

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

Alexandria, Virginia
Friday, November 1, 2019

PARTICIPANTS:

TPAC Members:

WILLIAM G. BARBER, Chair

STEPHANIE BALD

ELISABETH ROTH ESCOBAR, Vice Chair

ANNE GILSON LaLONDE

ILENE B. TANNEN

DONNA TOBIN

KELLY WALTON

Union Members:

JAY BESCH

USPTO:

KIMBERLEY ALTON
OPIA/Office of Governmental Affairs

CARI BERDUT
Trademark Policy/OPIA

AMY COTTON
Trademark Policy, International

MARY BONEY DENISON
Commissioner for Trademarks

PARTICIPANTS (CONT'D):

ROBERT HARRIS
Deputy Chief Information Officer

JAMIE HOLCOMBE
Chief Information Officer

ANDREI IANCU
Under Secretary of Commerce for
Intellectual
Property and Director of the USPTO

SEAN MILDREW
Acting Chief Financial Officer

LAURA PETER
Deputy Undersecretary and Deputy Director

BRANDEN RITCHIE
Director, Office of Governmental Affairs

GERARD ROGERS
Chief Administrative Trademark Judge, TTAB

MARK THURMON
TTAB

Also Present:

MIRIAM RICHTER

ALLISON RICKETTS

* * * * *

P R O C E E D I N G S

(9:04 a.m.)

CHAIRMAN BARBER: Happy day after Halloween. I hope you all had a pleasant evening out trick or treating last night and congrats to all the Nat's fans in the audience. I'm sure you're still celebrating the stirring victory in the World Series. My name is Bill Barber. I am the Chair of TPAC. I am from the law firm of Pirkey Barber in Austin, Texas. And this is my last meeting as Chair of TPAC. Please hold your applause. It's been a real privilege to serve in this position. It's also my last opportunity to introduce my fantastic colleagues on TPAC. You should all know that this is a group of very smart, hardworking and dedicated trademark lawyers that are dedicated not only to the trademark profession, but also to the success of the U.S. Patent and Trademark Office and it's been a real privilege working with all of you over the past year.

So, let me introduce the TPAC members that are here. Elisabeth Escobar. She

is the Vice Chair of TPAC and she is also Vice President and Senior Counsel for IP at Marriott International in Bethesda, Maryland. Elisabeth has done a fantastic job as Vice Chair. She's been a tremendous help to me over the past year, made my job a lot easier. So, I really appreciate all your work, Elisabeth.

Eileen Tannen. Eileen is of counsel with Jones Day in New York. She is finishing her 3-year term on TPAC. So, thank you for your service, Eileen.

Next, we have Anne Gilson LaLonde. She is author of Gilson on Trademarks and she resides in the great State of Vermont.

Donna Tobin, over here. She is a partner at Royer, Cooper, Cohen, Braunfeld in New York.

Then we have Kelly Walton, is here. Kelly is Vice President of Trademarks and Copyrights at Dell, Inc., in Austin. Who have I missed?

Then we have Jay Besch. Jay is here. Jay is president of NTEU, Chapter 45, representing Trademark Examining Attorneys and

Interlocutory Attorneys at the TTAB.

I believe that is all of the TPAC members here at the moment. We may have 1 or 2 more join us later.

So, first on the agenda, we have a special guest on the phone, I believe. Andrei Iancu is joining us by phone today. He is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. I believe he is coming up fairly soon on his 2-year anniversary in that position. He has been a big supporter of TPAC and our activities. Thank you for taking time out of your very busy schedule, Director, in joining us this morning.

MR. IANCU: Thank you, Bill. First of all, hello, everybody. Bill, can you hear me?

MR. BARBER: Yes, we can.

MR. IANCU: Fantastic. Yeah, apologies for not being able to be in person, but very happy to be with you on the phone. First of all, I want once again to thank all

the members of the Committee for being there and for everything you do on TPAC and for the USPTO.

I wanted to take a few minutes and give special thanks to Bill. I know, Bill, you said to hold the applause, but I would like to applaud your service, frankly, and even if you cannot see me applauding, I am now applauding. But this is your last meeting after 6 years of fabulous service and let me tell the Committee and the public a little bit about Bill, at the risk of embarrassing you a little bit, Bill.

Bill is a founding member of Pirkey Barber in Austin. He actually started off as a patent lawyer, but then he quickly moved over to the trademark side of IP and became a nationally recognized trademarks expert. A few of his notable achievements, he has been named to the World Trademark Review 1,000 for the past 9 years. He has been named of lawyer of the year for trademark quality in Austin, Texas. He served as the President of AIPLA and most important for us, at the PTO, his service

on TPAC, as I mentioned, this is his 6th year. He has served as Committee member, Vice Chair, and Chair of TPAC, all of that with tremendous dedication to the organization, in addition to his many commitments to his law practice. He has always been available to consult with the Office with respect to TPAC. He is always ready, willing and able to help the USPTO by leading every quarterly meeting with great skill, responding promptly to every request from the office, delivering the Annual Report and the Fee Setting report promptly. And giving his all to help and support the USPTO and the trademark system to make it the best that it can be. So, really for all of that and much more, I want to thank you Bill, for your fabulous service. So, before going further, a real round of applause - I'd like to hear the folks in the room applauding.

With that, I'd like to present Bill with a memento from the PTO. Laura hopefully is here and ready to hand it over to you. Laura? So, Laura is giving Bill a special flag. This is a USPTO flag. It bears the

shield of the USPTO and it actually flew over the PTO headquarters on September 30th of 2019, which is the last day of the fiscal year 2019. Bill, I wish you much success as you continue your distinguished career and please stay in touch with the Office. I know you will, and I know you will continue your service to the IP community in the years to come. Thanks, Bill.

MS. PETER: I also have his certificate of appreciation for his service this term.

(Applause)

MR. BARBER: Thank you very much, Director. This is a bit overwhelming. The flag is beautiful and I will find a place of prominence in our brand-new offices in Austin to display it. So, thank you so much. It's been a pleasure working with you, Director Iancu, and with you, Deputy Director Peter. So, again, thank you very much.

MR. IANCU: Hey, Bill, if you'll fly that flag in front of your house, people might start coming over and drop off trademark

applications on your door. So, before I go, I also want to express thanks to the 2 Committee members who have successfully completed their 3-year terms, Eileen Tannen and Brian Winterfeldt. Eileen and Brian, if you don't mind, Laura is going to hand you your certificates, as well, on behalf of the United States Patent and trademark Office, as an appreciation of your excellent service to once again, the USPTO and the trademarks community.

(Applause)

MR. IANCU: So, with that, I want to thank you all. Have a great rest of the meeting. I will turn it now over to Laura.

MS. PETER: Thank you, Andrei. Thank you so much for that wonderful tribute. Thank you again to Bill Barber and to our Committee members who have finished their term this year. It's been a pleasure working with you and thanks to all the TPAC members for your continued support.

Now, to business. As you aware, we have been driving a number of new initiatives and are proud of the progress that we have

made so far. Some of those initiatives resulted from the challenges Trademarks faces with improper submissions and unethical behavior before the Office. All of those initiatives are a result of the Director's and this administration's laser focus on maintaining the USPTO as the global leader in innovation and making the intellectual property system more stable and more reliable. Of course, the US counsel rule tops the list of initiatives to make the US trademarks filing system more secure. As of August 3, all foreign domiciled applicants are required to be represented by United States counsel. Mandatory electronic filing for almost all trademark filings with the United States Patent and Trademark Office will be required as of December 21, 2019. On October 26, we instituted mandatory log-in and a 2-step authentication process for trademark form filing. Also, we continued our efforts to actualize and implement effective and useful artificial intelligence. Our continuing exploratory initiatives regarding artificial

intelligence include using AI for image search to help find prior similar images and also, to identify fraudulent specimens. We are also looking into using AI to identify, reduce and mitigate unauthorized or other improper activities related to trademark matters. But much work remains. You may also be aware that we recently published a notice in the Federal Register requesting public comment on the impact of artificial intelligence on intellectual property which included a number of targeted questions regarding its impact on trademark issues. We're looking forward to the responses and to a robust discussion.

We continue our efforts to engage with stakeholders and customers to educate them on what the Office is doing and also receive their feedback. We are exploring leveraging the resources in the regional offices to expand our outreach efforts in trademark related services to the public. For example, the regional offices are increasing their trademark public outreach and educational events and interacting with the

regional trademark practitioner communities. Facilities for trademark search and filing capabilities and regional office staff trained on trademark related services are now much more robust. Meanwhile, even with all of these exciting technology and policy initiatives, Trademarks has a business to run. I am delighted to report to you that Trademarks continues to provide timely and high-quality services to our customers. For the 14th year in a row now, Trademarks has met or exceeded its performance goals.

As many of you know, this is also the last TPAC meeting for Mary Boney Denison, Commissioner of Trademarks. She is retiring at the end of this year and I would like to recognize the Commissioner for her exemplary service and dedication to our customers, the Agency and the country. Mary, thank you for your unwavering dedication to the USPTO.

Before I hand this over to Commissioner Denison to give you an update on trademark operations, please let me again thank the TPAC members for your ongoing

partnership and hard work this year. Your guidance has been truly invaluable. At this time, I'm going to hand the baton back over to Bill Barber.

MR. BARBER: Thank you very much, Laura. I didn't get to introduce you, but Deputy Director Peter, she is coming up on her 1-year anniversary at the Office. I believe you've attended every public meeting of TPAC since you've joined the Office. You've also attended a number of our sub-committee meetings, executive sessions, and we truly appreciate the support that you and the Director's office have given the TPAC over the past year and prior to that during Director Iancu's tenure since he started. So, thank you so much.

MS. PETER: It is my honor and pleasure. Thank you.

