UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia
Thursday, September 2, 2010
PARTICIPANTS:

JOHN B. FARMER, Chair
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MARY BONEY DENISON
JAMES H. JOHNSON, JR.
MAKAN DELRAHIM
RANDALL P. MYERS
DEBORAH LEE
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MARK DONAHEY

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MR. FARMER: Welcome to the meeting of the Trademark Public Advisory Committee of the United States Patent and Trademark Office. Thank you for coming and thank you for your interest in what we're doing. As you know, this meeting is being web cast, so anything you say will be broadcast and preserved and written down by a court reporter, and your face may show up on the screen.

We have an agenda today and I'm going to stick to it pretty tightly, as is my habit. As far as taking questions and comments or concern, I'm going to follow the exact same protocol as I have at previous meetings. And so if you've been here before, you've heard it before, and I apologize for that, and that is, we'll move down through the agenda.

When we reach appropriate points for questions, I will first ask TPAC members if they have any questions they want to ask or any
comments they want to make, and then after that, I will defer to our folks here who have come to attend live, because I think if you make the special effort to show up live, you deserve the next spot in line as far as making any comments. And then the people watching by web cast should, assuming everything is working well, have the technological ability to ask us questions. Also, there's an email address which I presume has not changed, and if it has not, it is asktpac@uspto.gov. Again, that's ask, a-s-k, tpac, t-p-a-c, @uspto.gov. You can send in your questions or comments.

If we have time within that segment, and if the question is not -- it's a legitimate question, it's not just a rant, I mean we'll read the rant, but if it's a legitimate question, we'll try to pose it to the person who's on deck at that time and get your questions answered.

And then also, the transcript of this meeting will, once it's been proofed, be posted online on the TPAC portion of the USPTO web site,
and so you can let folks know who are not able to be here today that that transcript will be there in case folks want to look at it down the road.

I'm going to start off this morning with a few comments on some recent TPAC developments just in the interest of transparency, and then after that, I'll turn things over to Lynne Beresford. And these comments I'm about to make are just my personal comments as the Chair of TPAC and they don't necessarily reflect the views of all TPAC members. There's been not really a recent change, but a recent strong reminder given to us as to how TPAC should work. And I just want everyone to know that the result of that will be that TPAC will not be able to be quite as active as it has been over the past couple of years. And I hope that maybe down the road there will be some loosening at the appropriate level of the stricture so that TPAC can resume the level of activeness and effectiveness that I believe it's had over the past couple of years.

I raise this to you today simply in the
interest of transparency. When the Obama
transition team came in, they called me up, and
one of the things they emphasized to me is that
they really wanted TPAC to be transparent. And
David Kappos has also emphasized that to me
directly and strongly. And as a matter of fact,
he made a point right after he was sworn in as
Director of not attending a TPAC Executive
Session, but only attending a public session,
because he wanted to emphasize that we should
conduct our business on TPAC as openly as we
possibly can.

Well, recently we have been in
communication with the General Counsel's office of
the USPTO in which the following messages have
been emphasized. And as I'll mention in more
detail in a minute, I don't think this is a new
message to TPAC, but it is a very strongly
emphasized message, and that is that members of
TPAC are not to work on more than a de minimous
basis on more than 60 days per calendar year.

Well, actually not per calendar year, it's per
rolling year. From any specific date on the
calendar, you should not have worked more than 60
days during the previous 365 days.

A biggie within that was a reminder, a
strong reminder, that that means that TPAC members
not only can't get paid to work on more than 60
days per year, but TPAC members may not even work
on a voluntary basis on more than 60 days a year.
So, for example, if you were willing to put in
time for TPAC to try to advance the ball and not
write down your time and not get paid as a special
government employee for that time, even that is
not permitted.

We have been given guidance on what
counts and doesn't count as TPAC work. And, for
example, we have been given some rather specific
guidance on what constitute de minimis effort and
thus not work on a particular day. And I will say
it's been repeatedly emphasized to us that while
no threat was made whatsoever, that it could be a
felony for a TPAC member to exceed those rules.
We on TPAC, or at least speaking for myself, I
absolutely assume this is the law and will follow it. I'll tell you that I'm not a specialist in government employment law, so I simply have to take it on faith based on what I'm told and what I read that these, in fact, are the rules we must follow, and we will follow them on TPAC, and we have talked about that, and we said, well, if those are the marching orders, we will march to them.

Now, I will say in fairness to the USPTO that these rules that were recently strongly emphasized to us really aren't anything new. I was personally told these rules when I became the Chair of TPAC, and so I do not claim any unfair surprise.

I know that some members of TPAC feel like the advice migrated a little bit from the advice that they were given in their ethics briefing when they came on, but I think my view is that the large picture was roughly the same. But nevertheless, these are the rules and we're going to live with them. But this is what the effect
TPAC will simply not be as active as it has been over the past couple of years. We have tried very hard and believe it's our role to respond in a timely fashion to every issue that's raised by the USPTO. And also we believe that TPAC has a dual role as both sort of a body that gives advice when questions are posed to us, but also we're a little bit of, and I'm struggling to find the right word, so I'll say watch dog, although that really doesn't quite hit the target I'm trying to hit, and what I mean by that is that we on TPAC have a broad and varied experience in the trademark community and bring that to the table.

I wouldn't want to add up how many collective years of trademark experience around the table because that would make us look pretty doggone old, and I'm not about to admit that. But because of that, we bring issues to the USPTO that may not be on their radar screen or maybe are not exactly in the direction that the USPTO was
thinking of going, but we think that's part of our role also, to be proactive in bringing issues to their attention, even though we think on the whole they're doing a very good job on the trademark side, and that simply is not going to be as possible going forward.

For example, you have to communicate with people. And very often people, you know, everyone has busy schedules, I can't talk to you today, I can talk to you tomorrow, and the difficulty with that is, it's hard to compartmentalize when you do stuff, it's hard to limit it to 60 days because someone is not available this day, but they're available the next day, someone can't talk to you then or they need to talk to you then, something comes over the trans from the USPTO and they need an answer right away. We often get things on a very short turnaround, sometimes a one week turnaround, and so this will be a challenge.

We have talked about this on TPAC, and what we're going to try to do is to have what
we're going to call TPAC Thursdays, and that is, it's going to be not quite on the schedule as we get through the annual report, because the annual report, the way that work has to flow, you couldn't get the annual report done by the deadline if we only touched it on Thursdays.

But generally speaking, once we get that done, our game plan, and we'll be flexible, going forward, is the first three Thursdays of the month are going to be the days in which we're available, and if we have TPAC work, we're going to plan on doing it. And so for those of you who may want to contact us in our role as TPAC members, the days to really circle on your calendar are the first three Thursdays of the month. The math behind that are that we've got meetings generally at the USPTO four times a year for two days, that's eight days. We felt like we needed to allow an additional four days for travel, because some people are not local and they have to travel the day before the meeting, so that's 12.

If you allocate these three days a
month, that's more days. And we'll try to have
our telephone conferences that you all know about
on those days, and we'll try to do our business on
those days. And I've forgotten the math, I think
that saves something like 12 or 16 days, depending
on whether you need those travel days to get to
the USPTO that will be available to TPAC members
to get work done when it suits them the best when
they have to do it, and so that's how we're going
to try to do it going forward.

Obviously, the impact of this is going
to be, in the past, or we could turn something
around on a dime, we may have to say, well, we're
going to kind of have to punt this until we've got
another Thursday coming around, but that's how we
intend to try to work with it.

I'll just wrap it up by saying that I
know that TPAC members have made tremendous
sacrifices, probably in some cases in terms of
their income and in terms of their standing with
their employers in order to serve here, and I
salute them for doing so and know that you will
endure and do well under these tight guidelines.

And it's my hope, and we may give a more specific statement down the road, that some sort of relief will be provided in the future.

We're not looking to spend every day on the phone with people at the USPTO and raise our level of influence with them, but I'm hoping that down the road there may be some loosening in these rules, however that needs to be accomplished, simply to acknowledge the fact that you can't always say that we're only going to talk to you on one day a week, that the pace of the business world demands responsiveness in dealing with things when they arise.

And so that's all I have to say about that, and I thank you for putting up with me while I make those comments. If any other members of TPAC have any comments based upon what I've said or want to rebut what I've said, you have the opportunity right now. Not seeing anyone jumping at the opportunity, so that being said, I'm going to turn things over to Lynne Beresford now.
MS. BERESFORD: Thank you very much, John. And I want to say thank you to all the TPAC members, I know how hard you've worked and how much you've helped the office with your advice and with your concern and I really appreciate all the work you do, so thank you very much. And on that note, it's not on the agenda, but I would like to talk about somebody who's helped TPAC tremendously and who I think is one of our kind of unsung heroes.

You know, when you see the swan going across the lake, it looks very easy, but underneath there's a lot of paddling going on, and I think TPAC meetings, which come together and look kind of seamless, there's a lot of paddling that goes on and a lot of work behind the scenes by the person who has to make sure you get your airline reservations and your taxis and your hotels and that you're reimbursed and all that work. And so on that note, I'd like to present an award to Ann Farson.

MS. FARSON: I can say a word or two,
and it's not just about me, it's about a team here at the PTO, including trademarks, which are fantastic folks. And Pat Beck is my right arm, and my new left arm is Clarie Clemons, who is now handling -- and she has done such a beautiful job. She's only been here a short time and I think you're going to grow to love her just as I have. But TPAC is an exceptional group and I've totally enjoyed working with all of you, you're very special. And if there's anything I can do outside of the 60 days, please call. Thank you.

MR. FARMER: Thank you, Ann.

MS. FARSON: Thank you.

MS. BERESFORD: Thank you so much. And on that note, Mr. Kappos and Ms. Barner are out of the office today, so I'm going to deliver their remarks and then go on and deliver -- talk about the things that are on the agenda for trademarks specifically.

Trademark's performance through the third quarter, it looks like trademarks is doing
really well, and in my capacity as the Commissioner,
I'll talk about the trademark accomplishments.
It's in our booklet showing -- there's two pages
that I sent out regrettably late, because I know
TPAC likes things two weeks in advance. But those
statistics track, and I don't know if we can put
them up on the screen so folks at home can see
them, those statistics track trademark's
performance.

As you can see, we're basically meeting
our quality measures. First action quality at the
end of the third quarter was 97.2 percent. Final
action quality 96.5 percent, five-tenths of one
percent below the goal, but we know that that will
come up as we go towards the end of the year. We
are also meeting our E-government processing goal,
that is the percentage of applications that are
handled totally, the percentage of disposals,
either registrations or abandonments, they're
handled totally electronically as they go through
the system.

We don't send any paper, and you don't
send any paper. We now have 66.3 percent of all
those registrations and abandonments handled
totally electronically. Of course, our goal is to
get that number up to our first action electronic
filing number, which is around 98 percent, so we
obviously have a ways to go.

And one of the things we're going to be
doing in the fall is having a roundtable to bring
in practitioners and law firms and others to talk
about best practices for handling electronic
communications. It's very important to us to
figure out how to get people to respond to us
electronically. Again, 98 percent of our filings
come in electronically, but we had a big drop off
after that into the 66 percent range for other
types of actions. So we're going to be working on
bring that number up, because electronic
communications really helps everybody. It
improves the quality of what's in the data base,
it makes sure nothing gets lost, it's really a win
win for both trademark owners, the trademark bar,
and the office.
Application filings, for those of you
who prosecute, it's good news. Here we have about
a five percent increase over last year, so that's
wonderful. And our pendency numbers again were at
about 2.8 percent on first actions, and 13 months,
2.8 months on first actions, and 13.3 months
estimated on disposal pendency, including inter
parties proceedings, and suspended cases, and
we're at about 11 months, if you exclude inter
parties and suspended cases.

We recently had something actually
publish seven weeks after it was applied for here.
And we see that with the electronic processing and
with the things that we've put into place, the
system continues to get faster. We think that the
post-registration number, the 13 months or the 11
months to final action or disposal, is going to
continue to go down in the next year or so as we
put various other pieces into place and as people
start using, again, the electronic processes for
more responses to office action.

So I think in terms of pendency, this is
all good news. It's created a bit of an issue for us when we publish something for opposition so quickly. We often have some Paris convention issues, but we've talked with the Committee about that and we're confident that we're headed in the right direction there.

The second page of our performance measures is looking at the productivity, quality and timeliness in all of our areas that support examination or post-registration. And for the most part, these areas, too, are meeting their performance goals. We have a few that we're working to bring their numbers down, and they're meeting their quality goals, and I'm really, really pleased with how quality has improved in all of our support areas.

We put a good quality metric in place there, we put a good quality review system in, so they are doing great. And our Trademark Assistance Center, which has become the rockstar of government assistance centers, is being visited all the time by other agencies; because of their
metrics and because of how well they do, continues
to set a good pace with, as you see here,
answering 89 percent of their calls within 20
seconds or less. So those are the kind of
statistics that I personally love to see, and so I
think we're doing fine there. Human capital plan,
well, trademarks has a human capital plan and it
fits in with the USPTO human capital plan. We
have already set up some groups to look at some
topics such as communication that have been --
that we learned are items that we need to focus
on.

We recently received the results of the
human capital survey which was taken in -- which
was given in March of this year, and trademarks
did splendidly on that. More than 50 percent of
the highest scores in the agency belong to
trademarks, so we did really, really well, and the
Committee will be getting a briefing on that at
the next meeting.

We formed working groups to develop
action plans, and we've got performance metrics
and deadlines and all that sort of thing, so we're
moving forward on our human capital plan. I think
trademarks is a good place to work, has a lot
going for it, but we can always be better, so
that's what we're working on.

IT initiatives, let me congratulate Gary Cannon. He's become our first ITSES in
trademarks. Gary, I know you're around here
somewhere, there you are. And we're very happy,
we know he'll work well with the OCIO in working
on trademark's next generation. The next
generation effort is going along. I'm rather
impatient, so it's not going as quickly as I had
hoped it would. The two objectives, of course,
that were initially talked about in trademark's
next gen were two separate trademark systems from
other PTO systems, and to virtualize the trademark
systems.

