFile

development capabilities.

While that is going on, in parallel, we do have our Trademark Business team completing the requirements analysis process there so we are ready to go when the development team is brought on board later this year.

From a trademark legacy perspective, I believe Mary and Chief Judge Rogers had covered this earlier. We did in January deploy TEAS and TEASi enhancements, and the four sub-bullets, I'm not going to go into, I believe Mary touched on them earlier.

As you just heard from Chief Judge Rogers, in January, we also updated ESTA and TTAB to be consistent with and support the regulatory changes that were put into effect in January.

Moving to looking forward. From a TMNG examination capability, we continue to collect, evaluate, and implement input received from our beta testers. When we were here in January, we had committed to a date of deploying TMNG examination in the second and

third quarters of this year.

You now see we are in a position that we have removed those dates and stepped back from those dates for quite simply the product that was delivered in January was not ready to be used in production based on feedback from the beta testers.

As a result, we have taken a few actions. First, John Owens and Mary are meeting regularly with our Deputy Under Secretary to make sure we have consistent expectations moving forward, and we also have a working group set up of OCIO and Trademark leadership to identify the critical success factors, what do we need to work on, such as the most important piece we have heard from our beta testers, the Custom Editor that was built.

There is consideration now of potentially replacing that with an off-the-shelf product like Microsoft Word or something similar.

We need to address the docketing issue that was raised earlier. There are items

mentioned such as potential data corruption issues that need to be addressed, and most importantly, system performance. Come to agreement on the response time that is expected by our customers, and ensure the system is in position to meet or exceed those times.

The last piece I will mention is we do have in parallel with all this an independent assessment being done by Ernst & Young, and they are looking at the program, and will be providing us with improvement opportunities and recommendations that we hope to make as quickly as possible.

Beyond deploying of TMNG examination, our next priority, which will be focused on in fiscal year 2018, is addressing not only the international application capabilities, Madrid, as we all know, but also docket capability for non-examination and getting into the TTAB capabilities as well.

From an TMNG external perspective, eFile is slated to be developed and hopefully able to be deployed by the end of fiscal year

2018, if not, early fiscal year 2019.

The last piece I will mention before opening it up for questions is our upcoming work from a legacy perspective. We do have deployment scheduled for this summer for both TEAS and TTAB. TEAS, to incorporate changes due to revival of statements and petitions to the Director, and the TTAB changes are the ones that Chief Judge Rogers just summarized.

The last bullet here is a recognition that the TMNG Madrid capability is not on the near horizon, so there are some critical fixes and enhancements that Trademark Business has identified that we need to make to the legacy, the existing Madrid system we are using today.

Although John Owens, if he was here, would certainly suggest that we need to pay as much attention as possible to TMNG, there is a recognition that with the delays, there are critical fixes we need to make to our legacy systems to make sure we don't impact or minimize the impact to Trademark Business.

We have a project initiated now. We

expect the enhancements and fixes to Madrid to be implemented in fiscal year 2018.

That's all I have to cover. I'm sure there are questions. I'll open it up now.

CHAIRPERSON WELDON-WILSON: First, let me thank you very much for coming, appreciate that. I think we all understand that under the circumstances, there is a need to step back with sort of a reassessment period on things. Therefore, that is why we can't have certain dates.

I'm going to ask a strange question given what I just said. Given this, do you have some sort of idea of when you will be able to provide some dates? Are you thinking this reassessment period might take a month, two months, three months?

MR. HARRIS: The group is formed. We are meeting regularly. I would want to very much meet the target that Mr. Lockhart put in front of us yesterday, which is when we are meeting with him again -- he mentioned July yesterday.

MR. LOCKHART: Late July.

MR. HARRIS: I was thinking it was early August. Late July, if not sooner. The point is when we are back meeting with the subcommittee and the full public meeting, we are in a position then to commit to a revised time line.

CHAIRPERSON WELDON-WILSON: Thank you. Lisa Dunner has a question.

MS. DUNNER: Rob, thanks for your really thorough report. Could you just clarify, Ernst & Young, what precisely they are looking at, and when we might expect a report?

MR. HARRIS: We have consistently, since the beginning of TMNG, had a contract for independent business oversight. It was performed by different companies for the first few years. The individual that was doing it was Bill Ulrich. I have forgot the name of his company.

When that contract ended about a year ago, it was re-competed, Ernst & Young won the work, and they will continue to

provide through the life of the program reports every six months on how the program is going and recommendations on how best to proceed.

They are due to provide a final report this month. I was chatting with John offline. I don't know off the top of my head the rules associated with how broadly that is shared. It's a report in final. I imagine it is public information, but I'm not 100 percent certain of that.

CHAIRPERSON WELDON-WILSON: Tim Lockhart?

MR. LOCKHART: Rob, first thing is I want to thank you very much for your service, I guess, as the interim Portfolio Manager between Raj and now John. John, we certainly welcome you aboard. It's a big job. I'm sure you have already figured that out. We look forward to working with you and your colleagues going forward on this very important initiative.

Rob, just to kind of recap to make sure I understand and members of the public

understand, the three reasons you have had to step back a little bit and kind of reassess and reprogram in terms of the schedule, apparently the beta testing has been going a little more slowly than anticipated.