MR. BARBER: Mary, you're not quite off the hook yet being recognized here. So, TPAC would also like to take a moment here, your last meeting here as Commissioner, to thank you for your service to the Office, to

thank you for your assistance with TPAC, congratulate you on your retirement, and just acknowledge you for the incredible service that you provided to the US Patent and Trademark Office. As many of you know, Mary hails from the great State of North Carolina. Prior to joining the U.S. Patent and Trademark Office, Mary had a very distinguished career in private practice in the trademark field. Among her many accomplishments, she served on the Board of Directors of INTA. She even served a stint on TPAC when she was in private practice. In 2011, she joined the US Patent and Trademark Office as Deputy Commissioner for Trademark Operations. She was promoted to Commissioner for Trademarks in 2015. She is finishing her 5-year term as Commissioner. You really have exhibited exemplary performance and leadership in your role as Commissioner. You've helped the Office maintain exemplary pendency and quality of examination, despite a period of explosive growth in application filings and in the examining corps. You've been able to master that and manage that

masterfully. You've also been a huge help and resource for TPAC. So, we really appreciate all the time and education that you've given us over the years. Despite having all those things to handle, you always manage to do it with a smile on your face. So, we appreciate that as well. We have a couple of tokens of appreciation to present to you. The first one is that all of the TPAC members wrote a personal note to you. We bound the notes into a notebook. For some reason the printer gave me 2 of them. So, you can have 2 of them, and read them at your leisure. Then Kelly Walton also has a gift for you.

MS. WALTON: Mary, we notice that you wear really, really nice scarves.

MS. DENISON: I didn't wear one.

MS. WALTON: Not today, I know it would have been perfect. We all seem to remember a presentation that included doctored images of scarves. So, always to remind you of your work in reviewing doctored images of specimens and in appreciation of your leadership and friendship, we would like to

present you with this scarf. We have every reason to believe that this is the real thing.

(Applause)

MR. BARBER: Okay. On to mundane business or maybe exciting business, depending on your point of view, I'll turn it over to Mary to give us an update on trademark operations.

MS. DENISON: Thank you so much, Bill, for those really kind words and thank you for the beautiful tribute, and, of course, the scarf. That's lovely. Of course, I'm not sure if I can keep it, but I'll have to talk to Ethics about that. Anyway, thank you so much. This really was very unexpected and very kind. I was on TPAC from 2008 to 2011, as was mentioned a minute ago. I think I've been at every TPAC meeting since 2008 when I joined, except I missed one when I had my shoulder surgery in September, the fee hearing, but I'm pretty sure I've been at every other meeting. TPAC has been an important part of my life, first as a member and then as a collaborator with the Office when I joined the Office

fulltime. So, it's really been a fabulous relationship and we're very grateful to Bill and Elisabeth and to everybody on the team. I want to give special recognition to Bill because he's been a great Chair and I'm sure that everyone at the Office will miss you. Of course, I won't be here to miss you. Of course, Eileen and Brian, all 3 of them are the type of lawyers who manage their own clients. They are always doing something for the Bar. They're always involved with all of the Bar groups and trying to make Trademarks a better place for everybody. So, I think that it's really important to recognize TPAC is just one of the many things that they have done in their efforts to improve the Trademark community. Thank you to all 3 of you.

(Applause)

MS. DENISON: And, Bill, I do want to thank you for acknowledging the Nats' win since you are from Texas. I thought that was particularly kind.

MR. BARBER: You didn't have to mention that.

MS. DENISON: All right. So, on to the business of trademarks. Last year on September 30th, we ended the fiscal year with a 5.4 percent increase, a little bit down from the year before, which had been 7 percent. We are expecting about 2.8 percent this year in fiscal year '20. Then we expect it to keep going back up. As a result, we are planning to hire -- this slide says 40 to 50. It's probably going to be closer to 50. We have advertised. I believe the advertisement has closed now. So, we will be starting interviews in the next month or so with start dates in the Spring for the new examining attorneys.

We ended last year at 3.4 months and we like to be 2-1/2 to 3-1/2 months. That's what people were bragging about, our 14-year record. I was extremely concerned at the end of last year that we were at 3.4 months. I did something which hadn't been done, I wouldn't say never, because Herb Wombley told me he did it, but a long time ago, which was to ask every trademark lawyer and every lawyer in trademarks to examine. I was an exception, not

because I'm special, but because I had never been an examiner. I wasn't sure that was the time for me to start. So, anyway, we did this great pendency initiative and the examiners really came through. All the lawyers in Trademarks came through. The result is, even though we had 5.4 percent growth, we ended the year at 2.6 months, having started the year at 3.4 months. So, that is really an incredible accomplishment and it is a great tribute to all the lawyers in Trademarks and all the support staff too because it really does take a village to make this kind of thing happen. Thank you to everybody for making that a success.

For those of you were worried that we might sacrifice pendency by having some people who didn't examine regularly, it did not impact our quality. We continue to have stellar quality results and I'm very proud of that, particularly proud of the exceptional office action number this year. Our target was 46 percent. That is something that looks at not just whether we got it right, but what was

the search like, what was the evidence like, what was the writing like. We have soared past our target and ended September at 54.5 percent which was excellent. I'm very proud of our team for both delivering on pendency and quality. Thank you to everybody in Trademarks. It was a terrific year.

Unless you think the people were examining all the time, there are lots of other things going on. As the Deputy Director mentioned, we had the US Counsel requirement. That was a heavy lift. It went into effect on August 3rd. We did an exam guide. We got some comments and so we issued a second exam guide in September. One of the reasons that we wanted to do this was to make sure that foreign domiciled applicants were actually understanding what U.S. law requirements were. It seems to be working. There has been a shift in applications. People are largely coming in with lawyers now as opposed to coming in pro se. It's a little early to assess the results and proclaim victory, but we are thinking that it looks positive at this point.

We hope that the - well, let me make a cautionary comment. That is if you are an attorney in the U.S., you should consider doing a search every month or so of our database to make sure that someone else is not using your name. I will talk about that more later, but it is something to be aware of because there have been some issues with people who did not really want to hire a lawyer, just borrow their name.

As mentioned earlier, we have mandatory electronic filing coming up. Again, that's been a huge push by the Office, a big joint effort by the IT people and the lawyers. It's going to go into effect December 21st, and at that point, we will stop accepting paper, except as required by certain international agreements. I believe there are 28 countries from which we have to still take paper. Of course, if you have a scent mark or something like that, or if there is something short of an emergency, in limited circumstances, you will file a petition and you can file on paper. People have asked me

why we are doing this; why is it such a big deal. We're at 99.9 percent of applications coming in electronically. That is true, but people do not stay electronic throughout the whole process. We are only at a little over 88 percent of people staying fully electronic throughout the process. Of course, the TTAB led the way. They made it mandatory a while back and we are following their footsteps. We believe it's very important for 2 reasons. One reason is that there are -- when people send in paper, it comes in and has to go through an optical character reader which makes mistakes. So, there is a quality component to it. The second thing is that even though we raised fees for paper, it does not cover our costs. So, the money has to come from somewhere, and that basically means that everyone who files electronically is subsidizing the paper filers. So, that hardly seems fair.

Now, I made a reference to bad behavior. There are lots of different types of bad behavior. Right after we published the Notice of Proposed Rulemaking for U.S.

counsel, people started sending out emails saying, may I borrow your bar information; I'll do all the work. I just need to know your name and number so I can file.

Obviously, that is not acceptable. We've seen forged signatures. We continue to see misleading solicitations. There are just so many different things and it feels like every week or two, there's a new issue that is coming up to our attention.

In order to deal with all of these issues, in 2017, we made the proof of use audit program a permanent program that is still resulting in significant deletions. We had hoped that it would have a deterrent effect. It does not appear to have had a deterrent effect yet. I have been issuing orders excluding unauthorized foreign practitioners. That does not seem to have been terribly effective because people just change their names. One thing that has been much more effective is that we have updated examination guidance to require examiners to refuse mocked up specimens and to use the 2.61b request more

liberally. So, we have seen a significant increase in the number of specimens that are being challenged, which is great.

Of course, a while back we improved the readability of the declaration in hope that people would actually read it by putting in check boxes so they would know what they were swearing to. TTAB continues to run a pilot on non-use. Of course, we have the U.S. counsel rule. But in addition, we have been developing a specimen database. We have never had a specimen database. We have only had a database of marks. Greg Dodson is working with CIO very carefully and aggressively to try to get this database up and running so that we can start testing it very soon.

In addition, as Laura mentioned, we have log-in. The first trademark was registered in 1870, almost 150 years ago. For that whole period, we've been able to trust people and it has generally not been a problem. Now that other people are going into files and making unauthorized changes, we felt as if we had to move to the login system. So,

Phase One of that went into effect on October 26th. Other examples of suspicious addresses are coming in. So, the U.S. counsel rule is based on domicile, and if you are domiciled in the U.S., you do not have to have a lawyer. Some people are saying they reside in the U.S., even if they do not. We are compiling a list of suspicious addresses and developing a system to flag these for our examining attorneys. I mentioned the people who are forging people's names. That is also a significant problem. If you see any of that, please feel free to let us know. We want to know about the things. We can't catch everything, and we would love for you to be our eyes and ears as much as you can.

In addition, we have developed a special task force because this was taking so much of our time. We have put together a team of IT people and trademark lawyers. Their mandate is to help us spot trends, to develop policies and procedures and technology solutions to help us with this. They have been doing a fantastic job. I get a weekly report

from them on what's new, which has been fantastic.

A minute ago, I mentioned unauthorized changes. We have a page on the website. If that happens to one of your client's files, please read that first. We are catching the majority of these on a manual review. In fact, we have caught over 1100 of these so far, which is not an insignificant number, particularly if it is your file. Please, please look at this and then contact us. As I said, we are trying to do this manually right now, but we're trying to automate it as soon as we can.

The action plan on login is we have the October 26 phase. Everyone who wants to file now has to set up a myUSPTO.gov account and log in. We had some issues on Monday and Tuesday. The program started on Saturday. Monday and Tuesday, we had some problems, much of which was caused by data mining. We are fairly confident that the problem has been resolved. Of course, we can't control data mining. It comes from the outside. So,

hopefully, we are back on track and people are filing without problems. If not, please let us know. TEAS@USPTO.gov. We monitor that very carefully and would be happy to help you if you have any issues.