More than a year ago, this is one year
and one day ago, we sent forward four work request
forms which we thought would give us early wins in
this process, and we had hoped that one or two of
them would be in place by now, they are not, nothing has happened there, although their work on at least one of them seems to be going forward. But again, my hope was that we would do this a lot faster than we have been doing it.

In March we put out a notice asking for comments on what should be the functionalities in trademark's next gen, and we've gotten more than 200 comments from both internal and external users. So this is good, they've been cataloged, they've been categorized, and they're being put into buckets for how they'll be developed into the trademark's next generation system.

Telework bill, well, Congress is out of session right now. There was a Senate bill passed in May, and a House bill in July. So these two bills are not the same, there's still some chance that they'll be reconciled and passed, and, of course, that's what we hope for. We want to have a more robust telework program. Right now we have 86 percent of our examining attorneys working at home virtually full-time.
The ones who work within a 50 mile radius are in the enviable position of not having to come into the office at all unless they're called into the office. The ones that are working in such exotic locations as Boise or Chicago or San Francisco are in the less enviable position of still having to report into the office, something that would be solved by this telework legislation.

In addition, we've recently expanded the geographic pilot, that is, the people that can live outside the Washington, D.C. area and work at home. We opened up a process for applying for those positions. We had 41 applicants who wanted to move out of the area and work at home. We had 25 slots, and we've, obviously, filled all 25 slots, and five of those folks are being deployed this quarter, and then there will be five in the next quarter and so on until all 25 of them have gone home. And again, we're really hoping that we get some legislative relief here for these folks, because we have learned in our teleworking program, our 13 or 14 years that we've had
teleworking, it's really not necessary for folks
to come into the office. I mean they have to come
in occasionally, but it's really not necessary for
them to come in on a bi-weekly basis, it just --
it doesn't make any sense.

In June I'm happy to announce we have
launched a leadership development program here at
the USPTO. All of our SES are going to be taking
part in 360 reviews. And the leadership
development program is really well done. It has
levels starting with people who want to be
leaders, who are not yet in management positions,
and going right up through the SES level, offering
lots of different ways to get training to help
yourself advance here at the USPTO. It's a really
terrific program.

Trademark Expo is upcoming, October 15th
and 16th, and the purpose of Expo is to engage
people in the trademark -- understanding
trademarks, the importance of trademarks, how
trademarks work. Last year we had more 7,000
folks attend it. It looks like we're going to
have an equally good Expo this year. If you're in
town, I suggest that you attend it. And also, for
those of you who have -- if you have the time, you
should go look at the wonderful exhibit that's in
our museum right now on food. Patents and
trademarks, through the years, with food
technology and food trademarks, it's very, very
interesting, a very, very interesting exhibit
right here at the USPTO in the museum.

And I think that concludes my remarks on
behalf of Under Secretary Kappos and Deputy
Secretary -- Under Secretary Barner. If there are
any questions, I'd be happy to answer them now.

MR. FARMER: Any questions on this part,
we're going to go through in a second with Lynne
on a more detailed report on some other issues
that are within her domain as Trademark's
Commissioner. And also, just so certain -- who
does what on TPAC, for the most part, Kathryn
Barrett Park is our champion for trademark
operations issues, and so I'll defer to Kathryn to
take the first shot at questions and things such
as that. But not all of the issues under III on the agenda are Kathryn's, we didn't want to overload her too much, so somebody passed it out to people on other sub Committees.

So basically what I'm going to do, Lynne, is, I'm going to give you the floor and let you kind of go down the agenda. Kathryn may jump in with questions, or others, and I may follow behind her with some, but I'm just going to kind of let you roll down the agenda, if that's okay with you.

MS. BERESFORD: Okay. Again, thank you very much. The first item on the agenda is accurate descriptions of goods and services, minimizing deadwood in light of the Bose decision. Ongoing discussions are being held in the office about the best way of doing -- of ensuring accurate identifications of goods and services.

We are looking at more of the post-registration area, looking at some kind of a pilot in the post-registration area to see -- to try to get a handle on is there really an issue
with inaccurate descriptions of goods and services or not. And we've had extensive discussions with the TPAC Sub Committee on this matter, and I think we'll be going forward, first of all, with a possible rule change for post-registration to enable us to run our pilot in a more robust manner, and then we will -- and had feedback on that yesterday in the Sub Committee meeting, but this is an issue that we continue to engage with.

MS. PARK: Right, and we did discuss it yesterday in terms of what the pilot would be and how it would be run. And we're also going to, on TPAC, spend some time to look at some of the other things, Lynne, that were on the list that you had prepared after our meeting in April and give further feedback on some of those ideas, as well.

MS. BERESFORD: Okay, thank you very much. That will be extremely useful. Next, upcoming changes in trademark fees. Again, I think this was discussed yesterday. We proposed at an earlier meeting that perhaps one of the things that would help all of us is to propose a
fee for paper filings.

TPAC has given us essentially a thumbs up on that. We're writing a proposed rule, and like all proposed rules, it will be published for notice and comment, and we encourage everyone with an interest in this matter to comment. That is the only thing we have on our possible agenda for fees. We don't have any plans at the moment to decrease any fees looking at our budget projections, et cetera, but that is something that we will be proposing in the near future.

MR. FARMER: I think we're fine and we can go on to the next item.

MS. BERESFORD: Okay. Discussions about trademark filings being made by online non-attorney services, well, we've had, again, rather vigorous discussions about this issue internally and with TPAC, and I think we've come to a conclusion that there are relatively limited tools available to the USPTO in this particular area. If we suspect that there is unauthorized practice of law, we can notify the person that we
think is doing that, and then if they don't stop
or don't explain, we can, of course, notify the
state bars.

We don't have any authority to go out to
their house and yank them out by their collar and
yell at them or anything else. So we are limited
in the scope of what we can do in this area.

We think this is something that we will
continue to monitor. We're looking at statistics,
filing statistics, email statistics and other
things which you will continue to share with PPAC,
but I think, hopefully, we've explained what the
limitations are in our ability to do anything
here. We will continue to do what we can. And if
we -- but I think we're pretty much -- we've done
all we can at this point.

MR. JOHNSON: Lynne, is there anything
the outside bar can do to help the PTO on this
issue if we suspect some unauthorized practice of
law or consumer issues, and if so, if there's a
particular person we should report such things to,
please let us know.
MS. BERESFORD: Well, you're welcome to report what you suspect is happening, but if there's a consumer issue, then that's, you know, if you suspect there's a consumer issue, the consumers need to step forward. That's, you know, you can't say I think people are being defrauded, somebody has to come forward and say, you know, something has happened and so on.

And, of course, we're happy to -- certainly when we have a situation where we have a company that holds itself out to look almost exactly like the USPTO, and you have the sense that a consumer reading their web site or their whatever, the letter they've sent, would think that they really are the USPTO and they're asking you for money to do something, those things we, of course, immediately when we know about them, we immediately report them, and we have a process for that.

But in terms of other companies or law firms that hold themselves out as giving you full legal services when perhaps that isn't true,
that's an entirely different matter. This is something -- this is an issue that appears in a lot of different ways, and depending on how it manifests is -- depends -- that shows how we can deal with it.

MR. FARMER: Just so everyone knows, Jim Johnson on TPAC has been our champion in this issue, so, Jim, thanks for handling it. I wanted to add an additional comment on this just from my individual view. This raises actually two concerns, there's the unauthorized practice of law concern and that's what the PTO has been looking at.

But also, one thing we've been talking about on TPAC, and I don't really know how to make it happen, but I'd really love to get the FTC's interest in this issue and have them take a look at it.

I'm not saying this is necessarily taking place, but I do have a personal concern that some of these services may give individuals who are not attorneys the impression that they
will do more for them than they actually intend to
do, that an applicant's hands will be held from
soup to nuts, that they'll be taken all the way to
the goal line of registration and they'll get the
registration that's appropriate for them, and I
just have concerns as to whether, and I would
encourage the FTC to look at this, whether the
representations being made by these organizations
indeed match up with the actual level of service
that they provide, and that's on top of the whole
lawyers doing what only lawyers should do sort of
issue. I don't really know how we get their
interest in it, but that's one thing that I just
would like folks to be cognizant of, and I hope
there will be a deeper interest in it in other
parts of the government down the road. Any
comments from TPAC based upon what I've said? I
think we're off to the next issue then.

MS. BERESFORD: Okay. Should examining
attorneys be required to put their email addresses
in office actions? Well, we've done a little
survey on this and we've determined that about 30
percent of examining attorneys now put their
emails in office actions.

We actually, as part of the office, we
have no real objection to this. You know, we
encourage people to communicate electronically, so
it seems to us that having examining attorneys
include their email address makes sense.

But at the same time, we have, and we're
going to move forward with this idea, but at the
same time, we have some other issues that we need
to solve. First of all, we need to figure out a
real process, a standard process for what happens
when the person sending the -- something to the
examining attorney, sends a response to an office
action. We do not allow responses to office
actions to come in by email, they really need to
come in on the response to office action form so
that the data is tagged and can be uploaded into
the system. And we do not want to get back into
the business of having email responses where
someone at USPTO has to key enter the data into
our systems, because this is one thing we've
learned about key entry is, you make a lot of
mistakes. Even if you double blind key entry, you
make a lot of mistakes. So it's almost like
getting a paper when something like that happens.

So we want to put a process in place so
everyone knows what they're supposed to do, and
they're clear about it. So we have some things of
that nature that need to be solved. But this is
something that I think makes perfect sense, and so
we'll move forward with it. We need to talk about
it with the union, we need to come up with some
procedures, but it's certainly something we think
makes sense.

The second item here, phone numbers of
examining attorneys in the data base, all the
examining attorneys' phone numbers are available
online with the employee locater. We haven't
thought about putting them in the data base
because they're already there, but we will look
into this. Again, this is an IT issue, so we will
look into this to see how --

MR. FARMER: I think we can actually
take that one off your plate.

MS. BERESFORD: Oh.

MR. FARMER: Sorry, I didn't have a chance to give you the news yet. We chatted about it yesterday, and I think we've decided it's not really an issue anymore.

MS. BERESFORD: Okay then, never mind.

MR. FARMER: But on the -- well, that's our fault for not getting the word to you. And on the email issue, just so everyone knows, Bob Anderson has been our champion on that. Bob, I don't know if you have any comment on this issue or not.

MR. ANDERSON: Not at this time. I've had several discussions inside the agency with people, and Lynne pretty much has covered everything I've been told.

MR. FARMER: Tim.

MR. LOCKHART: I just have a question. You said you did a survey of the examining attorneys and about 30 percent are putting their emails on there now. Of the remaining 70 percent,
roughly what percentage thought it was okay to have the emails, or roughly what percentage said I don't think that's a good idea?

MS. BERESFORD: We didn't survey examining attorneys, we surveyed office actions just to see the percentage. We surveyed to see what percentage of them -- we took a sample and looked at what percentage of them included that information. We didn't go out with a survey to examining attorneys. If I misled you, I'm sorry.

MR. FARMER: A few additional things here, mainly just to help folks outside of TPAC know what's going on. I think the big change here is, before the question was really if, and now it's more when and how for these emails, and so I think that's a development.

Also, to let you know, we've been having deeper discussions with Lynne's team about overall just trying to facilitate good communications between folks who are prosecuting applications and trademark examining attorneys, and they've been very helpful and very open to ideas, and we really
appreciate that.

On the bar side, one message that Lynne has given to us, and I'll pass it along, so for those of you here representing the bar organizations, if you could help get the word out to your members, we'd certainly appreciate it, and that is, one thing we're hearing back through Lynne from trademark examining attorneys is that, you know, you get caught up in phone tag sometimes with examining attorneys, and we're talking about the examining attorney side of that, and I'll get to that in a second, but also to encourage members of the bar to not take the attitude that the only time they should talk on the phone is when they place the call, but also try to be as available as you can to receive calls from trademark examining attorneys when they come in just so we can make the communication, get the issue disposed of, and so I'd just encourage folks to be solicitous of the office in that regard.

And also, presently, when you file an application, as the prosecuting attorney, if
you're an attorney, you can give them one email address, it's possible that down the road, that may open up so that you will be able to give two email addresses.

Many firms, especially bigger firms I think presently have the policy that they want all those emails floating to their docket clerk so that no one misses anything, or if someone leaves a firm or they're sick or on vacation, the deadline is not missed, and it's perfectly understandable. But we may see the world down the road where you could give two, you could give the attorney who's handling the file and the docket clerk, and the purpose behind that is then maybe down the road the examining attorney could drop an email to that attorney saying, hey, I want to discuss something with you that may lead to an examiner's amendment, when would be a good time to chat. And it just facilitates communications, but you still have an email going to your docket clerk so that it still gets into your docketing system.

Flipping back to the office side of
things, this is just in the preliminary stages of
discussion, and obviously there are a lot of folks
-- a lot of issues that will have to be worked out
with the examining attorneys, we're not going to
railroad over them.

But we've begun to have very preliminary
discussions, not just about the email issue that
Lynne has raised, but about the phone issue, in
that not always, but sometimes we get feedback on
TPAC that I never get an examining attorney when I
call, it's always them having to call me back.

Now, they have quality initiatives in
place presently in the trademark operation that
are trying to address that, but also that
sometimes the permissible working hours for
examining attorneys have a broader footprint than
the usual working day of an attorney in private
practice or anyone else for that matter, and maybe
start looking at ideas that would identify
specific hours during the week for examining
attorneys when you have a higher chance of
catching them on the phone, when they're going to
say that, you know, I'm probably going to be
taking calls, making calls during this time.

So all preliminary, there will be a lot
of issues to work out, but what we're trying to
work on in TPAC here are both in email and phone
is just increasing the percentage of instances in
which you can make first contact and get in
contact and get things dissolved so you just don't
have to play tennis. And so we've heard the bar's
thoughts on that and we're working on it. And,
Lynne, do you have any follow-up comments based
upon what I've just said on that or did I get
lucky and get it right or --

MS. BERESFORD: I think you got it
correct, John. This is something we all have an
interest in, better communications. Examining
attorneys often want to talk to the applicant or
applicant's attorney as quickly as possible, they
have an interest in that, let's figure out ways we
can facilitate that on both ends of the spectrum.

