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PROCEDINGS

MR. FARMER: Good morning, everybody.

Welcome to the May Trademark Public Advisory Committee Meeting. I'm glad all of you all could come up here today. Thanks for coming to spend time with us, welcome. This meeting is being web cast today and we're glad about that so we can be as transparent as we can with the public.

For members of the public, for those watching at home, as I like to say, you can send us questions that, if we have the opportunity, we'll pose them during the meeting, or you can send in comments if you want. The email address for doing that is asktpac@uspto.gov. Again, that's ask, a-s-k, tpac, t-p-a-c, @uspto.gov. And we have an ability to have those questions relayed to us from the workroom behind us.

As always, this will be sort of the pecking order for presentations and questions as we go through our agenda. And each segment will have a presentation from our interlocutor at the USPTO. We try to keep those summary and brief so
that we have lots of time for questions and interaction. After that, I will usually turn the floor over to the TPAC person or people who are the champions on TPAC of that particular issue or that subject matter area and then open it up for questions from all of TPAC. After that, if there are any members of the audience that have questions or comments and we have time remaining in that segment, we'll honor them. The folks who take the effort to come here in person we give precedence to because we're thankful for them doing so. And then if there are any questions by email and time permitting, then I would ask those on behalf of the public at that time.

If you're following this meeting at home, I've not checked recently so I cannot verify this, but all of the documents that are being presented on the public record here today should be on the TPAC portion of the USPTO web site, and so if you're watching by web cast and you want to see what's being referenced, you ought to be able to find the documents there.
If there are any that are public documents that are not there, if you send an email to asktpac@uspto.gov, we'll try to make a note to get those put up within the next one or two work days, if possible.

I'd like to welcome a new TPAC member. We have Bob Anderson, who has joined us here at TPAC. While Bob is new to TPAC, he's probably the most experienced member of TPAC when it comes to the USPTO. He worked at the PTO here for quite a while, and I believe at one point he was Deputy Commissioner for Trademarks, and I think it was for like a total of 16 years in that position. On TPAC, Bob has agreed to serve on our Information Technology Sub-Committee, he had a lot of involvement on that when he was here, and also work on some quality issues and on some issues regarding how communications are handled between folks who are in the application process and trademark examining attorneys. And so, Bob, welcome to TPAC, we're glad to have you here, and we're thrilled about the skills and background
you're going to bring to the Committee.

MR. ANDERSON: Thank you.

MR. FARMER: Also I'd like to note that two days ago that our own Jim Johnson testified before the House Judiciary Committee. Thank you, Jim, for representing us. Jim is one of our two senior most members of TPAC; Jim and Elizabeth Pearce are our senior most members and represented us very ably, and we thank you for that.

And I think it's possible that at one or two places in the agenda today, some of the things that you specifically spoke about could possibly be mentioned in the agenda, such as the unauthorized practice of law issue, and so, Jim, thank you for covering us on that, we appreciate it. Before we get into the main part of the agenda, I just wanted to express the following sense of TPAC again, and this is a unanimous sense, and if there are any other organizations that wish to help get the word out on this, we would certainly appreciate it, and that is that TPAC continues to stand forcefully for the ending
of unintentional fee diversion of the office.

We believe that fees are paid to the PTO
for a purpose, to get work done, and that it
simply makes no sense whatsoever to take fees that
are paid for the PTO to do work and to not apply
them for the purposes of getting that work done,
especially at a time when, on the patent side of
the house, the administration here is struggling
very ably and very mightily to rectify some bad
situations, and so we call for that strongly.

The other thing that we recommend
unanimously is that the office should be given fee
setting authority for all patent and trademark
fees. We believe firmly that the office needs
that authority in order to be able to do its job
ably and to be able to do it flexibly. And so we
strongly hope that that authority will also be
granted to the PTO soon. And we realize that
there are a lot of issues going on on Capital Hill
right now regarding intellectual property, and we
won't put a dog in that fight, but we hope that
nothing will hold up ending unintentional fee
diversion and giving the PTO fee setting
authority, because the sooner that happens, the
better for the PTO, and so that's TPAC's position
on that issue.

Having said that, I now want to turn to
welcome comments, brief comments by USPTO
leadership. I see Sharon Barner has just joined
us. I'm going to guess that you'll be handling
that part, and welcome to TPAC.

MS. BARNER: Good morning and thank you.
I apologize for being somewhat late. I flew in
from New York this morning. I attended the AIPLA
meeting yesterday in New York and well received on

(Interruption)

MS. BARNER: Good morning and thank you.
I apologize for being a little late. I flew in
from New York this morning and there was a little
bit of a delay getting into the airport. I'd like
to welcome a second Trademark Public Advisory
Committee meeting of 2010 this year. And I'd like
to spend a little bit of time just giving you --
saying hello and giving you a brief update on things you'll hear more about throughout the day. We're going to talk a little bit about Trademark's performance for the first half of the fiscal year. And, of course, Commissioner Beresford will tell you more about this in depth later on, some of the IT initiatives that relates to Trademark's next generation, some of our initiatives on our excellent office action, and some technical corrections, the Technical Corrections Act, and a little bit about some of the things that are upcoming at the USPTO.

In this year, fiscal year 2010, the first half results I'm very proud to say that Trademarks is knocking the ball out of the park. In the meeting -- it's a meeting surpassing all of its goals for FY 2010. The first action pendency for mid year 2010 is 2.7 months, where our goal was between 2.5 and 3.5 months. Our average disposal pendency for first quarter FY '10, 13.6 months, including suspended and inter partes proceedings; 11.3 excluding
suspended and inter partes proceedings. This exceeds our target of 13 months. Quality for first quarter of this year, first action, 97.2 percent, which exceeds the target of 95.5 percent, and final action at 96.5 percent, close to meeting the target of 97.0 percent. I can tell you that during my speech at AIPLA yesterday, as we talked about where things stand at the USPTO, one of the things I did say was that it was very nice during a lot of the time that we have to spend on the patent's operations to have trademarks actually humming along, so that we could spend some of our attention, more attention on patents. And so those are just excellent reports from FY 2010, and I have to, again, commend Commissioner Beresford and her staff on those results.

On our IT initiatives, trademark next generations, as you know, Director Kappos and his IT team have spent a significant amount of time over the last nine months relooking at our IT initiatives. Trademarks is moving forward in its effort to separate its systems from patents, as
well as improve and update the systems to better meet the needs of the trademark owners and the office.

I'd like to thank TPAC for your participation towards this end. Your ideas and suggestions are greatly appreciated, and we certainly will use these ideas and suggestions to achieve the goal.

The excellent office action initiative, and while trademarks has been humming along, we can never get set and rest on our laurels, so trademarks has established and is in the process of initiating an excellent office initiative. And through our quality statistics, though our quality statistics are impressive, we have asked and received great feedback from the user community in this regard and we thank them for their support.

We've identified a new quality goal for excellent first office actions this year, and we're working on a baseline measurement. In conjunction with the new measure that we're establishing, an incentive award is also in place.
I am glad that management was able to work so
effectively and efficiently with NTEU 245 in this
regard.

To this end, trademarks has developed a
plan to communicate more clearly with the
Examination Corps as to what management is looking
for in order for an office action to be excellent
and has already begun a series of training
sessions on excellent writing and evidence. Let
me underscore that it is not a change in
performance requirements, it is simply clarifying
already established principals.

On the Bose decision last week, the
USPTO and George Washington University Law School
hosted a symposium to discuss all viewpoints in
regard to the Bose decision. We generally support
the Bose decision, but we are also in favor of
ensuring accurate indications, and applications,
and registrations. The roundtable provided an
excellent opportunity for the exchange of ideas
and perspectives on the issues and yielded some
proposals that merit further consideration by the
trademark community.

You may be aware that earlier this year, the Technical Corrections Act was passed. The Department of Commerce was tasked with conducting a study and issuing a report on the effect of abusive litigation tactics on small businesses and on the best use of government services to protect trademarks and prevent counterfeiting. This report is due on March 17, 2011.

Later today, we will be outlining our plan for conducting the study. It currently is in the form of a proposal, and we would like to get TPAC's input on the proposal.

TWAH, our Trademark Work At Home update, 50 mile radius option is in place. I am pleased to report a change in reporting requirements for our work at home attorneys. In the past, examining attorneys were required to report to the office two times per bi-week. Under this new option, trademark work at home attorneys who live within a 50 mile radius of the Alexandria Campus may change their duty station to their home. By
choosing this option, eligible trademark work at home attorneys are no longer required to report to Alexandria. We will continue to pursue options for attorneys who live outside the 50 mile radius, as well. Recently, HR 1722 was sent to the full committee for mark-up. This bill would give the GSA authority to approve test programs. One of these programs would be to waive the reporting requirements for attorneys who work beyond the 50 mile radius.

The goal of the USPTO this year was to raise $1.41 million, and the final number came to something that exceeded that. We were able to raise $1.49 million for our CFC campaign. Trademarks raised 126,000 of that, which also exceeded their goal.

Gwen Stokols, a senior attorney in Trademark Law Office, 109, was the USPTO's chairperson for the 2009 combined federal campaign. We thank Gwen for her efforts. The generosity and dedication of trademark employees once again has shown through. I thank trademarks
1 for giving so much in such difficult economic times.

2 Upcoming events include our Community Day in June. On June 10th, the USPTO will have its annual Community Day celebration. Highlights of this employee event include ethnic fashions from around the world, delicious food from popular and specialty food vendors, spectacular talented performances by USPTO employees, vintage cars, fun and exciting motorcycles, and international games.

3 Please join us for this entertaining and informative event. I can tell you that the employees are very excited that Community Day is back, so I look forward to participating, as well.

4 The Trademark Expo and preparations for it are underway. Please come and see all that trademarks has to offer on October 15 through 16.

5 The purpose of the expo is to engage and educate the public about the roles and enormous value that trademarks have in the marketplace. More than 7,000 people attended last year's event and we are hoping to achieve the same success this year.
I'm very proud of the stellar performance and the outstanding work of trademarks. Thank you, Lynne, and thank you for inviting me.

MR. FARMER: Great, thanks for being here, thanks for that report. The next thing on our agenda is to talk about where things stand with the five year strategic plan. I'm not sure who's covering that as far as giving us an update as to where that stands.

MS. BARNER: I'm happy to give you an update on the strategic plan. And just to remind everyone, pursuant to congressional mandate, when we adopted our 2005 -- 2007 to 2010 plan, it was required that in three years we relook at the strategic plan and decide -- and determine whether or not the goals and objectives were being met and what, if anything, we needed to change or tweak in the plan.

We have been in the process of looking at those things quite intensely over the last several months, and we are putting together what
is a structure of a strategic plan to give to TPAC and PPAC for input before it goes to the public.

The strategic plan as it currently stands, I think we went through the broad outlines at the last TPAC meeting where we had adopted essentially seven priorities that we had also put in the President's FY 2011 budget. The process now has been to send that document or those priorities out to the business units and to have the business units identify activities and actions necessary to meet the goals specified and the priorities in the President's 2011 budget.

We firmly believe that in reaching the priorities, it requires more than just a listing of those priorities. It really requires having project plans, action items, and metrics that are sufficient to meet those goals over the period of time. It's very difficult to say we're going to meet a goal in 2014 without laying out on a month or at least quarterly basis how that's going to happen. So what we're in the process of is trying to make sure that we have real activities and real
metrics that help meet those goals.

And so some of that has required some
back and forth as to having real activities and
real metrics that we can measure ourselves again,
again, the point being so that we can look out
over the time we're doing this and determine what
we need to change along the way without waiting a
year or two to get there.

The timelines have been pushed back.
The strategic plan is due to Congress by the end
of the year. So our goal has been to try to make
sure that we give everyone plenty of time to make
sure that they have time for input and we have
time to take those input and suggestions back and
make changes as necessary to the strategic plan.

Our current goal is to make sure that
our employees and our management get an
opportunity to look at and tweak any of the
measurements and metrics that are in that plan and
then to get that plan to TPAC and PPAC for their
input and then to start a proposal of rolling it
out to our stakeholders for comment so that we
have time to get it back to OMB for 45 days for
comment, which is what they want.

And so our goal now is to try to have
that draft plan to our employees within the next
couple weeks and then to have it to TPAC and PPAC
so that they have a couple weeks to look at it, as
well, before we take it back in and take comments
and redraft it.

MR. FARMER: Okay. Thank you letting us
know on that. We can talk about this more later,
but we on TPAC would like to see it at the first
opportunity, and one reason is that I think
there's a little bit of concern on TPAC that we
might end up suggesting something that would be
seen as a major change and we just don't want the
thing to get too calcified before we can bring
that input.

For example, I think there's a
significant chance that we may ask that a TTAB
item be added as an important trademark item
within the strategic plan, and thus, we just don't
want things to get too set and too detailed and
then you've got to come in and do something major, so we would appreciate the opportunity to maybe provide some interim look at an early opportunity.

MS. BARNER: Thank you, and I appreciate that, and I want to make sure that people do understand that it's not in the process of getting calcified, it's just in the process of making it a structure that people can really comment upon. Without some structure to the plan, I think it would be a lot of effort put into it and a plan that's not set forward in a way that we will be able to actually measure it this year.

I think that what we're envisioning is something different than what you had in plans in the past. This is going to be more than just a title. It really has to be things that we are going to do across a timeline. And so we're trying to get those timelines and measurements at least somewhat understood by people and signed on to being able to accomplish the goals and the timelines that are in there.

So we don't mean by putting something
out in the first instance to say nothing else can
go in the plan, it's the point of putting it out.
You've seen the major priorities set forth in the
fiscal 2011 budget, those things have a lot of
room for other things within them to make sure
that we meet the goals of those things. So, for
sure, we're not looking to set a policy in stone.

MR. FARMER: Okay. Thanks a lot, we
appreciate it. In that case, now we will go on to
our visit with Lynne Beresford, the Trademarks
Commissioner. Lynne, we have an agenda with
items; should we just move down in order, do you
think?

COMMISSIONER BERESFORD: Sure,
absolutely.

MR. FARMER: Okay. In that case, the
first item that we have is about trademark filings
being made by online non-attorney services or
non-attorney services working for -- non-attorneys
working for online services, and I don't -- are
you leading that? I'm not sure if you're passing
it off to someone else or --
COMMISSIONER BERESFORD: Yes, I -- this is Lynne Beresford. We discussed this and had a presentation in the sub-committee yesterday by Harry Moats, the head of our Office of Enrollment and Discipline, essentially outlining what the authority of the office is. The office has jurisdiction over individuals, not particularly companies, and the jurisdiction they have is, if someone is discovered in the unauthorized practice of law, and that does happen, the office can send them a cease and desist letter. If they don't cease and desist, they can be reported to the state bar. States do a variety of things with this. And eventually, of course, we take their names off of the files that they're prosecuting, we replace them with the applicant's name or sometimes applicant -- it's an actual attorney and we put that name on there.

So those are the kinds of things that we do internally. Obviously, if we have an attorney who's encouraging unauthorized practice of law by the way he or she is operating, then that person,
of course, can be reported to -- will also get a cease and desist letter or a show cause and will be -- and eventually will be reported to the bar. We have some ability to report to the FTC, but the FTC basically is looking for cases that are relatively large and important for their time, and thus far, they've taken no interest in what we're doing.

The office will be looking at other options here. We're going to be -- I think we were asked to check into some of our accounting files and see what's going on in both cases, but essentially those are the powers of the office.

MR. JOHNSON: Lynne, Jim Johnson, is there any legislation or rule the office can issue that can help you better address this unauthorized practice issue?

COMMISSIONER BERESFORD: Well, I don't think this is -- off the top of my head, I know of no proposed legislation, and Sharon, if you feel -- feel free to jump in here. I know of no legislative proposal, and I can't think of one off
the top of my head, and I don't know of any. I don't think we can promulgate regulations without further legal jurisdiction over these issues. So I don't -- I can't think of anything we can do currently under our current statute and with our current regulations other than what we're doing.

And I don't think this is particularly a problem just in the trademark area or just in the patent area or just in the IP area. I think there's -- the internet and other things have spawned a much greater ability for unauthorized practice of law, so I think this is probably just a bigger problem than just our problem. Thank you.

MS. BARNER: Sharon Barner, on behalf of the unauthorized practice of laws that relates to consumers, normally the FTC does deal with those issues, or the state bars, if you refer a matter to the state bar because someone is practicing law in an unauthorized manner, it's not from that perspective otherwise within the federal agency's mandate because it is a consumer and legal
practice issue, and so I don't think that there
are any regulations that the USPTO has that were
permitted to adopt any rules or regulations
otherwise governed, but we could, as Lynne has
said, work with the FTC in connection with issues
we see coming up if they're frequent.