There is an authentication process which I won't go through, if you need to set up a myUSPTO account. What's coming next is in early calendar year 2020, we are going to require that all myUSPTO account holders verify their identity. At this point, it looks as if there will be 2 options. One would be to go and prove your identity in person, if you would like. The other is to use a computer program in which you would scan your driver's license or passport. So, we will be giving people 2 options to prove who they say they are. Otherwise right now, we have people coming in under the firewall, but we don't really know that Mary Denison, her account set up in my name, is Mary Denison. So, unless this happens, we will not know. That's an important next step. Then the final step for login will be in summer of 2020 when customers

will be able to create rules and delegate authority to other accounts. This will be very helpful with interactions with paralegals. We have had questions about how to pass documents back and forth between the lawyer and paralegals and filing questions. We are working on some FAQ's to post on our website on that.

We also continue to get complaints about specimens and we have a website that is set up. If you see something that you think is fishy that hasn't been registered, please report it to us. The decluttering initiative that I mentioned went into effect permanently in '17. Since that time, we have sent out over 7000 audits. And the disappointing number really is 62% of the registrations either filed a response deleting goods or were cancelled and of those 79 percent had a lawyer. So, clearly there is not a deterrent effect going on with this. If you have clients who are filing maintenance documents, please, please, please emphasize to them how important it is that they are actually using

the mark on all the goods listed.

Misleading solicitations continue.

We have taken 2 different attacks on this problem. One is education. We have been trying to educate the public. We have a lot of information on our website and we have posted notices and a video explanation on our web page that is called Caution, Misleading Notices. In addition, in the filing receipts, the office action covers emails and paper notices, we are sending out warnings to people. In addition, we have been collaborating with TPAC on this. TPAC held a hearing in 2017 with bar groups invited and a number of important government agencies so that they could hear just how important this was or is to our users. The result of that was a fantastic development which was that I was able to talk to the Department of Justice people and they agreed to take 2 USPTO lawyers so we have had 2 USPTO lawyers over there since early 2018, working on criminal prosecution. So, that's the other prong of our attack. Of course, we can't talk about the

status of things, except to tell you that we have 2 fulltime lawyers at the Department of Justice working on nothing but trademark solicitations and they are working closely with the US Postal Inspection Service as well as the DOJ lawyers. There have been criminal convictions in 2017, but I don't have any inside information. They don't share it with us, but I do want you to know that they are working very hard and so hopefully we will have some announcements about criminal prosecutions coming up.

One of the things that has been very important to me as a former customer of the Office was to make sure that we bring the customer to the center of all that we do. So, we brought in Deloitte in 2016, I think, 2015, 16. They measured how we were doing in the customer experience from the perspective of a number of different customer personas and we learned a lot from that. As a result, Trademarks hired the first customer experience administrator. From there, we've hired a number of web strategists and plain language

writers as well. It's very important for us to communicate with the pro se applicants because they are now 35 to 40 percent of our filers. So, we have been making great progress on that front, and if you get a survey from us, they are very short. We ask that you please, please take it because we want the feedback. It's the easy way to give us feedback. So, please consider doing that. We have launched a number of short surveys this year on our website.

I also wanted to mention that the trademark landing page has been redesigned recently. If you haven't seen it, I hope you like it. On myUSPTO, now that you're having to go there to file, you might want to take advantage of some of the other features. People have complained in the past that they were having trouble finding forms, so there is a form finder widget. You don't have to know the name of the form. You can use plain language. You can also put your whole docket in there. I also wanted to mention that TPAC has been very helpful to us recently with the new form that we have developed. It's for TEAS

Plus and think for it as the 1040 EZ form for trademark filing. So we are very grateful to TPAC for testing the form in beta form and helping us, giving us feedback and to get things on file through this. There are actually filings that have now been made through this new form. We're delighted with that. It was originally developed with pro se's in mind, but we think that everyone is going to like it, once we are able to finish the testing and release it fully to the public.

We also have the first ever status app, or the first ever App for the USPTO, which is a status app. If you have got it, it will ping you when you have changes. So, please consider adding that to your phone and it's both available for Google and Apple phones.

On the international front, we are still an active member of the TM5. The other members are Korea, Japan, China and Europe. We have a lot of projects going on. I'm very excited about the fact that the ID list, which

means ID's accepted in all the members - the ID list of agreed-upon terms has now hit 20,000. We have about 45,000 terms in our ID manual and 20,000 of them are now acceptable in all members of the TM5. That has taken an inordinate amount of work and so, I'm very grateful to both the people in OPIA and our ID team in Trademarks for all the hard work on this. I cannot tell you how much work it is. Going through each ID, it is a lot of work. So, thank you to them for that hard work.

In addition, the common status descriptors, for the icons that you see on our website that show the status of our pending and registered files, they have been accepted by all the TM5 members. Other countries have expressed interest, including Israel. I believe that our Director talked to Israel about that recently and WIPO has also expressed an interest. So there are many, many different projects going on. If you want to look at them, go to TMfive.org and you can see some of the projects that we're engaged in on the international front.

I always want to put in a plug for IP attachés. It shocks me when I go out and speak and I say how many people have ever used an IP attaché, and I did this this week at the Association of Corporate Counsel. There were about 60 people in the room. Molly Kowalski, who is our Regional Director, was one of only 2 people in the room who raised their hands, who had ever heard of or knew about an IP attaché. As I said, it may be the most important thing you get out of my speech today is the fact that you have this free resource abroad to help you when you have problems abroad. They are really fantastic and they can't give you legal advice, but they can help you in many other ways. So, it's a really valuable tool for all IP lawyers to know about.

If you have feedback, TMfeedback@USPTO.gov is the contact information. I always used to tell people to contact me, but that will only work through December 31st, so TM feedback will last a little bit longer than that. Thank you so

much to TPAC and I really am very grateful to you for the recognition and for all the time that we've spent working together. It has been a true honor and pleasure to work with all of these very impressive people. Thank you.

MR. BARBER: Thanks very much, Mary. Any questions for the Commissioner? This is your last chance to cross-examine her. So, take advantage of it. Okay. Well, I guess you answered all of our questions in your presentation. I did want to introduce one other TPAC member that joined us since I did the introductions.

Stephanie Bald. Stephanie is a partner at Kelly IP. Even though the firm is located here in D.C., she resides in Chicago and she gets the Super Mom award today because she attended our subcommittee meetings yesterday, went back home to Chicago to trick or treat with her kids, and then came all the way back here for the public meeting today. So, thank you for all of your dedication to be with us today.

MS. BALD: I cannot miss TPAC.

MR. BARBER: Well, we're a little behind on our agenda, but we'll catch up, I'm sure. I believe next up, we have Amy Cotton from the Office of Policy and International Affairs, to give us an update on what she's doing. Thank you.

MS. COTTON: Thank you, Bill. Actually Shira could not join us today. She is in Chicago giving a speech and she's asking me questions about various things she's talking about right now. So, we're in contact with her. She wishes she was here, but instead you have me and my colleague, Cari Berdut, who is a Senior Counsel with OPIA's enforcement team. We wanted to talk to you about a couple of things today, starting with the Presidential Memorandum. I'm going to turn it over to Cari for that.

MS. BERDUT: Thank you. Good morning. So, on April 3, 2019, the White House issued the memorandum on combatting traffic in counterfeit and pirated goods. The memorandum requires that DHS, in coordination with DOC and in consultation with an interagency group,

submit a report describing the factors that contribute to and the scope of trafficking in counterfeit and pirated goods and to provide recommendations for enhanced enforcement measures, data collection, federal collaboration and public-private collaboration. The PTO had the lead for the DOC and an executive steering committee was created to draft the report and the PTO was the DOC lead for that, and of course, we were in constant consultation with our colleagues at ITA and NTIA throughout the process, but the USPTO provided drafting as well as views and edits as the draft report took shape. I keep calling it a draft report because it will not be a final report until the White House approves it. So, the draft report was due to the White House on October 30th and was delivered and now we're waiting for comments from the White House. The memorandum provides that 30 days after the October 30th deadline, a public version of the report will be published in the Federal Register notice. Now, as part of this information gathering process,

we also published a Federal Register notice on July 29th requesting comments from the private sector and there were 3 overarching questions that shaped the information we were seeking in the Federal Register notice. That was: the extent to which online marketplaces and other third-party intermediaries are used to facilitate trafficking counterfeits; what were the existing best practices that were most effective in curbing counterfeiting; and recommendations for future action. A total of 95 comments were received, 90 of which were made available on regulations.gov, and 5 of which contained BCI, but the over-arching submission themes were legislative reform, for example, augmenting CBP's authority to intercept small package mailers, data-sharing and transparency, and in that content, the example was given as having a uniform data standard for government seizure data or direct centralized access to CBP data. Consumer education, third-party liability or secondary liability standards need to be clarified and legal enforcement. In other words, existing

law should be enforced more stringently in the fight against counterfeits. Those really were the bucket list or the buckets that we found of the responses that were submitted. Now, the draft report will consist of 3 sections. The sections are the scope of the problem, current efforts are in place, and U.S.G. role. The scope of the problem, of course, is the issues that are faced by right-holders and consumers plus existing data on the scope of the problem. Current efforts include both private sector and U.S.G. So, for instance, what preventative steps are platforms taking and what proactive steps are they taking, such as notice and take-down or the use of AI to detect counterfeits. Then for the U.S.G., is the existing regulatory and legal framework. Then there's a recommendation section, and the recommendation section is divided between voluntary actions by the private sector and government action, and the government action is what can be done short-term versus what can be done long-term. So, once the public version for the report is issues, then we will be

engaging with the private sector on next steps, on where do we go from the report. So, that's it in a nutshell.

MR. BARBER: Any questions? Thank you.

MS. COTTON: Two more topics to run through quickly. I know we are short on time. I wanted to fill you in on bad faith in China. You know in April, I told you about the trademark law revisions. They are going into effect today. These include the requirement to use at filing. Also, there were a set of regulations we talked about in April. These were from the Chinese Intellectual Property Office on abnormal applications. This is what they were calling them. They've changed that name. Now, it's bad faith applications. We saw an updated version of those regulations issued from the State administration for market regulations. That's sort of a new entity that encompasses CNIPA. They call it SAMR. This version of the regulations will go into effect December 1. So, you'll be seeing these very shortly. The SAMR draft went back

to the old formulation of well-known mark, instead of using the term "widely recognized by the relevant public" that they used in the earlier draft. In other words, it will be considered in bad faith to file for an application that copies a term that is well-known, rather than simply widely recognized. Also, in the final regulations, there are no provisions prohibiting the granting of financial aid support or awards to parties engaged in bad faith trademark violations. What that means is that the provisions that were in the earlier draft that were penalizing bad faith filers by withdrawing their financial incentives, they have been removed from the final regulations. So, this is code word for subsidies. So, for those bad faith filers that were getting subsidies that provision was taken out, that the penalty is no longer in there.