MR. FARMER: Any questions or comments
from other TPAC members on that issue? Folks in
attendance? Okay, let's roll into the next thing then.

MS. BERESFORD: The next item is the congressionally mandated study coming out of the Trademark Technical and Conforming Amendment Act of 2010, which essentially was a question looking at litigation tactics in the trademark area. We've been working closely with TPAC to come up with a list of questions for a survey, and we've got some wonderful comments and some wonderful help from TPAC members, thank you very much.

Our next -- we're refining a few of the questions, and then our next item of business is to figure out how to get the survey done, and we're looking at various options for having this survey done.

Of course, the study, the congressionally mandated study, the survey is a small part of it. Lots of the things that are required in that survey is really explaining how trademark rights work in the United States, because it seems to make an assumption that if you
send somebody a cease and desist letter or anything of that nature, somehow you're doing something that's aggressive or wrong, and yet under the U.S. Trademark law, if you have a mark, it's absolutely your obligation as a mark owner to retain the rights in that mark, to tell people that it's your mark and to ask them to stop using something that's confusingly similar. So a large part of the response to this request from Congress will be explaining how the U.S. Trademark system works.

Also, I think there will be some information, looking at the trademark litigation system versus litigation systems throughout the U.S., how much of what we're seeing here is part of just litigation and the U.S. legal landscape, not just the trademark legal landscape.

So we continue to develop the results, we continue to work forward with this, and I think as we go forward, we'll certainly meet our deadline. We had a year to do this and I think we'll meet our deadline. And I really appreciate
the help from TPAC members on these questions.

Thank you.

MR. FARMER: Thanks, Lynne. Tim

Lockhart is our champion on TPAC and that issue.

Tim, do you have anything to say on this issue at this time?

MR. LOCKHART: Well, I just -- I think the folks at home would be interested, Lynne, to know when you think it might be possible for them to comment in response to the questions. I know we're still sort of searching for exactly the right vehicle to do that, but do you anticipate it would be in the next month or two or longer?

MS. BERESFORD: Well, I think if we keep to the schedule which we've been on, it will be in the next month or two. You know, we have a schedule on how to develop this information, et cetera, and I think it should be in the next month or two.

MR. LOCKHART: And I'm assuming that there will be an announcement on the PTO web site so that folks who want to comment, if they're
monitoring the web site, they can read that information and that will direct them as to where to go and how to put in their comments?

MS. BERESFORD: We will put an announcement on our web site, and we will certainly do everything we can working with INTA and AIPLA and IPO and other groups to ask them to help us in this matter, because, obviously, if we're asking questions, this isn't just let's have the corporations answer the question, we want small businesses, we want individuals, so the more we can get the word out, the more apt we are to get a cross section of folks who are trademark owners and trademark practitioners answering the questions in the survey. So we will do what we can to -- we will use our resources to make sure that the questions -- people know about them.

MR. FARMER: Lynne, thank you. Unless anyone has any questions or comments to that, we'll move to the SOU issue. And Kathryn is our champion there. This is another later development, Lynne. I think the sense of TPAC is
that we don't really -- it's not an issue we're
pushing anymore, we've thought about it more, and
because of some of the deadwood implications,
we'll keep an eye on it, and if the office has
recommendations down the road, and Kathryn may
have more to say about this in a second, as to the
changes you want to make, we'd certainly look at
them, but we're not as gung ho as we were before,
so we're not really pushing it. And, Kathryn, do
you have any comments more on that?

MS. PARK: Well, I think, Lynne, as
we've discussed many times, I think from a
prolifically pragmatic perspective, it's not that
big an issue. And I think that was sort of the
conclusion that the INTA USPTO Sub-Committee also has
sort of reached, that it's terrible when it
happens to you, but it doesn't happen all that
often. So I think for all the reasons John
articulated, we've decided that's not something
we're going to keep pressing on for now.

MS. BERESFORD: All right, thank you. I
think this is something that will be solved partly
by -- and I think INTA and others will be looking at this issue in their legislative agenda because part of this has to do with how the law is written, and also part of it is due to how our computer systems are set up. So hopefully with the more flexibility the trademark's next generation will offer us, we may be able to be more flexible than we are now with a solution to this problem.

MR. FARMER: Okay. I think we're off to the quality issue now, and just so everyone knows, Bob Anderson is our quality champion on TPAC.

MS. BERESFORD: We are still working on our excellent First Office Action Initiative. You know, we've been sending out office actions to bar groups and having them comment in a grid for each office action we sent them. We're now at about 600 office actions that have been commented on. Believe it or not, we have a line-up of bar groups that want to do this for us. I'm always amazed. New York Intellectual Property Law Association has said they would like to review 200 of our office
actions and give us comments on them. We continue to -- and the Ohio Bar is weighed into, and we continue to look at those results. We think it's been extremely valuable in helping us hone in on what actually constitutes excellent quality. We'll continue to share the metrics with TPAC and with the world. And our quality initiative now is in kind of a pilot stage. We have a pilot award for this excellent quality. We'll know at the end of this fiscal year, or we'll be able to look at what we've done at the end of this fiscal year, so in October we'll start looking at has this award made a difference, is there something we can do to tweak it, how can we move forward with this.

But all of this is in an effort to really reward excellence in the entire office action as opposed to our earlier measure of quality, which was decision-making. So that continues to be an ongoing issue. And if there are any comments --

MR. ANDERSON: I'm Bob Anderson, and

John put me on the quality team because when we
first talked, I discussed a situation and a case
in which I was an expert witness, in which there
was some less than stellar examination quality, in
my opinion.

However, after talking to the people in
the office, including Lynne, Sharon Marsh, the
head of the Trademark Quality Review Function, and
seeing what the office is doing, I've become more
and more convinced that we're really talking about
instances where there are small things happening,
that the general quality of office actions that
are moving through the office at this point is
very high, and that, in fact, quality has improved
substantially since I left the office back in
2004, and I think the efforts being made by the
office to improve quality are excellent, and I
strongly support them, and that will be reflected
in the annual report. Thank you.

MR. FARMER: Hey, Lynne, I gather from
your comments and from what we've been chatting
about that down the road, when you have statistics
at your port, you're going to have a new
benchmark, I guess it's called total quality or
whatever.

MS. BERESFORD: Right.

MR. FARMER: And you'll have a target
percentage and your actual achievement during the
past reporting period. Do you have any time
forecast as to when you expect that benchmark and
the first reporting on how you all are doing
against that benchmark to start rolling out to the
public?

MS. BERESFORD: Well, we're hoping to
have enough information to benchmark in the next
fiscal year, so that would be after September
30th. Again, I'm a little hesitant because we
haven't looked at all the statistics yet, but that
certainly is where we want to go with this. This
will --- and I'm tooting trademark's horn here,
which I'm so good at, this will be the third time
we will -- or actually the second time I guess we
will have changed our quality metric in the last
ten years.

And the amazing thing here is the
examining core simply rises to the occasion and
does the right thing and meets the goals that we
set for them. Of course, there's lots of
discussion about them and lots of training and all
that sort of thing, but I really think this new
benchmark, this new quality standard is going to
really move the examination quality up to an
unprecedented level.

And I'm very -- I think there's a lot of
support for it throughout the trademark
organization and certainly from Director Kappos
and Deputy Director Barner, so --

MR. FARMER: Sounds great. I think
we're off to the next issue then.

MS. BERESFORD: Okay, the consistency
mailbox. Well, as you know, we opened a
consistency mailbox more than a year ago, and we
were a little disappointed with what's come into
it, because it hasn't gotten that much use.
However, we expanded the consistency -- what could
be filed in the consistency mailbox to include
some ID related issues. And so in FY '10 thus
far, we've had 15 requests into the trademark consistency mailbox; only one of them was ID related. So we were very concerned when we expanded the criteria that we were going to, as always, using the legal term, open the flood gates. And, unfortunately, somebody hasn't figured out the lever on the flood gates yet, so we haven't seen that.

In '09, we had 18 requests, seven were granted, seven were denied, and four just didn't belong in the mailbox. We've had 15 requests so far in fiscal year '10, which we're almost through, one more month, and only one was ID related. Of these 15, eight were granted, four were denied, one was moot, and two are still pending.

So we're dealing quickly with what comes into the mailbox, but it's still not something that's used a lot. And, obviously, if this trend continues, we will then open it up further and have more things that can be filed into the consistency mailbox, because, again, as part of
our quality initiative, we're also interested in consistency. So we'll be looking at the results, which so far are a little disappointing, but we'll be looking at the results and thinking about how we could expand the reach of that mailbox.

And while I'm on user feedback, it was at the behest of TPAC that we put a feedback button on the main page of the trademark -- of the web site, and we established that mailbox to gather complaints and praise and other things, other things from the public on how trademarks is doing and whatever is on their mind.

So we opened it on February 24, 2010, it's -- as of the 27th of August, we've had 72 submissions into that mailbox. So here's a little mini report on what has come into the feedback mailbox, and it's a very mixed bag.

We've had six very positive compliments into the mailbox. We've had 21 suggestions for improvements or complaints, and these are all over -- let me just say these are all over the map.

In the suggestions area, limit the
number of attachments of third party registrations
and web site print-outs being used by the
examining attorney. Clicking on the link to the
office action should take the user to the office
action with attachments as one printable document.
A lot of these came in when we opened
up asking people for functionality for trademark's
next generation. Add a missing and parenthesis in
one portion of the -- text for responses, so, you
know, again, these are suggestions.

Complaints, some of them -- a couple of
them -- of the one, two, three, four, five, six,
seven, eight, nine, ten, 11, 12, 13, 14, 15 -- a
couple of the 19 complaints that we got are things
that turned out to be user error, so we won't go
over that.

And some of them are -- and again, these
are all over the map, everything from letter of
protest not granted, the overall web site is not
user friendly, no reminder was sent that a renewal
filing was required, don't make my address
publicly available on the web site, I got
something from a company asking me if I wanted to
use them to file a response, you know, you name
it, it's in this box. We take it all seriously.
We answer them as best we can. But anyway, that's
the sort of thing that we're getting there.

And then we have 36 that should have
gone somewhere else, like the Trademark Assistance
Center, you know, asking a status question or
something of that nature. So this is the sort of
thing we're seeing in the feedback mailbox. A
very large percentage of what's coming in probably
is not in the right place, but nevertheless,
people are using it. And when we get comments
from the public, we take care of them. We respond
to the ones we can respond to and deal with the
others, send them forward to the Trademark
Assistance Center for response or whatever. But I
just thought you all would like to know what's
going on with that particular mailbox.

MR. FARMER: Not seeing any hands going
up, I think we can go on to the next item.

MS. BERESFORD: Okay. Official Gazette
in html, that is not part of what's -- that could possibly happen in trademark's next gen. One thing we have done with the Official Gazette is, we've put up a user friendly optimized Official Gazette which should download much faster, a 400 percent decrease in file size, and therefore, a much faster download, so that's something that we've done to improve access to what's in the Official Gazette.

Obviously, we know that in the future, what people really want is to be able to just download their publication, their mark that's been published in the Official Gazette, not the entire Gazette. That will be something that we'll deal with down the road in trademark's next gen, it's not on the radar screen, it's just not on the radar screen to do it right now, so --

MS. PARK: I think, though, making the OG download so much faster has been a huge improvement for users and so we are very appreciative of that.

MS. BERESFORD: Oh, good.
MS. PARK: Yes.

MS. BERESFORD: I'm glad people noticed, you know, good, okay, so that's terrific.

Anything that helps our users out, we're good with. Electronic certificates of registration with an option to get a paper certificate, again, I think this is going to be something that goes on in trademark's next gen, it's not something that we can do right now for a variety of reasons.

And then on to TMEP issues. OCIO is working on having manuals available in a user friendly format with Wiki possibilities and other things. That, you know, was one of the things, one of our four WRF's. That I think John discussed and we'll discuss when he talks about what OCIO is doing.

But again, we've remained -- trademark remains really wanting to be able to update the TMEP quickly. I don't know that they'll ever be on a daily basis, it gets too difficult for versioning purposes and for lawyers who have to -- who want to cite to the TMEP probably don't want
8,000 versions out there, which is what would happen if it's updated too quickly, so we will have to, as we get the possibility of actually doing updates in real time, we'll have to establish a schedule.

Whether it's monthly or quarterly or whatever, we will work on that process. But at this point, we're still waiting for the -- for progress from OCIO, and hopefully in the next year, we will be able to see this TMEP with Wiki and with the ability to update it quickly available to all of us.

MS. DENISON: Lynne, may I ask a question about this?

MS. BERESFORD: Sure.

MS. DENISON: As you know, the TTAB has been updating the TBMP, and I wonder if you could be cognizant of coordinating with the TTAB in the future about how often you're planning to update, because they're considering at this point, once they get this major revision completed, how often they should be completing, and I think it would
just be helpful to have coordination. And also
they're considering whether they would do a Wiki
version of the TBMP, and so anything that you
learn, since you're, you know, a little bit
farther down the path than they are, I think it
would be helpful for you to speak to one another
on that. You probably will, but I just wanted to
make that note.

MS. BERESFORD: Oh, well, of course,
we'll talk to the TTAB about this. And actually I
think they're part of these -- I hope they're part
of these meetings on xml tagging and on the TMEP,
because this is -- really the reason this is being
pushed is because patents wants the patent manual
of examiners, the MPEP, this is a wonderful
initial discussion, they want the MPEP up and with
the ability to search and change, et cetera. So
there's a -- that's part of the reason this is
moving along.

But, yes, we'll definitely talk to the
TTAB. We'll definitely coordinate with how we do
our updates. This is all -- and this is just not
the TBMP and TMEP, et cetera, this is also what we're hoping to use for our internal manuals, for instance, that are used by our LIE's and other manuals. We're looking at how we can put the -- form paragraphs into this format and be able to update them more quickly and also give the bar and opportunity to comment on that if anybody has the time and wants to comment. We really see this as an opportunity to really improve our paper tools here, our book tools, they're on longer in paper, of course, but this I think is just a tremendous opportunity for the office to be able to offer its manuals and its training materials and other things in a way that will make them far more useful to the people that use them outside the office. And, Jerry, I don't know if you have any comments or not, but --

MR. ROGERS: I second yours.