MR. JOHNSON: Lynne, again, Jim Johnson,
what about putting warnings on the USPTO web site
alerting applicants to make sure that the party
that's preparing their application is a licensed
attorney or warnings on the applications
themselves asking people, you know, warning people
about the issue of unauthorized practice of law,
those things that -- those kind of things that PTO
seems like they could do?

COMMISSIONER BERESFORD: Well, we can
certainly put a warning on the web site. I have
some knowledge of how the web site is used, and a
lot of people don't read anything that's on there,
that's the first. Secondly, we have a lot of
warnings there already, and so you have to pick
your battles, you know. You warn them about this,
you warn them about that, you warn them about
something else, and certainly at some point
you're going to stop reading and/or do something
else, I don't know. But we'll work on drafting
something and see how we can integrate it into the
web site. Again, I have some doubts about yet
another warning. Obviously, some folks are going
to file with these companies because they
advertise or they innocently think that Uncle
Marvin, who knows a little bit about the law,
would be better to help them file the application,
and they don't even think about unauthorized
practice of law. But we will look into some -- we
will look into drafting some warning language and
see if that -- if we can figure out how to post
that effectively.

MR. JOHNSON: One other thought I had is
about the declaration itself. Maybe if the
applicants would either, you know, assert that
they prepared the application themselves without
any assistance from another party, or if they had
assistance from another party, identify that
party, and that way you could start flushing out if there are third parties that are preparing applications for them that aren't authorized to do so. I'm just brainstorming with you. I don't have any, you know, golden answer, as you don't either, but I think working together, we can try to come up with some creative solution to this problem.

COMMISSIONER BERESFORD: Okay. Well, putting something on the application itself is a little complex, but -- and also asking people, this is going to create a paperwork reduction act issue which you'd have to look at because we're asking a question we've never asked before, and we're asking -- if we ask it on every application, we're really adding to our paperwork reduction act burden. There's a long process for getting through that burden. It's something we'll consider.

I think we'd probably want to look, I know the IRS does this in terms of filling out your tax return, but I think it's something we'd
want to look at, how other agencies handle it, and also think about what are the consequences of doing this, you know. So we'll take that under consideration and we'll talk about it and see what happens. Thank you.

MR. FARMER: I should have noted that on TPAC, we have individual members who champion issues, and they're the lead, they don't work through me, they do their own thing. And Jim Johnson is our leader, our champion on TPAC regarding this unauthorized practice of law issue, or as I call it the UPL issue. Jim, you testified yesterday before the House Judiciary Committee, not yesterday, I misspoke, Wednesday, and I wonder if you can relate to the committee your experience in this issue because they seem to show some real interest in it.

MR. JOHNSON: Yes, John. The only question that Chairman Conyers had of the Judiciary Committee about my testimony was about the unauthorized practice of law, and he asked the director to advise him what steps were being taken
to assess the issue and then address it.

So I don't know if Lynne or Sharon or anyone would have any idea when they could report back to us about what -- how big the problem is, if they can figure out a way of the big problem, but -- and then later I also got inquiry from the Committee's counsel who came up to me after the hearing and expressed sincere interest in this issue. So that's only passing it on to the PTO what my impression was, that this was of significant interest to them.

MR. FARMER: Okay. As you can tell about it being early in the agenda, you know, sometimes issues kind of pop up on the radar screen quickly and they're big suddenly, and I think this is one of those kinds of issues for TPAC, that TPAC is very concerned about it. We realize that there's -- that the office has limited tools as far as what it can do, so we're not expecting you to do what's beyond your statutory power, we understand that. We encourage you to keep pushing on it. Also, I think I can
speak for TPAC in saying that we hope that the FTC will take some interest in this issue. I believe that there's a consumer protection aspect to all of this, that some of these advertised -- some of these services beyond whether an attorney needs to do this or not just may give consumers the impression that these services can and will do more than they really can, that the process is simpler than it is.

I don't mean this to be an instance of attorneys looking out for attorneys, I'm concerned about consumers getting the impression that you can get more from this and that it's easier than it is, and I draw an analogy in that regard to invention submission companies.

And so I don't know if my voice reaches to the Federal Trade Commission from here, but if it does, I encourage them to take an interest in it, and I'd ask that our colleagues here at the PTO join us in that voice of asking that the FTC take interest in this simply because we think that it's got a potential to do significant harm to
people who don't understand what's going on.

A sub issue in that, and this is something that's come up recently, and we put this question on the docket, is, and I'll read it -- docket, my gosh, we're not in court, on the agenda, the dockets to the rocket dockets across the street are the non-attorney services mining the USPTO data base for email addresses of filing correspondence and using them in sales efforts, and if so, can this possibly be prevented.

I won't name the company, but I'll say that several members of TPAC who prosecute trademark registration applications and a lot of I think members of INTA, because it was pointed out through their list serve, started getting emails from this entity that was sort of selling them to do something that's the next step, and you kind of wonder how they got the email addresses, and so we wanted to see what's going on there and whether it's possible to do something about this so that folks don't get spammed or get the impression that this has something that it doesn't, and so we're
COMMISSIONER BERESFORD: Yes, well, our non-attorney services mining the USPTO data base, we don't have any real way of knowing who mines our data base. Our view has always been that the more we can transmit our data out there and let people know what's registered and pending, the better we're doing our job or the better we're helping trademark owners, so we allow people to mine the data base. Can the email addresses be put in the data base in a way that they can't be mined? We're going to check into that. We don't know right off the top of our heads. Of course, I note a later item on the agenda, please put the attorney email addresses into the data -- the examining attorney email addresses into the data base and into the letters that we send, so if we -- and that's something that we're pretty positive about doing, but then we create the issue of we want to hide some of the email addresses, but not all of the email addresses, so this will be a little bit of an IT problem that we'll have to
figure out, so that's the answer to that.

People mine our data base, we don't necessarily know who they are in general, we're happy they do because we want to disseminate information, but not everybody is a good actor that gets into our data base.

Mr. Farmer: Is there a difference, Lynne, between what your data base is that you use and the parts of the data base that can be publicly mined? Where I'm going with that is, I wonder if it would be possible to keep your data base open. We're certainly in favor of transparency, but because of these concerns about not having someone be able to scrape a large bucket of these sorts of email addresses.

Commissioner Beresford: Well, again, the idea has been to have our data base as public as possible. We will look into the issue of hiding email addresses on the data base and making them non-mineable and see what happens, see if we can do that. I don't know off the top of my head if we can and what would be involved.
MR. FARMER: Okay, that's fine. We realize that we're at the beginning of this issue, and so we are not expecting everything to be done yesterday, and also, we just advise, the office decides. So, you know, as the issue develops, we'll just look forward to going forth with you all and working on it, and we appreciate the fact that you all have jumped on it quickly, because this really has welled up like a summer storm cloud very recently.

If it's okay with everyone, I'll go on to the next topic, and that is, in wake of the recent Bose decision, which Ms. Barner mentioned during her comments, I think the office has now started a thinking process as to what, if anything, should be done in the wake of Bose and also beyond the fact that the Bose decision just generally regarding possible what I call dead wood on the trademark register, meaning registrations for March where some, or perhaps in some cases all of the goods and services claimed in the registration are not, in fact, being used on the
mark or were not at the time the declaration was
signed, and so I'll turn that over to Lynne.

COMMISSIONER BERESFORD: Yes, on April
26, we had a seminar here in conjunction with
George Washington University School of Law, and it
was, I thought, extremely useful, lots of good
ideas came out of it. We've at this point shared
with TPAC a preliminary list of the ideas that
came out of the roundtable for dealing with the
issue of excessive goods and services, and dead
wood on the register.

I think perhaps I put the cart before
the horse. The first thing I should say is, the
roundtable agree that there's a problem here,
there's an issue, and we need to be concerned
about what is happening with our register.

The second part of the roundtable was
talking about what to do, what ideas there were,
and we have a long list of ideas, of things that
can be done during an examination and
post-registration. Some of them would require
legislation, some of them would require
regulation, and some of them just require a change in policy. What we're going to do with this list is break it up into how each of these things could be effected, do they need legislation, one of them required to change in our treaty obligations, so -- and we're going to take the list, put it into a -- segment it by what would need to be done, so we'll put the regulatory things together, the statutory things together, the policy things together, and then we're going to add some time estimates to the list so folks can look at the list and see what the time estimates are for doing each of these things.

More importantly, however, we're going to keep fleshing out some of these proposals so that there's a better understanding by trademark owners and the trademark bar about what each -- the cost in terms of time, effort or money would be if we rolled out each of these proposals.

So that -- I think we should have that ready for the next TPAC meeting. I, of course, will be talking about it at the meetings that I
attend and speak, I'll talk about this because I think it's an extremely important issue to the trademark community and the U.S., so that's the plan.

MS. PARK: Lynne, this is Kathryn Park. I attended the conference on the 26th, as did John Farmer, the Chairman of TPAC, and we both agree with you that it's a very important issue and that a lot of very valuable suggestions came out of that conference. What TPAC is going to do, and we'll probably be working on this parallel with your further segmentation of the list, is also take a look at the various good proposals that were made, some of which may be mutually inconsistent with one another, some of which, you know, we will as a group try to give you our collective guidance on which on these things we think -- which of the various things could be used alone or in combination. And we'll try and get you our feedback prior to the next TPAC meeting, as well.

COMMISSIONER BERESFORD: Thank you,
that's great. That's just exactly perfect, thank you.

MR. FARMER: In case it wasn't obvious, Kathryn Barrett Park is our leader on this issue, and so thanks for tackling that. Okay, so that's it for that. Next, we have an issue in which we were going to discuss various issues regarding communications with trademark examining attorneys. Bob Anderson is our champion on that issue. Before I throw things over for whatever we have, I'm going to guess that we may not be doing a lot with that today, because I think the feeling on TPAC is that this is an issue where we want to give it a little more study ourselves and formulate some ideas and come back to the office. But with that preface, I will turn it over to Lynne and to Bob in case there are any comments that you have at this time.

MR. ANDERSON: To some degree the issue of use of telephone and email may be minimized because the office, and I want to congratulate them on working with 245 to implement a new awards
procedure that encourages examining attorneys to
use a telephone or to use email to expedite the
processing of application on the -- putting
examiner emails on office actions, there are a
couple things there that I don't think people
thought about.

Back in 1998, we actually did publish
examining attorney emails on the web for a short
period of time, and then with the advice of the
solicitor and the agency at that time, removed
them based on the concern about information being
added to the file wrapper that applicants might
not want in there or the office might not want in
there. The case ended up in litigation.

It's been in that status ever since.
The TMEP does allow examining attorneys to
communicate with applicants via email with the
understanding that all of the communications
regarding the application will be added to the
application file, and that's a situation that I
think people need to think about before they
communicate via email since sometimes they tend to
get a bit prolific in what they say in emails and they could be putting information in the file that would ultimately effect litigation if the file ends up in litigation.

It is under discussion, and I've had discussions with Sharon Marsh about this, to do it, we would have -- the office would have to work with NTEU 245, because it would be a change in working conditions.

And I think there would have to be an understanding by the bar of the implication of putting this information into the file, in essence, unedited and unaltered. Some suggestions have been made about that, but I'll work with the office to see what we can do with that. And that's about where things stand with the communications issue regarding email and telephone calls.

COMMISSIONER BERESFORD: Thank you, Bob. And I think we'll see an upswing in the telephone call, the occurrence of examining attorneys using the phone and calling applicants. I do have to
say, however, that when I -- in rolling out the
excellent office action training, I went to many,
many law offices because I wanted to talk to
examining attorneys about it and emphasize how
important it was to the office to improve our
quality, and this was an opportunity for them to
do that, and earn some more money at the same
time. The phone issue, however, was the one upon
which I got the most comments. And the usual
comment, you know, I would say, what we hear from
the bar is, they always get sent to voicemail, and
you don't return the phone calls, and the response
back from the examining attorneys were, what are
they talking about, our calls always go to
voicemail and they never return our phone calls.

So, you know, we heard right back from
the folks on the other side of the -- on the other
end of the phone that maybe there was some
comparative behavior going on here. So I promised
them that I would, in all my talks that I gave to
the bar and other organizations, I would be
mentioning this, reminding folks in the bar that
this is a two-way street, communication is a
two-way street, and if you really want to resolve
things, you can't send an email.

I think one of the interesting things I
learned about the emails, because I suggest it at
every meeting, if you want to talk to the
attorneys, send them an email and tell them, you
know, I'm available at this time and this time,
and they said, well, a lot of the times the email
you have is trademark docket at XYZ firm, and how
do you -- and you cannot be sure when you send
your request for a phone call to trademark docket
at XYZ firm that you're going to get a phone call
back, maybe what they should be doing is giving us
their personal email so that we can email them
back.

Well, so this is a dialogue. It's
obvious to me that examining attorneys can do
better on this, they can be more answering the
phone, they can return calls more quickly, but I
think the other side of the coin is, there's some
behavior, too, that folks in the bar need to be
MR. FARMER: You know, Lynne, one thing that occurs to me is the reason why a law firm often does that is just because of concerns about turnover, that an attorney may leave the firm, a trademark paralegal may leave the firm, and then the email won't be seen -- therein, but we're sensitive to the fact that trademark examining attorneys have production requirements and that they've got to crank things out, and if they don't -- on both ends by being able to set phone dates.

COMMISSIONER BERESFORD: Yes, I think your suggestion to have the possibility of two email addresses is a fine one and it's something that we can look into so that -- but this is obviously an issue that we need to -- the office needs to be aware of and we're working on being better in this area. But also, we need to figure out how to work with the systems that various law firms have and make sure that the -- if the attorney does send a request, does want to send a request for a phone conference, that they can do
that in a way that someone will see it.

MS. PEARCE: This is Elizabeth Pearce. I just have one quick request of the Trademark attorneys. I am delighted to work by phone with them, that works fine for me, but if you're going to call me about more than one or more than two serial numbers, it would be helpful if I got an email so I had all the numbers and the matter numbers in front of me. I can then, you know, go in and look at the office actions, and when I call you back, I can be better prepared.

If you give me a whole bunch of numbers in one phone message, then I have to play the phone message about six times before I write everything down correctly. So it would be just helpful to have a written record of all those numbers and we can work a little more effectively.

COMMISSIONER BERESFORD: Thank you for that suggestion.

MR. FARMER: I noticed that I hadn't been stopping along the way. Were there any other questions or comments from other TPAC members on
the communications issues or the ones we've hit so far? Howard.

MR. FRIEDMAN: Thanks, John. First off, I want to use this as an opportunity to welcome Bob personally. I know the highlight of my day yesterday was being on the same side of the fence as Bob after so many years of being on the opposite side. And as Tim Lockhart said later in the day, he had never seen me so quiet at a meeting, well, you know, Bob and Tim took care of all the questions, so it's great to have him.

I wanted to follow up on some of the comments that Bob and Lynne had made. First off, I appreciate the office and Sharon and others acknowledging that we do have a role in this and the office is going to want and need to talk to us and we look forward to that.

When Bob started getting into this issue, I think one of the benefits of our past experience is that, collectively, we were able to drudge up emails from 11 or 12 years ago, which sort of got the ball rolling on a discussion, so
that helped. Bob had initially mentioned the Ace
Awards, and you know, from our perspective, before
we start rushing into email communications, it is
an important vehicle that I think will encourage
people to call more, money often does that, and so
I think it's important to see how that plays out.

I believe, if they haven't already, the
office is working on sending out instructions to
our attorneys, giving them more guidance as far as
under what circumstance they can call people back
to spur talking to people for priority actions,
which many people in our bargaining unit haven't
used, so that's another reason why I think people
will be picking up the phone more.

And at the highest level discussion, and
we can, of course, get into it over the next few
months, just to hit a few highlights as far as
concerns of ours. I believe there's no way to
notify external customers by email that we are out
of the office and cannot respond to their email
message right away, and so we get very concerned
about that, the impact of that, when it comes to
customer service, so that is a concern of ours. Also, we're concerned that applicants and attorneys may try to submit responses by email regardless of what's on the forum, and you know, I mean it's I think equivalent to Lynne talking about warnings on the web site, sometimes people gloss over those kind of things, so we're very concerned about how often people may respond by email.

We're very concerned that attorneys will seek advisory opinions, which will then require us to respond, which will then require or encourage people to go back and forth in that chain, so we're concerned about that. And without getting into details, we're concerned that email isn't always more efficient depending upon the issue. So we have details on that, but we just wanted to sort of get our highest level concerns out there to frame the upcoming discussion. Thank you.

MR. FARMER: Any other TPAC questions or comments on this issue? Questions or comments from folks not on TPAC? Well, we'll look forward
to going forward on the issue. You know, technology and email has just become such an integral part of working communication that I'm hopeful that we'll find a way to work it out that addresses the concerns of all parties, both just realizes that it's just such a fundamental aspect of business communication in the 21st century, and I'm confident we'll find a way forward on that.