Lastly, there is this new provision in these regulations that says a detailed examination regulation and procedure shall be enacted separately. We don't really know what

that means, could be examiner guidance, other regulations, we're not sure. We don't know when it will be issued and we don't know if we'll be able to comment on it. So, we're a little uncertain about that, but obviously they thought they needed more regulations to deal with bad faith. So, there may be possibilities for future engagement, like criteria for examiners to consider in analyzing bad faith applications or criteria for examiners to figure out whether there is a bona fide intention to use. So, we'll be looking to see what openings that there are, so that we can provide some support for the Chinese Office. So, that's the news on China.

Lastly, let me just wrap up with WIPO, W-I-P-O, the Standing Committee on Trademarks, this next week. We've been discussing country names for a long time, not much progress. Now, we're seeing a proposal from Peru about nation branding. They wanted an international instrument on nation brands. They didn't get much support for that. So, they're sort of stepping back and they want a

survey on how countries develop and protect and enforce nation brands. This is that whole government ownership of IP angle that countries are coming at. So, that creates some problems for us. Another proposal that might be more interesting to you all is that from the delegation of South Korea, they're seeking an international treaty to protect well-known marks that are not registered, used, nor have reputation, except in the country or origin. So, apparently there is a problem for Korea that their well-known marks are facing registry squatting in China and Vietnam and some other countries, and they're looking for ways to deal with that. You should know that their own law actually recognizes a well-known mark from another country that's not known in Korea. They have put their money where their mouth is, but that's a little hard for us to sort of contemplate. We need to figure out what we can do with that. I think there's a problem. We have a registry squatting problem too, right? We have bad faith filers who are coming in and so I think

maybe there's a combination to be had at the SET in Geneva and we'll see what happens.

Also, I just wanted to mention, I just saw a blurb this morning about Brazil. They just implemented the Madrid protocol October 2. You should know they will only allow applicants to designate Brazil in new international registrations, so you could not file a subsequent designation on an existing IR. They want to control the number of files that come in, applications that come in early on, but that will be something that you all need to look at as you are looking at filing strategies for your clients. So, that's all I've got on WIPO from OPIA. If you have any questions, I'll be happy to answer.

MR. BARBER: Thanks very much, Amy. Any questions? All right. We have a quiet TPAC this morning. Next on the agenda is Branden Ritchie. Branden is the Director of the Office of Governmental Affairs and Oversight. He is going to give us a legislative update.

MR. RITCHIE: Thank you. I have Kim

Alton, our Deputy Director here with me as well. We will try to give you an overview and answer any questions you have. Thank you. It looks like everybody survived Halloween pretty well. Fairfax County decided this was the right day to do picture day for my daughter's elementary school. So, we'll see how those come out.

So, anyway, there has been a lot of activity on trademarks recently. I was a trademark examiner back in the day for about 3 years. Then I went to the Hill and I was there for the last 16 years before coming back this year. I can tell you when I was on the House Judiciary Committee, we didn't have even this much trademark legislation in the whole time that my boss was chairman for about 6 years. So, it just seems like these issues are ripe this year. We'll go through some of that.

First, we'll tell you that yesterday we had a hearing. It was a patents hearing, but it's of note that it was a hearing on patent quality where the Commissioner on Patents testified and I don't know exactly

how - let's make sure I've got this right. There we go. It was all about patent quality. The pendulum on the Hill swings sometimes back and forth between a lot of interest in pendency and a lot of interest on quality. This one focused on the quality side. The Commissioner did a great job. That's of note. It's on Congress's mind these days, the quality of what we're doing here at the PTO.

But going back to the previous comments, there is a lot of activity on trademarks. First of all, we had a hearing with Commissioner Denison where she did a wonderful job. It was all about the fraudulent filing issue. Congress is very interested in that. The hearing that Director Iancu had was dominated by questions about this issue, so much so that they wanted to do a follow-up hearing and have Commissioner Denison come and testify just on this issue. That happened this summer. She did a wonderful job. Now, the Hill, especially on the House side, is leading the effort to try to come up with a legislative proposal to create additional

tools to help combat the fraudulent filings issue and the non-use issue. That's still in the works. There's a lot of details that they're trying to work out. They held a roundtable last week which we attended and they are still mulling over some different proposals, but one of the ideas is the basic thrust is to set up some new proceedings to challenge and take another look at marks where they're not being used or never were used on certain goods and services. The other issue that's somewhat tied into that, that I think the Hill is also considering is to create a rebuttal presumption that there's irreparable harm when there is a finding of trademark infringement. So, that's a live issue on the Hill as well. Let's see.

Skipping on down to the Trademark Licensing Protection Act, there has been a bill introduced that would say that if just because a trademark owner exercises control over his or her trademarks, that would not qualify as a factor in establishing a franchisor-franchisee relationship. There is

a lot of concern from stakeholders that we've heard about this provision. The Hill knows that. The chances of that bill we'll see, I think. The House doesn't seem much interest in moving that. But we're watching that closely and trying to help convey thoughts on that one.

The Flag Act, we heard a lot about that earlier this year, it almost went to the floor but it got pulled because of some concerns and the Committee on the House side is still thinking that one over. I think they're rethinking exactly what they want to protect and working with stakeholders to try to figure that one out. So, that one, I would say, is on hold for now while they continue to contemplate it. Then one thing that was somewhat surprising to us was that there does not seem to be an urgency to fixing the Brunetti case on the Hill. That's a pretty salacious one right there, as we all know, but I think it gets tricky on the Hill because it seems like there is a clear-cut way to do that, but then there's a lot of Frist

Amendment issues, a lot of strong feelings about these types of marks. So, I would imagine there would be a lot of debate about that one before that one moves forward, but there is thought about it, but there doesn't seem to be much urgency to move a fix on that right now.

Then anti-counterfeiting efforts by the U.S. Government and Amy talked a lot about that. That's another topic that both the House and Senate are both very interested in and are contemplating doing legislation on but we haven't seen drafts of that yet. I should say that the Senate is very interested in the trademark fraudulent use claims issue as well, and they are working with the House on trying to figure out a draft legislation on that, as well as reparable harm.

Again, there's a lot of issues on trademarks unprecedented for the past decade, I'd say, a lot of work for us, a lot of work for Amy and Sharon's team, but it's fun. We welcome your comments as we continue to look at these things.

Moving on to the next slide, I'm not going to get too far into this because I feel Sean is going to talk about this in detail, but the broad scheme of things, November 21st, there is a CR that goes until November 21st and I'll just stop there because Sean is going to do that one. He'll talk about the impacts to the budget and things like that.

Finally, one of our legislative priorities that we are always on the lookout for is continued continuity of service during lapse in funding. We want to make sure that we can continue to operate and examine even if there is a lapse in funding. We came pretty close to not being able to do that earlier this year and we are looking at ways that we can possibly mitigate that risk, as well as potential investment authority. Talk about the IP attachés, as Commissioner Denison mentioned. They are really important tools that stakeholders really make use of. This is where I'm going to do a quick plug too. They are very helpful to the Hill as well. So, we did a lot of Codell's when I was on the Hill,

and we went to different countries. Primarily we focused on IP issues, patents and trademarks and copyrights. The IP attachés would always meet us there and give us the briefing on what's happening on the ground because they talk with the AmCham members and the government officials in country. We'd always get the briefing from them. It was very, very helpful. So, I agree with what Commissioner Denison said about that, how critical they are. I'll put a plug in that we can help provide potentially. If you hear of members of Congress traveling to different countries on CodeL's, one of the things we could help do is facilitate getting talking points or issue papers to the Hill on issues that you're hearing about that are big in the countries that they may be going to. We can help facilitate through Sharon's team and Amy getting those to the IP attachés as well. That's an open invitation. It's really helpful for the members to have background papers when they go. The committee staff usually does it, but often they'll send out calls for the

industry to provide those. We can help facilitate that in OGA if that's something that you guys are interested in. Just feel free to contact us.

Let's see what we got left. Thank you. Now, we're open to any questions.

MR. BARBER: Okay. Thanks very much, Brandon. Any questions?

MS. WALTON: I have one question, yes. Can you elaborate a little bit on the investment authority for USPTO's internal operating reserve? What is that about?

MR. RITCHIE: I'm going to let Sean talk about that.

MS. WALTON: Okay. Thank you.

MR. MILDREW: I'm sorry. Could you repeat the question?

MS. WALTON: I just saw on the legislative priorities a bullet point about investment authority for the internal operating reserve and I was just curious to hear a little bit more about that.

MR. MILDREW: I'd love to share, but we don't have an official administration

position on that specifically. So, it's really beyond me to comment on that.

MR. BARBER: Other questions? Well, it's certainly interesting to see all the trademark activity on the Hill. I'm sure that will make for interesting discussions between you and TPAC in the following years. I appreciate the Office keeping such a close eye on those initiatives and educating us on them. So, thank you.

MR. RITCHIE: You're welcome.


MR. BARBER: Okay. So, next on the agenda we do have Sean Mildrew. He's the acting Chief Financial Officer and he will give us an update on the finances and budget.

MR. MILDREW: Great. Thanks, Bill. Good morning, everyone. I'm going to address the usual topics, 3 fiscal years, '19, '20, and '21, and then talk a little bit about our fee setting. So, why don't we dive right in? For fiscal year '19, good news. As you can see, we had annual fee collections of \$343.9 million for Trademarks. If you add that to the adjustments to our revenue of \$1.3 million,

you come up to that top line number or the USPTO, trademark fee collections of \$345.2 million. That's really good news because it's actually more than what we were authorized to spend. You can see the authorized amount at \$341 million. That leaves us just shy north of \$4 million above our authorized amount, which is great news because we get to keep that money. The law provides for any amounts collected above our annual authorized spending amount to be deposited in the Patent and Trademark Fee Reserve Fund, which is a special fund set up in the Treasury just for these occasions when we collect more than we were authorized to spend. So, we're working with the various entities to help us get those funds from the fee reserve fund into our operating account. So, that's good news for us and we're working on that right now. By the way, just as a footnote, this is only the second time that we've used the Patent and Trademark Fee Reserve Fund. The first time was back in 2014. So, this is good news for us. It goes a long way in preventing fee diversion.