MR. FARMER: I think that takes us to the end of our session with Lynne Beresford.

Lynne, was there anything else you wanted to talk about?
MS. BERESFORD: Video, we have a video.

Is the video ready?

MR. FARMER: Okay. It's the movie hour now at TPAC.

MS. BERESFORD: Okay, everybody, get out your popcorn. We're going to look at the next video that's been prepared for online to help those folks who don't read the instructions but want to know something about it anyway. We've been producing videos to tell them about that. So here's after you file.

(Video played.)

MS. BERESFORD: Thank you so much. And I thank the folks. These are all in-house actors, and all in-house production. The production staff is absolutely amazing and has done a wonderful, professional job. We're going to put them in for an academy award. But it's just -- I think it's great and I think this is the kind of thing that people really need to know when they don't read the instructions. Thanks.

MR. FARMER: Thanks, Lynne. And just so
everyone knows for these laws on TPAC, TPAC's own
movie critic is Jim Johnson, so you can always
contact USPTO directly if you see any issues with
the videos. But also, Jim is the one who's
watching that on TPAC. Jim, do you have any
comments?

MR. JOHNSON: I thought that video was
excellent. It explained a lot of the issues that
there's confusion about. So many people believe
that when they file an application, registration
is instantaneous, or we can have notice of
publication, anything, they just believe it's
registered, and I thought that was a key point to
make about responding, that you need to respond to
applications. I thought it was well done and I
think it will highlight a lot of the issues and
clear up some of the confusion that's out there
about trademark rights and that sort of thing.
Thanks.

MR. FARMER: Okay. Elizabeth.

MS. PEARCE: Lynne, I just wondered if
you had other ideas in mind for future videos at
this point. One thing I think might be helpful, because it came up a little bit here, guiding people through the electronic forms, the simplest ones, the office action response and change of correspondence and things, just so they can find it on the site.

MS. BERESFORD: I think we have -- probably Dave back there can tell us exactly, but I think we have about seven in the can at this point.

THE VIDEOGRAPHER: We have seven filmed and we have about eight or nine --

MR. FARMER: He'll need to repeat the answer.

MS. BERESFORD: Let me repeat this for everyone, seven filmed and a couple more in process, including one I have to say that I'm going to be in, so they've told me I can't wear a wig and a mustache, I have to look like myself, but we're hoping -- I think you've seen the longer ones, the ones that will be coming out in the future will be probably a bit shorter and really
more topical, really related to more than -- more
related to a single topic. So we're hoping that
all of these will be very useful for our
applicants, and some of them will be linked into
the filing form.

MR. FARMER: Okay. Lynne, did you have
anything else you wanted to chat with us about
today? Before we break off the segment, any
questions, comments from folks on TPAC? Anything
from folks in the audience? Okay. Lynne, thank
you, you all are doing a great job in the
trademark operation, it's a pleasure to work with
you all on that. We're going to take a five
minute break. I see John Owens here. And we'll
come back with our discussion with the CIO in
about five minutes.

(Recess)

MR. FARMER: If everyone will take their
seat, please. Our next visit will be with the
Office of the Chief Information Officer, and I
think John Owens, the CIO, will be making the
presentation. And on TPAC, our technology folks
are Tim Lockhart and Bob Anderson, and also Howard Friedman, who is not able to be with us today, but Deborah Lee is sitting in for Howard today, and so I'll turn the floor over to John, and then, Tim, if you -- I'll kind of let you take the lead on the interlocutory part. Thanks.

MR. OWENS: Good morning. All right, well, my name is John Owens, I'm the Chief Information Officer, I'm happy to be with you again today. Go to the next -- we have a device or something. Next slide, please. Okay. Let's first talk about the number one topic of which I know people can't wait to have, is the trademark next generation program. We are working very closely with trademarks on formalizing a final plan. We went through some iterations early on and some investigation, as you know, and we are now much more prepared to actually start.

We are looking at the improvement of the functionality and technical services, as well as standing up the next generation IT platform. One of the major initiatives, of course, we've always
talked about is the separation of trademark systems from other business unit systems. But recently we've come to the conclusion that it would be safer and more easily managed, and we did this in concert with trademarks, and Gary Cannon in particular, to, instead of having like a very revolutionary model where things just happen in one big bang, to have more of an evolutionary one. So to avoid the issues with data migration and possible corruption or failure, where one day the system would work and the next day the switch was flipped and we'd have a brand new system with unknown, you know, issues, that we're going to a much more evolutionary model, and the CIO certainly agreed and have been working with Gary and the trademarks team on formulating a new plan based on that type of strategy. Next slide, please.

So what does it look like today? The stand up of the trademark next generation IT platform and the migration of the trademark systems onto that new platform will be iterative
over the next one to three years. You will see those enhancements. Some of them will be internal only. Some of them will not be seen, they will be infrastructure, but hopefully you will see the ramifications of improved performance and quality and stability.

The enhancements will continue to be made on current trademark systems that currently exist at the same time as we build the new platform. Now, that might seem like redundancy, but much of the work that we're going to do on the current systems will be translatable onto the new system, that's going to be part of it. We will make decisions of do we continue to add or do we rewrite or transform the current products and services to new products and services on the future infrastructure. And we will employ an agile methodology instead of the traditional waterfall methodology employed by the federal government as encouraged by the -- under the federal CIO to give smaller wins over shorter periods of time.
I know one of the biggest complaints we have from customers is things take so long, we wait a year or years to get something. Well, industry went away from the waterfall methodology a number of years ago. Certainly in my last seven years at AOL, I did nothing but agile development. I'm happy to see that the federal government has finally embraced this type of development methodology and that we are going to be allowed to do it and OMB is changing their regulations to make sure that we can properly document on progress.

What this does mean is that you will see smaller improvements, but quicker, and that's actually very powerful. No longer will you wait until the end of a $10 million project to find out that you failed, you will know right away, which is actually quite a good benefit, so you can make course corrections and steering corrections. Many programs fail when you do a whole bunch of tasks and then you get to the integration step in a waterfall method and then you don't properly
integrate. Because the development is done in
smaller chunks, you don't have that issue anymore.
Next.

For those of you that are wondering, the
particular method of agile methodology that we'll
be using is called scrum, s-c-r-u-m. It's readily
documented and available. It is a rugby term for
those of you that pay attention to rugby. And
it's a very collaborative type of agile method,
where the teams have on them customer
representatives, product managers, product
champions from the trademark organization in every
team guiding the way.

So this plan is going to look
financially a little different. Instead of
building a completely separate system and
maintaining a current system, we're going to build
up the next generation platform a little slowly,
and then over time what you will see is the
operations and maintenance on the old system go
down and the improvements to the new system go up.

That will more than likely be visible in
the third year, but in FY '11 and '12, the numbers that trademarks and the CIO came up with are $6.5 million on the next generation program, the enhancements to the current systems, again, much of which are translatable to the new platform at 3.5 million, and continued operations and maintenance at the 8.5 million to keep things going, which is what you pay today.

In fiscal year 2011, if you'd go to the next slide, please, we're going to work together to define the program down to the project level including scopes and milestones.

There's a concept called the backlog, not to be referenced to the patent backlog, which is completely different and not relevant here, but the backlog is a list in scrum of the requirements and enhancements that need to be worked on. They are prioritized by the trademark office or the customer on what gets worked on first in collaboration with CIO, and then iterations happen that takes part of the backlog and actually do the development test and release of that iteration.
The sequence is, again, evolutionary. I can't stress that, because that is a change given the original direction that we thought we were going to go. We are going to develop a new prototype with this architecture in the core foundation of the architecture next year. We are currently working the first experiment in the cloud. One of the work request forms that we had received last year pertained to the document retrieval system, the trademark document retrieval system, TDR. That contract has been -- requirements have been finally finalized, the contract has been written, and we are currently in I believe design architecture or the start of development.

That will be based on a public cloud technology because of the low threshold for security when it comes to this type of data. Since trademarks are openly published, it qualifies as -- on the order of one, two or three rating, three being high, it qualifies as a one. So we felt comfortable using a fully
functional and deployed public cloud to do this
development work. And it's our first development
work in the cloud for the entire agency. And we
will continue to enhance the functionality for our
user community, as well, with all of the wonderful
feedback you gave trademarks, which they've been
happy to work with us to write requirements for.
Next.

So let's talk a little bit about what we
did in fiscal year 2010. We just released Madrid
1.9. We've done a first action systems for
trademarks FAST 1.16 also recently. The trademark
electronic search system test has had some issues
which I'll talk about separately in a minute.
And, of course, we've fully implemented PTO Net 3,
and we're now working on the -- what's called the
head end, the connection to the internet, with our
firewalls, VPN, gateways and parameter switches,
because next year we are going to upgrade from
approximately 300 kilobits per second connectivity
to the internet to three gigabits per second to
the internet, which is a ten fold increase.
Now, that's not just going to give us a lot of space for nothing, that's also going to enable a lot better quality when it comes to voiceover IP, comes to home, you know, working at home, the quality of the collaboration product that we have, and are going to deploy, and well as the performance of our systems, and the ability to place many more folks on telework.

So let's talk a little bit about TESS. TESS has had some issues lately because of some activity generated from the internet. One example, and I can only stress that it's one, we had hundreds of these examples over a period of several months where a malicious application out in the web generated 70,000 application requests in approximately five hours, sucking up 50 percent of the utilization for TESS, thus, denying service to the public and to internal users. This type of denial of service attack, we've had others where a single application was just opened again and again and again and again, and either that's a real bad program we're trying to scrape data off of our
system and data mine or a malicious denial of service.

Because of this and the system performance being degraded after we had worked so hard to put up notifications how the systems perform and when they're available and improve that, we are looking with trademarks at introducing a piece of technology to help protect us against automated or what's known as bot networks.

These automated applications or bot networks can generate this type of denial of service attack. They also generate spam and a bunch of other malicious type of internet activity.

The technology that we are going to implement, we've also implemented for patents, and it's called Recaptcha. I'm sure many of you are familiar with it on banking sites and so on. It does allow us to determine whether or not there is a human being making the request or whether or not it's an automated application, and thus, denying
the request if it's an automated application.

I have been avoiding doing this as much
as possible because, of course, the Recaptcha
experience is annoying. However, when looked at
the other side of the coin, which is 50 percent of
the agency's resources taken and a denial of
service to both the constituency and internal
users, there's really not a lot of choices other
than to implement a security measure such as this.

Let's talk for a minute about what else
we've done or are going to do in fiscal year 2011.
TDR 2, again, this is the first foray into the
public cloud that we are going to have or cloud
technology we are going to have using a much more
modern environment.

It's planned for final release in the
third quarter FY '11. This was using the
waterfall methodology, not agile; we're still
finalizing the agile method of development and how
to be compliant with it here.

We have Madrid 2.0, which we've
separated into two releases. Because of the
importance of the release of Madrid 2.0, when it comes to support of the WIPO, International Bureau of Automated Treaty, I think it was a treaty, Lynne, correct me if I'm wrong. And then, of course, the planned first -- this was just planned in the first quarter release.

Now, the trademark quality review system which is aimed toward providing data to management on the improvement of the efficiency and quality of reviews done in trademarks, it's actually -- we used as a basis for that a current patent system that works very well, but this is totally independent of that.

Many of you have heard about the TMEP work that we're doing. Next slide, please. Version seven is going to be available in the current format that is available today, but it will also be available in a beta format. The content will be reengineered to be managed in xml, and it will be published in pdf and html, and hopefully in the future other formats such as the E book formats and so on.
Trademarks will get to manage this data directly. Today, trademarks does work in concert with OCIO to put the TMEP in a system that is hard to maintain and manipulate and takes the direct intervention of a developer to actually import and then export in the appropriate format. This is less than desirable.

I have been working hard both with our internet publications, as well as the TMEP, and even the MPEP, the patent's manual, to get OCIO out of the publication game. I don't feel a need to do that, and I want to give the power directly in the hands of trademark. So that will be a big win. We're also exploring a tool together, public comments and feedback on the TMEP through a product called Ideascale, which has been used by the White House. And we are looking at adding the new public search capability using a product called Marklogic in a later release later in 2011. The beta for this product is planned for the first quarter of FY '11. And this is a big win. This was one of the WRP's we received last year as a
request.

The Trademark Trial and Appeal Board

Information System, of course, is being integrated

into our overall plans for next generation. And

we are also working to improve the current system

by modifying the interface and integration with

the trademark systems to better coordinate the two

organizations. And that is what I have for you.

MR. LOCKHART: John, as always, I want
to thank you and Scott and the rest of your team

for coming in today and briefing us on what's

going on. I thought we had a very productive

Sub-Committee meeting. Obviously, you've got

quite a few headlines, if you will, in this

briefing, most notably the decision to shift from

the revolutionary approach, you know, one system

one day, the new system the next day, to where

it'll be a more transitional process, and I think

that's good news, I think that approach makes

sense, and as you say, it's more likely to result

in success, which is what we're all interested in.

And I'm very pleased to see, as I'm sure everyone
is, all these points about deployment of systems. So you're starting to move from a -- it seems to me from a situation where you're focused primarily on planning to one where you're in the development mode, you're rolling out a lot of new functionality, you've done that this year, you're going to do more next year, so we're all pleased to see that those things are starting to come online and will continue to come online.

I know everybody is probably familiar with that ReCaptcha technology, but maybe not by that name, so just for anybody at home that might be a little uncertain, can you just briefly describe what that is so we're all on the same page?

MR. OWENS: Sure; Captcha or ReCaptcha, which is a particular brand of Captcha, I believe by Carnegie Mellon, I may be wrong, gives you a little window with a group of words or letters that are kind of skewed. Now, the reason they're skewed is because programmatically, if they were just typed there, and this is just an anecdote,
because I get asked this a lot, if they were just
typed there, there are programs called optical
character recognition that could just read it and
it could be automated. So it's skewed on purpose.
It may have multiple colors, it may be skewed.
There's also usually a button for 508 compliance
to read you the letters, and then you are to type
them in to match what is shown, and hit enter, and
then we know that a human being took it.

