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MARY BONEY DENISON

TIMOTHY J. LOCKHART

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MAURY TEPPER

ANNE CHASSER

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HOWARD FRIEDMAN

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Also Present:

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Director, Office of Government Affairs

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Chief Financial Officer

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Erik M. Pelton and Associates

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CHAIRMAN FARMER: If everyone can take their seats, please. I'd like to welcome everybody to the TPAC meeting. My name is John Farmer and I chair the committee.

I know this is old hat to perhaps everybody in the room because I look around the room and see so many familiar faces, but just in case someone is new -- or for folks watching at home -- this meeting is being webcast and it's also being transcribed. And just fair warning, you may appear in a public broadcast and your words may be captured and all of that.

During our presentation today, what we're going to do is come on through the program and with each part, we will first have our guest speak for a period of the time that we have allocated to them. Generally, we'd try to keep that to about a fifth of the time, so that we have time for questions. And the protocol that we follow is, after that person gives their initial
presentation, then I turn to whoever is the
champion of that issue on TPAC, for that person to
ask any question they may have, and have a
dialogue. Then I open it up to all of TPAC.
Then, as time permits, I open it up to people who
are attending here in person, just because I
figure that if you take the effort to come show up
in person, you should be next on the pecking
order. And after that, we take any questions or
perhaps comments, if they're appropriate, that
come in by e-mail.

Speaking of that, for those of you who
may be watching at home or elsewhere within this
building, right here, via webcast, you can send us
questions or comments. The e-mail address to do
so is asktpac@uspto.gov. And if they get here in
time for the segment on which you are asking a
question or comment, the protocol is that they're
brought up to me and if I can work them in, I do
so. And that way you have a way to participate
even if you're not here.

Those of you who know me will not be
surprised by this: We try to start on time and finish on time since I know everyone here has things they need to get to.

We have three new members of TPAC and we welcome each of them and are thrilled to have them back on the -- to have them on the committee and to be up to full staff or full strength.

We have Deborah Hampton, who's right over here to my left. She is the IP manager at the Limited Brands, including Victoria's Secret, and Deb has agreed to serve on our Trademark Operations Subcommittee. So, Deb, welcome. It's great to have you.

Then we have Anne Chasser, who is a very familiar face to folks here at the USPTO. She's a former commissioner of Trademarks, so it's not been that long since she sat in this chair and now she's sitting in that chair. And she also is the associate vice president for intellectual property at the University of Cincinnati, and Anne has agreed to serve on the finance subcommittee. And, Anne, welcome back and we're thrilled to have you
And then, Maury Tepper. It's Groundhog Day and Maury Tepper is back again for his third term on TPAC. I believe he is now starting approximately his sixth or sixth and a half year on TPAC. Maury is a partner in the law firm of Tepper and Eyster in North Carolina. And in addition to bringing back great historical knowledge, Maury has agreed to serve as a member of our Information Technology Subcommittee. And so, welcome back, Maury. You outrank all of us.

And just for a reminder, the other members of TPAC -- and I won't go through the bios, so we can get on with things that are here -- are Kathryn Park, Mary Boney Denison, Tim Lockhart, James Conley, Makan Delrahim -- who couldn't be here today -- and our union representatives, Howard Friedman, Harold Ross, and Randall Myers.

And so, with that, we will just dive right on into the agenda. Our first visit is with Dana Colarulli, who I see down here, who's the
director of the Office of Governmental Affairs.

And so, welcome, Dana, and the floor is yours.

MR. COLARULLI: Morning. Thanks, John.

Good morning, TPAC members. I'm happy to start
off your agenda here, but I know you have a packed
agenda, so I'm going to give a little bit of an
overview of the issues that are facing the agency
legislatively.

Let me get
to the slides here. The number one issue being a
continual issue for PTO, our funding. And that
affects all areas of the office. It affects all
areas of performance for the office, and a
challenge that we've been struggling with for some
time. This year is no different. We are
currently funded under a continuing resolution.
You'll hear more about this later today, when Tony
Scardino comes in, but I wanted to give you a
sense from the legislative side, and some of the
things that we're doing to try to make the case
for funding for the agency.

We're currently under a continuing
resolution for the current fiscal year, FY '11.
We expect for the next fiscal year, FY '12, that the President will unveil his budget next week. So, very soon here we're going to be talking about two different budgets at the same time. It's going to be a challenging legislative discussion, but the main points are the same.

In order to address some of the problems that the agency has, the agency needs access to the fees it collects. And something that's a bit foreign in Federal budgeting, we need to be able to budget on a multi-year basis. Our team here -- our CFO shop and Patents and Trademarks Operations -- do a very good job of anticipating what their funding needs are going to be, not just this year, but the next few years. I think nowhere is that more the case right now than on the Patent side where we're trying to address a significantly large backlog and unnecessarily pendency. We really need to know where our money's going to come from and what money we're going to have three years from now, as
that side of the shop is doing fairly significant hiring. So, I want to start out with that.

On the legislative front, I'll hit a couple of things, and why don't I just flip through the slides a little bit and then John will get to the other couple of points on the agenda that you wanted to talk about.