The next slide, you can see that our appropriated spend levels there and our reserve and other income, minus an OIG, inspector general transfer, gives us an end of year available income of \$481 million against our spend, brings us to an operating end of year operating reserve of \$126.6 million for Trademarks, which is wonderful. If you add the \$4 million that I talked about just previously, that is in the patent trademark fee reserve fund, we come down to a final operating year-end balance of \$130.6 million. That's a great number to have for lots of reasons. But that fee collection level, including the funds deposited in the reserve fund for 2019 actually is \$55.7 million above our minimum operating reserve level. So, that's good news. That's kind of where we want to be.

Our next slide, looking at fees, we were 0.8 percent above our fiscal year 2019 appropriated level, that level of \$341 million that I mentioned previously. Our trademark fee collections for fiscal year '19 were above our

planned fee collected amount by 1 percent and that planned fee amount was updated as recently as June. You can see they were greater than our 2018 fee collections by 4.5 percent. You can see on the chart below, we show '17, '18 and '19, the difference between '17 and '18 was almost 8 percent. The difference between '18 and '19 is 4.5 percent. You might recall Commissioner Denison that application filings were up 5.4 percent and so you might wonder why 4.5 percent increase in collections. That really has to do with the mix of frees throughout the year, not necessarily driven by applications. There is a little bit of an application in the air there of how we collect our income. The other things that I would want to point out on this chart, is the spoke.  If you look at the orange bar graph, that spiked in July for \$215,000.00 we believe that's directly related to the U.S. Counsel role. Okay.

Moving on to fiscal year 2020, as Branden had mentioned we are currently operating under a continuing resolution which

essentially allows us to spend at last year's levels. That is calculated off our fiscal year 2020 budgeted amount of 3.37 billion dollars, the good news is that both the Senate and the House completed their floor action and the senate committee and both house and senate bills fund us at our full request level of 3.45 dollars.

So, for the fiscal year 2020 budget, our OMB budget was submitted on September 9, and the President's budget by law will be released on the first Monday in February, and before that is released, we usually share our draft budget with the TPAC for their review in advance of that position. Finally, just a word on fee setting. As you all know, because you hosted a public hearing back on September 23rd, regarding the fee adjustment proposal. Those comments closed on September 30th and we are in the process now of reviewing the public comments and drafting that will be used in drafting a notice of proposed rule-making, an NPRM, to set and adjust trademark related fees and we'll also obviously have the benefit of

the TPAC fee setting report. So we'll have your information as well as public comments and use that as we draft the NPRM which we hope to have published in the Federal Register for public comments yet again in the springtime of 2020. So, we're fast-tracking that, and it will provide another opportunity for public comment when that Federal Register notice is published. I think with that, I am concluding my prepared remarks. I'm happy to take any questions you may have.

MR. BARBER: Thanks very much, Sean. Any questions from TPAC members? Just an update on TPAC's report on the fee proposal. I see a couple of people in the audience that attended our hearing and spoke. So, I appreciate your interest. TPAC has completed our draft of our report. I submitted it to the Office yesterday. I believe there is an internal review process before it will be made public, but I think it will be made public very soon. So, look for it on the PTO website. It should be available soon.


With that, we are at our break. So

we will take a 10-minute break. It is now 10:13. We're ahead of schedule. It's amazing. Thank you, Sean. We'll take a break until 10:25. We'll resume at 10:25.

(Recess)

MR. BARBER: Following the break, we have Judge Gerard Rogers. He's the Chief Administrative Trademark Judge at the TTAB, to give us an update regarding the Board.

MR. ROGERS: Thanks, Bill. This will be the counterpoint to the 14 years of always hitting your numbers at the trademark operations. We cannot say that at TTAB, and I will now endeavor to explain why and how we will try to get back to hitting our numbers in the current fiscal year.

During the past fiscal year, fiscal 2019, all filings in all categories were up across the Board, taking a slightly more detailed look at not just the year over year increase, but in recent years in total. I've highlighted this  18,490 filing level for extensions of time to oppose in fiscal '17 because in these 4 fiscal years, that's the

only category which did not have an increase and everything else in all 4 of the fiscal years covered by this slide did have increases. I've also highlighted the quarterly incoming filings for extensions of time to oppose oppositions and cancellations in the '19 fiscal year, because in every one of those quarters there was an increase. In the appeals, we saw things kind of go up and down over the course of the year, which is often what we see in terms of fluctuations, but it's pretty darn clear when you look at this slide that we've had increases in every year in these inter partes categories and even in every quarter in FY '19. So, we expect that these increases are going to continue for some time to come, given the filing levels that have occurred in trademarks in recent years and they have had ramifications for our docket.

If you look at just the numbers here, the cumulative 3-year increases, appeals up about 7 percent, extensions of time to oppose, 7-1/2 percent, oppositions, 18

percent, and cancellations a whopping 31 percent. This much more significance in trial cases has had an impact on the Board in fiscal '19.

On the other end of the process, because those first few slides are looking at what's coming in the front door at the Board. On the other end of the process, the number of cases maturing to ready for decision by a panel of judges is the area where we've seen the impact of the increases that were occurring at the beginning of that earlier slide, back in '15, back in '16 when these dramatic increases first started occurring. It takes a few years for trial cases to work their way through the Board process. We did not even see increases in the number of cases maturing to ready for decision in '17 and '18. We saw declines, mostly because of declines in appeals maturing to ready for decision and the increases in trial cases maturing to ready for decision were there but were relatively slight. But between '18 and '9, we had a much more dramatic increase in the trial cases

maturing to ready for decision, and we also for the first time had a more dramatic increase in appeal cases maturing to ready for decision. What that adds up to is we had almost a 9 percent increase in appeals maturing to ready for decision, 30 percent increase in trial cases maturing to ready for decision. We didn't quite keep pace with the appeals. We did everything we could to try and keep pace with the trials. We increased our decision making in trial cases by 41 percent. The total increase over the course of the year was about 11-1/2 percent that the judges increase their production.

We are left at the end of the fiscal year with a docket that is still made up of 40 percent of trial cases. So, that's pretty significant change for us as recently as a few years ago, the inventory was generally composed of about 75 percent appeals and 25 percent trials. So, this has been a big shift, given the extra work that many trial cases require to get done. This has had ramifications for the processing of contested

motions. More trial cases mean more contested motions in trial cases and we have not met our standards in regard to processing of motions. We did not meet the standard that we have for the time to decision for both appeals and trial cases. This 13.3 week was the result we achieved in fiscal '19, but that is the time to decision from the point when a case, an appeal or a final decision is ready to be decided. It's not the time to decision from when I assign it to a Judge or a panel to be done. They're doing their work in a shorter time period than that, but this is the total time from the time it's ready and then it's going to sit for a little while until it gets assigned. Then when the decision finally comes out in the appeal or the trial case, it will be about -- at least in fiscal '19, it was about 13-1/2 weeks. Looking at the pendency from time for ready for decision until issuance of decision, on this slide we kind of split it out for you, so that you can see the increase in appeals and the increase in trial cases. So, a somewhat more significant

increase in trial cases. It's always been true that we have faster turnaround times on appeal cases versus trial cases and that's illustrated by this 4 year look at the difference in disposition rates, pendency rates for the 2 types of cases.

Total pendency, if motion pendency goes up and judge pendency goes up, it follows that total pendency will go up in the end to end processing times for appeals and trial cases. On this slide, the one thing I'd like to highlight is on the lower left, ACR trial cases, 27 cases decided following the parties' agreements to use some form of accelerated case resolution. That's the highest number we've ever had in one year. So, there is a lot of interest among many parties to trial cases in doing things in a much more efficient way. That's something we continue to try to leverage and promote to parties who were involved in trial cases. We've recently started working with one of the examining attorneys who is working with us on a work project. Brittany, you can raise your hand.

Thank you, Brittany. She is going to be helping us update our material on our website about accelerated case resolution, the kinds of cases that have gone through the process, our frequently asked questions, and simply trying to give the process a higher profile, so that people who do want their cases to work through faster than the average pendency that we're seeing will have opportunities to agree to efficiencies that will get them through the process more quickly.

So, what do we do? Well, our staffing levels, we had not increased our judge staff significantly, but we now know that we're going to have to hire more judges and hire more attorneys. So, we've got a current staff of 23. We lost a judge who got promoted to a judge magistrate position and we certainly wish her well in the Federal District Court. We promoted 2 of our interlocutory attorneys to judges, but those were just backfilling of position due to retirement. So, we didn't really have a net increase during the year. But what we are

doing in terms of hiring is we brought on a Deputy Chief Judge Mark Thurman to my left here during the year. We are in the process of trying to hire judges. We hope that will be done in this quarter of the current fiscal year. We have interviews that we're starting to schedule for candidates for the interlocutory attorney position. We have many applications for that. We have Brittany now with us on work project and we've had another examining attorney on work project before her and we will have more after her. We have just recently resumed the trademark examining attorney detail where they come over and work with our interlocutory attorneys on motions. We have a part time student intern. We have a fulltime law study extern who is starting in the spring and we are investigating the use of fulltime law clerks, which is something that the Patent Board has recently done. So, hopefully we'll be able to replicate that process and bring people on board.

So, one of the things I think we need to do for this fiscal year and I've


already had discussions with Deputy Director Peter about this is to recalibrate some of our goals. Earlier on that slide that showed average time to disposition of appeal and trial cases at 13.4 weeks, again, that's rolling up all decisions into 1 category and given that our docket is much more trial focused than it was before, and to promote more precision in the goals that we have and better client counseling by attorneys when they are talking to their clients about how long things are going to take at the Board, we've thought that we should really sort out our goals and have separate goals for processing of appeal cases and trial cases and separate goals for processing of non-dispositive versus dispositive motions because these recognize that certain things are going to take longer times than other things. So, these are the goals that they're not completely finalized yet, but these are the things that we're talking about and we will finalize very shortly and then have them be set as our goals for the year.