Let's turn to the SOU issue now. Kathryn Barrett Park is our leader on that issue also, so I'm going to turn things over to Lynne, and then if Kathryn has anything to chat with Lynne about on that, we'll have Kathryn do that.

COMMISSIONER BERESFORD: Yes, well, this is an issue we talked about extensively in the sub-committee meeting yesterday. Essentially, the request is to be able to file a statement of use, and if there's a defect in the statement of use, to be able to continue to file extension requests for the entire remaining period of the three years.

There are a couple of issues, as we
talked about in the sub-committee, there's some legal issues; if we have issued an office action on a statement of use, we then have a time period running on the office action, and suspending that office action and continuing to run the periods for the extension request puts the office in a position of having to keep track of two periods of time.

So there's a variety of issues here.

Those are the legal issues. Then we turn to the system issues. The program that takes care of the ITU extension request is a complex one, and we would have to, in order to do this, we'll have to figure out a way to manually override some of the edits in that program every time a situation like this occurs. We really don't like to put ourselves in the position of doing exception processing, because exception processing is when lots of bad things happen to trademark applications, but it is possible perhaps to do it. We really haven't looked at what the system -- are and what we would have to do.
We think that as we go through time, we can, especially with trademark's NG, the system will probably be redone, and it might be possible at that time to look at the periods of the extension request and make -- and change them from six month periods, although I have to note that at the time this legislation was passed, there was great, great concern that people not be allowed to just keep things in examination unless they were willing to swear every six months that they were still going forward with a bona fide intent to use that mark. So those six month periods were built in as a way to keep that idea alive.

At any rate, there's a whole bundle of things that we have to look at. We're more than willing to look at them. I've asked for some statistics on the number of these that we have, statements of use that are refused, it's a very small percentage, I haven't been able to get it, I asked for it this morning and I haven't gotten it yet, so maybe later during the meeting I'll have it, but it's a very small percentage, and we're
looking at what would be necessary to take care of those. Thank you.

MS. PARK: Thank you, Lynne. And I thought we had a very good discussion on this topic yesterday. And I do appreciate remembering when ITU's were allowed to be filed. The great concern at the bar at the time that this was sort of contrary to U.S. practice and the need to keep it sort of reigned in, so I understand the history here.

I thought Janice Long made a very interesting presentation to us, and she shared with us a paper called How to Maximize Use of the Insurance Extension Option When Filing a Statement of Use, which, although it wouldn't give applicants probably back the full three years, it certainly is a way that if we can educate trademark applicants, a way to help minimize the problem while we're looking for whether or not there's anything more that we need to do and whether that can wait until trademark's next generation.
But I will say TPAC will continue taking the feedback we got yesterday and the work we've done on this issue to also think about it and hopefully have something more to share with you before our next meeting, so thank you very much.

MR. FARMER: And regarding that topic, the document that Kathryn mentioned, again, for those of you practicing, it's called How to Maximize Use of the Insurance Extension Option When Filing a Statement of Use. I was just chatting with Lynne on the side. We think it may be on the web site, and if not, it'll go up at some point. So for those of you looking to sharpen your game, you may look for that and that may give you some interim help.

MS. PARK: And, John, I'd just like to say, although I haven't talked to Michelle King, I would certainly think that INTA would probably be willing to run an article on this in the bulletin, as well, which would help.

COMMISSIONER BERESFORD: Okay, thank you. Craig assures me this is not on the web
site, we will have it posted within the next day or so, I feel quite certain, and we'll be happy to share it with INTA for an article. In fact, I will say that out of the sub-committee meeting yesterday, we got enough ideas for articles that your next newsletter may look like an OG, so thank you.

MR. FARMER: All right. Assuming that there are no questions or comments on that, then we'll move on to the congressionally mandated study. Congress, in a recent piece of legislation, required -- well, within the Trademark Technical and Conforming Amendment Act of 2010, that a certain study be done. I won't read the entire statutory slug here regarding that. I'm going to --

COMMISSIONER BERESFORD: Toni Hickey is going to present on that.

MR. FARMER: Okay. And I'm going to turn that over to Toni Hickey to present on that issue. And also, I believe Tim Lockhart is our champion on TPAC regarding handling this issue.
So, Toni, welcome, and thanks for joining us.

MS. HICKEY: Good morning. My name is Toni Hickey, I actually work in External Affairs, I'm on detail right now, I'm Deputy Chief of Staff to the Deputy Director and Director. So I just wanted to spend about five minutes moving away from kind of trademark operational issues to discuss the litigation study.

So as John mentioned, in March the President signed a new bill that would require the Department of Commerce to partner with the Intellectual Property Enforcement Coordinator, Victoria Espenelle, to issue a study on abusive trademark litigation tactics. So what we decided in-house at the PTO is that we are going to sit down and try to look at this from a different perspective. We first thought that it was important to separate out the bill and to determine what role, if any, the PTO would play. The bill identifies the Department of Commerce. There are other sister agencies that are heavily involved in IP related issues such as the
International Trade Administration, so we wanted to really sit down and determine what role should the USPTO play, should we play the lead role, should we be the coordinator, and then we wanted to work through a plan and talk with TPAC members to determine what role, if any, you'd like to play in this process. So I believe you all have a copy of the proposal. Lynne, was it provided to the TPAC members?

COMMISSIONER BERESFORD: I believe it has, I think it's in the booklet.

MS. HICKEY: Yes, good. So Lynne provided the proposal. And one thing that we identified right off the bat was how litigation tactics were characterized. And I think all of the trademark professionals in the room, we had representatives from almost every business unit at the USPTO participate in the meeting, and we decided that we didn't prefer to use the term abusive, that we wanted to move away from that term, and that one of our first obligations would be to education the public about the process, in
hopes that if the public understands the process a little bit more, we could move away from the characterization that litigation tactics are abusive and have an impact, a negative impact on small businesses.

So we thought if we educate about the process of acquiring the right and protecting the right, that clearly, that would mean that the PTO would have to take the primary role in bringing together the other government agencies and getting the study done. We have a one year deadline, we have to present it to Congress by May 17th next year, so we really knew that we had to get rolling on this.

And secondly, we decided that after the USPTO kind of played the primary role in pulling the information, defining the process, that we would pull in our sister agencies and other government -- and other departments to educate the public on resources that are available that the federal government provides to help trademark owners, large, small, the individual trademark
holder, everyone, we thought that everybody needed this information. So, for example, we thought it would be relevant to make sure that we touch on resources that are provided by the National Intellectual Property Rights Center, which is a combination of 11 agencies that work on IP counterfeiting types of issues. We thought it would be appropriate also to highlight our stop fakes initiative, and also to discuss our IP -- program in the context of the resources that are available overseas.

So, in short, and I guess that wasn't quite short, we decided to just put together a short proposal, feed it around to our sister agencies and DOC in the department and the Intellectual Property Enforcement Coordinator and Customs and Border Patrol and all these other I guess alphabet acronyms that maybe some of you that haven't worked in government will probably want to pull me aside later and I'd be happy to go through the whole list with you, but we decided to pull in everyone and get their thoughts on the
1 proposal.
2  But the first thing, and Lynne pointed
3  this out, the first stop is that we wanted to
4  start with TPAC and get your input, so --
5  
6  MR. FARMER: Tim, do you have any
7  comments on this such as sort of how we plan on
8  going forward on the issue?
9  
10  MR. LOCKHART: No, John, not at this
11  point. This is, you know, obviously a pretty new
12  initiative and very interesting, an issue that --
13  TPAC will be part of this in advising the PTO with
14  respect to our views on it, but at this time I
15  don't really have anything else to add.
16  
17  MR. FARMER: Okay, that's great. I
18  think as a whole, TPAC aspires to help in two
19  ways, and that is, one, to itself provide
20  substantive feedback on the issues presented by
21  Congress based upon the combined experience of our
22  TPAC members.
23  
24  While we're all spring chickens here,
25  I'm going to hazard that we may have 200 years of
26  IP experience on TPAC, in addition to provide some
thoughts to the office as to how one can best
reach out and gather good data on this issue so
that we don't get skewed data or data in which
some may wish to -- wish away intellectual
property enforcement as opposed to unduly coercive
intellectual property enforcement, and so we look
forward to working with you on that. Any comments
on that issue before we move on to the next one?
Okay. Quality issues are next. I'm going to turn
the floor over to Lynne in case she has any
comments or updates as to what we're doing there.
And Bob Anderson is our champion on that and I
think a passionate one, and so we look forward to
working on that issue. Lynne, anything going on
in the quality world?

COMMISSIONER BERESFORD: Well, we always
have a lot going on in the quality world. I've
already talked about the excellent first office
action initiative, and I'm happy to answer
questions about that. Otherwise, I'm going to
turn the quality issues over to Sharon Marsh, who
is our guru of quality, and let her answer any --
talk about the issues here and answer any
questions you might have.

MS. MARSH: Can we start with how you
turn this on? Thank you. Sharon Marsh, USPTO.

We're sort of taking a multilateral approach to
quality. Sharon Barner and Lynne have mentioned
three parts of our quality initiatives, namely the
outreach to user groups to ensure that we all
agree on what's good quality, our new measure,
where we will be measuring office actions to
determine the percentage of actions that do
everything right, that make all the right
decisions, have good writing, good evidence, et
cetera, the new award for examiners who meet very
high quality requirements.

And then the fourth part is a part that
started, boy, a long time ago and took longer than
Commissioner Beresford hoped that it would, but we
got a multi -- a cross functional group together,
some of our managers, our senior attorneys, our
quality office attorneys, even our TEAS staff, and
their goal was to better define what we mean when
we talk about what's an excellent office action, and to provide more guidance to the examiners. And so just a week or so ago we finished up training. Each law office manager did a training session on, you know, what's an excellent office action, and we -- had they comprehensive tools to use in providing this training, and we outlined really high level guidelines on what's good quality, you know, the writing is clear, concise and well organized, it links the law to the facts, gives ideas for solutions, if there are any, the evidence is on point and specific and is the best available evidence, et cetera.

So I -- the feedback that we've gotten is that those sessions went well. And we have a lot of follow-up work to do. There were a lot of questions, everything from mechanics of attaching evidence and collecting evidence in our electronic world to some questions and issues about what's expected. So anyway, we're very hopeful and pleased with this new project. And I think that's probably all there is to say on that. Do you want
to move on to the consistency initiative?

MR. FARMER: I'm thinking why don't we just go ahead and let you tackle all three of the billet points under quality --

MS. MARSH: Okay.

MR. FARMER: -- and then I will kick it over to Bob if he has any comments he wants to throw in at this time and we'll go forward from there.

MS. MARSH: Okay. The second item listed there is the consistency initiative. If you all recall, we started a program more than a year ago where if an applicant felt that they were receiving inconsistent treatment on applications and registrations within the last two years that were owned by the same client, that there would be a mechanism to bring that to our attention.

And, as always, we hoped that people would first work through the examining attorney, and the examining attorney's manager, et cetera, but in cases where all else failed, this would be an avenue to get the issue before the office.
Response to that mailbox has been minimal. The total number of entries has been very, very small, and so we decided to take a look and see if there was a way to expand it. And so what you have in your notebooks I think is the draft that our policy office put together on how to expand that initiative. Basically it's expanded in two ways; one is that we're expanding the time period for the registration, so for all issues except identification of goods and services issues, the inconsistency can be between pending applications and registrations that issued up to five years ago.

And part two is that for identification of goods and services issues, for the first time, we will, in a very limited way, permit inconsistency claims on ID class issues. It's limited to identification issues where there's been a final refusal, where the registration that is being pointed to as, you know, where the inconsistency is was issued within the last two years and since the last addition of the Nice
agreement, and also Madrid applications and registrations are excluded from the ID process.

So it's a draft right now; I think, unless the committee has strong feelings against the idea, that we're really moving forward and expanding the consistency mailbox.

MR. FARMER: Everyone agrees, move forward, right? Please do. And then --

MS. PEARCE: I have one quick question for Sharon. I'm certainly --

MR. FARMER: Try pressing the other speaker button.

MS. PEARCE: Thank you. Technology and I never the best of friends. I'm very much in favor of this consistency effort, but I had one question for Sharon, because this is something that my office is wrestling with at the moment. Is there a reason for the five year cut-off on registrations? There were a couple of registrations that we were concerned about which are uncontestable now, so they would be outside that five year limit.
MS. MARSH: Our goal was to expand incrementally. We still worry about a flood of, you know, issues that are overwhelming. And I also think part of the five year decision was, you know, the Nice agreement changes every five years, and so if you go back too far, the prior registrations might have been under a different Nice classification system and maybe that's part of the reason for the inconsistency. We certainly would consider expanding further if the next phase goes well.

MR. FARMER: Okay, that's fine. And then the other thing we had was instances of improper use of the mark and the goods or services identification of another mark.

MS. MARSH: Right; there's -- examiners do not allow registered marks in descriptions of goods or services. But despite our best efforts, occasionally marks slip or applications slip through where we have a registered mark in the identification of goods.

And so what we are considering doing to
try to have better quality in that area is to set up a voluntary system where any registrant who had a one or two word mark could request that the office search every incoming application to see if that mark appeared in the description of goods, and if it did, there would be some kind of flag or note to the examiner so that they could see that that was in there and take appropriate action.

Again, this would be purely voluntary.

The registrant would have to decide if they were willing to be put on this list, knowing that it's possible that that list could be the subject of a FOIA request, and whether or not they would be comfortable with that result would be their decision.

MR. LOCKHART: Just to clarify, I assume that you mean use of a registered mark as a registered mark in the ID?

MS. MARSH: I mean -- I'm sorry, I mean use of a registered mark in the ID either as a registered mark or perhaps as a --

COMMISSIONER BERESFORD: A noun or an
adjective.

MS. MARSH: -- noun or an adjective,
yes.

MR. LOCKHART: Well, I'm confused. I mean what would -- what's wrong with using the word apple in an ID if it's not referring to Apple brand computer products? I mean what if you mean apple, the fruit?

MS. MARSH: If it's apple used to refer to fruit, that would be fine, but if it's Apple used in a class nine ID to refer to a computer item, then it shouldn't be in the description of goods.

MR. LOCKHART: Well, maybe I didn't phrase my question right. That wasn't what I was trying to get to. So the owner -- owners of registered marks who choose to put their registered marks on this list would be saying if a third party applies for a mark and uses my registered mark in the ID as an adjective to describe goods or services for which my mark is registered, then I want you to flag it.
MS. MARSH: Yes.

MR. LOCKHART: Okay, that's fine. And is this something that the office has put on its wish list for a trademark next generation or is planning to?

MS. MARSH: This is something that we could begin more rapidly. The programming is apparently pretty simple.

MR. LOCKHART: So has a decision been made, are you going to go forward with this, are you still looking at it?

MS. MARSH: We're -- that's why we're talking about it today, to see whether TPAC thinks it's a good idea or not.

MR. FARMER: Tim, do you have any thoughts on that?

MR. LOCKHART: Well, I personally think it's a good idea. We talked about it yesterday in a different meeting, and you know, I think it's a good idea, especially if it's purely voluntary for the owners of the registered marks, they can either choose to put their marks on this watch
list, if you will, or not, and I take your point
about the FOIA request, so it would just be a
business decision for the owners of these marks.
I can see how there would be certainly a number of
companies, maybe not necessarily a small number of
companies to whom this would be a concern,
probably most trademark owners it wouldn't be an
issue, but there are some companies, perhaps the
one we site an example where they wouldn't want to
do it, and I think it would be a great option for
those companies to have, so I'm in favor of it,
especially if it doesn't present any
insurmountable or especially difficult
technological obstacles.

MS. MARSH: Yes; I think we would start
it on a pilot basis to, you know, decide what the
volume is and whether it's something we can
handle.

MS. PARK: I would just have a -- I
would have a concern, companies might not want to
be on that list because it's a certain
acknowledgement that you have a problem, so I'm
not sure how much use you would get from that program.

MS. MARSH: Right.

MR. FARMER: It sounds like this may be an issue where, Bob, we may need to focus on coming back with some more specific thoughts now that we see that the ball is in our court and we'll make certain to do that, okay. Any other TPAC question or comments regarding quality issues? Howard.

MR. FRIEDMAN: A few collective comments, I guess; one dealing with the Ace Awards, to follow up on a few things Sharon said. I think it's important particularly with the experienced practitioners here and for those playing at home to cover two important issues that were mentioned during training, and one is that a good office action isn't necessarily having a lot of form paragraphs, and that the office was very receptive as part of the training, emphasizing that you don't necessarily have to -- form paragraph after form paragraph, what you need to
do is put the right form paragraphs and that will be part of peoples' evaluation.