Optical character recognition, which can
be used to get around simple Captcha, has much
more difficulty getting around Recaptcha because
of the way they skew the words, or the letters,
shifting them up and down or changing the size or
manipulating them in some way.

So if you've ever seen that, many people
have seen that on -- when you have applied for a
Facebook account or something like that, you'll
see the little pop-up that says please just make
-- we want to prove that you're not a robot, would
you enter this information so that we can grant
you the account, we know at least that you're a
human being.

MR. LOCKHART: So you're looking at implementing this for folks from the outside who want to come in and access trademark records, but has a decision been made, and if so, when are you going to implement it, or it's still something you're studying?

MR. OWENS: I think that the CIO is ready to implement. I think we have been -- well, we have been talking to Marilyn and Lynne and others in trademarks. I also was waiting kind of for the feedback of this group before we were going to make a final call, I believe. But the final decision is not quite made, but it is very close. It is one of the limiting -- there are not a lot of technologies out there to prove that you're a human being and not a bot. That's why everyone here should be at least familiar with the product, because it is the industry standard to make that determination.

With receiving the constant attacks that we've been receiving, I have a team of people that
have been working diligently, almost 24 by seven
during the periods, to fight the attacks as they
happen. But bot nets and hackers are very
adaptable. They change IP addresses, they move,
they change the way they're doing something, and
that's a game of chess that we're always on the
defensive for. I need to get out of the defensive
mode. Just as quickly as I can rectify those,
they still have impact on the performance of the
system.

MS. PEARCE: John, isn't that Recaptcha
system what they're already using on the PAR
system for patents? Isn't that the same sort of
thing?

MR. OWENS: PAR, yes, it is.

MS. PEARCE: Yeah, okay.

MR. OWENS: It is used on PAR, it's been
used there for two years.

MS. PEARCE: Right, and I use that
extensively also in tracking our patent portfolio,
and it's really not a problem, you just use a
similar system for TESS then?
MR. OWENS: It would be the same system.

MS. PEARCE: I don't -- I've never had a problem with it. Every now and then I get words that I can't quite decipher, sometimes they juggle them so much, you can't quite figure out what to type, but I find that I just exit out, go back in, and they give me something that I can, you know, recognize and type in.

And you can do a number of records that way. You don't have to do that each time you do one record. It's just once you're in, you're in. And I found that it works very well on the patent side. So I don't -- I've not had any problem with it and I certainly would vote for extending that to the trademark side if it's going to help with these hackers. I don't know if anybody else has got experience, they'd like to speak to it.

MR. LOCKHART: Well, this is a pretty new development, certainly new to the TPAC, and we might want to take some time later to discuss it among ourselves and then give you a sense of the Committee, John. You know, if you do implement
this, I think it would just be good to maybe have
some explanation on the PTO web site about why
you're implementing it on the trademark side.

And, obviously, you've got a very
significant problem, and I understand why you
might want to go in this direction, but just -- it
would be good to educate the public so they don't
think it's just some, you know, barrier thrown up
for no good reason. But we'll get back to you
with that after we've had a chance to discuss it.

Given that you're now pursuing this
evolutionary road, and so it's not going to be a
situation where one day we're under the current
system and one day we're under trademark's next
generation; is there some milestone or event that
will signal when we are officially transitioned to
trademark's next generation? What would be the
date or the triggering event on that? How will we
know when we're there?

MR. OWENS: Well, Mr. Kappos still would
like us to get to the final evolution with
everything transferred by 2013. We are still with
trademarks working out the schedule of what will be developed where. I know one of the first things that both CIO and trademarks agrees upon completely is standing up the new core virtualized infrastructure which would have an electronic service, you know, enterprise service bus, it would -- we would start building things based on more of a service oriented architecture, which I will translate for you means that the new work would become scalable and redundant much more easily than the current system, which is important, because as load and demand grows today, we are capped by the hardware and software that we have in place today, whereas a virtualized environment, much like the cloud, you can instantiate or start, literally just start other applications to increase the capacity of one application or the other and they just work seamlessly together.

It is a major reengineering effort. It is a technology and a bunch of series of concepts that came about since about 1998 on. It's been
wide use in industry for a while, but the
government is just now starting to accept those.
So what parts get built when other than I can tell
you we're going to start with that core piece of
infrastructure, much like we originally -- I told
you before we were doing. Other than trademarks
and OCIO agreeing on exactly what those initial
pieces are, we don't have the fully flushed out
schedule yet. But the goal that I was given by
Mr. Kappos, and I know Lynne was, too, is to shoot
for trying to get that done in 2013. And as we,
you know, develop the schedule together, we'll get
a much clear picture to tell you that.

MR. LOCKHART: Okay, I appreciate that.
And I just had one final question. I want to
credit my colleague, Jim Johnson, for this one, I
think it is a good question. What do you see as
your major challenge or challenges over the next
year or two and what would be your plan to address
those?

MR. OWENS: Well, I've said it before,
training and hiring. I was just given permission
to hire a bunch of dedicated folks for trademarks, approximately nine to ten people next year. Hiring in the federal government is not an easy task, it takes a lot of time, so I believe that is one of the challenges. Getting acceptance of agile when the rest of the government is so familiar with waterfall, it is a much different philosophy. Agile embraces change and failure. They expect failure to happen. It also means that you plan much smaller projects and see -- you see the product evolve much slower over time. Instead of a big waiting game, you get little bits in drabs. It's like watching a television show with a lot of commercials, you know, you get a little piece and then you've got to wait, and then you get a little piece instead of waiting and hoping and then it not happening.

So that'll be interesting, as well, as well as the training. Don't forget that the organization both in trademarks and patents needs a lot of training on the new technologies and new methodologies, everything from documenting
requirements into what's known as UML, which is a
mark-up language for documenting requirements,
business requirements, and then translating them
to technical requirements, but also the
development tools and methodologies, as well as
what is service oriented architecture.

So though we've been working on some of
those things, bringing in experts for training
and, you know, starting to bring in training for
agile and following an agile system development
lifecycle, that will be a big change for this
organization on both sides, both trademarks and
CIO. And I think some of those initial steps that
we take doing agile scrum, what's known as
sprints, those iterations, will be a learning
experience on both sides, and that we have to
continue to improve those and not give up on them,
I think that's the largest challenge that I have.

MR. LOCKHART: You know, your comment
just sparked one final question that I have. Do
you anticipate that the transition to trademark's
next generation would require any retraining of
the examining core, or will it be so transparent
that that would not be necessary?

MR. OWENS: That depends directly on the
user interface design and development effort and
any reengineering that is done on the interfaces
themselves. Certainly we could keep the exact
same interface as we have today, but this is an
opportunity, if trademark decides to take it, to
invest in some expertise.

I know we're doing this for patents by
hiring experts in the field of user interface
design and finding ways to optimize. So it's not
necessarily going to require a lot of retraining.
Trademark systems are in a much better place
electronically automated than patents are, but
it's certainly an option if we redesign the user
interface for efficiency.

MS. DENISON: John.

MR. FARMER: Kathryn, then Mary.

MS. PARK: Thank you, John. I had a few
questions about the developments on the Trademark
Manual of Examining Procedure. And, first of all,
you say it's going to be available in a beta format, and is that going to be available to the public, the public will be able to see the new version?

MR. OWENS: Yes.

MS. PARK: And then secondly, it says here you're exploring the tool to gather public comments in your referencing ID scale, that's essentially creating -- would be to allow the creation of a Wiki version?

MR. OWENS: Wiki means different things to different people. There's also discussion forums, blogs and so on. And I don't know what you exactly mean by Wiki. But what it does mean is that we are looking at the ability for us to take the document, cut it into sections, I shouldn't say us, trademarks, and ask for comments, and have a discussion on particular sections using the product called Ideascale, which is what the White House uses, that product, to do the same thing on policy and, you know, law.

MS. PARK: And my last question on the
TMEP is, it says the new search capability will be available in a later release, and can you elaborate a little bit on what you anticipate there?

MR. OWENS: Yes; Marklogic provides a fairly sophisticated, open standard core language with all types of near operators and, you know, what you would expect when you're actually doing, you know, a patent or trademark search.

Making that available to the public won't be for the original -- the initial release in the very first beta, but we do have it on the books planned in the next release. This is one of those types of efforts that we are trying to take a more agile approach or iterative approach to development. We want to put it out there, gather feedback, use that feedback, develop something new, put it out there, gather feedback, and so on and so forth. And that was one of the longer, more complicated, costly features that we thought, well, why would we wait an extra couple of months, why don't we get the functionality we think we
need out there first, which is the ability to
manipulate the document in xml, and the ability to
give the publication responsibility directly to
trademarks without the CIO, and the ability to
comment first, and then we go for the rest.

MS. DENISON: John, I wanted to have a
little bit more information on two areas, one was
on the TDR, and the other was on assignments.
With regard to assignments, I understand that they
are currently under the CIO, and the current
procedure is, you file an assignment
electronically and then you get faxed back your
confirmation, and it's rather archaic in today's
world to get a fax back, and I just wondered if
that's going to be handled in trademark's next
gen, and why it isn't under the trademark section.
As I understand it, it's under CIO instead of
trademark operations, so that's my first area.

MR. OWENS: I have to be completely
honest, I know that the assignment branch is under
my organization. I am not fully up to speed on
the trademark process for that area.
MS. DENISON: If you could just --

MR. OWENS: I can look into it and be happy to get back to you.

MS. DENISON: Yeah, that's all I'm asking, I don't have to have an answer, but it seems to me to be lagging behind, the fact that they're using a fax system, and that's the sole system, you don't get a paper thing, but you get a fax back indicating recordation, so it seems to me that that should move into the 21st century when you're updating everything else.

MR. OWENS: I'd be happy to look into that a little bit.

MS. DENISON: Thank you.

MR. OWENS: And I'll report back. The second area?

MS. DENISON: Yeah, the second area, you said that you were putting TDR on the cloud first because you had lower security concerns about the TDR data since it was public, but I'm assuming -- I just wanted your assurance that people still, even though it's lower security, people would
still not be able to manipulate the data because it is important that the data remain accurate.

MR. OWENS: Yes.

MS. DENISON: And I just wanted to make sure that that was clear.

MR. OWENS: Yes; the store of the data and its integrity will still be here. The front end that hosts and would retrieve and deliver the data to you in the format that is specified, we want to give more flexibility in the formats that we deliver you data in, would be through this front end system. It is not part of the store as it currently is.

MR. FARMER: Any other -- Bob, do you have anything?

MR. ANDERSON: Yeah, one quick question. You mentioned using Marklogic for the new TMEP version. Are you looking at Marklogic for searching across the board?

MR. OWENS: Not at this time.

MR. FARMER: I'll get to you in a second. Anything else from other TPAC members?
Deborah, you're standing in for Howard today, anything from him since he sits on the Tech Committee?

MS. LEE: No questions.

MR. FARMER: Okay. I have one and then we'll go to the audience questions, and we will get to you, and that is, we've gotten some reports recently from folks trying to contact trademark examining attorneys that they can't get through, calls get dropped, and we've also heard some from the examining attorneys, they just don't get voicemail messages left for them, and we've even heard reports that some examining attorneys have started using their personal cell phones or other phones just because they don't have confidence that the call is not going to be dropped on the VOIP systems. And so I was going to see, John, if you could give us any information on that. It sort of bridges into trademark operations, since we're talking about examining attorneys, and so, Lynne, if you want to jump in with any comments also, we'll be glad to hear them. So, John, we'll
start with you, then we'll go to Lynne.

MR. OWENS: So I think yesterday in the Sub-Committee meeting, Meryl was there, and we had a conversation about this. There are intermittent problems with voiceover IP, and I will speak about those in a minute. But first I'd like to address an issue that we had with our Nortel voiceover IP system when it came to voicemail several months ago, and it was actually like a quarter ago.

For approximately two quarters, we received complaints of an intermittent problem that we could not identify, which was, people claimed to have been -- left voicemail and not gotten it. And it was actually one of my own staff on a fluke that caught the problem happening. We then did an investigation with Nortel, who, up to this point, had worked with us and could not find the problem. And once we saw it happen, we figured out that it was a misconfiguration by the contractor of several profiles, what's known as a profile for each
individual person.

We rectified that by changing all the profiles, and we have not received a report that we could substantiate since that there is still a problem. In fact, the calls diminished significantly.

As for voiceover IP quality, it is variable. One of the limitations, of course, of the system is actually the band width that's available between the user's home, the hotelier's home, and our environment.

I already told you next year, now that I have the money and the supplemental, we are going to be increasing by ten fold the band width outside the building and much of that is related to the voiceover IP system usage.

We are also looking at a new collaboration tool in concert with trademarks as one of the evaluators and customers to replace what's known as MCS, a product offered by Nortel and long since defunct. That product is currently under evaluation and we hope to roll it out Q2
with the new laptops and all the rest of the new
environment, and that will help fix some of the
problems. Lastly, we are looking at replacing
that legacy voiceover IP system from Nortel all
together, which is also part of the supplemental.
That voiceover IP system and the associated
voicemail system, the PBX, provided by Nortel,
which is now a defunct company, the remnants of it
were sold to a company known as ABIA, and we are
looking at the plan that we are developing right
now to replace the entire system and end, because,
in part, of the failures that we have sustained
with the product that I inherited.

So there are issues. But there is one
set of issues that I will not be able to ever fix,
and that's known in the industry as the last mile.
And somewhere around 30 or 40 percent of the
issues that we field are because of what's known
as the last mile.

Now, I put quotes around the last mile,
it's an industry term, and it's the term that's
used to define the connectivity between the end
user, your hotelier, and their local central
office, either for cable or for fiber or whatever
they have providing band width to them.

    Now, granted, it can be over a mile, so
it gets confusing for some folks. But that last
mile problem, if there is an issue, is generally
beyond the control of the CIO or this agency.
What I have done is, set up very close cooperation
with the local ISP's, Comcast, Cox, Verizon and so
on to work with us and report into our network
operations center, our command center, the issues
that they are seeing and the band width
limitations by neighborhood so we know at least,
the company knows that there are issues.