I do not want, after all of that negative news, to fail to recognize the accomplishments of the Board's attorneys and judges this year and the judges, as I said earlier, did step up after I implored them to increase their production and try to keep pace with this influx of cases maturing to ready for decision. They increased their production this year by over 11 percent and that was without hiring any additional judges. The 2 attorneys that were promoted to judge positions were really still training their replacements. So, they were not able to contribute much. This is a good increase in production, given the limitations that we were under. We were able to bring the inventory of cases that were ready for a decision, which hit its high point in May at 273 cases, down 25 percent before the end of the fiscal year. Our 5 new interlocutory attorneys we hired in September of 2018 are now really ramping up their production. So, we hope to see some positive signs on the motion practice front in the near future, even before we hire

additional interlocutory attorneys. Thank you to Judge Karen Kulke who has been our lead judge for clearing precedential decisions. We were able to hit our goal for the year and get out quite a few precedential decisions, including many on procedural matters that continue to interpret and explain the rules changes we had in 2017.

Of course, we revised the TBMP on schedule as we have every year since I think it was 2011.

So, there is continuing interest in accelerated case resolution, as I said earlier. This is a trend that is worth noting because it can help us ultimately with the influx of trial cases and the number of trial cases maturing to ready for decision if we can get more people to continue to be more interested in accelerated case resolution, we can get trial cases through the process faster. Hopefully we will make this a more prominent and available option and publicize it in ways that will continue to generate interest in ACR. We've also seen in cases

where the parties don't actually agree to accelerate case resolution greater uses of stipulations. So, for those who have become familiar with the ACR process and the different aspects of ACR cases, they sometimes will enter into stipulations of fact or  stipulations of procedure just to kind of remove issues for which there is no real dispute and the parties can agree that they are not issues that need to be tried.


Another notable trend that we're seeing, in addition to the increase in interest in ACR are the default rates. The reason this is a trend that we are noticing now is because we do not have an IT system that can easily generate this kind of data but because we're involved in the expedited cancellation pilot and we've been looking very closely at cancellation cases in particular, and even more so cancellation cases that are certain non-use or abandonment claims, we've been able to figure out that default rates are very high in cancellation cases and growing, as you can see from this slide. There's some

thought that there might be even greater growth in some of these default rates as a result of the mandatory U.S. Counsel rule because there may be filers who are going to challenge foreign based Madrid extension or 44 based registrations, and if those registrants are not going to select U.S. counsel to defend those proceedings, we might have greater increase in defaults in some of those cases, but we'll just have to wait and see.

So, the cancellation pilot program which Commissioner Denison alluded to earlier is ongoing. We're not sure that the results of the cancellation pilot bode well for us drafting a notice of proposed rule-making to formalize an expedited cancellation proceeding as a particular type of cancellation proceeding at TTAB. The default numbers being as high as they are and the interest that many attorneys who do not agree to ACR in these non-use and abandonment cases, in having some discovery, kind of suggests that we have large record trial cases and we have trial cases involving non-use or abandonment claims where

the parties just feel that they need to have some discovery. So, we will continue to explore with these parties, what kinds of discovery they need, what kinds of procedures they find useful in our attempts to expedite cancellation cases involving nonuse or abandonment claims, but unless we get a lot of useful data from this continued effort, we may not be in a position to actually put out a notice of proposed rule-making to establish an expedited proceeding as a specific type of cancellation proceeding, because rulemaking is itself a labor intensive activity and usually requires IT changes. It may not be worth the cost of that time and effort, if we're not going to see the benefit. So, we're going to continue to assess it for a while longer.

For the standard protective order which we've spoken about in a number of previous meetings, we had comments that came in in regard to a couple of big issues, and that was in-house access to attorney's eyes only material, and the number of tiers of confidentiality that we should use in our

standard protective order. There were suggestions that change might be needed in both of these areas. The comments that we received were not strong and uniform in any particular direction, and so, therefore, there are not going to be any major changes, at least at this time, on those issues, but for some of the other issues  which we agree with commenters would be useful. We are going to consider making the applicability of the standard protective order more prominent for those parties who are involved in the case, if we can find a way to get them entered as a separate docket entry in the prosecution history. We may do that. We are going to try and address more directly the ramifications of access to attorney's eyes-only information when pro se parties are involved, which basically means if you don't have an attorney, you don't get access to attorney's eyes-only information. So, any questions that's something that we may try to clarify and we'll try to address some ambiguities in various sections of the standard protective order and

just kind of clean things up a little bit based on comments that we have received. So that's it from TTAB. I'll be happy to take any questions.

MR. BARBER: Thank you very much, Judge Rogers. Any questions for Judge Rogers? Well, you're off the hook. Thank you very much for your thorough report.

Last, but certainly not least, we have our update from OCIO. I see we have 2 people from the team here. We have Jamie Holcombe. He's the Chief Information Officer. Also we have Rob Harris, the TMNG Portfolio Manager. So, I'll turn it over to you.

MR. HOLCOMBE: Thank you very much for inviting me this morning. It's a great day out, little chill in the air. Hopefully we've gotten through all of those operational issues and there will be no more chill in the operations of trademarks any further. We have a good presentation here about all the progress we've made and I'll follow up at the end with further comments.

MR. HARRIS: Thanks, Jamie. I want

to cover, as I have in the past, what's happened since we were together 3 months ago and then certainly have a time to talk through what we are priorities are for FY '20 as we move forward. As Mary already touched on, on many of these, I'll just highlight a few of the changes.

We talked about the U.S. Counsel earlier. That change was effective August 3rd. TEAS's log-in last weekend, we spoke earlier about the bumps in the road and Jamie just alluded to the chill. We feel like Monday and Tuesday were bad days for customers, late Tuesday afternoon into Tuesday evening. We've worked those out and are moving forward as green from Tuesday night forward. Mary also mentioned this morning the TEAS Plus short form. We now have up to 44 Beta testers. As of this morning, there have been 15 applications submitted, 2 more in progress. So, we certainly appreciate the additional activity. I know the TPAC members, you all have encouraged your staffs to use the product. We've got some really good feedback and it has

put us in a position, as we wrap up the Beta test, to make informed decisions as to next steps, as to how to improve the product and make sure the product is seen from the customers as useful and wanting to continue with it. The last one, this slide is mandatory electronic filing. We talked earlier that the target, our effective date is December 21st, for the rule changes and the IT changes there.

Turning to our artificial intelligence, there was quite a bit of detail shared earlier about the specimen database and improper behavior and altered specimens. Hopefully, that's not one in the orange box that was presented earlier. That's a legit scarf, right? Kelly, you committed to that. You guys did your research, right? That's the specimen search piece of this bullet that we're hoping to identify some IT tools to help the trademark business unit get a leg up in that area. The second piece is image search. Image search is an area that is still developing from a technical perspective. So, we've looked at 1 product and we are expecting

to expand that market research in the near future, but the initial feedback is the capability is still in an area that is very much in a proof of concept. We haven't seen any results from an image search capability that will help with the likelihood of confusion that says, hey, this is a home run. Still some work to be done in that area by industry and put us in a position to adopt what we would see as a usable tool.

Stabilization, you'll hear more about this in a few minutes, but we have some good work in progress. We currently are working on the trademark workflow process, TTABIS. Chief Judge Rogers left, but TTABIS is a work in progress as is trade-ups. TSDR, we know, has had some customer - it's a customer facing system. We've had some issues with that and that's also one of our that's currently being worked to stabilize the infrastructure and the foundation of that product. Last quarter was one where every trademark and TTAB employee received a new laptop, Windows 10-based laptops. Sounds like a very easy and trivial

step. It wasn't, but it was a great team effort between the trademark business unit and CIO to get more modern tools on the desktop for all of our employees. Lastly, and we'll talk more about this in a minute, we've established 3 agile pilot teams. These teams are working on TMNG capability right now, forward leaning capability, but more importantly what we're looking for these teams to do is to identify how best we can work in our future state and how best can we adapt or improve our development processes and our supporting processes so that when we launch the teams to support all of our future modernization efforts, we've adopted best practices from an agile development prospective and also learned from our mistakes in the past of having teams that weren't as efficient as they needed to be.

That leads to where are we going. I appreciate the discussion we had with the IT subcommittee yesterday. There was really one pointed question which I appreciate being asked, which is what the difference is. Where

did we see? Why are we more confident now than we were when we launched TMNG? I gave it some thought last night after again a good dialogue yesterday. I boiled it down to 2 areas. The first is leadership. We've heard from Director Iancu, through Deputy Director Peter, Commissioner Denison, and even across the Board. This is not just an IT project, so it was Sean's team, Jamie and our team that we have from the top down very focused priorities for fiscal year '20, and forward. In the past, I think one of our challenges has been that we've been willing and able to commit to dabbling in 10, 12, 20 things at once as opposed to having a focus on what are the key priorities for the agency. Those are laid out in the slide, stabilization, modernization and governance. Stabilization, that's shoring up the infrastructure. That's making sure the products we have today are going to be usable until we're able to replace them with more modern products. As I mentioned, we've finished some works on TEAS and TEAS I. That was last fall and beyond TTABIS and tradeups

were also working with our current OM team on products like fast 2 and tickers. There are servers that are well beyond their useful life that we need to upgrade. There are operating systems we need to get off and that's not very glamorous work going on behind the scenes there. That puts us in a position to then leverage modernization, our second goal.

From a trademark perspective, we've talked a lot about TMNG in the past. TMNG has determined over this past year from the Boston consulting group is a solid foundation on which to build on. There are products and tools that we have built into TMNG that we will continue to use in the future. That being said, there are improvements that need to be made. That's no surprise. This has been a product that's been in development since 2011. Some of the products, like the Electronic Official Gazette, ID manual very useful to our customers today. Others, the more internally facing tools have been a struggle to be candid. Those are tools that again, we've done some solid work and that

will be the foundation from which we build on in the future. So, from a modernization prospective what the team has been doing for the last few months and will continue to do over the next few is focus on first, requirements definition. We've got an idea of what we want, really do that deep dive, work with subject matter experts across the trademark business unit to make sure that we know at a high level and a more detailed level features and effects that we know when we turn to a new vendor we can explain clearly what our expectations are. At the same time, we expect the industry to come to us with innovative solutions. We want to be able to tell them the what and turn the industry and have the power of industry come back to us and say hey listen, have you considered this approach and this tool. How can we fit AI into this? It's really rely on the power of the great minds out there.