Secondly, the office emphasize in the same training that it was important to provide good evidence, not necessarily a lot of evidence, so I wanted to put that out there for the experienced practitioners here, as well as for those who are listening outside the room.

As far as the consistency office action, it looks like -- we would like to meet with the office to discuss this, probably not surprisingly. We met with the office before when it was a pilot. It looks like it's still going to be a pilot, if I've read the draft document, but obviously it's expanded and we have some concern, so we would look forward to setting up a meeting perhaps next week and talking about that. And then putting that sort of package together along with the email, I think it's a good time to at least express on behalf of the examining attorneys that when we think about the consistency initiative, when we think about how the office may want to
handle email communication, and when we think about some possibilities that could result from Bose as far as examining more specimens, however that issue may occur, obviously we've got concern about the impact that will have on production and on quality.

So I just want to put that out there as a marker, that we're sensitive to that, I assume or expect that the office is, too, and obviously we would like to have a dialogue on all of those topics. And previously we had submitted some comments on behalf of the examining attorneys regarding the impact of Bose and getting rid of deadwood could have, so I just want to put that out there also. Thank you.

MR. FARMER: Any other questions or comments from TPAC members on quality issues? Any from members of the public?

MS. MARSH: We just wanted to make one more comment about the Ace Award.

MR. FARMER: Come on right up here if you want.
MS. COHN: Hi, Debbie Cohn. I just wanted to point out, because it did come from the input that we got from our user groups, and that is that for the new Ace Award, we are requiring an increased level of telephone contact with applicants and attorneys, and it's quite an increase from what's required in the performance plan, but we think that this will really address the issues that have been brought to our attention by this group, by INTA, by AIPLA, so I wanted to make sure everybody was aware. Thank you.

MR. FARMER: Thanks, Debbie. Anything else on quality from TPAC members, from anyone else here? Okay. Let's move on then. Next, this is sort of just a check in issue, Lynne, a discussion about the TPAC goal of eventually, in a messianic age, getting the Official Gazette published in HTML rather than PDF, and as an interim step, what we can do about the large PDF file problem.

COMMISSIONER BERESFORD: Okay. Well, this is not something that's short term, and it is
something that we will be working on in trademark's NG, but the good news is, we've come up with what we're talking about as the optimized OG, and the first one will go up on the 25th, our plan is, and it should download at least 30 percent faster than the one you have been downloading, so hopefully that is going to help a little bit with this problem. That's an interim step, but it's something that we think will help you all. Thank you.

MR. FARMER: Okay. Yes, we recognize that's a -- the technology just got to make it possible issue. Next one is a similar one, another TPAC goal of eventually achieving electronic certificates of registration with an option for a paper certificate.

COMMISSIONER BERESFORD: Yes, that, too, is wrapped into TMNG, and I think many of the things that we've been looking at as small projects are getting folded into this larger project, so I don't see that happening any time in the near future, but it's something that we
haven't forgotten about.

MR. FARMER: Okay, that's great. And
then we're off to kind of -- the TMEP, and the
TPAC goal there is to keep it as continuously
up-to-date as possible and to move towards having
a parallel Wiki version that may be helpful for
folks.

COMMISSIONER BERESFORD: Well, this
particular issue is extremely important to Mr.
Kappos, simply because he would like the MPEP to
be updated more frequently and to have a Wiki
version. So he is working personally and closely
with OCIO to see that this particular project gets
done. We're very excited about it because we
think that along with the TMEP, we have many, many
other manuals that we would like to have the
ability to update quickly.

Our LIE manual, for example, which is an
internal document, we would love to have it
updated more rapidly, and we would love to be able
to have a Wiki for that LIE manual, because the
people that use the manual have ideas about how to
improve it and a Wiki would be one way to get
those -- give us access to those ideas. So, as
always, we're very supportive of this and we're
really hoping that it can be done quickly. I
don't know what the timeline is, maybe Kay Melvin
would like to discuss this, she's our OCIO
representative down at the other end of the table
there, maybe Kay has some ideas, I don't know what
the timeline is.

MS. MELVIN: Good morning, I'm Kay
Melvin. This is when -- I notice we're going to
get a break after a while, I thought I would stop
and see if I can get an update for you on the
Wiki. I do have some other information about the
TMEP, version six and version seven, which I'll be
covering in my presentation later this morning.
Thank you.

MR. FARMER: Okay. Anything else on
TMEP at this time?

COMMISSIONER BERESFORD: Well, Sharon
reminds me, we're issuing an update on May 21st on
the TMEP to reflect the changes in the technical
directions bill, which is post-registration filings for Madrid cases.

MR. FARMER: Okay, thanks. Anything else on TMEP? Okay. Last, but not least, just checking in on trademark operation, speed and quality performance metrics, we didn't put this last because it's not important, but I put it last because the trademark operation does such a good job here that we just -- if we had higher concerns, we'd put it higher on the agenda.

COMMISSIONER BERESFORD: Well, as per the norm, we've given you both -- we've given all of you the copies of our trademark performance measures, both for our -- the ones that we report externally, quality of application files, and for our internal measures, for our supporting organizations. Basically, for the most part, we are at or above our goals. I'm certainly willing to answer about a specific goal if anyone has a question, but I think it's pretty self-explanatory.

Yesterday in -- the figures in these
charts are from the end of the second quarter, that is the end of March. There was a question yesterday about the intent to use divisional unit, which was quite far behind on its processing at the end of March. I just learned this morning that at this point in time, there are nine days for all of their documents, so they've brought down all those numbers to below their goals and are currently at nine days for processing, extension requests, statements of use and divisional requests.

MR. FARMER: Great; any questions or comments from TPAC members on those statistics?

Before we wrap up Lynne's part of the agenda, any questions or comments directly regarding the trademark operation? Any from the folks in the audience? Okay. I want to say that we think the trademark operation is doing an absolutely fantastic job under Lynne's leadership, and while we may push and prod on some issues on TPAC as we try to do things, we hope that the trademark operation understands that we do that in a spirit
of cooperativeness and we think that you all are
doing a great job, and the thing that we really
love is that you don't get complacent and that
you're constantly looking to do a better job, and
so keep up the good work, we really support you in
that.

Let's take a five minute break. We're a
little ahead of schedule, which I love, anyone who
knows me, and so if in our subsequent segments we
end up needing a little bit more time, we'll have
the luxury of having that. So five minutes, then
we'll come back and go to Judge Rogers on the
TTAB.

(RECESS)

MR. FARMER: The next part of our
agenda, if everyone could have a seat, please, is,
we're going to visit with Judge Rogers, who's the
Interim Chief Judge of the Trademark Trial and
Appeal Board. And Mary Boney Denison runs that
issue for TPAC, and so I'm going to let Mary be
the primary TPAC interlocutor with Judge Rogers
for that part of our agenda. And, Judge Rogers,
thanks for coming.

MS. DENISON: Thank you, Judge Rogers. We're going to start with the speed statistics and the case volume. And if you can just kind of go through those things, then I'll have a couple comments at the end.

MR. FARMER: And if I can jump in, I forgot to make this one announcement. The technical folks visited with me on the side and said that they're having some audio problems today, and so if we could make an especially good effort to pull the mics up close, you may just want to appropriate Jim's mic, Gerry, and so that would help the folks at home hear us better.

JUDGE ROGERS: Okay. I think it's on and I'll do my best to keep the voice up. I don't think there's any really bad news that I need to speak softly and try and slip by you, so I should be able to maintain a steady voice here.

We did send to the TPAC in advance, and I assume it's on the web site, the two-page list of TTAB filing statistics, so anyone who's
listening or watching at home can access that at
the web site. I think there's a -- rather than
just read through all of the statistics, I think
I'll try and draw a couple of conclusions from
some of them, mentioning some of the statistics as
we go along the way and leave it to everyone to
look at the list later on, because we discussed
some of these conclusions and some of these trends
in the sub-committee meeting yesterday, and I
think they're pretty interesting.

Mid year figures for this fiscal year,
in terms of new filings, the first thing I want to
take a look at, and the new appeals are down just
slightly from mid year last year. The
oppositions, however, are down almost 20 percent
from mid year last year, and while cancellations
are -- there's been a slight increase there. So I
guess the first question to deal with is, well,
you know, what do we -- what conclusions do we
draw from the new -- statistics about new cases
coming in the door.

And as was pointed out in the
sub-committee meeting yesterday, in two of the
three areas where we've had some declines, they're
probably year over year declines because we
probably had declines in those areas in fiscal
2008, as well as in the current year, or in fiscal
2009 vis-à-vis historical highs in 2008. So
that's something that I'm going to be looking at a
little more closely and see if we can, especially
as the director and the deputy director work on
budget planning for the 2012 and out years, we'll
want to look at some of our historical highs on
new filings coming in the front door vis-à-vis
where we are now and where we think we may settle
as, I guess kind of like the economy, we're kind
of bumping along the bottom here and then things
will settle in some relation to historical highs,
and so we're going to look into that and see if we
can try and predict where we may end up moving
forward, at least in terms of the new filings.

The other thing I wanted to talk about
was the cases maturing for final decision on the
merits. The number of decisions, final decisions
on the merits were down significantly from the mid point of fiscal 2009 in this year. However, as we've all discussed in I think a few meetings now running, in large part that's because we have a lot of judge time being spent on the revision of the manual.

But because the -- it was an opportune time for us to be delegating time to working on the revision of the manual, even though the total number of decisions is down, the overall pendency on final decisions is still pretty close to goal; and, in fact, it's under, at the mid year point, under the goal that we had for last year. We've -- there was discussion about changing the goal for this year from 12 weeks from the ready for decision date to ten weeks, and I believe that that's what the front office is expecting us to meet. But reaching the mid year point at 11 weeks on average, you know, we're pretty close to that goal, and as we find more and more judges coming off of the TBMP revision project during the second half of the year, I think we've got a real good
shot at meeting that ten week goal by the end of the year.

The second fallout or the second item that results from having judges work on the TBMP revision is, we've got somewhat of an increasing backlog of cases waiting for a final decision on the merits. And we were discussing yesterday whether some of this might be more appeals or more inter partes cases, you know, or whatever, but I did look at the numbers, and the breakout seems to be the same fiscal -- mid year fiscal 2010 and mid year fiscal 2009 in terms of a relatively proportionate share of oppositions, cancellations and appeals, it's just a greater number, so it's not any one particular kind of case.

And so we're going to be attentive to that backlog and try and make sure that we don't have that backlog grow any longer. As we've discussed in some of the sub-committee meetings, we've had some judges on medical leave this year, we had a retirement that was unexpected, we anticipate some additional retirements during this
calendar year, so we're sensitive to the fact that we have a somewhat increasing backlog, and we're going to have to manage to make sure that it doesn't get out of hand.

And one of the things that I'm looking forward to in that regard is a meeting that I have scheduled with the deputy director to discuss production, pendency, staffing levels at the TTAB, and our plans for moving forward.

As we have heard today, and I think as we all knew, the director and deputy director have had their hands full with patent issues and the Patent Board and recently bringing on a new General Counsel, and they've been content and happy to have trademarks and, to some extent, the board, TTAB, just kind of hum along doing their work.

But, again, because we do see some warnings signs, we want to make sure that we now have an opportunity to discuss with the front office staffing levels and our needs and make sure that we're able to deal with any filing level
issues moving forward.

Motions, contested motions, we don't have the same kind of backlog concern. We don't really have a big backlog of contested motions that the interlocutory attorneys are handling. We are kind of constantly attentive to the pendency and wanting to get those motions decided within goal from the time they're ready for a decision, and we're well within that goal. While on final decisions we're a little bit above goal by a week or so at the mid year point, we're well below the goal of ten weeks on contested motions at the mid year point.

And one of the things that has helped us reach that goal is the increasing use, or at least at this point I think we realized the increase earlier and now we've maintained it for some period of time, and that is the increasing use by the interlocutory attorneys of telephone conferences to help resolve motions, something that our stakeholders for years have been asking for and desirous of from the board, and the
interlocutory attorneys have responded and done a
great job managing the contested motions.

It probably also helped that we had a
successful PAP negotiation with NTEU 245 a couple
of years ago, and one of the things that we put
into place there was a bonus. And again, as we
heard earlier today, money sometimes is a good
motivating factor, but one of the bonuses that we
put into that contract was a bonus for the
interlocutories as a group if they meet the
pendency goals on getting contested motions out.
And so it kind of fosters their working together
as a team to get the motions out, the contested
motion decisions out. And I think the use of the
telephone both serves the interest of the
stakeholders and serves the interest of the
interlocutories in terms of being able to reach
this goal and secure this bonus for them. So it's
been a successful transition to the new PAP.

Not that there aren't always issues,
we're constantly talking about and happy to talk
about with union leadership and the front office.
Precedential decisions I also wanted to mention because that's been a continuing area of interest for the bar for a number of years, and that is a goal of about 50 decisions a year, 50 precedential decisions. And at mid year we were a little ahead of pace, and we've added another four or so precedential decisions since the mid year point. So I think as of yesterday, we're up to 31 precedential decisions for the year and well on our way to making the goal of 50 by the end of the year.

That said, I think, in terms of the speed statistics and pendency matters that I wanted to highlight, but if you've got any questions you want to go over, now is a good time to do that.

MS. DENISON: I just have a couple of comments. It's a good thing that the oppositions and the appeals are down because the TTAB is short staffed at the moment, and they are spending a lot of resources trying to get the TBMP updated, which is a big manpower drain, and also there have been
two judges out sick, and then the chief judge position has been open for months, and another judge who was one of the big producers has also retired, so that, in essence, leaves the TTAB four judges short, and so, as I said, it's a good thing that the oppositions and appeals are down because there would be very serious I think slippage if there was a sudden huge uptick in cases coming in with being four judges short.

So I would urge the agency, and I think it's the sense of all of TPAC, to please fill the two open judge positions as soon as possible because there are people that are eligible for retirement, and so if they, in fact, were to retire, we would have even more of a shortage of judges.

And so I think that, you know, there's a little slippage now, but it could get much worse were the economy to improve and the filings to go up. So I hope that the agency can move quickly to get the positions filled.

JUDGE ROGERS: I think we share your
1 concern. I think the next issue, if we want to
2 move on to that, is the revision itself of the --
3 TTAB's Manual of Procedure. And as was reported
4 at the last TPAC meeting, we had to -- we had a
5 bit of a hiccup, we had to transfer overall
6 responsibility for the revision project from a
7 judge who had to take some medical leave to one of
8 our interlocutory attorneys, but it was just a
9 momentary hiccup, and I think it's been going
10 smoothly.

11 I spoke to Angela Lykos, who's the
12 interlocutory attorney who's now supervising the
13 revision project, just yesterday, and I have to
14 say she's doing a great job, as we all knew that
15 she would. And she relayed to me that we have a
16 number of really important chapters, such as 500,
17 which deals with motion practice, and it's one of
18 the larger chapters in the manual, 700, which
19 deals with testimony and evidence put in at trial.
20 Just about finished at the TTAB, and we
21 have a number of chapters that are already at the
22 solicitor's office undergoing review there. So,
you know, our progress is consistent, and we're kind of juggling a lot of different stages of review for different chapters either in-house or at the solicitor's office, and hopefully, you know, they'll all come together at the end of the fiscal year, which is still our goal to have all our work done on the revision effort by the end of the fiscal year.

And as I mentioned at the sub-committee meeting yesterday, I'll get a more detailed report from Angela Lykos next week and then be happy to forward that on to the TPAC so you can see exactly where we stand with each of the chapters and what state of review each chapter is in.

Related to that is the next item on the list, and that is the plans for frequency of the TBMP updates after the revision. As we've discussed, it's been a gargantuan effort getting the manual revised this time around because there had been so many years that had passed since the last revision, and while there were good reasons to hold off on doing the revision, most of all to
reduce pendency when we had pretty high levels of
decisions that needed to get out, and then we had
rule changes in 2007, and we wanted to kind of
wait and develop a body of precedential law
interpreting those rule changes that we could put
into the manual, so we had good reasons for kind
of delaying the revision, but the longer you
delay, the more revising you have to do, and so
clearly we want to do more regular revision of the
manual moving forward, and it'll be posted in a
format that will allow for more frequent
revisions. I can't really say that we've figured
out exactly how frequent. I would think that no
less frequently than quarterly, we would probably
want to get revisions that would reflect cases,
precedential cases that have issued. They can be
issuing every week, and so I don't think we want
to be trying to incorporate new precedential
decisions every week, or maybe not even every
month, but certainly every quarter we would want
to be incorporating those new precedential
decisions.
And since the format of the revised manual will make it easier to revise, certainly if there are any process or procedural changes as a result of rules changes or statutory changes, then, you know, we'll be able to do those as they come up, much as trademarks is doing in regard to the Technical Corrections Act.