    But you're correct. I would say and I
would describe this, and I know this is what was
said by Meryl yesterday, so if I'm wrong, Meryl,
please step up and correct me, that the problems
do exist, they are intermittent. The ones that we
know about that happen all the time we take action
on. There are three tiers of service, including
tier three, which shows up at your door to help
you. So most of them are readily rectified or
temporary.

The voicemail problem did happen. It
was a configuration issue that the company could
not find that we found by accident. Even though
it had been reported for quite some time by
trademarks, we could just not see it happen.
Unfortunately, when the voicemail wasn't recorded,
there was no record of it in the system. But we
did rectify that situation, as well, and have not
been able to substantiate that from happening
again. So it is a complicated set of -- it's a
complicated environment we hope to simplify and
it's a complicated question, but I hope I covered
it.

MR. FARMER: Lynne, did you have
anything on this?

MS. BERESFORD: Meryl, do you have
anything you want to add here?

MR. FARMER: If so, just please step on
up to a mic, thanks.

MS. HERSHKOWITZ: Hi, I'm Meryl
Hershkowitz, I'm a Group Director in Trademarks, and I've been working on the work at home program now for 13 years in various capacities. When you work at home, we do substantial training, and one of the things we try to emphasize is patience. And I know no attorney is really good, I think it's a trait we don't have, and maybe there's good reasons why we're not particularly patient.

But in the work at home system itself, as John says, there's multiple points where you can have failure, including modems and the wiring in your house, and then, of course, anything that could happen on this end. So we do train our work at homers to call in problems and be persistent with the help desk, and we do have a special mailbox for them, and we pay extra money for advanced problem resolution, and we have, in addition, contracted with a company that helps us with ISP provisioning, that's the internet service provider, and they also have a help desk.

Trademarks has gone out of its way to insist that our work at homers have the highest
possible internet connections available to them. We pay for that, and as a result, they either have Fios or high speed cable, and that helps a lot.

But if people don't report the problems, obviously, John's group can't fix them. We do encourage people not to use their cell phones, but to get their problem fixed. And we send messages out constantly to the examining attorneys reminding them to do that.

I understand their frustration. There has been, for example, they had been reporting the voicemail problem for months before the problem resolution was discovered, and so it is frustrating for them.

We also, any time we get a complaint from the outside that they can't reach an examiner, and again, we don't know if it's because it's a technical reason or because they're working different hours or whatever, it, unfortunately, is not an easy, simple problem to resolve because we have to investigate what the problem is. We have done that. I know there has been some chatter on
the inter server -- list serve about problems, we
have addressed those specific problems, and I will
say that the most recent ones have been very
specific to the two examining attorneys that the
person complained about.

One had a substantial hardware problem
that they were addressing at the time. It only
took a few days, but, you know, when you have to
replace your laptop and all your associated
hardware, it takes a while. They have to
rebaseline a computer for you and all that, it
takes a while.

We do encourage our work at home
examining attorneys to come and use the hotels in
the office when they have problems at home. But
again, you know, even if they come in, if they're
having a profile problem, that's not going to
correct that.

So I would just, you know, in the days
that we're used to a land line for a telephone,
always working and never going down, we're not in
that environment anymore. And phones are just not
as reliable on the internet as they are in a land
mine, and that's what John is talking about. But
the good news is, we are active partners with the
CIO in picking out these systems. And what our
first line of defense is for testing these systems
is with our managers. We are going to be testing
possible new systems in the next quarter, and
we're excited about that.

We have seen demonstrations of the
capability of the newer model, voiceover IP
systems and collaboration systems, we're very
excited about that. We're excited about the
technical advances that have been made that will
allow us to have unified systems so that once you
go into outlook, you can make a call from outlook,
you can set up a video or audio conference, you
can share documents, we can even seen presence,
meaning if someone is available and working.

So we're very excited about the new
possibilities of the future and we are looking
into them. So I know it's hard for everybody to
be patient as we work out these problems, but we
are working on them. And in the meantime, if you do have a problem, we do want to hear about it, because they're individual problems that can be corrected.

MR. OWENS: Yes, just to reiterate, we produce regular reports out of the call center that lists each one of these issues, we share those with our customers, Meryl and so on, and we do track the trends of these issues to make sure that they are resolved, that we don't have any large spikes or growth with these type of problems, and then if we do, we focus on fixing them.

MS. BERESFORD: Is there any thought from going away from VOIP if it's not working? I mean ---

MR. OWENS: The initial release of the voiceover IP system was pretty cutting edge for its time. We are many versions away from where we are now, if any of you use it at home, provided by your cable company or Fios. We are looking at upgrading the entire plant to a much more robust,
and that was part of the supplemental money that we just received, the complete replacement of the voiceover IP system and the current PBX system that we have today, and hand lines, not only on campus, but for the folks outside.

MS. HERSHKOWITZ: The future is that we're all going to be on voiceover IP, and it is a decision that I think we might want to think about, but my understanding from John is that that decision has -- is in the works.

MR. OWENS: The entire -- I mean I'm sure many of you realize this, but the entire industry, the telephone industry, is moving away from dedicated lines to your home to either cellular access or voiceover IP, where your phone calls will be transmitted over your internet connection. So even if you don't have that today and you have a dedicated line from your central office to the network that handles phone calls, it's more than likely already voiceover IP.

MR. FARMER: Let's move things along a little bit. Lynne, you had another comment?
MS. BERESFORD: Well, yes; it may be where the world is moving, but we have to deal in the present, of course, and the question is, is this the best thing for us at the present? Does the new VOIP solve that last mile problem or is that only going to be solved in the future? And so, for me, you always have to ask the question. Yes, it's very nice that we have this, and I understand it saves us some money, but if it's not giving good customer service, then basically it's not the right thing, so it's something we have to look at.

MR. FARMER: And TPAC will certainly keep an eye on that. I think what I'd like to do now, John, is -- Deborah, did you have any comment on behalf of the examining attorneys?

MS. LEE: Yeah, I lied, I don't have a question. Do you know -- you know the intermittent call dropping problem that everybody reports, I think the general perception among the examining attorneys is that that is an inherent problem with the MCS product, and so I think that
that is part of the reason why those issues are under reported, admittedly; is that perception accurate?

And then my second question is, what is your timeline for having these issues resolved? I know you said you've got a band width thing going on and then you've got the upgrade of the product, when the next generation laptops role.

MR. OWENS: So the bulk of the changeover for voiceover IP, the PBX and everything else happens between the second quarter and fourth quarter of next year, so that's -- and there's a bunch of different selections there. The first quarter will select the new MCS replacement, and then we'd go to deployment. Second quarter, we have the PBX replacement on or about the second quarter that moves into the third quarter; we have -- et cetera, et cetera. There's just a large schedule that's, you know, constantly being worked on and refined.

Is it the MCS replacement tool alone?

We do know that that tool, which had not been
really upgraded in recent years by the company, it was really a defunct product that we had purchased and then not supported after a while, did have issues, and it did have issues with that, that's true, but it wasn't the only cause. That last mile problem, which is a problem for anyone even that uses voiceover IP in their home today, is going to be there.

So the answer is, yes, it was part of it, but I can't tell you how much, in large part because the system wasn't complicated enough to track which problem it had when it lost the call.

It certainly is under the purview of trademarks to determine whether or not they want to continue to use voiceover IP or they want to purchase everyone and a separate land line. CIO is not involved in that decision, that's certainly up to your business unit.

As far as the voiceover IP for the rest of the environment, I would say that we are definitely moving toward that. We have shown an incredible amount of success with the work out of
Randolph Square, which is one of our buildings detached from us where we do have a large contingent of people using the new voiceover IP system as part of the deployment of our PTO Net 3 network based on the Cisco technology, and it works very well. So all I can tell you is what our experiences have been. And certainly we are here as a service organization to support you going forward. If we continue to use voiceover IP, it is our aim to continue to improve its quality and performance, and I would say that since the initial delivery of voiceover IP, you know, five -- six years ago, there have been strides made in the industry that we just -- like the rest of our infrastructure, not kept up with.

MR. FARMER: I'm going to move things along, if we can, and that is, it's an important issue, but while we still have a little bit of a time cushion, just in case you need a little extra time for the other folks, I wanted to preserve some of that cushion. Any other questions or comments from TPAC members? There was someone in
the audience that was waiting very patiently who
had a question or a comment, so I'm going to turn
them over to him.

MR. DONAHEY: Good morning, Mark Donahey
from Erik Pelton and Associates. Regarding the
need to move to a Recaptcha system, is there any
insight about what these bots are trying to
access? I know you have the trademark data base
available in bulk in an xml file that's updated,
and now do your people not know that's available
or are they accessing information that isn't
included in that? Could the problem be resolved
by making some other information also available in
bulk download?

MR. OWENS: Well, there are some people
that are accessing the same object or the same
file over and over again 100,000 times. That's
normally what we call a denial of service attack.
There's no real purpose of doing that other than
clogging the system. That's like people who just
want to send massive amounts of mail to your email
system in order to clog it up and deny service to
those others used, and we've seen that.

We also see people coming in and
scraping data. What particular parts of the data
they want, I have no idea because they just take
it all. We have informed as many of those folks
as we can contact where the data is, where is
housed, how it's available, even available for
free, you know, it doesn't seem to dissuade them
at all. Why that is, I have no idea.

And then there are those that we can't
contact. They use these bot nets and proxy
services, they could be anywhere in the world and
attack us in this manner, and we could never hope
to find out who they are. Just, you know, remote
controlled networks of computers on the internet
throughout the globe remote controlled by someone
in the middle of no where in another country that
then goes and takes the data from those computers
and cyphens them to other computers and et cetera,
et cetera, hiding their trail.

So the issue is really, there is a
problem, and as much as we like to advertise the
fact that we provide all the data we possibly can, without knowing whether or not it's a human being on the other end to give service to, we either have an infinite scaling problem, and trust me, these bot nets can get very powerful and very large, or we have to take some action to identify you as a human being and thus protect the resources of the agency.

MR. FARMER: Okay. Anything else?

MS. BERESFORD: I have a question for John. Is there any relationship -- we gave a lot of our data to Google, but we didn't give it all to Google, as far as I know. For instance, I'm not sure they got our cropped images. Is there any relationship to what's going on with the data mining on our web site and what went to Google, do you know?

MR. OWENS: I don't but we've pointed out the fact that what data we have given to Google, which is the data that we sell, if there is something missing from that data that we collectively trademarks and -- think would be
useful to give them, certainly they're willing to
host it for us. We are also developing a site to
be hosted internally here at the USPTO which will
point to the Google data store which tells people
what's there in a much more plain English fashion
and how to use it, because some of the use of the
data, particularly when it comes to patents, is a
little more technical, it's stored in blobs of
binary tag data that you really need a little bit
more savvy in some computer systems to know how to
import, extract and operate on.

So we are under development of that site
I believe in the first quarter of next year, and
we hope to get that done relatively quickly. But
again, the press has been all over the fact that
we have released data and that there is data
available. Most of the hackers, in fact, all of
the hackers don't really tell us what they want,
so it's hard to meet their demand. But I'm
certainly willing to entertain any thoughts that
trademarks has of what data is not available in
bulk and we can look at what it will take to make
that happen and host that data, but, to date, I haven't had that conversation.

MR. FARMER: Okay, thank you, John. Anything else? Okay. John, thank you very much for your time. I'm going to change up the break schedule just because we went a bit long there. I'm going to take a five minute break now, and I mean five, and then we're going to come back and do the rest of our agenda in the last segment.

(Recess)

MR. FARMER: Our next visit will be with the financial folks and the OCFO. And, Mark, are you presenting today?

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Great; Mark Olechowski, great to have you with us, and the floor is all yours.

MR. OLECHOWSKI: Thank you, John. Well, thank you, thanks for having the CFO back. But really before I start, we do, in fact, have a new CFO, and I apologize, he is on board, but he had some previously scheduled leave, his name is Tony
Scardino, I'll be glad to introduce him the next
time that TPAC gets together, but I'd also like to
take the opportunity to thank Karen Strohecker
from the trademarks organization who is glad
enough to volunteer to be our Acting CFO since
January, bringing over a lot of experience and
insight to a time that was exciting for the entire
PTO, strategic plan, the 2012 budget, a
supplemental, and all our various execution
issues, so thanks, Karen, I just want to make a
public thank you for the time and guidance you
gave us during the last several months.

MR. FARMER: And I'm going to jump in
there for a quick second. I want to second that,
in that we on TPAC know that Karen had to work
really hard recently and pull some incredible
hours, and we know it's not been the best time in
her life to have to do that, and we recognize
that, and we really appreciate your service,
thanks.

MR. OLECHOWSKI: So the CFO briefing.

2010, it's actually a little bit easier to talk to
you about 2010 since the last time we met, thanks, Karen. So a lot of things have happened, and let me just try to get into it so we can get to any of your questions.

Recently, in the past couple of weeks, as you know, Congress passed and the President signed a supplemental appropriation bill for the United States Patent and Trademark Office which gave us access to an additional $129 million worth of collections. Those are all patent fee collections, and I'll talk in a little bit about what our plans are for spending that money and advancing the mission of the PTO.

Fee collections to date, I know this is a little bit dated because it says July 31st, tomorrow will be three days after the end of August, and we'll close out the month, but we are, in fact -- Monday we surpass the 1887 mark. 1887 is the number everybody remembers, which was our original appropriation, so we have exceeded those estimates of 1887, and probably sometime in the second or third week of September, we do
anticipate exceeding even the additional 129 million, which will leave us by the end of the year probably $60 to $70 million above our 2016, which is our new appropriated level.

There will be carryover on both the patents and trademark side. Down at the bottom of slide two, we estimate that patents is going to carryover approximately $108 million and trademarks 93 million.

The next slide talked a little bit about the 2010 supplemental appropriation that did increase our authorized spending to $2 billion $16 million. That bill was the culmination of efforts on many people's parts, not just the PTO, but our counterparts at Commerce, OMB, our stakeholders, and certainly our congressional supporters, so we appreciate everybody's effort to allow the PTO access to more of the fees that it does collect.