The last piece of this is governance. That's recognizing again that we can't continue to operate the way we're

operating today. This is governance, not just from an IT perspective, look at processes like our development life cycle, our investment management process, but also again from an enterprise level, how can we adjust our acquisition processes, working with the CFO to make sure that we have more efficient and more focused processes that allow us to have the right contracts with the right folks at the right time and also, it cuts across our CIO, our hiring processes, as well as working with Commissioner Denison and her team to make sure that we have the right people engaged with the product team at the right time. That is those 3. Stabilizing current, preparing ourselves to modernize and having the right operating model in place to support the future modernization efforts. The man to my left is very passionate about all 3 of these. I'm going to pass the mic there and I'm sure there are key pieces that I've missed that I'm sure Jamie will expand upon.

MR. HOLCOMBE: Thanks a lot, Rob.
One of the things I'd like is any interaction.

So, please stop me if you have any questions, because I think we get much more if we exchange information, rather than just one way.

In order for people to understand what I'm trying to do with the team internal and this goes for patents and trademarks and PTAB and TTAB. It goes for everyone. Is to provide a vision where people can understand that there needs to be change. I look at things in the terms of 3 areas. People, process and tools. In the peoples area over the last 8 months, I've identified a large skills gap that we have between the old and the new, and what is that? It's really easy if people can understand that overnight on your bed stand, your phone is updated with multiple releases on different things that are just pertinent to you, because this is your customized view of the world. That's the new. The old way of doing business is very stodgy and structured we have to do this and have to do that. As a result, we hit these problems where not everything is coordinated correctly,

because everybody is wait, wait, wait, wait. The structure in bureaucracy is huge. So, it's getting people's minds around changing to the new and adapting to that. We need speed now. As you can well imagine, the government is not very good at speed.

No. 2 is the process, people processing tools. The process that we've undertaken in development heretofore has been very structured. It's not that easy and it's not that disciplined. Believe it or not, when you have chaos in special operations in the military, it's very disciplined. It might seem that it's not. Free flight, when you have air combat control, is not controlled by a bunch of air traffic controllers. It's done by the operational aspects of AWACS. The pilots are allowed to have free flight. They don't have to check in if they are in a dog fight. I'm using that process as an example of what are our agile teams are about to do. They are about to free flight in combat with all these things in a very structured and disciplined way so we don't kill one another, but we kill

the enemy. The enemy is time. We don't have time. We have to get these minor things out very quickly. There are going to be bumps in the road.

Finally, the tools. As you well know, you are using tools that are very, very old and antiquated. My goals next year is to replace those as soon as I can. In order to do that, I am going to go out into the cloud. We can't go out in the cloud with these current mainframe systems. It doesn't work. So, we're going to get out there and put in some good modern tools. So, people, process and tools. That's the way I'm coming at it. There will be bumps in the road, but I will guarantee that when those bumps occur, it will be like it happened on Tuesday. We are going to make sure that we bear forces and solve the problems as they occur. I was very proud of the team coming together and solving those problems without a lot of finger pointing, so thank you very much. Are there any questions?

MR. BARBER: Thank you, Jamie and Rob, very much. Any questions from TPAC

members? Donna?

MS. WALTON: First we wanted to thank you both and your team for being so accessible to TPAC. We really appreciate it. Rob, you mention internally facing tools. I just wanted to mention TMNG exam and whether you had any comments on where that is.

MR. HARRIS: There haven't been significant changes since we were together the last time. We had talked in past meetings of our critical success factors, the one primary remaining item to check there is the form paragraph editor. We had explained before that is tied to implementation of mandatory electronic filing. So we wouldn't have to convert all the form paragraphs over to a modern database and go back and do it again, once the changes format were implemented. We've been on hold with that. The IT work is prominently done there. So, in this pause, our focus has turned more toward the stabilization I mentioned for our legacy systems. The same thing for TMNG Exam. We've had good folks from Boston Consulting Group from EY and

others come in and kick the tires on TMNG exam and identify technical ways that we can shore up the existing product. If we are going to use this as our foundation moving forward, we need to make sure it's a solid foundation. So, there has been a lot of work. The focus has been, over the last release or two, has been more on the infrastructure of exam and the foundation of exam as opposed to any customer facing capabilities that Jay or his team or anyone else is experiencing.

At the same time as we discussed yesterday, the exam product is available, for examining attorneys, for early adopters that want to use the product. We realize it's certainly not perfect and without FPAP and without the divisionals capability, which we are going through a final test. It's not a complete product. There have been areas where it's been more advantageous for the examining attorneys to use TMNG exam over FAST1, so we've been a little uptick in that, but in other areas, we know until we can look at it as a complete product that we have our product

owner agreeing that we're ready to go. We don't expect to see any significant increase and usage from examining attorneys.

MS. TOBIN: Thanks.

MR. BARBER: Any other questions?

Ann?

MS. LALONDE: Could you explain what AGILE means? Is it a philosophy? Is it a system? I've seen it on a lot of materials and I don't know what it means.

MR. HOLCOMBE: Very good, because it means different things to different people. One of the worst things about the term is anybody can use it to mean anything. Right? To me, what AGILE within the CIO staff is the ability to move quickly. Period. That's it. Heretofore government doesn't move very quickly. So, move quickly in what area? Everybody is asking me, how are you measuring success? What are you doing? I always say better, cheaper and faster. The whole thing is everybody forgets the faster point. Don't worry, we'll wait until tomorrow. We need more information. No, you don't. You've got to move

now. So, I'm measuring things by speed, and right now, we're not quick enough. So, the agility that I'm trying to pitch forward also has a little structure around it. People have been telling me, oh, next year we're going to do this or we have plans to do this. In this quarter, we're going to do this. I don't care. I want to know what you're doing in the next 30, 60 and 90 days, how we can measure that. Then, how that fits in to the further objectives, how to get us out into the cloud, so that we're resilient, so that we can fail over and not have to worry about an infrastructure loss. Does that answer your question?

MR. BARBER: Okay. Other questions?
Elisabeth?

MS. ESCOBAR: Thank you very much for your time. I wanted to mention the short form that's in beta testing. Our group at Marriott has been very happy to participate in the beta test. We've filed a number of applications and we love it. Quick question about November 7th. That's when the beta test

is going to shut down, I understand. Were you hoping to get any feedback by that date or will there be a further period for feedback?

MR. HARRIS: We're looking for feedback prior and after as well. I know Meg Arthur has been the point of contact there and has been working a lot of your team. I will get back to you with a definite date. I believe the feedback line is open now, but on 11/7 when it closes, it will be a more formal feedback method, whether it's a survey or whether it's getting key folks together and having an in-room discussion what 'x' discussion. So, I believe it's 2-prong. There is ongoing now and then after 11/7 when it closes, a more formal feedback mechanism in place, but I don't know off the top of my head what that is. I'll check with the team this morning and get back to you.

MR. BARBER: Other questions? I had a follow up question to Donna's line of questions about TMNG and in particular TMNG exam. I know there have been some successes with TMNG and I don't want to -- I want to

acknowledge those. You mentioned the ID manual and the EOG. Those are products that are working and great and people are using them. TMNG exam is something that has been developed in beta testing, but it's not widely used by examining attorneys at this point. I guess my question is what is the plan for TMNG exam or whatever product you ultimately call it, the product that examining attorneys will use for examination, what is the plan? Is TMNG exam part of that? Do you have any sort of timeline going forward as to when you expect the product to be in use by examining attorneys?

MR. HARRIS: This is your last meeting. And you're going to wrap up the question with a timeline question.

MR. BARBER: I wanted to give you something to remember me by.

MR. HARRIS: And I appreciate that. No, we don't have a timeline. So, that's the easy answer. I know that -- again, I can feel the pressure. I can feel the heat on my back right now when I say no to that. So, let me

explain that right now the focus is on acquisition activities to get a new industry partner in to help us with something we're referring to as TMX right now with a modernized product. The first priority when the team is together and the new product team is formed, is to address the shortcomings in the TMNG exam that the Boston Consulting Group identified. That's work in progress now. I don't expect the current team to finish that. It's going to be in the near term, finished up in -- we're talking months, not years, but it's all predicated on when we can get to contract award. Hypothetically and looking at some of the information that the Boston Consulting Group has provided and suggested to us, realizing that we have to still step back and analyze that to make decisions from an agency perspective, there were plans of hopefully getting a contract in -- I like seasons, so we'll talk spring training. Spring training since we started with Astros and Nats talk. The timelines I've seen lead to a few months of activity, putting us in a position

to open up broader usage from examining attorneys, but again, there are certain plans and recommendations that the Boston Consulting Group has laid out that we still need to work with through the trademark business unit, certainly through Jay and his team and make sure that we're all on the same page with that, but I've tap danced around your question. I'm not going to say by year. I'll go season and if we award in spring, I would say shortly thereafter, given the guidance from Jamie that we'd be in a position to open up that tool for broader use.

MR. BARBER: Okay. I ask a lot of dumb questions and this will be one of them. The ultimate goal still is to replace the system that examining attorneys are using now, the legacy system, with some new generation examination system?

MR. HOLCOMBE: Absolutely. On the slide that's still up, stabilization and modernization is the balance that I personally am struggling with right now, is if you have a dollar, how much of that dollar do we want to

lean towards modernizing versus stabilizing. So, a product like FAST1 that would be replaced by the TMNG exam tool, how much time and effort do we want to put into a product to stabilize your product like FAST1 when its retirement would be the first primary product that we would retire once TNMG exam is deployed. So, that's a challenge we're faced with now, and that's the transition period we're in right now.

MR. BARBER: Then as far as the TTAB IT systems, I assume they're still in the mix here and the hope is eventually we would replace those systems as well?