You are fixing problems that the beta testing has identified, and of course, additional problems continue to be identified and addressed. You mentioned the word processing editor, the trademark docket and data corruption as examples of those. The third thing is apparently there is still the ongoing process of identifying and documenting requirements.

Is that a fair assessment of sort of the big three as I think of them?

MR. HARRIS: Yes.

MR. LOCKHART: Dee Ann raised the issue, and I would just echo that, we understand why you have had to step back and why we have these "to be determined" bullets up there in the schedule. We get that. I think that is a reasonable approach under the circumstances.

It is, of course, disappointing. I'm sure you and your colleagues are disappointed as well that we have hit this bump in the road, but in a project of this type, sometimes you hit bumps in the road. We get that.

We do hope that when we come back in July that maybe you can give us a better assessment of where you are then, what the schedule would look like going forward. We know you're working very hard on this. We look forward to getting in July perhaps a little firmer feel for what the road ahead looks like.

MR. HARRIS: Will do. Thanks, Tim.

CHAIRPERSON WELDON-WILSON: Jonathan Hudis.

MR. HUDIS: We have been working with you for many years. We thank you for your candor, your thorough reports, and ongoing cooperation in working with TPAC. John, welcome aboard. I just have a few follow up questions to those of my colleagues.

I just want to make sure I was clear

on some of your prepared remarks. First, the docket fix: you are looking for a summer deployment?

MR. HARRIS: It will be deployed incrementally. We have the first deployment, May, and then across July, and right now, August. We are hoping to accelerate, but that's the current schedule we're looking at.

MR. HUDIS: The beta testers, Rob, you said there are 70 plus people. What's the makeup of those beta testers?

MR. HARRIS: It is a combination -- I'd be glad to. I think I can reiterate what Glenn or Chris mentioned yesterday.

MS. DENISON: Do you want me to answer?

MR. HARRIS: Please.

MS. DENISON: It's about 20 Union members, examining attorneys, and the rest are made up of managing attorneys, senior attorneys, and people from Training and Quality Review, TQR Group.

MR. HUDIS: In the CIO's opinion, is

that makeup and the number of beta testers enough?

MR. HARRIS: The more, the merrier. Certainly, with any product we want as much feedback as possible.

MR. HUDIS: Rob, you mentioned an item called "critical fixes." I just want to make sure we are all on the same page with terms. Does that include the editor, the docket fix, and the beta testing? Did I miss anything?

MR. HARRIS: Beta testing resulted in the feedback. The two primary, the most significant pieces of work we have in front of us are the editor and docket; yes.

MR. HUDIS: That involves switching from what was going to be an in-house, custom designed editor to something that may be off-the-shelf like Microsoft Word, for example?

MR. HARRIS: Yes.

MS. DENISON: Jonathan, let me just add, there has not been a decision made on that. We are considering that.

MR. HUDIS: Right. I heard there was a consideration of additional requirements. Is there anything in either answer to our questions or in your prepared remarks that we haven't covered as to additional requirements for a full examiner tool roll out?

MR. HARRIS: Not at this time. Our push has been the recognition that the docket capability that was delivered in January was not consistent with what was expected, so we went back and reexamined that area.

Are there others over the horizon? That's to be determined. Right now, that is the most significant area, and that is where the focus has been.

MR. HUDIS: Okay. Here's my last question. In answer to Mr. Lockhart's question, you said after this reassessment period you would be able hopefully to give us some kind of time line on the examiner tools and external TMNG eFile tools. Can you do both by the time we see you folks again in July?

MR. HARRIS: The focus for us is on examination, eFile right now, the variable is the speed at which we can finish the acquisition process. There are some variables that are outside our control. We don't have a development team on board right now. We are hoping and anticipating that contract award to be made in the fourth quarter of this fiscal year, so in the July/August/September time frame, and once they are on board and we have a team in place, then we can commit to baseline the project and commit to firm dates.

MR. HUDIS: What you are saying is that for the TMNG e-File tools, that's going to be farmed out to an outside contractor?

MR. HARRIS: Yes.

MR. HUDIS: Thank you.

CHAIRPERSON WELDON-WILSON: Are there any other questions? Howard?

MR. FRIEDMAN: John, I also want to welcome you aboard. I'm concerned that the greater number of TPAC members who welcome you, the scarier your job gets. (Laughter)

Just a quick comment. I want to

acknowledge the invaluable contribution our beta testers have made and will continue to make.

CHAIRPERSON WELDON-WILSON: Thank you. Any other questions or comments? (No response) We thank all three of you for coming today. We really appreciate you making this presentation. It is very interesting and very important. Thank you.

PUBLIC COMMENTS

CHAIRPERSON WELDON-WILSON: I think now we are in the public comment portion of our meeting. Is there any member of the public that would like to say anything or have any questions? (No response)

Any other questions or comments from the members of TPAC? (No response)

If not, we encourage everyone to join us for the fraudulent solicitation roundtable coming up on July 26. Please keep an eye out for more information on that as things develop, and let us know if you have any suggestions as to potential speakers or people to testify as to their experience.

We will see you again for our next public meeting on July 28. Thank you.

(Whereupon, at 11:27 a.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

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

My Commission Expires: August 31, 2017

Notary Public Number 122985