And I think we have the benefit of perhaps following the lead to a certain extent of the director and his efforts on the MPEP, and the Commissioner for Trademarks and their efforts on the TMEP, and the development of the Wiki version, and so I'm not one for reinventing the wheel, especially when we have the staffing issues that we do, and so if they come up with great plans for revision schedules for those manuals and Wiki versions for those manuals, then I'm sure we're going to be willing to follow their lead and take advantage of that. Any questions on the manual?

MS. DENISON: Yes; it's my understanding that the trademark prosecution operation has a full-time person working on the TMEP; is that
correct?

COMMISSIONER BERESFORD: Yes.

MS. DENISON: And the TTAB does not, and having a current useable TBMP is of critical importance to the bar, and so there would be huge public support, and there is also I think unanimous support from the TPAC for getting someone on board at a senior level at the TTAB to handle the TBMP updates on a regular basis.

So I hope that the agency will find the resources to give the TTAB a person that can work on the TBMP on a regular basis so we do not find ourselves in the situation where we do now -- where the rules changed in '07 and '10 we still don't have a current version. I hope that the agency will find the resources for that position.

Oh, and one more thing, you didn't talk about HTML to make it more searchable; is that -- can you talk about where you are on that?

JUDGE ROGERS: Well, that's our plan, is to have it up in dual formats so that people can search in the way that is most efficient for them.
MS. DENISON: And hopefully, once we get through the revision, the solicitor -- as I understand it, the solicitor's office has to then approve your proposal, and so hopefully they will get through this quickly because the bar is anxiously awaiting this.

JUDGE ROGERS: Yes, and they're actually working on chapters as they come to them, and so it's not a situation where the solicitor's office has to wait for all of the chapters to get there and then they're going to review them all at one time, they didn't want that, they wanted to be able to review them as we completed them, and so that's the process that's going on.

The open question for me is, when we get chapters done, whether we have to wait until we get the whole manual to then deal with general law and OMB in terms of the external review and approvals that have to go on. And I'll be looking into whether, when the solicitor's office and the board have agreed on a particular chapter and the internal work is done, whether we can similarly
begin a piece meal external review chapter by chapter with general law and OMB or whether OMB is going to require that the whole manual come over, I just don't know the answer to that question, but I'll be looking into that with general law, and hopefully we can minimize delays on the external review part of the project.

MS. DENISON: Great; and, of course, we want a Wiki version, but I realize that that's not a priority at the moment, so hopefully you can learn from the Wiki experience from Lynne's group, and eventually we will also have the Wiki for the TTAB.

JUDGE ROGERS: Great.

MR. FARMER: Just before we go to the next issue, we're -- I wanted to check on each issue as we go through. Did any TPAC members have any questions or comments on what we've covered so far?

MR. LOCKHART: Well, I have a comment. And, Judge, I know you and your team are making great efforts to get the manual updated. I'm just
a little curious and surprised by your figures. I guess this is on the second page of the report.
More than 8,000 staff hours spent on revision to date, that's over four person years.

JUDGE ROGERS: Yes, that's since we started, that's not -- although this is a sheet with mostly mid year figures, we actually started the revision project in the last quarter of the previous fiscal year, so it's really about three-quarters that we're talking of, three fiscal quarters that we're talking about. And we do, we have nine judges who were working on it, and some of them were working on it almost full-time, so it is a considerable amount of staff time being devoted to the project.

MR. LOCKHART: How long is the manual, how many pages, do you know roughly?

JUDGE ROGERS: Oh, I would -- it's about the size of a phone book, a good metropolitan phone book.

MR. LOCKHART: Several hundred?

JUDGE ROGERS: Oh, no, several -- it can
be several hundred in one chapter, and it's 12 chapters.

MS. DENISON: The next thing on the agenda is the accelerated case resolution, ACR. And I want to congratulate the TTAB on their website updates regarding accelerated case resolution. There used to be a very brief description of it, sort of a one to two page piece, and that's still up there, but now they have added a section on frequently asked questions, and so I think that's helpful to people. And there's also a list of cases where parties have actually used ACR, so I think that's helpful. So the next thing we believe will encourage the use of ACR is to get what John Farmer has coined plug and play options, and what is meant by that is, putting up some examples of how people can use the ACR structure, because there is -- it's just sort of -- it's possible to do this, but there's no true structure to it, it's left to the parties right now to work it out. So the idea is, if there were plug and
play options, that people would be more willing to
do it because it would just make it easier for
them. So the idea is that option one would be
limit your depositions to two and limit your
interrogatories and then submit cross motions for
summary judgment, just something off the top of my
head. And there would be a number of different
options for that.

And so we've been talking to Judge
Rogers about that, and I think that he would like
input from outside groups on options they would
like to be considered by the TTAB for this plug
and play availability for people, so I'll let you
talk about that.

JUDGE ROGERS: Yes, a lot of my speaking
during the kind of spring speaking tour I guess
has been I feel a little bit like I'm on a book
tour I guess promoting ACR, and so I've spoken to
a number of groups, a number of bar associations
and a number of conferences on ways that parties
and counsel can wring efficiencies out of board
proceedings.
And, of course, you know, they're always free to go through a traditional pleading and discovery and trial if that's what they think best suits the needs for their clients, but we want to make clear to anyone who practices before the board that there are many options that can be chosen, and so we've been at these conferences talking about the classic ACR, if you will, which is a kind of cross motion for summary judgment or cross ACR submissions that may or may not result from an abbreviated discovery process, which is a process, this classic ACR, that actually predates our 2007 amended rules, but which we have promoted and discussed more in conjunction with the rules, because one of the rule changes, of course, was the requirement that the parties conference to discuss the pleadings and possibility of settlement and how they were going to manage disclosures in discovery and conferencing. One of the conferencing requirement is a discussion of ACR and other efficiencies that might be used. So we want to make sure that the parties are -- have
the lingua franca, if you will, and the ability to

discuss these issues by putting up the FAQ's and

putting up the cases that they can look at.

But we understand from our discussions

with the TPAC and the sub-committee that it's

thought that many stakeholders would be more

willing to consider these options if they didn't

have to kind of go to the deli counter, if you

will, and specify I want lettuce, or I want

onions, or I don't want onions and that kind of

thing, and if they had certain kind of prepackaged

options that they could just pull off the shelf

for -- whether it be for discovery or whether it

be for trial or some combination of the two.

And so we're always interested in

working with stakeholders to get their suggestions

and their input on this kind of thing. We have no

vested interest in any particular plug and play

option, because, again, this is an area where we

want to be responsive to the stakeholders. We've

got a history of doing this, we came up with the

board's standard protective order because we were
asked to develop it by stakeholders, and we took input from many who gave us possible templates for the standard protective order. The increasing use of phone conferencing is, again, something stakeholders have requested. I think the 2007 amendments to the rules involved a lot of give and take between the office and the bar, and we ended up having a rather large meeting, about this size, with representatives of AIPLA and INTA and IPO and other bar groups, and the final rules that came out in 2007 were amended in significant ways because of the input we got from the stakeholders.

So similarly, we'll be very pleased to get any input that we can from any bar groups who want to offer plug and play options that, in their experience or in the experience of their members, have served them well in particular cases.

MS. DENISON: Judge Rogers, I just wanted to add that I think the list of cases that you have prepared and that I understand is now on the web site is a very good place for the bar groups to start to look, because there are actual
examples where parties have come together and
compromised and come up with some strategies, and
it's a good starting place as to things that
actually have been effected, so I think that helps
us get the ball rolling.

JUDGE ROGERS: Yes, and that's a list
which we'll update, because as I review decisions
that are getting ready to go out each week, final
decisions on the merits for the weekly summary of
decisions, I do take note for my own purposes of
cases where there is discussion of the parties
having agreed to stipulations of fact or
stipulated procedures that are more efficient so
that we can add to that list and give people even
more cases to look at. So it's got a large number
of cases as it is, but it's going to be continuing
to grow hopefully.

MS. DENISON: Great, well, thank you.
We think once we make it easier to use and people
become more and more aware of it, that people will
use it more, and it will reduce TTAB's need for,
you know, it will make the TTAB more efficient and
cases will move much more quickly through the system, reduce the need for resources there. Do you have a date by which you'd like bar groups to submit the plug and play options in mind?

JUDGE ROGERS: Yes, I think since our goal is to get the board's work and the solicitor's office work on the manual revision done within this fiscal year, and I don't really want to take on another project before we've done that, I would say if bar groups can be working on suggestions that they want us to consider and get them to us, you know, in September, by October 1, so that as we start the new fiscal year, we can hopefully take on that project, that would be a great time to get those suggestions and gives people lead time to be thinking about them.

And I know sometimes INTA committees or IPO committees or others, AIPLA committees, you know, have their own issues in terms of getting input and scheduling meetings to discuss this kind of thing before they can come forward with a unified position and present it to the office, so...
hopefully that would give them enough time to get back to us.

MS. DENISON: Great; I forgot to mention one thing, and that is, on the TBMP, the TTAB has put up a warning to people on the web site, which we're very pleased about, so that the unwary who look at the old TBMP, which was last updated in 2004, I believe, don't use it without knowing that it's a little out of date.

JUDGE ROGERS: Yes, and that's a pop up window, and I know it works because I had one of Commissioner Beresford's attorneys send me an email the other day saying I tried to access the TBMP and I get this pop up window which says it's being revised and how do I actually get through to the TBMP, and so I said, well, at the bottom of that pop up window, you can click through to the manual, so I know it's working, and hopefully everyone on the outside who may be less familiar with the rules changes that came through in 2007 will derive from that pop up notice that they're to read the old manual, if you will, in
conjunction with those rules changes, and then so when they click through, they'll already know that.

And then the other thing that we've done at the suggestion of the sub-committee after the last meeting was, come up with a short article, and again, we're trying to fill that INTA newsletter I guess on the revision project and that we're happy to send out to INTA or other groups and have them publish for their members so that they know what's going on with the manual and that the revision project is underway.

And that's done and we're just waiting to get clearance from Public Affairs and the solicitor's office so that we can start disseminating that to the various bar groups.

MS. DENISON: Thank you. John, do you have anything?

MR. FARMER: Regarding that issue?

MS. DENISON: Well, or ACR.

MR. FARMER: I think the only thing on ACR is to point out that we on TPAC are really
asking for bar groups to take the lead here, and
so INTA, AIPLA, IPO, ABA, state IP bar sections,
city IP bar associations, if you all really could
take the laboring or and put in three, four, five
suggestions for getting through discovery in a
more efficient manner or getting through case
resolution.

I think our plan, correct me if I'm
wrong in my memory here, Mary, is for TPAC not to
itself generate a list of suggested plug and play
options, but to have them flow in from the various
bar groups, and then when they all flow in, we may
provide some vices to, you know, which of the ones
appear to be most promising, because you may be
better off with five plug and plays for discovery
and five plug and plays for a dispute resolution
as opposed to 30. But our plan is to -- the bar
associations to bring their talents here, and then
we may sweep in at a later time, right?

MS. DENISON: Correct. Anybody have
anything from the audience? Okay. Old cases.

JUDGE ROGERS: Old cases, always a
wonderful topic for discussion at any meeting. As we've discussed in some of the prior sub-committee meetings, we have mined our data and come up with a list of all cases that were commenced prior to the deployment of the amended rules for inter partes proceedings in 2007.

And we chose that as a benchmark, not because we're looking at cases that are three years old or older, but because it's in our interest and I think in the interest of anyone who's trying to understand board practice and procedure to get all of the cases that are proceeding under that old set of rules out and to get them resolved one way or the other, and to move forward with just one body of cases that are all proceeding under one set of rules.

And so we took that focus, and as we've discussed in the past, we've tried to sort out that group of cases in two ways, one, where we're sorting it out by year to kind of work backwards and see how many cases within that larger group are three years old, how many are four years old,
five years old, et cetera, and, of course, the numbers decrease the further you go back, but it's still somewhat distressing that you have to go back to a certain number of years and still have cases that are pending. So clearly we're attentive to that, and we're trying to figure out what status all of those various cases are in. And we've discovered that a lot of them are in suspended status for bankruptcy proceedings or for civil actions, some maybe in extended settlement negotiations, not because it's just that one case that the parties are involved in, but they may have global settlement issues or other matters that are being discussed, and this particular TTAB matter is just one of a number of matters the parties are discussing.

But in any event, for all of those cases that have been in suspended status, we've been coming up with kind of forum status inquiries that our paralegals can issue, and we want to find out whether the civil actions are still pending, these bankruptcy proceedings are still pending, whether
the parties are still actively discussing settlement.

And then for cases -- we haven't focused too much on cases that are not in any of those suspended statuses, but are, in theory, being litigated and are just getting old because there's been a lot of motion practice, but that's the next thing we want to turn our attention to, is those cases, and to be a little more active in our management of those cases. And as we discussed in the sub-committee meeting yesterday, one of the things that we're going to hopefully do is have one or both of our supervising paralegals work on this as kind of a capstone for training programs that they're going through now, and hopefully we'll be able to report back at the next meeting that we've made some significant progress in at least identifying the numbers by year, the numbers by type of status, and be able to tell you what steps we've taken to address various groups or sub groups of this larger group of older cases.

MS. DENISON: I think that it is
difficult for the board to have to be operating 
under two sets of laws, and so all the pre -- 
November 1, 2007 cases are operating under the old 
system, so to the extent that you can push along 
the resolution of those, I think it will make the 
board's workload a lot easier. So we fully 
support you doing whatever you can to try to clean 
out the things that have been there five, six, 
seven, you know, years or longer. Anybody have 
anything on this?

JUDGE ROGERS: I don't think anyone is 
going to object to cleaning out older cases, so I 
don't think you'll expect any objections there.

MR. FARMER: Mary, there was a question 
behind you. Do you want to step up to the mic so 
folks can hear you?

MR. PELTON: Thank you, my name is Erik 
Pelton. Just a suggestion on that last point, it 
may be a little bit premature, but perhaps one of 
these ACR type proposals could be an agreement 
between parties operating under the old rules to 
adopt the new rules in any way applicable to their
case regarding expert disclosures, other testimony
rules or whatever is -- obviously, certificates of
service and other things wouldn't really be
applicable, but whatever would apply to their case
that they could adopt the new rules and that would
help the board, help things to move faster,
hopefully help everybody.

MS. DENISON: Great idea.

JUDGE ROGERS: And I can say that we
actually have done that to a limited extent,
because early on when the -- at least within the
first year or so after the new rules kicked in, we
had situations where we were consolidating cases,
and we would have cases commenced under the new
rules and cases which were already pending under
the old rules, and whenever possible in those
consolidation situations, we would drag the old
rules cases into the new rules by consolidating
them with a new rules case, so there's some
precedent for doing that kind of thing.

MS. DENISON: Anybody else? Okay. The
TTAB has done a draft request for comments, it
covers three topics, one is a possible fast track for TTAB opposition and cancellation cases, which would be different from ACR which requires consent, and it also addresses participation by the TTAB in settlement, which is not currently on their radar screen, and the third thing is possible limits on consented extension.

So we have a draft of this from the TTAB, and the TPAC is going to be looking at this proposal and deciding if we want all these things, and if we do, how we feel about the proposal, so we'll be looking at that in the next month and we'll be getting back to the TTAB with our thoughts on moving forward on the request for comments.

MR. FARMER: Okay. Judge Rogers, do you have anything on that? I didn't necessarily expect that you would, but on that last topic.

JUDGE ROGERS: Not particularly; but again, I would echo the comments earlier in regard to ACR, and that is, we're always happy to work with any of the bar groups or any stakeholders.
And so I think we have made it clear that while, as drafted this request for comments is limited to three major subject areas, I think our intention, unless there are any serious objections, and I don't think that there would be, to make it clear in any request for comments that's eventually published, that we're happy to take any additional suggestions.

Clearly, one objective or major objective for the request for comments would be to get suggestions from the bar groups on the three major proposals that are contained in it. But if there are other suggestions that the bar has for process improvements, we're certainly always willing to consider them.

And I can tell you, based on my experience with the rules amendments in 2007, generally the bar doesn't need to be invited to make a lot of suggestions. They're going to take anything that has a comment period as an opportunity to comment on pretty much anything that they think should be brought to our
attention, and you know, we're happy to receive
those comments.

MR. FARMER: Okay. Mary, anything else
from you?

MS. DENISON: No, thank you. I
appreciate your help, Judge Rogers.

MR. FARMER: Yes, on the issue, as Mary
said earlier, I'm not quite sure how our thoughts
get from here to those who have the power to make
decisions, but we really, really do support
bringing the TTAB up to full strength, to filling
the judgeships that are vacant and those that may
become vacant soon, as soon as they do, and for
the TTAB to get the support person that would be
very helpful to them on staying up on the manual,
for example.