MR. HOLCOMBE: Absolutely. So, TTAB, all 3 of their existing products now, that's TTABIS and TTABvue are all part of the vision for TMX. It's very much an integrated product into it, realizing the appeals side of TTAB as part of our examination process. Trials, we've looked at the trial capability that we've built for PTAB and have worked with very closely with Chief Judge Rogers and his team to see what we can reuse out of that PTAB

trial capability that has already matured and how can we reuse for TTAB. At the same time, there is near term war that the team is working on, others in EFOIA product we have now that TTAB information is a part of, and we're already looking to replace that tool and have already migrated the data over for TTAB into a more modern EFOIA product. That's a tiny little piece, but they have sat at the back of the line for a while and we've recognized that there are some key and near-term things that we can do in working with Jerry's team. They've been fantastic and they've got folks that are engaged and will want to sit down and roll up their sleeves with us.

MR. BARBER: Then my last question and then you'll be rid of me forever. You've mentioned a couple of times in your presentation that you are turning to industry, looking for industry partners to do some of these things for you, is that a shift in approach, going back to 2011 when you were developing TMNG, is looking to industry, is

this a shift in approach or is it something that you've been doing all along?

MR. HOLCOMBE: It's a big shift in approach and I would say that when I first came here, I noticed there was an attitude or a culture of not invented here, because we have a monopoly on trademarks. There is no one else that does it. Therefore, we have to build everything internal. I have shifted that at least with my immediate reports and everybody that I can reach and touch. I mean the fact of the matter is technology has gone by the trademarks IT and now we're catching up. So, one of the philosophies and it goes to the timeline, one of the philosophies is not only should we look elsewhere first, but whatever we implement, in 5 years we have to assume that it will be overwrought by other, better tools. So, the only thing you have an obligation to do in IT is to ensure that you can have those blocks deployed quickly and extracted quickly. Right now we've created a monolith of a system where if you take one little thing out, everything else falls apart

and breaks. That is the worst system to have. So, what we're doing is we're developing a system that can last forever, i.e., you take it out, you put it in. That goes with processes and people too. So, it used to be that web designers were the thing. Everybody needed a new web designer. The career path was huge and they're precious. Web designers are a dime a dozen now; right? Anybody can figure out how to do HTML. Well, we have a lot of similar ways that we have to think about that in the future. So, our vision is to mix and match. It's to just implement what's needed at the time and take it away with something that's better in the future. That goes along with the timeline. We're actually going to probably deploy new, while the old is still up and operational. That provides a lot of problems for synchronization and everything else. The sooner we can get off the old, the better, but the new has to be accepted. Once that new is accepted, then we throw the old out.

MR. BARBER: Thank you very much.

Any other questions? Any comments or questions from the public? Yes? I'm not sure of the protocol here. Maybe you can come up here, because we need it on the mic. State your name and who you're with and what your question is.

MS. RICHTER: Miriam Richter. I'm a solo practitioner from south Florida where it's much warmer than it is here. Several people in this room have probably heard me on my soapbox before. So, I just figured I would take one more opportunity for those who haven't heard my little soapbox spiel. In Commissioner Denison's report were a couple of very interesting statistics. I believe page 18, the improper behavior. I'm Miss Goody Two Shoes. I'm always looking for the way to improve the register. I just have this thing about all the deadwood and the improper filings that are on the register. I've been, as I said, on this soapbox for a bunch of years. I think what's interesting is that the new behaviors, the new improper behaviors that the Office is seeing, in a response to a lot

of the steps that the Office has been implementing in order to improve the quality of the applications. One thing that I have learned over my years as a trademark practitioner is that there are certain people out there who will always look for the way to circumvent the system. They get their rocks off, for lack of a better way of saying it, by circumventing the system. So, I think we're going to be seeing more new behavior with the new implementation. They're just going to find more ways to circumvent the system and I have for several years been raising what I think is a good solution to the problem and a little bit more pro-active than reactive. That is the implementation of a trademark bar. I think that if trademark applicants, those who are not pro se, are required to have an attorney who was admitted and approved by this Office, similar to the patent bar, that that would go a very, very long way in solving a lot of the problems because we're going to keep seeing these new suspicious behaviors, the suspicious addresses, the improperly

signed submissions. I now have to, thank you, Commissioner Denison - I now have to add to my list of things to do, is to do a search to make sure that no one is using my name, even with all of these new implementations. So, the statutory authority for trademark bar is on the books. It is the same statutory authority that created the patent bar. So, it does not require any Congressional intervention. This is an option that can be taken solely by the Office and I think that it would go a very long way. It would give the Office the authority to do something about those people who are improperly filing, if there were a trademark bar and a standard that everyone who signed a trademark application needed to be held to. I think that further proof of this is on page 27, and I think these numbers have gone up from the last time I heard you give these numbers, a year ago, Commissioner, and that is the program for the decluttering initiative, the proof of use program that was made permanent because it was so successful. 62 percent were either deleted

part or were cancelled at registrations. That is an astounding number, but the thing that is even more astounding, is the fact that of that 62 percent, 79 percent had attorneys. That means the attorneys are not living up to the standard that they should be operating on. I truly believe that the Office should seriously consider a trademark bar and asking attorneys to be accountable and provide up front quality that the Office will not have to expend such tremendous resources on to prevent the problems that we see we are having, because of bad actors. So, I'm off my soap box. Thank you.

MR. BARBER: Thank you very much for your comments. It's very good food for thought. Mary, do you want to respond?

MS. DENISON: Thank you so much, Ms. Richter, I really appreciate your comments. I wanted to just correct something. It would require a statutory change to the Administrative Procedures Act because as I understand it, the Administrative Procedures Act permits any U.S. lawyer to practice before

any Federal government agency and there is an exception for patents. There is no exception for trademarks. So, it would require a statutory change. That said, we are thinking about this. We have been hearing more and more from people in the Bar. The Bar groups themselves have not come out with a proposal on this, but we are very interested to hear about that. With regard to the results on page 27, which show 62 percent, we've actually had a slight decline, but it looks like it's a dramatic increase, because what we didn't do, was we didn't compile all the numbers before. So, what we were talking about, the 48.6 percent deletions were actually something like 51 percent last year, but we weren't combining it with the response to deleting goods or the cancellation. So, once we combined that, that's why the number looks worse. So, the number is actually slightly better. I don't proclaim victory, believe me, but I just wanted you to know that it is not the dramatic shift that you thought. It's just that we weren't reporting the same way as last year

but thank you so much for comments.

MS. RICHTER: Thank you,
Commissioner.

MR. BARBER: Thank you. I think I
saw another hand. Allison? Yeah, please.

MS. RICKETTS: Hello. I'm Allison
Ricketts. I am a partner at Fross Zelnick and
a trademark practitioner. I have some
comments on the specimen database from the
outside practitioner viewpoint. I understand
the purpose for which you are creating this
database. I think it's great. For several
years, I have been interested in the idea of
creating a searchable specimens database, but
for a different reason. My idea has to do
with providing trademark owners and trademark
practitioners with a way to search for
unregistered designs and logos and trade
drafts that appears in specimens. So,
specimens used frequently show more marks than
the mark for which registration is sought.
They show logos. They show trade dress
elements and other visual elements that go
into the entire package that the consumer

sees. But many of these additional elements that appear in the specimen are not themselves subject of a trademark application and therefore, they are never captured, coded and indexed the way that design marks that someone submits for filing are. So, even the companies that are developing the visual image searching tools which I agree are in their infancy, they are still limiting themselves to searching marks that are the subject of applications and various trademark offices, you know, U.S., EU, other countries like that. But if you were able to identify these additional unregistered marks that appear in specimens, code them, index them, you could create a searchable database of designs and logos that are in use, common law use, that would be a hugely valuable asset for trademark practitioners because at present, when a client wants to adopt a logo, we have a very limited ocean that we cast our net in to try to determine whether the mark is available for not. There just isn't any way to search designs and logos that are in use. So, I don't

know if there's any plan to share the specimen database once it's developed with outsiders, vendors, even people going on to search like we do now, on TESS, but I just wanted to share that idea with you. I've been talking to vendors about it for years, urging them to, telling them that it would be a financial bonanza if they could figure out a way to do this and to ask their customers how much they would pay for a search that actually looks at unregistered designs that are in use. I think they are interested in it. They are intrigued by the idea, but they also say it would be very hard. So, when I heard that you were developing a specimen database, I was very excited that perhaps this might open the door to the idea of being able to search for availability and clearance and confusion purposes as well. So, I just wanted to share that. Thank you, Mary, for your service. You've been very agile throughout.

MS. DENISON: Thank you so much. I really appreciate your comments and I appreciate your idea. We will talk about it

after the TPAC meeting. Given my lame duck status at this point, I'm not sure I can commit to anything else besides developing the database that we're already working on for specimens, but we will certainly talk about it and keep it in mind and you can feel free to bring it up with my successor, whoever that may be.

MS. RICKETTS: Thank you. It's very much appreciated. I just want to mention one other thing, which is why I think this would be so helpful, because you already have the owner, the goods and services and the date that the thing was in use, i.e., the date that the specimen was submitted. So, it comes like ready with all of that information already, you know. So, anyway, I hope it works out someday. Thanks.

MR. BARBER: Thanks, Allison. Any other comments from our audience. Rob?

MR. HARRIS: I just wanted to loop back with Elisabeth. I just checked with the team and we are scheduling feedback sessions with the 44 folks that are involved. That's

happening next week as well. So, we're hoping that any applications that are in process will be wrapped up by the end of next week and as well as the feedback sessions.

MR. BARBER: Okay. Elisabeth?

MS. ESCOBAR: I just wanted to take a minute to express my gratitude for Bill. He has been such a wonderful Chairman to work with. I'm sure that the rest of the Committee shares my views. Whoever follows in your footsteps is going to have very big shoes to fill, but you've been a tremendously wonderful person to work with.

MR. BARBER: Thank you. Jay?

MR. BESCH: I wanted to say a lot of the same things. I wanted to thank everybody here today that gave presentations, all the members of TPAC, Mary and Bill. Seeing you both go, will be a big change. I know about filling big shoes, having done so just recently, but I did want to thank all of you and hopefully I will see those of you who are leaving around from time to time. So, take care.

MR. BARBER: Thank you very much.
Any other comments? Questions? Again, it has
certainly been an honor to serve as Chair this
year, and I wish you all the best of luck
going forward.

I'm sure you will have a tremendous Chair
and Vice Chair and full TPAC roster next year.

Thank you. We are adjourned.

(Whereupon, at 11:27 a.m., the
HEARING was adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Steven K. Garland, 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: July 31, 2023

Notary Public Number 258192