The supplemental bill, and we've sent a spend plan to the Hill about what we plan on spending that on, and as you can see, it really centers on the patent organization. We plan on
hiring an additional 200 examiners during September, and then even some additional patent examiners with that money into 2011, in addition to the thousand we're already planning on hiring in 2011.

John Owens, our CIO, mentioned some of the programs that he has underway, a laptop replacement program, as well as the PBX replacement, those efforts are now underway with the supplemental funding.

And, as well, we were running out of money for the patent organization to fund PCT outsourcing and patent examiner overtime, and we've been able to fully fund those two programs through the rest of the year.

The next slide is certainly a little bit busy. I don't want to go into great detail, but this is the reason that we were collecting more fees than we had estimated at the beginning of the year. Our filings on the patent side and trademark sides are up a little bit more than we thought they would be when we began the year. We
thought we'd probably have around -- a flat filing rate, and we're seeing upwards of two or three percent on the patent side and a similar increase on the trademark side in a number of filings.

On patent side, RCE filings are up, which is certainly a concern of the Commissioner of Patents and the Director, but the rate of RCE filings has slowed, and so that's encouraging based on some of the new initiatives Director Kappos and Commissioner Stohl have put into place.

Patent issues are up for a couple of reasons, one is that we have been able to retain many more of our patent examiners than we had anticipated. We've had some attrition rates in the eight to ten percent range in previous years and they are sticking around working for us instead of going elsewhere, so that's helped.

Our allowance rate is also up by a couple percentage points from what we estimated to be 42 or 43 percent to around 45 percent.

Our maintenance fee renewals are also up, which I think is encouraging, as well. The
people I think are realizing the value of a patent portfolio. We're seeing historic highs in the renewal rates of all three stages, first, second and third stage renewals on the patent side. The next slide, 2011, President's budget, as we reported last time, has been submitted to Congress. It represents a significant increase in our request, well over $2.3 billion. Included in the President's budget is a 15 percent patent interim fee adjustment on most patent statutory fees. We anticipate that the surcharge itself will bring in between $220 and $300 million additional than we are receiving this year.

Some of the bigger ticket items we plan on funding in 2011, another 1,000 patent examiners, complete outsourcing of the PCT operations. John talked about the trademark next generation project, as well as the patent end to end. A lot more programs on the enforcement and IP policy side.

We did just yesterday provide to the Hill our revised fee estimates for 2011, and we do
anticipate collecting more fees than we had anticipated when we submitted the President's budget, so more to follow on that probably at the next TPAC meeting.

And I mention once again the 2010 supplemental appropriation. As you can imagine, if we're getting money to do work in '10 and the beginning of '11, it's going to effect the work we get done in 2011. And then the last line just indicates that both the House and Senate have completed their mark-up of the bill, and at least from the information we have, the bill has remained intact, but as you all know, there's still lots of work to be done on the Hill before the appropriation, not only for the PTO and Commerce, but the rest of the government gets passed, so we'll continue to keep you updated on that.

The 2012 budget process is well underway. We have now, as of just yesterday, completed our initial draft of the OMB budget submission. That submission is due to our friends
at the Office of Management and Budget on the 13th of September. The draft budget is out to the
business units and our front office for their comments. As soon as we receive their comments,
there's our schedule to submit to the Public Advisory Committees and DOC that draft for your
review.

We're working hard to get you a draft. As of Friday, I know our schedule had changed a
little bit because of some last minute changes in the templates, but we are trying to get you at
least the trademark portion of the budget for the Public Advisory Committee's review by Friday. The
strategic plan is in its final process of being approved. That was out for public comment. We've
received all those incorporated changes, it is now at OMB for their final review. We do anticipate
making that effective and having it posted and implemented by the end of this fiscal year.

After we submit the OMB budget in September, we'll continue to work with OMB and our
DOC budget folks to finalize the President's
budget. That budget goes get submitted by the
President, as you know, the first Monday in
February, so still lots of work to be done on the
2012, especially given the fact that we have a '10
supplemental, '11 plans are kind of changing
because of that, so it kind of just all ripples
downhill. So, Mr. Farmer, subject to any
questions, that concludes the brief.

MR. FARMER: Thanks, Mark. And please
call me John.

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Our money folks on TPAC are
James Connelly and Elizabeth Pearce. I'll turn
the floor over to them for any questions,
comments, other stuff.

MS. PEARCE: I have one thing that I
wanted to highlight that was on the last page of
Mark's presentation. We are continuing to keep an
eye on trademark fee costs just to get an idea
about how well the electronic system is working.
And Lynne discussed earlier this morning the
possibility of a paper surcharge, this is
something we really support because we want to continue to drive people into working electronically as much as possible. We've seen the numbers, Michelle Picard has been very helpful in tracking all of that for us. We've seen how much of a difference it makes when work is handled electronically. The costs are continuing to drop per unit. For anything that could be handled end to end electronically, this provides absolutely greater service for the customers, as well as cost savings for the Trademark Office, so that's part of the reason that the paper surcharge is being discussed. We just want to continue to drive people in the electronic direction because it makes a big difference.

MR. FARMER: Okay. Before we go on to the fee study element, any questions, comments on this issue from TPAC or members in the audience? If it's okay, we'll go straight into the fee study aspect.

MR. OLECHOWSKI: Well, I do want to
apologize, and Elizabeth, thanks for passing the
test about finding the last slide. As you know,
we reported out on the last several TPAC public
meetings and the Sub-Committee meetings that James
and Elizabeth attend that we had a very large and
collaborative effort to review all of the
trademark activities and fees and inputs to costs
across the trademark organization, as well as all
of the support units across the PTO, and we've
completed that effort and reported out to the
Sub-Committee, and I think, as was mentioned a
little bit here, there's no intention right now of
having a proposal for new fees except what we are
committed to do within the PTO and with the TPAC,
is continue to monitor those costs and find areas
where we can use the data that we've collected and
spent so much time analyzing in an attempt to make
not only the trademark organization more
efficient, but also the support organizations that
deal day in and day out with the trademark
organizations, so those efforts are going to
continue underway, and as we find opportunities to
present to you the results of those continued efforts, we'll do so both in the public and Sub-Committee meetings.

MR. FARMER: So is that it for all financial aspects of the report?

MR. OLECHOWSKI: Yes, sir, unless there's any other questions.

MS. PEARCE: Well, I thought one thing, Mark, if you'd -- the last item on your list, which is such particularly good news, if you would -- from a trademark perspective, if you'd just highlight that.

MR. OLECHOWSKI: The last bullet, it's -- I think, you know, there's a lot of things going on inside the PTO with reviewing the Patent and Trademark allocation. And certainly it's, you know, the shift is a little bit more to -- because you can look at it two different ways, the shift is more to the patent side because we are doing so much more patent work.

The patents organization is growing, we're hiring more people, we're spending more
money on that side, and I think we're seeing, you
know, the shift of those services, you know,
supporting the patents organization.

So, once again, we will continue to
monitor that. We have monthly, as well as
quarterly reports that we send out to all of the
business units. We have an ABI Steering Committee
which is made up of members from all of our
business units. The topics are germane, they're
open for discussion, all the information is
presented to the ABI Steering Committee, so I
think there's a great forum for people to have
those discussions, bring up topics that they may
not particularly think are right, and we look into
them and everything else, I think we have a very
nice robust system for addressing those kind of
issues.

MS. PEARCE: I think the comfort level
with this information is greater than it's been in
a long time, certainly since I've been on the
Sub-Committee, so I'd like to thank everybody in
the CFO's office and in trademarks for their hard
work on this.

We are able to have very productive meetings now because we've got the information we need, and we've made, you know, a great deal of progress I think in being able to streamline matters. So thank everybody for their hard work, and I'm just glad there's so much good news.

MR. FARMER: Okay, great. Mark, thank you very much for your report. I know that I perhaps have more latitude or whatever to say this than those of you who work here at the office, but we on TPAC just continue to wait for the messianic age when Congress will just say the USPTO is entitled to keep all of its fees instead of having to ask for an appropriation, because, after all, those folks do pay you that money to do something, it's not just money that falls on you for no particular purpose, and to the extent we can ever support that message in the future, we just stand ready to do so. So again, thanks for your report and for your time, we appreciate it. And we're now, unless I see any hands go up, going to
transition right over to our visit with Judge Gerry Rogers and the TTAB. And so, Mr. Rogers, the floor is yours.

MR. ROGERS: Thank you, John. I'll try not to stand in the way of your timely conclusion and transition to lunch. I'll try and get through everything as quickly as I can. The first item on your agenda today are hiring and appointment issues.

Apart from the judge issues which are mentioned on the agenda, I did want to point out that the board has hired a replacement for Jean Brown, who retired shortly after David Sams, so we have a new Technical Program Manager to translate that title.

Essentially, Denise Delgizzi, who has been hired for that position, is in charge of all of the support staff, the paralegals, the customer service representatives and others at the Board, so that's going to be a great help for us moving forward, because Cindy Greenbaum, our managing interlocutory attorney, has had to kind of step in
and fill a lot of Jean Brown's role while we were waiting on that hiring, so that's one thing that's been taken care of. In terms of judge hiring, we had hoped to be able to give you names at the meeting today, but we can assure you, as we discussed in the Sub-Committee yesterday, that we're in the last stages of having offers extended to candidates for the ATJ position, and so they may very well, those two individuals, enjoy their Labor Day holiday as ATJ's.

And if we have an announcement, we'll certainly provide that information to you today or tomorrow before you've even left town perhaps.

And then the front office is going to be interviewing candidates for the Chief Judge position next week, and so my best guess would be that they'll have that wrapped up within the next few weeks and we'll start the new fiscal year with a permanent judge in place, and that's about all we can say on hiring at this point.

The manual, the TTAB's Manual of Procedure, the TBMP, we've made great progress
recently, as we discussed at the Sub-Committee meeting yesterday. Just within the last few weeks we've received back from the Solicitor's Office quite a few chapters that the Board had revised in which we had forwarded to the Solicitor's Office for their review. So they've completed their review on all the chapters that we've sent to them. We also plan to have three more chapters of the Board's manual sent to the Solicitor's Office next week, which will leave us with only two more to go. And we will essentially have all of the manual revised in-house this month and over to the Solicitor's Office, and they've assured us that they will continue their current pace of turning around their review very rapidly.

And we expect to have the Solicitor's Office review of the manual completed by the end of the current fiscal year or no later than the first few weeks of the next fiscal year, which will then lead us into the part of the process where we deal with general law and OMB and getting approval, and also dealing with the CIO's office.
And just before he left, I chatted for a moment with John Owens and made sure that we can have one of our representatives piggyback on the work that they've already been doing with the TMEP and not reinvent any of that part of the process, and so he gave me the name of the developer that they have working on the TMEP, and so we'll be contacting him and moving into that portion of the process, the external OMB review and CIO work early in the new fiscal year. Any questions on the manual before we move on to other topics?

MS. DENISON: I just wanted to --

MR. FARMER: I'd just say Mary Denison is our champion for the TTAB, so I'm going to pretty much let her run things, and we may jump in as we need, but maybe we'll do it issue by issue before we go on to the next one.

MS. DENISON: Okay. We're delighted to hear that so much progress has been made and this major project is almost done. I know the private bar will be thrilled to hear that this is almost done and is going to OMB by October 15th it sounds
like for approval, so I'm hoping that it will
actually be up on the web site by the end of the
calendar year, and that is very good news.

So I hope that you will make some sort
of an announcement with all the relevant bar
groups so that people will know that there is the
new manual up. And also to avoid any confusion,
since the old one will stay up, given the fact
that there are many cases still operating under
the pre November 1, 2007 rules. But at any rate,
we are pleased that this mammoth undertaking has
almost been finished, and so congratulations on
your progress.

And also, I'd like to -- we were
disappointed to hear that there is no money being
allocated in fiscal year '11 or '12 for a person
dedicated to future updates, and we think that you
have a good plan for addressing that, which is to
sign out the chapters to various personnel within
the TTAB, and we would be happy to help you
however we can with that, and hope that that will
work out, and if not, we want to know, if it does
not, if you need more resources, we would be very interested in hearing about that. So if you could talk about html and Wiki and future updates, that would be great.

MR. ROGERS: The only thing I can really say on that is, we've been focusing more on getting the substance of the manual revised, and so I was very pleased to see that John Owens and trademarks has done so much work on the beta version for the TMEP.

And as I said, we just want to piggyback on that, we don't want to reinvent the wheel, and so whatever assistance the CIO can provide us in getting the manual out, we've always planned to have the revised manual out in html and in pdf, and to have it searchable and more easily updatable, and it seems like the CIO has a plan that they're deploying with the TMEP, that if we follow that, we'll be able to do the same thing with the TBMP. In terms of updates going forward, as we discussed in the Sub-Committee yesterday, I think there's a great idea to have quarterly
meetings at least among the champions that we'll
assign, to borrow the TPAC term, for each of the
chapters of the revised manual, to make sure that
we stay on top of revisions that need to be made
and get that kind of cross pollination of the
champions and having them talk about when we
should roll out revisions and how soon we'll be
able to do that.

So we don't have a particular schedule,
but echoing Lynne's earlier comments, we certainly
don't want to be putting out revisions every time
we issue a presidential case.

And as you know, we've made great
strides in getting lots of precedential decisions
out in recent years, but we will want to make
revisions as necessary when there are significant
rule changes, or we've got a body of cases that we
want to get in there. So we'll have to work that
out, but we'll happy to continue to discuss with
the TPAC what the TPAC thinks is an appropriate
schedule for revisions.

MS. DENISON: Thank you.
MR. FARMER: Thanks. Because the TBMP has been such a hot issue with the bar, I do have a hope generally, just going forward, that maybe some baseline minimum period of time for updating the TBMP may be established, just because my fear will be that case volume picks up, you find yourself in a hole, it's easy to kick down the road just because there won't be -- we committed to put up an update at least every year or something, and I think sometimes just the pressure of those sorts of deadlines tends to be useful so that it doesn't become convenient for the next Chief Judge to allow that to slide, because you've got to meet your case volume concerns.