I know that because of the recession
we're in, that, you know, money and hiring is
always a concern, but, you know, that's not as big
a problem on the trademark side, so it seems like
the funding should be there, and we just hope
those who have the power to make this happen will
make it happen soon because we think that will bring good things. Judge Rogers, thanks for your time today, we really appreciate it.

We are now going to go on to the report from the -- on the financial status of the USPTO. And, Karen, are you going to be doing that today? Yes, we have Karen Strohecker here, who is the Acting CFO, and I'll have to note that she's been working really hard lately, and that we on TPAC have noticed that and really appreciate it and that we have a lot of trust in your abilities and we're thankful that you've taken up the task.

MS. STROHECKER: Well, thank you very much. And I have to extend my thanks and give the credit for my being asked to fill the acting role of the Chief Financial Officer to the good management and the mentoring and the wonderful experience I've gained over the years working with the trademark organization in particular. It's been quite an exciting experience for me to step into this role; I've been doing it since January.

And as Director Kappos and Under
Secretary Barner had expressed to me when asking me to take this role, their first priority for me in assuming this position is to work on improving the relationships with their external stakeholders, not specifically TPAC, because as you all know, we have a wonderful relationship with the TPAC, I think even more so, Mr. Farmer, since you have assumed the role of Chairman of the TPAC.

MR. FARMER: Well, I'm going to disclaim any credit right now. And also, I forgot to point out, Elizabeth Pearce and James Conley are our money people on TPAC, and so they get all the credit, and also, they'll be running this part of the TPAC agenda and chatting with Karen.

MS. STROHECKER: All right, thank you. And I understand, having said all of that, that I want to begin by first alleviating any concerns or fears that anyone on the TPAC or anyone in the trademark user community might have with respect to the office needing to tap into trademark funds to manage its operations in 2010.
I think everyone is very well aware of our funding constraints in 2010, and I just want to assure you that Director Kappos and Ms. Barner have made it very clear to the department, OMB, and our appropriators that we are planning to manage our spending authority, that we will do everything we can to ensure that we work within our current spending authority.

Having said that, as you're probably all aware, we have also made a request, which is supported by the administration, to have our spending authority for 2010 increased so that we might make available to the agency the full access to -- up to the amount of the fee collections that we might receive this year. And that's ongoing, we do have their support, and we are right now very confident that that will end up working out in our favor before the end of the year. So having said that, I'll just give you a brief status on the 2010 budget. Our authorized spending level this year is one billion 887 million dollars. Our mid year has just recently
1 passed. And just to give you a sense of what
2 we're doing and why it's important, again,
3 whenever money is of consequence or of issue, it's
4 vitally important that we make certain that we're
5 exercising good financial management with respect
6 to ensuring that our current rate of spending and
7 our options through the remainder of the year lead
8 us to the ability to spend within our current
9 plan.
10
11 So we have just recently concluded a mid
12 year funding review of all the various business
13 unit operations with their cooperation and
14 support. What we're attempting to do is to
15 identify whether or not they are currently
16 spending to their budget plans, and to the extent
17 that there might be opportunities to perhaps
18 redirect some of their monies to other priorities
19 within the business unit, as well as within the
20 patent and the trademark operations.
21
22 Having said that, there are certain
23 plans that we're only able to execute this year on
24 the patent -- in the patent organization because
of good spending decisions that were made last year, to bring in some carryover patent funding into 2010, and that's allowing us to plan to hire up to 250 experienced IP professionals this year. At the start of the year, we were not able to do that. It was only because of the good management that was done prior to my coming into the CFO role that funds are available to do that this year.

Having said that, I just also want to point out that, with the exception of the trademark organization, the TTAB, in fact, all the areas that are not funded directly from trademark funding, there are still severe limitations placed on hiring and replacing vacancies that occur in other parts of the organization.

We have redirected some spending within the patent program to make certain that we can sustain and plan to manage to fill our hiring commitments, because as you know, hiring and patents, just like in trademarks, is a multi year effort.

So to the extent that we're not able to
execute on our plans this year further pushes out
our plans to reduce patent pendency and the patent
backlog, which is a big commitment that this
administration has made to reduce patent pendency
to first action by ten months, by 2013, 2014, with
patent disposal pendency being pushed out to 2014
and '15 to 20 months. We also plan and we're on
track to carry over a surplus this year of
approximately $85 million in trademark revenues,
and that's based on our current spending
throughout the office.

Our fee collection estimate right now,
and we're pretty confident of this, we're actually
talking in ranges now rather than trying to be so
specific in terms of giving people the indication
that we can when we know we can't estimate exactly
or precisely where our revenues will be for the
year.

Understanding that we're a $2 billion
operation, any fluctuation can have kind of a
dramatic impact in terms of specific plans in the
office. So our fee collection estimate range
right now is that we expect that we could collect
between $146 million and $232 million above our
current appropriation.

Through May 5th, patent collections had
exceeded $1.1 billion, and trademark collections
had exceeded $131 million. Average daily fee
collections for patents are in the range of about
$7.5 million so far this year, and trademark is
roughly $800,000 a day. I don't want to scare you
with this next slide. It's really not best for
projection. This slide was an attempt for us to
be able to, and it's -- there's a lot of content
here, it primarily addresses our ability and what
we look at when we're forecasting fee collections,
specifically patent fee collections.

The estimate this year, the reason why
we are so significantly under our current
projection in terms of spending authority is
because there's been a significant increase in the
payment of patent maintenance fee renewals and
patent issues, and those are due primarily to the
fact that the economy actually has improved since
the projection was made, as the 2010 budget was
being completed, and the fact that patent has made
some significant changes in terms of the internal
operations, and they are now issuing more patents
than previously had been expected. So that's
primarily the source of the additional revenue
estimate at this time.

If you look at this page, there actually
is some information on here about trademark fee
collections, you have to find it. Basically what
it shows you here is that, based on our current
spending authority of the $1.887 billion, $218
million approximately was planned from trademark
fee collections. And our current projection range
within that 146 million to 232 million that I had
spoken about earlier basically suggests that a
trademark range of over collections is in the $2
to $7 million range. So trademarks is very close
to plan. I think that that's also a reflection in
terms of their ability to manage on such a
consistent basis their performance results for
pendency and examiner production.
The next slide is actually basically a restatement of what I've just explained to you in terms of trying to understand better the content of the slide. We prepared this slide really in an effort, the previous slide, that is, to better articulate and explain to our external stakeholders at the Department of Commerce, Office of Management and Budget, and our appropriators what it is that we consider when we're formulating estimates for filings, because in order to get their cooperation and have them understand why our estimate now is so much above our spending authority, which was revised, you know, just a few months prior to the enactment of our 2010 appropriation, we had to basically begin educating them in terms of all the various things that we have to look at and what our potential ranges are in terms of forecasting workload and filing estimates that then generate fee revenues for the office. The next slide is one that we have traditionally made available to members of the TPAC at their request, and it basically is the
cost allocation. So this is a bit different than budget obligation authority. But this information is basically the source of information for determining the current year spending allocation split between patent revenues and trademark revenues.

So basically what we do is, we take each organization, and through our activity based costing models, we determine the allocation of time, as well as expenditures that support trademark, as well as patent services, and from that we determine percentage that is then applied to incoming revenues to determine basically how we allocate patent and trademark revenues and determine the split of resources, and it also determines the extent that, within the office, we can spend revenues so that we don't violate the trademark fence.

I don't know if anyone at this time has any questions regarding 2010; hopefully I have alleviated most of the concerns that I have heard expressed coming into this meeting about 2010.
spending, which, quite frankly, has been a very
challenging year for the office, challenging in
ways more so for the patent operations because of
the significant initiatives and improvements and
changes that Director Kappos has made to try and
make a huge impact in terms of reversing the
unacceptably long patent pendency. Just so you
know, patent pendency and backlog reduction is
considered by this administration to be a high
priority performance goal, which means it's
going attention that it wouldn't otherwise get.

And having that attention, quite
frankly, has been very crucial to our ability to
persuade the department, OMB and the appropriators
to support us on our request to have additional
spending authority in 2010 to address this high
priority performance goal. So it's very important
we've made the connection between jobs and the
economy when it comes to advancing intellectual
property protection.

I think we briefed you last time about
the 2011 budget, but just to give everyone some
assurance, I know there's been a lot of discussion
and concern about when are you all going to get to
see the strategic plan. And as Ms. Barner
indicated in her comments at the beginning of the
session, what you will be seeing in the strategic
plan is, in large part, what you have already seen
in the 2011 President's budget request. That
budget actually is a significant departure for the
agency in terms of not only how it was formulated,
but how we have articulated what's important in
terms of the U.S. economy, jobs, and the
relationship of intellectual property protection.

That budget request is a significant
increase from this year's spending authority. It
will be approximately $2.3 billion should we get
that spending authority. And included in that
request is a request for $224 million that would
be an interim, a patent fee increase, and that's
necessary for us to be able to begin executing,
again, on an aggressive pendency reduction plan.

What's different about this budget as in
past years, in past years, as you all probably may
be familiar, what we've done is, we've basically set our budget to the level of fee collections that we anticipated in that particular year.

Well, we know that we have requirements that exceed our current fee authority based on workloads and expected volumes. So what we've done this year in order to close that gap, because we fully want to cover the requirements of our budget through fee collections, is to request two things; the first, again, is the interim fee increase, and the reason why that is so significant is because legislatively we can have an increase that will allow us to begin executing 2011 within ten days of the enactment of our appropriation. Our preference really is to set fees through fee setting authority so that we can engage and involve the user community in those discussions with respect to what's the proper fee structure, as well as what kind of policy consideration should be considered when setting fees.

So setting fees through that process, as
you know, was pretty extensive and elaborate, requires at least 18 to 24 months to do it well, and we do not want to defer the improvements that we need to begin making really now for patents by doing that.

So the concept behind this budget is basically we need fee setting authority for all of those fees that currently now are set by statute. Approximately 70 percent of the income for the agency is generated from fees that are set by statute, whereas only 30 percent are those that are set by regulation. So it's a huge issue for the agency in terms of trying to align its cost with its ability to collect revenues to support those costs.

And in the third component of the 2011 budget request, which again, is a significant departure, is that, and it's been done in trademarks, and it's demonstrated its ability to help manage the agency, and that is, we are consciously funding a patent operating reserve, which is necessary to allow us to begin the
significant hiring that will take place over the next two years to reduce the patent backlog and pendency.

After 2013, if plans go as suggested in our 2011 budget request, we won't need that level of hiring, and therefore, the reserve will actually go down in the absence of any additional fee increase.

At the end of 2011, we expect the trademark surplus to be much less than it will be going into it. We expect that we're going to have to use $37 million of the $85 million surplus at the end of 2010 to cover expenses in 2011, and there's a couple of reasons why.

One is, our expectation for fee collections in '11 is slightly less than it is in '10, because specifically it has to do with extensions of time filings and statements of use that will drive that down, you know, perhaps -- we're not talking a high number, we're in the $7 to $10 million range, but our requirements increase, and so I use that as an example to show
how an operating reserve can actually mitigate the
need for increases in fees when there are
fluctuations in files and forecasted fee revenues.
So it's good management practice to have an
operating reserve. The one that we are planning
in the 2011 budget is just the first start for the
patent operating reserve. It won't get us to the
ideal situation, but it's one that we felt would
be comfortably managed given the amount of the fee
increase that was being requested for 2011.

Just to give you some overall
perspective in terms of where we are now with 2012
budget process, because as you all are familiar
now, we don't have just one budget year to deal
with at a time, we have three.

We have begun internally with the
guidance and working with the business units on
the 2012 budget process. We are actively engaged
with the Department of Commerce, and we are
working with OMB and the appropriators to make
certain as we formulate our 2012 budget request
that we are doing so in a manner that will allow
them to better understand the PTO's requirements.

So we are, again, doing a requirements
based budget. We'll identify the requirements and
then determine how we can fund those requirements.
And the second piece of that is, we are doing a
base review. We will break out how we are using
our current resources absent any additional
increase request so that we can display the level
of resources and the level of performance that is
basically delivered by those various functions and
programs in a way in which we have not done in the
past.

So we are currently in the process of
just initiating the 2012 budget process in the
April/June timeframe. We have to work with the
department to make certain that we are doing
things that will actually allow them to roll up
our budget request with theirs. We are not -- we
are making certain that all of the initiatives
that have been identified in the 2011 budget
request are a continuation.

We want to make certain that as we
formulate budgets, we're not considering just one year at a time, that we actually are managing to focus our attention and our plans on a five year plan, which will be consistent with the strategic plan once that's developed.

During the July and August time frame, and we put, you know, two to three months time frame on this because there's a lot of activity here, it may not look like it from the timeline, but there's far more detailed timelines within the agency. We expect to, by the middle of June, actually be working with this committee on any new initiatives that we might have that would be part of the 2012 budget process. We are going to have an internal process where we have a budget committee that will be comprised of executives or senior leaders from each business unit to review the base request, as well as the increased request from every organization within the PTO to make certain that all of our strategic priorities and goals are well understood.

And it will also give both patents,
trademarks and our external affairs areas an
opportunity to tell the support areas what level
of service they need in order to be successful in
meeting their performance goals and commitments.

All of this is leading up to September,
when we need to deliver to the Office of
Management and Budget our first submission for the
2012 budget request. And then during the November
time frame, we would get a pass back from OMB and
begin formulating any changes, if necessary, for
completing the congressional request or the
President's budget request, which would be
finalized at least in the agency in the January
time frame and then made available to the public
by February. That's my presentation on the
budget. I wanted to stop and give you all an
opportunity to ask any questions. I know it's a
lot of information, and I just have to say that in
my current role, trademarks has made it easy for
me, once again. I spend very little time dealing
with trademark matters in this capacity. But it's
given me, you know, a great opportunity to have
exposure on issues that confront the entire agency.

And I have to say that, you know, trademarks, given its current financial situation, as well as its performance situation, has made it easy not only for me, but I think for others. So if you have any questions, I can take that now. I was going to talk just a bit before I wrap up about the fee cost study that we've been doing.

MS. PEARCE: I have one question, Karen. You are talking about the 2012 budget, and I'm assuming that there is going to be an operating reserve request built into that. Aren't we planning on hiring -- doing significant hiring of new examiners in 2013, the next year, and that's part of the reason why this operating reserve would be so crucial, is because there are some major projects coming up?

MS. STROHECKER: Well, it looks like Elizabeth has looked at the budget, and she is correct. Elizabeth has been one of the key supporters and I guess instigators of the fee cost
study, because it's been an issue that we have
been working with her for I guess the past year,
just over. Yes, by -- what I had mentioned
earlier about 2011, we expect to draw down on the
current surplus by about 37 million, and in '12,
we'll draw it down another 17 million, so that by
the end of 2013, we expect to only have about a
$30 million surplus, and that does cover increases
in hiring.

Now, the increases in hiring are
presumed for two reasons, one, as you know, we
haven't hired trademark examining attorneys in the
past couple of years, and we anticipate that
filings will continue to increase. Along with
attritions at some point we'll have to resume
hiring trademark examiners again. So rather than
have to increase trademark fees, we are trying to
be very prudent in our management of the operating
reserve. Any questions? Okay, all right. Do we
do a presentation on this?

Just a brief update; Elizabeth and James
have been working very closely with us, as I said,
for the past year or so on a fee cost study. But
I want to give everyone just a bit of background
on how that came to be. The Patent and Trademark
Office has been using activity based cost
information for the past 13 or so years in order
to determine the relevant cost between patents and
trademarks. Primarily at first it was to identify
the cost so that we could have good financial
reporting in terms of managing those two
resources.

Well, what we've done is, over time
we've actually made a number of changes to that
model. It's far more sophisticated now than it
once was. And so we began working in trademarks
with members of the finance activity based costing
team to actually refine the models in a way in
which we could capture the cost of each fee for
which we provide or perform a service, so that in
the past where we might have had cost associated
with relatively large functions that were
performed at the office, our objective here was
that what we wanted to do is to identify the cost
of every single fee performed service,
understanding that we would have to allocate those
costs for which we do not receive any revenue to
the appropriate fee code.

So what we've done is, we've been able
to identify not only the direct cost of
operations, but also the allocated direct, that
would be things like IT systems that are specific
to trademarks and TTAB, and then the allocated
overhead, which would be those things that there
is not a specific direct association, but at the
same time, those services are necessary for us to
perform our work in delivering trademark
examination and services. The importance of this
study really extends beyond just trying to
determine what the cost of every individual fee or
fee code is. And the manner in which it's been
done gives us visibility into the source of the
cost or the cost drivers in a manner in which we
never had previously.

So there is huge opportunity here, if
you will, not only to identify these costs for fee
settings potentially, but also the bigger opportunity here in our mind is that it gives us insight so that we can actually determine how we can perhaps seek to minimize our cost, if not better understand the process of consuming resources within the agency specific to the relative cost and activities that we then expect our fee payers to cover.