And also, I realize this was beyond your power, but I personally do have a concern about leaving first line working responsibility with the TTAB judges for keeping the TBMP up to date. You all have been able to do it now without tremendous slippage in your turnaround times because your volumes are so low, but I just have a concern as volume returns about having you all have to do
that work yourself, and while I don't have perfect
knowledge, my base understanding is that for the
other major public manuals, that it's not done
this way, that there's a dedicated person who has
primary responsibility, and that, of course, the
relevant stakeholders follow and make sure
everything is done right. But I just -- it seems
to me that that will be the way to go, and so I'd
hope that the administration, the PTO, reconsiders
that as they go forward. Any comments from other
TPAC members or a response based upon that? Okay.
Let's go on to the next issue then, thanks.

MR. ROGERS: Current speed statistics
and case volume statistics is in the booklet. I
don't know if there's a slide for it, but the --
I'll just read the statistics for you. The third
quarter of the current fiscal year compared to the
third quarter of last fiscal year, we've seen
decreases, again, year over year in new incoming
work, so new appeals are down 20 percent in the
third quarter compared to the previous third
quarter, new oppositions are down 16 percent, new
cancellations are down 15 percent, again, in the
third quarter. We've even seen a decrease in the
number of cases. Those are all front end figures,
things coming in the front door, but we've also
seen a bit of a decrease, about 17 percent, for
cases maturing to -- ready for final decision on
the merits.

So some of the case work -- there may be
fewer cases that parties are pursuing to ultimate
resolution, too, perhaps because of the economy or
other decisions that they're making, but except
for the increase in the pendency on final
decisions, which we've already alluded to because
of all the work that judges are doing on the
manual, we generally kept pace on the motion
practice end of things. So our pendency
statistics are about 13 weeks, just a week or so
over the goal from last year. We had hoped to
realize a lower goal this year and take advantage
of the tremendous start we had to the year, but,
you know, the manual has been a commitment we've
made to the bar and to stakeholders to get that
done, and we think that the slight bracket creep
on final action pendency in the long run is not
going to be much of a problem to overcome as those
judges come off the manual revision project and
are back working in the first quarter of the
fiscal year on decisions.

We think that, you know, that can come
down rather quickly, because they'll be producing
more decisions and they'll be producing them, you
know, more quickly, so hopefully that figure will
quickly come down to under ten weeks in the coming
year.

Contested motions, we're holding steady
at about eight weeks to a decision from the time
motions are ready for a decision, and that's well
under goal. The number of final decisions and the
number of motions decisions are down, they're both
down because people are working on the manual, but

also because we are just not getting as many
motions, and as I alluded to earlier, we're not
getting quite as many decisions or cases maturing
to -- ready for a final decision.
I did neglect to include one number in the handout that I provided, and that is the number of cases awaiting decision at the end of the third quarter, it was 45 in the third quarter last year, it's actually 132 this year, so that's the kind of slightly growing backlog that judges will be working off as we transition into the first quarter of the new fiscal year and get them off the manual revision project.

And let me see, the interlocutory attorneys are still doing a great job encouraging resolution of contested motions by phone conference, handling about 21 and a half percent of those contested motions through phone conferences, which is actually a much higher percentage if you just look at the motions that are not potentially dispositive and which require a panel's consideration.

So for motions to compel and motions for protective order and other motions that the interlocutory attorneys can handle on their own, we're probably looking at 35 -- 40 percent or more
of those being handled by telephone. So we hope that that's a great aid to stakeholders in getting those potential log jams to progress and proceedings broken and to keep those cases on track and moving.

I did want to talk also about precedential decisions. As of the end of the third quarter, we had 43 that we issued for the year; currently we're at 49, and I expect that we'll be at, because of others that are in the pipeline, at 53 or higher by the end of the fiscal year, so that will be a number of precedential decisions in excess of each of the previous two years, so that's been successful.

And I might add, a number of those cases have been we think pretty noteworthy and pretty helpful for stakeholders. We've had the safer decision and others that have made it easier to get evidence into the record. And we think the importance of some -- we're not just pushing out precedential decisions for the sake of reaching this number, we're trying to get precedential
decisions out there that really address the needs
of stakeholders and cover the substantive issues
that they want to see discussed in precedential
decisions and cover the procedural issues that
will help them build records in board proceedings.
And accelerated case resolution --

MS. DENISON: Before we go to that --

MR. ROGERS: Oh, I'm sorry.

MS. DENISON: -- I just had a couple
things. One is, I think everybody is pleased that
there are more precedential decisions, because the
bar continues to want more precedential decisions,
so we do applaud your work on that and thank you
very much for making an effort to get more of
those out there.

And I also just wanted to reiterate that
we would expect that there would be catch up after
the first quarter, or at a minimum, the second
quarter of fiscal year 2011, given that you've got
two new judges coming on board and the TBMP will
be completed, so I think that we all expect that
the numbers will look a lot better pretty soon.
Thank you.

MR. ROGERS: We would hope so, yes. I was going to say, on accelerated case resolution, we only had -- as we've discussed yesterday, we're kind of broadening the notion of what constitutes accelerated case resolution. Anything that increases the efficiency and the speed of board proceedings should be considered under the ACR umbrella, at least in my view. In terms of the classic, if you will, ACR case, where there are cross motions for summary judgment and a stipulation that the board can resolve any lingering issues of material fact, we had one quarter for each of the first three quarters, but we will have three, and this is something I didn't check until after the Sub-Committee meeting yesterday, but we'll have three classic ACR decisions out in the fourth quarter alone.

So I don't know whether that's a sign that parties are beginning to embrace ACR a little bit more, but hopefully they are, so that's three classic ACR's cross motions for summary judgment.
decisions that will be out in the last quarter.

And, of course, as we discussed yesterday, we also see, although we don't have an easy mechanism for tracking it, but we see a lot more cases where parties are stipulating to facts or are stipulating to more efficient procedures for entering evidence into the record, such as putting in testimony by affidavit or declaration and reserving the right to do cross examination in person only if necessary, that's something that we see a lot more of, too. So I think we're getting a little bit of a snowball effect on ACR.

MS. DENISON: We had asked AIPLA to look at some plug and play options for ACR, and we understand they are working on that and expect to have some drafts for the TTAB to consider by the end of September, and we hope that the posting of AIPLA's suggestions will, in fact, lead to further discussion and make it easier for people to use ACR, because anything that sort of streamlines the process and costs the parties less I think would be welcomed.
MR. ROGERS: And I think if we see what we've seen on the web site in terms of our information, when we post information on ACR and list cases in which parties have agreed to more efficient procedures or they've agreed to the classic ACR method and make that information available, practitioners and stakeholders realize that it's something that they should be considering for their cases, too, and I think that they are.

And so perhaps when we have these AIPLA plug and play options, maybe we will have that prompt other organizations, too, to come forward with other suggestions. And, you know, we're, of course, very happy without any need for us to endorse any particular suggestions, just put them out there for everyone to see and to consider for whatever they may be worth.

MR. FARMER: That's great, and it's my hope that we will reach the day where there will be on the USPTO web site a catalog of available plug and play options that people can select just
because, and I know I've been a broken record on
this, but that I just feel that you're never going
to see a significant uptake in ACR until it's
easy, because right now the path of least
resistance that's so easy for TTAB litigants,
including me, is just to say it's hard to work
through with opposing counsel, can we change this,
can we change that, it's so easy just to go with
the flow of what the rules presently allow.

And building on that, I know that the
TTAB has put a lot of effort into getting the word
out about ACR in the past with talks to bar groups
and articles. My slight suggestion would be,
everyone has got limited time, that going forward,
I would allocate as much of that percentage of
time available to developing those plug and plays
and getting them on your web site so folks can use
them as opposed to spending a lot of time talking
about what theoretically ACR may be, because
again, it's a heavy lift for litigants because
they still at the end of the day have to fashion
and sign off on the rule that they want in their
particular case themselves, and again, I just
don't think you're going to get the uptake until
you make it easy for them. So I hope you all, as
you go forward, will think towards let's put stuff
out there that people can just readily grasp onto
and say, yeah, that looks good, let's do item 3B,
and then I think you'll see ACR take off.

MR. ROGERS: Something we're certainly
willing to devote the time to as we complete the
manual revision. I think that's --

MR. FARMER: The manual absolutely comes
first. I didn't mean to imply you should slow
that down.

MR. ROGERS: Yeah.

MR. FARMER: Thanks. I think we're on
to the next topic.

MR. ROGERS: Okay. Oh, and then I guess
we've kind of covered ACR. We've got older cases,
and the status report on the request for comments.
On the older cases initiative, Denise Delgizzi,
who I mentioned earlier who's been hired as the
Technical Program Manager, has thoroughly
investigated the older cases that are on the docket, and we're talking essentially about -- and we're talking about cases that were commenced under our old rules, the pre November, 2007 rules, in which we would like to move on and get resolved one way or another, because then we'll only have one set of rules for all of our cases moving forward. We may not have any need to maintain an older version of the manual on the web site, that sort of thing.

And so we're talking about approximately ten percent of inter parties cases, so I think about 11 percent of cancellations and a little bit under ten percent of oppositions. We're talking about slightly over 800 proceedings. There are actually slightly over 1,000 cases, but because of consolidations, we're really talking about 800 or so proceedings.

And so we've identified the cases by number, we know which ones they are, and we know which ones are suspended for settlement talks, we know which ones are suspended for civil action or
bankruptcy, we know which ones are theoretically
on track because they're engaged in motion
practice or in discovery or in trial, and we've
developed some strategies that we were able to
discuss in the Sub-Committee meeting yesterday and
to get some valuable TPAC input on our possible
strategies for dealing with those suspended cases
and those on track cases, to make sure that they
all progress either to settlement very quickly or
into trial and ultimately resolution. So we thank
the Sub-Committee for the suggestions received
yesterday in that meeting, and we're going to, you
know, move forward in the first quarter now that
we've identified these cases and see if we can
pursue some of these strategies with the
assistance of our paralegals and our attorneys and
our judges, everybody is going to have a role
depending on the particular strategy employed and
the particular kind of case that we're talking
about, whether it's a suspended for settlement
case or an on track case, and we'll try and deploy
everybody in some way in that effort to work off
this backlog of old cases.

    MS. DENISON: Over half the 800 cases
are suspended for settlement in civil action, so I
don't want to go into all the details at this
point, but I just wanted to say that that will be
the area that's going to receive the most
attention because that's the largest chunk of
these old cases. And so all these cases are at
least three years old and some are significantly
older, and so I think it's in everyone's interest
for these cases to move forward.

    MR. ROGERS: Yeah, and one example of
one of the things that we're talking about or
thinking about doing, I'm going to be talking to
the judges about pursuing as kind of a pilot
project on a body of cases something that we've
talked about in the strategic plan, which is the
possibility of having judges more involved in
settlement talks.

    So for some of these cases that have
been suspended for settlement talks, but not
progressing towards settlement fast enough, we may
take a group of these cases and get judges involved in settlement talks, and that can both help us work off this older body of cases and also serve as kind of a pilot project, if you will, for that element of the strategic plan which involves having judges involved in settlement talks more. So hopefully that will be successful, and then we can roll that out into other cases, other older cases. And the request for comments, the -- I'm sorry --

MS. DENISON: Let me just say, you had prepared requests for comments some months back for us to consider, and it had four elements, a possible fast track alternative for the opposition and cancellation cases, number two was encouraging settlement for TTAB cases, number three was possible limits of consented extensions, and number four was a catch all, and, you know, seeking comments from the bar or the public on whatever ideas they might have for improving things at the TTAB. The sense of the TPAC is to focus on encouraging settlement at the TTAB.
And so -- and we are requesting that you issue a request for -- that you consider issuing a request for comments that focuses solely on the settlement aspect and the catch all.

And we are still very interested in these other two issues, but we would like you to put all your efforts into the settlement focus for now. And we will then, you know, try to help you get whatever we can do to help support that, and then we'll revisit these others in a few months.

MR. ROGERS: Well, I think you can be completely assured that we'll be doing that, because it's in the strategic plan that we'll be pursuing the possible use of judges in settlement talks. So now that the front office has blessed that part of the strategic plan, we can certainly move forward with a request for comments on that subject.

MR. FARMER: Any -- Judge Rogers, I didn't mean to cut you off. Did you have any other comments you wanted to make?

MR. ROGERS: No, that's fine.
MR. FARMER: Okay. Any questions or comments from TPAC members on TTAB matters? Anything from folks in the audience? Okay, Gerry, thank you very much.

MR. ROGERS: It's nice to have the last slot before lunch.

MR. FARMER: There you go, always a fearsome place to be. We're now off to open mic night, thank you very much. Lynne Beresford has some late breaking news to report, so over to you, Lynne.

MS. BERESFORD: Well, I wish I had Jason Lock here to give the trademark news here, but I don't, so I'll have to do it myself. We had a request from TPAC to put up a more robust warning on the web site and more explanation that only licensed attorneys, attorneys licensed to practice in the highest bar of the state of U.S. and certain Canadian practitioners can represent you before the USPTO. That request came in recently. We have posted this morning a revised warning on the web site, so hopefully you can -- you can go
to the web site and see it. Here is a paper copy
in which I'm happy to make more of if people want
paper copies. But that's something that we can
check the box on at this point.

MR. JOHNSON: Thank you, Lynne.

MR. FARMER: Any other issues that
members of TPAC want to bring up? Any other
issues that other folks here from the USPTO wanted
to bring up, or from anyone who's just kind enough
to come visit with us today? If not, then we are
adjourned. We plan on having another set of
public meetings here at the PTO in the last
December, excuse me, late November/early December
timeframe. We don't have the date precisely
pinned down, we're checking some calendars, and we
hope to have that up on the USPTO web site very
soon. And thanks to everyone for being here, we
appreciate it.

(Whereupon, at 12:06 p.m., the
PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn by me; that the testimony of said witness was taken by me and thereafter reduced to print under my direction; that said deposition is a true record of the testimony given by said witness; 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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