So we have shared the actual cost information for the past I guess, what, two and a half years now, so we have cost information from fiscal '08, '09, and through the second quarter of fiscal 2010. We've also been working with the TTAB to incorporate their fee codes. There's a lot of work that's been done and there's -- I never see it as actually being completed, and this is why, because as we continue to make changes within the agency in terms of our management and how we go about actually processing work, that's going to necessitate changes in how we actually identify the cost, and also just in terms of the analysis, it's not just the actual capture of the
cost, but the analysis.

And the other big potential for us is to put this information in front of people within the agency so they're better informed about the actual time they spend on various activities and what that actually means to the agency in terms of having to defend those costs, as well as manage those cost levels.

So lots of opportunity there I think for us to make better decisions. We will certainly use it as a basis for informing -- providing information to inform us on making any future suggestions in terms of adjusting fees, whether up or down.

We actually have it at a level where we can identify not only the cost of things that are provided to us on paper, but also things to which they are filed electronically in those things that we have electronic processing associated with it. But as I said before, it's going to be a constant ongoing process because things are constantly changing in the office. And I think as we work
with it, there's lots more we can learn about how
we can make improvements to it. And it's been
very constructive for us working with Elizabeth
and James on this project to get their feedback on
how they view the information and how we can
better present it.

MS. PEARCE: It's been very interesting,
because you come in, you know, you've got to have
some pre-conceived ideas when you go in, and you
realize that as you start looking at the data,
it's a more complex issue than you realized, but
they've been kind enough, Karen and her group, to
provide us with quarterly updates.

One of the things that's still
challenging in this rocky economy, I assume
everybody knows what the stock market did
yesterday, and it's doing it yet again today,
we're hoping I think for a little bit more
consistency in the number of filings that we've
got.

As long as things are going up and down
at a dramatic rate, it's a little bit harder to
figure out what the realistic cost of something should be. So I think we're still waiting for things to even out a little bit. But by looking at the data on a quarterly basis, you really do start to see some patterns. And it's wonderful to be able to look at particular things, drill down to one particular item and be able to assess, you know, is that costing what it should, and if not, as Karen says, you can actually figure out why it costs more than you expected it to. Is it something that can be changed or is this something that just simply it is what it is and perhaps what you want is to not have to do as many of those just by virtue of what it costs.

But I would like to thank, Karen, Steve Porter and Michelle Picard, who's not here, Steve Porter, who's seated right behind us, who have worked very, very hard on keeping this information up-to-date, and also thinking about creative, useful ways to use the information now that we've got it, and I'm very excited in what we'll be able to do going forward.
I think it's going to continue to improve the efficiencies and the effectiveness of the office. I am hoping it'll make Karen's job a little bit easier, because I know it's not easy having to head up the CFO's office. So I'd just like to thank them. And we will keep everybody posted on this, and if they are able to get fee setting authority in the future, which we are hoping they will be able to do, then we're going to be able to hit the ground running.

COMMISSIONER BERESFORD: I have a question, Karen. The study is giving a source of cost and cost drivers. As you know, trademark spends an awful lot of its money on its organizations of staff trademarks and on indirect costs. Has this study given us the cost drivers that we need to look at in order to reduce, for instance, our CIO, CFO and CAO costs? Thank you.

MS. STROHECKER: This is a real change of events, isn't it? Now I'm on the other side. Now I have to anticipate the tough questions. Now, you make good points, Lynne, you know. Lynne
actually has been very vigilant in looking at this cost information, and I give her a lot of credit for being one of the few people I think that actually spend a lot of time looking at it and understanding it.

As I said previously, I think we can always do a better job in terms of refining the sources of the cost information, and a lot of that comes with, again, getting other people similarly educated and informed so that they can help us make better decision with respect to how we go about mapping the various activities and the source cost so that we actually do get good, accurate information. As you know, we have to make a lot of assumptions on certain costs because we just don't have the information broken down in a way in which we can identify it as specifically direct, we have to allocate based on various drivers, hopefully the ones that are most appropriate, but you're always limited by the information you have to work with.

So to the extent, and I think we have
made big improvements in terms of working with the CIO organization, and the way in which they have defined the various activities through the activity codes that people use to report not only their time, but also whenever we procure or spend money on things, there is a code that actually has to be used that goes into the financial system and becomes the source of that cost information.

So to the extent that we can continue to work and educate people within the office, we can only continue to make better improvements on the actual information we get to use to make our own decisions. Lynne wanted an answer like, yes, it's too high, or no, it's too low.

COMMISSIONER BERESFORD: I'll take that as we're working on it, and you know, and we'll go from there. I just -- I know that the focus of this study was mostly on what trademarks was doing. There wasn't a particular focus on those other organizations. And I know that, to pick out OCIO, a very large percentage of that money is 80 percent or so of their costs or an infrastructure,
you know, and so in terms of now that we've worked so hard with the trademark organization to map our costs, et cetera, I hope there's an equal desire to move towards the staffing organizations and make sure that they have the same rigorous methodology applied. Thank you.

MS. STROHECKER: Absolutely; and I do have to share Lynne's sentiment. We do have now ways of looking at what portion of CIO costs are related to the direct systems as opposed to the overhead, the operations and maintenance, and you know, that is increasing and that's a source of concern to us all.

Similarly, I take your point, and I appreciate it, and it's one we do need to still work on, continue to work on, and that is making certain that the allocation distribution for the support areas within the office are actually reflective of the amount of effort and work and resource expended in supporting trademark operations and services, absolutely.

MR. FRIEDMAN: Just a few things, sort
of a bookend to some of the opening comments that John made about our fees. I wanted to just make clear that earlier this week, on Wednesday, at the Judiciary House Oversight Committee Hearing, we did submit testimony -- had submitted testimony making very clear that we're against the diversion of fees.

Further, we hope that the committee would act or will act favorably on the administration's request for an interim patent fee increase. NTEU also supports legislative changes to remove PTO from the appropriations process and to make all of its fees collected immediately available to PTO, and that they should be given authority with appropriate safeguards to set its own fee schedule.

We believe all these actions would give the office the operating efficiency it needs and are the kind of policies that should be put in place. I think the focus has kind have been on the revenue side, but I don't want to minimize the expense side. And on the expense side, I can't
think of a better way to emphasize how prudent the PTO, and in particular trademarks has been than to focus on the amount of money that's been saved in real estate in view of our telework program. And I also want to use that as an opportunity to make very clear that the people who work at home are as productive, if not more productive than those people who work here. The quality standards and the performance standards are exactly the same, and it's that kind of program that we look forward to expanding further at the PTO and hopefully have appropriate legislation passed in the very near future that will help our agency and the rest of the federal government. Thank you.

MR. FARMER: Okay, thanks. Unless there are any questions or comments, I'm going to call an unscheduled five minute break so that we can give the CIO presentation the full attention it deserves. And so I've got 2:02 on my watch, 12:07, excuse me, I was using middle of the Atlantic Ocean time. In five minutes we're going to start right off and we'll have our CIO report
then.

(REcess)

MR. LOCKHART: Well, we just want to thank Kay very much for coming in and briefing us. Both John Owens and Scott Williams are out of the office today, so we very much appreciate your coming in, and we had a real good meeting yesterday to discuss the issues in depth. We look forward to hearing the brief.

MS. MELVIN: Thank you very much, Tim. It was a pleasure meeting with the sub-committee yesterday. They gave me lots of good pointers and hints for the presentation today, and I'll try to follow up on as many of those as I possibly can. Just to let you know, I do work in the Office of the Chief Information Officer and I'm the Director of the Program Administration Group representing John here today. And I will start out on our first slide talking about trademark next gen, that's one of the first questions you had here on the agenda, as to the status and the plans for the new next gen, and we would like to update you on
where we are to date.

Working with trademarks very closely, we've tried to arrive at or start to investigate the best approach for trademark next gen, and we started out by creating some teams, joint teams between OCIO and trademarks. And we initiated three separate studies to take a look at where we are today, where we need to go in the future, primarily a future look for trademarks.

We came up with three different approaches; one was developed internally by OCIO and trademark staff, two were developed by external contractors. Everyone was given some basic concepts. We are looking at doing things like prototypes to try out the new concepts, the best way forward, check things as we develop them, make sure they're working prior to doing development and releases. We also are looking at things like using GSA contract vehicles for procurement. As you know, we have certain contracts here in-house, but we believe that perhaps we want to look outside to some other
contract vehicles for some of this activity going forward.

We're looking to use an agile development process. This process is more interactive, and I apologize, I don't say that exactly right, that seems to be a hard word for me, but that process actually doesn't take huge clumps, it does break things down, but it breaks them down so that we can put them and we can test them, we can design them, we can prototype them and then add functionality and go through again another quick test of the design, the functionality, and add onto it.

So that we don't end up developing a whole module to do something, I wanted to get to the end and find out we have problems and it doesn't work the way we thought. So we're hopeful that this new agile development will help us get to that and avoid some perhaps costly mistakes that have been made in prior development efforts.

We're looking for a system that will be scaleable and flexible, gives the office, gives
trademarks the performance that it absolutely
needs for both internal and external users, and
we're looking to perform -- move towards 24 by 7
maintenance, no service interruptions. Now, what
some people perhaps don't realize, that for our
internal users today, our examining attorneys and
other staff in trademarks, the systems are down
for a considerable amount of time in the late
evenings, like from midnight to 5:00 a.m., and
while many people are sleeping, that's not
necessarily the case for people who are working
here at the Patent and Trademark Office. We'd
like to have those systems up and available for
people.

Also, there is some down time for the
external users who are filing registrations. We
want to make sure that those systems are up and
working, and we minimize, if not eliminate some of
those maintenance windows.

There are lessons learned in private
industry that we're looking at to bring those
kinds of capabilities in. So these were some of
the factors that were brought in when we were looking at these initial studies and coming up with an approach.

With the three different approaches that have been presented to us to date, we have gone back with our joint trademark OCIO teams to take a look and see, is there any one approach that is the best approach, or is it, in fact, a combination? Did each group, whether it was one of the contractors or the internal group, come up with key things and key items that we believe should be used in the next gen going forward? And perhaps we are going to still yet again come up with a fourth approach that uses the best of those three to deliver what is needed by the office and what would best support trademarks.

So that is -- currently we've completed at least an initial review of those three. And if we can move on to the next steps, what we're now in the process of doing is working with trademarks to fine tune and further determine just what is the best management process forward, what is the
best, how do we want to define the prototype that we get from this effort, and how we want to move forward.

We're going to be working together to determine the best procurement vehicle, knowing what the various options are, and we need to agree to a common -- to a business case. In other words, to move forward on the next gen product, it's got to best for the -- what's best for the business, and that, too, is something that is a joint effort between the two of us, and then finalize that CIDP, which is our investment decision paper that would be going forward to say here's the timeline, here's the approach, here's the timelines, the business case, here's the dollars and cents, and we would be looking for approval then to proceed. So at this point, we are currently in this process working with trademarks to nail down some of these details, and until we actually have those details resolved, we consider ourselves still to kind of be in the conceptual phase, so we don't have a firm date
where this will be done or that will be done, we need to complete those discussions.

And I think it's safe to say those discussions are happening weekly and in most cases daily between the various groups to try and make some of those decisions so we can come together to get to a common approach going forward. I don't know if there -- Lynne or you or -- I work with so many people in this room on this case, I don't know if you have questions or if there's anything anyone would like to add before I move in to talk more about the things that we are continuing to do, but --

MR. FARMER: We'll come to you in a second, Michelle. First, you guys, anything?

MR. LOCKHART: Well, I'll certainly defer to Bob and Howard. I think maybe the best approach would be just to go through the whole presentation and then we'll have some questions and comments, but in the interest of time, maybe just go through it.

MR. FARMER: Okay, why don't we do that?
We'll take them at the end.

MS. MELVIN: Okay. Current trademark systems, another question here on the agenda is, there are some ongoing technological projects that need to be completed for trademarks. Just because we're looking for the next generation, that doesn't mean that we are not blind to the fact that there are things that need to continue to be done today, and we've made those commitments, that we will continue those projects to make some of those changes and improvements as we go forward.

I think as we do that, we're also within the different teams looking to see, are there any components of this that will fit into next gen, you know, or noting that this is a requirement we want to make sure is included in that next generation product, as well. So we are continuing forward with some of these -- adding new features or improvements and capabilities to the existing systems. You can read up there trademark -- I don't need to read the slides to you, obviously, but the TDR that were up there, hopefully what
we're trying to do there is, provide the ability for people to file in the different form -- in different formats and then retrieve in other formats as they are desired.

We were talking yesterday a bit about sometimes people can only file or we're looking for PDF format filing. In the future, we'd like for you to be able to do jpeg or do XML filings or whatever, and then if you need to retrieve it in a different format, you can do so. So we're looking at some of those kinds of things with the TDR 2.0.

This is also in a definition phase, which means until we finish this phase, we do not have an actual project plan with a deployment date, but it is in that process. And they're currently reviewing proposals from contractors, and soon we should have some more -- a project plan for that one going forward.

We have Madrid 1.9, it is currently in testing, we're watching this one very, very closely. There have been a number of issues that have been raised during the testing process, but
we are hoping to see deployment of this sometime in I'll say early summer timeframe. Madrid 2.0, looking ahead again, this is a new project that's in the concept phase, is targeted for later this year for deployment, we're watching this one along with Madrid 1.9, because we don't want one -- if one gets slowed, we don't want to slow down the 2.0. We're very aware of the necessity to get this one out, as well. So while we have not -- we know we're watching them, but they're not tied together. So 2.0 is proceeding also in a concept phase in looking at the requirements that are needed to push forward on this one, as well.

Fast 1.16, another project here. Let me just look at my note here real quickly. We're looking at changes in templates for different users here. Deployment for this Fast system is currently on schedule for mid August. We have Fast 2, TQRS. We are currently reviewing a proposal now for cost and schedule on this one, as well.

TMEP and the -- well, here we have it
listed together, sixth edition, second revision, seventh edition. We've talked about the TMEP a couple of times this morning, and I also took a note to reach out to the board and see what their needs might be, because the changes in the -- things that we want to do with the TMEP and the MPEP, they're both on Mr. Kappos' list, I'm sure this one will land on there, as well, and we're looking to see where we can learn and use synergy from one to the other to help both operations. I think we heard this morning the sixth edition will be coming out this month, it is still on target. We're currently working on the, what we're calling the seventh for in the fall. And basically in both that and in the whole Wiki process, we're looking for ways to get control of the updates and the changes to the TMEP to trademarks.

Right now the process includes some OCIO support, which we just don't believe we need to be into that mix with the content. We believe that this is something that should reside in trademarks and they should have the tools that they need to
be able to easily do this any time they want
without having to worry about testing and
scheduling within our office.

So that is the goal that we're working
toward here. I did follow up a little bit during
one of the breaks about the Wiki, to find out
where are we with the Wiki. A team is looking at
commercially available software right now for
that. They have done an initial market survey to
identify some common XML editors, develop some
draft schemas, and they're surveying capabilities
of some of these products now. It's still
defining the project, but my understanding is,
they're trying to move forward on it very quickly.

Yes, Lynne.

COMMISSIONER BERESFORD: Yes, Kay, this
project, TMEP, sixth edition, second revision, and
seventh edition is actually just, my
understanding, it's just the normal update to the
TMEP, it has nothing whatsoever to do with Wiki or
anything else, this is just -- this is just
getting a revision out, which a little more
quickly than OCIO had originally planned, but
nevertheless, it has nothing to do with Wiki or
HTML, TMEP or anything, it's just getting these --
first the update for the change brought about by
the Technical Corrections Act, and then the
seventh edition, our normal yearly update to the
TMEP.

MS. MELVIN: Yes, you're correct, I
apologize. Perhaps I kind of jumped into one
quicker than the other. The goal for the -- I do
believe, though, the goal for the TMEP is to go to
something that is much more robust, that
trademarks can handle on its own in the future.
You are correct.

It's with the -- the Wiki, when we
talked about the TMEP, Wiki, this morning, that is
going down a separate path right now where they're
defining the project, and they're trying to
further determine the actual release date for
that, which my understanding is Mr. Kappos would
like to see certainly this fiscal year, if not
sooner, so I don't doubt that that's not one for
-- looking at for acceleration.

COMMISSIONER BERESFORD: Well, I just wanted to be clear. You've listed these as major features being added, and I wanted to be clear that we're not adding this at the time, there's no ability to do that, and so since you were talking about them together, I wanted to clarify that.

Thank you.

MS. MELVIN: In terms of the TTABIS project right now, this is a series of small changes. I think we all recognize that the TTAB needs access to the systems in trademarks, our systems need to talk to those two systems, TTABIS and the trademark systems need to talk.

Some of the things that TTABIS can't do today, like handle jpegs, but there are jpegs available in other systems, we're trying to find ways in working in this project to try and identify some of those changes to start to make this better for them, as well. So some small changes, small improvements that things I believe that all need to happen, and also things that
we'll be looking for trademarks and the board to
tell us in moving forward, where we need to make
additional changes and requirements. I won't
mention TMEO again, but I would like to tell you a
couple of the things that are additional
initiatives that the OCIO was looking at right
now, and one deals with Google. As you may have
heard, we have contracted with Google to load bulk
data files for free for the public onto their
system.

This is a short term measure, it's part
of an initiative, a presidential initiative to
make more information available to the American
public. And these are files that, in the past,
the USPTO has made available to the public, this
is nothing that hasn't already been out there, but
we've always charged for it in the past.

This is to be free distribution of the
bulk files. For trademarks, we're looking at
things like the daily image 24 hour box, the USA
marked back file from 1870 through 2009, and the
retrospective XML application assignments and TTAB
information. This is all bulk files currently --
that will be made available on Google.

Now, going forward, the office will be
contracting; there is an RFP that will be out in
June, and we will be contracting for someone to
come in and look at that data, post that data, and
have the opportunity that they could actually add
value to the data. This is a contract that is --
we're asking for these potential resellers to
support us for no cost. They will be coming in,
we will give them the data, they'll load it for
free across the USPTO, nothing at that point, but
they do have the opportunity to add value to the
data and they can potentially resell it. Anyone
that wants to download that data in bulk from them
could similarly take it and also do the same
thing. So that is coming, and the RFP will be
posted on that in June.

Our single laptop program, this is a
program that the office is embarking on that will
give users a single laptop to be used both in the
office and outside of the office as their sole
Right now the OCIO has approximately 25,000 computers that we are tracking in our asset system for people in and out of the office. This would obviously cut down that quite a bit. No longer would you have a desk top in your office and a laptop at home, you would take it back and forth.

And we've been looking to examine all the applications for both patents, trademarks and others in the office. These applications, many of which will need to be upgraded to work on Windows 7 on these laptops. And the laptops that we're proposing will be top of the line, having much higher capability and opportunity for the people using them than some of the equipment today. A lot of our equipment today is very old and outdated, causing problems for people either working from home or working from other sites. So we see this as an opportunity to replace a lot of that old equipment and give some of the best that's currently available to our examiners and our attorneys.
We're in the process of doing that evaluation now. There are no -- once that's done, we'll know how many and which applications, both in trademarks, as well as in patents. We'll need to be either redesigned or somehow modified to work on the systems. And once we have a good feel for that, we'll be able to make some clearer determinations as to exactly when that project will begin.

We will continue to work with trademarks in testing. It's been very -- it seems to be the best way to go actually to have the users test these applications out, to tell us if they're working or if they're not working. And we've also, of course, involved our unions in letting them know what's going on, so taking into account all of the questions and the interest throughout the office and with our staff on that. PTONET upgrade, we are -- this is our on campus upgrade of the network, it is almost complete, it's running a little ahead of schedule. On this one, we have actually been replacing a lot of old
equipment, preparing ourselves for expanding and
band width and capability to handle some of the
collaboration tools and other things that we're
using here now. And it's also given us some added
security protections that we have needed here and
we want to continue to strengthen going forward.

So once this is completed, we'll be
starting to look at the external connections from
the internet and other increasing band width
there, but our first step was to get the internal
infrastructure here around the campus shored up.
So I think we have -- and we're almost at that
point. So I am at the conclusion here and ready
for any questions and comments. Thank you.

MR. LOCKHART: Okay. First of all, I
want to thank you for a great presentation, very
comprehensive and very informative, so thank you
for giving us that information. In particular, I
want to commend you and OCIO for where you have
developed targets dates, for telling us what the
target dates are. And we know that sometimes
those dates can change, but where you got the
target dates developed, it's helpful for us to know what they are. And likewise, where you're in the process of developing target dates, if you can just, as you did, identify that and say we don't yet have a date, but we're working through it, that's also, again, very helpful, because, you know, we in the public are always very interested in when these particular initiatives are going to be rolled out.

And I really want to take note of these two very helpful handouts. And I assume that these were prepared, Lynne, by your office.

COMMISSIONER BERESFORD: Uh-huh.

MR. LOCKHART: And are these posted yet publicly?

COMMISSIONER BERESFORD: These are the trademarks next generation ideas that we've collected into our mailbox, and they have not been posted publicly. We're still collecting and sorting, and we will -- I don't know whether we'll post them or when we'll post them, but I wanted to make sure TPAC saw what has been coming into the

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mailbox.

MR. LOCKHART: Right; well, I had just
gone through these briefly. We have 29 pages of
ideas from external sources, all sorts of groups
that contributed, INTA, AIPLA, some private law
firms, I'm pleased to see, obviously, the TPAC
suggestions on here, the ABA, so a very wide
variety of folks out in the trademark community
have contributed. These look like they're
excellent ideas. Likewise, we have ten pages of
ideas from the trademark office internally, and
again, these look great.

I think we've got, you know, between the
two, we're off to a real good start on gathering
all these different ideas. And, Lynne, if I heard
you correctly, you're still in the process of
collecting ideas and updating these lists. Are we
going to have a cutoff on that or is this an
ongoing process while the OCIO continues to refine
the system architecture?

COMMISSIONER BERESFORD: Well, the
cutoff date was actually April 15th, but we had
some -- ABA, for instance, came in after that date, and, of course, as long as we're still working on the list, we're going to take the suggestions that come in. Actually, what we're going to do now is, these are kind of -- we've organized them in a certain way, and now we're going to go through and I think group them a little more to see -- to put like ideas together and maybe try to summarize the functionality that the ideas have in them. So we'll be -- I just got finished -- just got finished compiling this list two days before the meeting, I wanted to send it out. We're going to do some more work on it and then we'll send it out to TPAC again, asking for your comments. Once you read through it, you're going to see there are some diametrically opposed comments in this list.

Many people wrote in and said, please, please, please, get the assignment records integrated with the records that are in TRAM and TAR, and get the assignment documents fully visible online. Others wrote in and said don't
you dare do that, we don't want you to do that.

And so there are some things in here that you will find, we're going to have to sit down and we'll talk with the committee about it, you know, where do we want to go here and what's, again, my view is, what can we do that's best for trademark owners and the trademark bar. Our users pay us to collect this information, we should make it as available as possible.

So we're going to -- but we're going to have to have discussions about that, so this is an ongoing effort. We'll have a fairly finalized list I would say in the next month and we'll ship it out to TPAC. And then we'll probably start trying to prioritize more, what really do we want, what's so important that we need to make sure that it comes first. Yes.

MS. PARK: Lynne, I just wanted to say, taking a quick look at it, I did notice that there was a lot of disagreement in terms of priorities and what steps should be taken in the comments, so I'm glad that we'll have a chance to help you on
that. But at some point will you also go back to
some of the bar groups on that? Because I would
think some of the sub-committees like the INTA
sub-committee would be a valuable resource in
addition to whatever feedback we could give you.

COMMISSIONER BERESFORD: Yes, in fact,
that's a very good idea, that's coming up in the
not too distant future. And maybe shipping off
this to that sub-committee would give them a
chance to look at it and maybe formulate some
ideas. But, no, I plan to, as always, talk to the
various bar groups about all of these suggestions
and counter suggestions and things of that nature
to get a sense of what, in general, you know,
we're not going to be able to do something that
makes everybody happy, but what's going to be best
for the system, what do most people want, that's
what I'll be looking for.

MR. LOCKHART: And, you know, Lynne, I
don't know if from a timing standpoint it will be
possible to do this, but assuming that we meet
again in roughly three months, if you feel, and
OCIO agrees, and you know, we're all on the same page, if it's possible to give the TPAC a briefing on, at least at a high level, what some of the ideas are, where there seems to be a consensus about important things to do, and maybe some of these areas where there is disagreement, because reasonable people can disagree, and maybe we see where there are points of disagreement, and I think it would help guide everyone on the way forward.

COMMISSIONER BERESFORD: No problem, we'll be working on that.

MR. FARMER: I had a couple of quick questions. Is there a present target cutover date for bringing the new TNG system live, or if it's not all at one time, a series of cutover dates?

MS. MELVIN: No, not at this time, there's not. What we're trying to do right now, we still need to fine tune exactly what those capabilities and what the functionality is that we need in trademark next gen. And I think as we continue to work together to figure -- to come up
with some of the information, we will be coming up
with a detailed schedule and project line for how
this is going to roll out, and as soon as we have
that, we'll be very happy to share that with you.
But I think that's part of our current process in
meeting with trademarks, is to figure out what is
the best way forward to manage this and to get the
system up and running.

MR. FARMER: I'm wondering, though,
whether you have any rough ballpark time estimate.
I mean I get the impression it's years before this
new system goes live, as in probably several, not
a couple; does that sound about right?

MS. MELVIN: I think that sounds about
right. I could say less than five, I could say
less than three, but it's -- I would say that it's
not going to be overnight, you're not going to see
it in FY '11 as a completely new system. We have
a lot of work to do, and I think it behooves us to
really work closely with trademarks and make sure
that we're doing things right and doing right for
them and doing right for the people who need to
use these systems, because a lot of us depend on them.

So I think if we spend the time now and get it right, we may see the development go very quickly, I just don't know until we answer a few more questions down the road, but it won't be -- it'll be more than two, how about that?

MR. FARMER: Okay, that's helpful. A related thing is that my understanding is that the legacy current systems are pretty stressed and strained; are you all pretty confident that your current systems are going to remain perfectly capable and in good working order so that you're not going to potentially run into problems there since you apparently have to stretch the systems two, three, four years?

MS. MELVIN: Well, we're trying not to make any shortcuts with our operations and maintenance of the existing systems, that's for sure. And we have made a commitment that, as we see anything that needs any particular shoring up, as we see changes that need to be made, we're
working with trademarks to prioritize and to put those in place. So it's not our intent to just let it kind of languish, you know, in a frozen mode, so to speak, we're going to have to do things to it, without a doubt.

Some of the infrastructure changes that we're making here at the USPTO will help with some of that stress. But in other cases, we're monitoring and watching and we're going to do our best, the very best that we absolutely can. We can't afford to let these systems go down, they're way, way too critical, and we recognize that. So we're working very closely with trademarks. We need their help to help prioritize perhaps some of the things that need to be done sooner rather than later, and we're working together to make sure we do the right thing.

MR. FARMER: Okay, thanks. The last question I had is related to your collaboration with Google. I have to admit, maybe I wasn't paying close enough attention, so that I'm not confident of the entire universe of documents
they're going to be helping you out with.

But I was curious as to whether that's

going to result in a lot more dissemination of

e-mail addresses of those who are having a

corresponding address with the office, because, as

you may have noticed earlier in the program, there

is some concern about people all of a sudden

getting e-mail solicitations that can kind of sound

like it's an offer you shouldn't refuse. And

also, should we move in the future towards

examining attorneys having e-mail addresses on

office actions? That potentially -- then if it's

all going to be up there, be an issue for them

also.

MS. MELVIN: I'm not going to pretend to

be a business expert on the trademark business, I

can only assume that there may be addresses in

this data that we're putting out. Like I say,

today we sell it in bulk, and it's been sold for

many, many years in bulk. That data has gone to

third party resellers for the most part who have

put it into other data base services which are
purchased. So the big difference here with this
particular data is that people will potentially
just go to Google and download it rather than pay
us for that data.

I don't know that a lot of companies are
equipped or really want to download in bulk, I
have no idea. It could take some load off of our
systems from data miners that we did talk about
also earlier. The impact on the email, I have --
I'm really not sure, and perhaps someone on
trademarks can help me with that, but --

MR. FARMER: My guess is that within
this bulk of data would be all filed applications
including correspondent information and then
office actions. And so it sounds to me like the
answer is, yes, it's going to be disseminated a
good bit more, and so we've got an email issue to
keep our eye on there.

MS. COHN: Yes, the answer is, yes, any
information that's available on an application
will certainly be available in Google with this
particular process, so --
MR. LOCKHART: Another way to put it is, all information that is publicly available now will be publicly available through Google. So it's not like they're putting out more information than they're putting out now, but it will be easier to find it perhaps through Google. Access may be a little easier, but it's not like they're going to be putting out information that they're not now putting out.

MR. FARMER: And my guess is then it will not only be easier to access as opposed to making them go to the PTO web site one by one and download the PDF office action, but it'll be easier to amalgamate and assemble email lists off of.

MR. LOCKHART: That's probably true, however, you know, you could speculate that a company that is in the trademark business, if you will, a company that now has a desire to acquire the information is simply buying it, so it's not like they're waiting for it to be on Google before they engage in this business, they're doing it
now. I'm not sure the impact -- on the email
question, I'm not sure the impact would really be
that great. I think we'll just have to wait and
see what the experience is.

MR. FARMER: Yes, what that may lead to
is us studying how email stuff is even put out
there in formats now, but that's an issue we're
just beginning to get our teeth into. Any
questions, comments from TPAC members that we
haven't brought out so far on our IT issues?

ELI: Yes, I have -- Kay, I just wanted
to clarify something. On page two, you say for
next gen you're employing GSA contract to select a
main contractor; on page three, it indicates
you're defining a procurement vehicle for the
prototype; it sounds to me like you've already
defined it.

MS. MELVIN: Well, on page two, what I
was referring to was, when we first set out with
the teams to look at things, the team direction
pretty much was, we need to determine do we want
to use existing contracts, do we want to use
another vehicle for these contracts, and I think that that is a decision we still want to make sure that both OCIO and trademarks is comfortable with, but we, in making that determination, we have gone and found that GSA does have -- has a contract, it has about 59 different vendors that have already been preapproved on that contract vehicle that could be used for developing the different prototypes and the different parts of next gen. One thing I think we talked about even yesterday is that often times we get contractors and we're locked into one for a very long period of time. We believe that in order to keep going forward with the next generation of systems here, if we can get better documentation, and we don't have to necessarily lock us into one, so we want to see if, again, using this vehicle at GSA or using something similar where we're able to have other people involved, a multitude of contractors, not just one or two, if that wouldn't be better for us in the long run going forward. But I think that is still up for a final decision-making between
the two groups.

ELI: And just a quick question, 25,000 computers are inventoried; if the agency has maybe 12,500 employees, that would be two computers per employee. Do you really have to wait until you buy laptops to start getting rid of some computers?

MS. MELVIN: I turned mine in this week. I think on a voluntary effort, we don't have to wait at all. But I think -- I don't know that the office is ready yet to make this a mandatory thing that examiners or attorneys that currently have one or 1.2 or two computers give up one to go to the other. Plus, we need -- and we need to take that into consideration, how people are using these things today, and let's make sure when we do this that we are doing it smartly and people have the applications on the machines that can get the work done. So -- but I did try to decrease it by one this week, okay, Rob, and I'll continue and encourage my colleagues, if they're not using them and they'd like to do something different, they
1 can certainly do that. Thanks.

2 MR. FRIEDMAN: Yes, I was going to say,

3 I think it's great that we're down to 24,999.

4 Three quick comments, for the single laptop, I

5 would hope that the CIO working with the

6 director's office, and, of course, in consultation

7 with the trademark office, will give serious

8 consideration when it's ready to roll out that

9 program, to roll it out first or very early in the

10 process to trademarks.

11 We obviously have a reserve, we're

12 nimble, we a tad smaller than patents, so we hope

13 serious consideration will be given to that. We

14 also know and see from your presentation that

15 CIO's plate is full between current projects and

16 the next generation, but we hope what doesn't get

17 lost in the shuffle over the next year or two is

18 -- and we know you, and we know trademarks is

19 struggling with web casting things so that people

20 don't have to come into the office, but we really

21 hope there's some emphasis or greater emphasis

22 given on that topic to improve web casting and
similar tools so that training can be offered, people don't have to come in, and then they can be that much more productive by not having to come in.

And then finally, I couldn't help but notice in the cursory review of the TM next generation internal sources that all of NTEU 245's ideas were excellent, and so I have nothing to add.

MR. FARMER: Anybody else? Okay. Thank you very much, we appreciate it, Kay, thanks for coming in. Now it's open mic night. Anyone from the public who's attended here have any issues they want to bring up before TPAC? Okay. Hearing none, thank you, everybody, thanks for those at home who are watching. We've tentatively started identifying our next meeting date, I won't put it on public record yet just so I can get it out, but we'll get it out very soon, and it should be around the end of summer time. All right, thanks, everybody.

(Whereupon, at 12:45 p.m., the
HEARING was adjourned.

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither 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.

/s/Carleton J. Anderson, III

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