I kind of just hit some of this, but this is a slide I use when I talk about the challenges in front of PTO because really our legislative challenges stem directly from the operational goals that we're trying to achieve. I mentioned USPTO funding is the top one that faces the agency. Patent reform legislation, we're now, in our fourth Congress for this. Where it affects the Trademark side is our efforts to acquire a fee-setting authority for the agency.

Now, this would affect both the Patent and the Trademark side. A critical piece for PTO is what we call the sustainable funding model so that we can think about our funding in a multi-year way.
Now, beyond that there's some other active legislation that I'll talk about in a second. On the Trademark side there's only a few substantive things, but we should hit them here. The difference between this Congress and the last Congress is leadership. The House switched parties, so Lamar Smith, who was previously the Chairman -- and most recently the ranking member -- is again the Chairman. On patent reform, this is very significant for us because he really did start a lot of that discussion and I think he has an interest in finishing it this Congress. I think that's good for us. We'd like to see legislation pass. But he did something that didn't exist last Congress; he recreated an IP subcommittee with Representative Goodlatte as the chairman and Mel Watt from North Carolina as the ranking member. What this means for us is that there's another body for us to go up to and talk to about the issues facing the Office. There are opportunities there. There's some challenges.
It's a little bit more bureaucracy for us to work through the committee structure. But it also provides a little bit more time and attention to our issues. And as for both Chairman Goodlatte and Ranking Member Watt, we've had good relationships with in the past and they are aware of many of the issues facing the office.

On the Senate, things are pretty much the same. The chairman remains Senator Leahy. He continues to be the chairman of the Judiciary Committee in the Senate. Senator Chuck Grassley, who was a member of the committee previously, is now the ranking member, with Senator Sessions going off to another committee leadership place. But Senator Grassley had been involved in patent reform in the past, had been involved in some of the other issues. The Senate has been the moving party, I think, on some other legislation outside of patents. Rogue websites is one of them, addressing online counterfeiting. And Senators Grassley and Leahy have both been involved in the development of that legislation.
Introduced thus far in the 112th Congress: The Cuba Reconciliation Act -- which some of you may be familiar with -- was reintroduced, very recently, so we'll expect there to be some action on that bill. Other bills we know are coming up that may have some trademark impact: Performance rights, really a copyright bill that impact our world; rogue websites; Combating Military Counterfeits Act, that's an effort that Senator Whitehouse from Rhode Island approached us on last year, saying he wanted to address this area.

Those have not been reintroduced, but they are the things that we're watching. And I already mentioned, not on that list, but patent reform to address the funding issues.

I included this in the slide deck, but, again, you're going to hear it from Tony Scardino a little bit later today, and he'll give you a more up-to-date view of what our current funding situation is and what we've asked for up on the Hill. We're in this situation where
we have multiple continuing resolutions. We've been making the case that PTO really should be treated separately. We're 100 percent fee-funded. No taxpayer dollars at all. So even all of the gains that the new leadership up on the Hill want to make in reducing the federal budget overall, PTO really shouldn't be impacted. And reducing artificially our funding level really harms the agency and really undercuts the overriding goals to improve the economy -- certainly on the Patent side and the Trademark side -- to issue these rights in a timely way and actually have them working in the marketplace.

We're continuing to try to make our case with our appropriators, our authorizers and, in fact, to anyone else who will listen. We've been spending much more time on the Hill on that issue than anything else. So that's kind of the legislative overview that I thought would be useful to TPAC.

John, there are a couple of other issues on the agenda that you wanted to talk about,
particularly issues that the committee raised in their annual report for the last couple of years to assist the operations of the TPAC, and I wanted to address both of those.

There are two suggestions in the annual report. One was the recommendation that TPAC be restructured, the restructuring specifically going to issues of appointments of the chair and potentially a vice chair or chair-elect. The second was an issue of timing and the timing of the overall limit that members have to spend on Advisory Committee activities.

Now, I know there's been a number of activities, John. I know you've had a couple of conversations with the Director as well trying to work through these issues. I know our legal counsel has been looking at these issues to see if there's any flexibility.

I think, unfortunately, there's two answers to this question. Number one, the structure which this advisory committee and
the TPAC and the PTO are authorized under is a structure that's similar to other advisory committees across the government. So dramatic changes to certain elements of that charter are difficult unless you're going to change the charters of all the other advisory committees across the government. So, surely from a legislative prospective, it's a hard push to make the case that one advisory committee among all the others in the federal government should really have very different rules. And that goes to both of these.

However, on the restructuring, I think there's places we can probably work together. At the end of the day, the timing of the appointment of members is at the discretion of the Secretary, and certainly we can work with you and work with the Department of Commerce to make those recommendations in a timely manner, and we'll do that. I think the harder issue, John and members, is really the counting -- changing the limit, the 60-day limit for time spent. And that does go to
the same model that the other advisory committees are across the government and it does go to ethical concerns.

So when the statute was written, there was a decision to have a limit. Sixty days was the limit decided to avoid any questions of ethical concerns about members that are on the Advisory Committee -- members that are practicing and actually because they're practicing they can advise the agency well -- of having undue influence in front of the agency. So that when it was chosen, that limit was applied across other advisory committees across the government.

So I think that one is a bit more difficult. I'm happy to continue to look at this. I know our OGC has already looked at this quite a bit, but in terms of the read that we have of the proposals, I think both of them are a bit difficult. The first one, we can continue to talk about and work with TPAC.

CHAIRMAN FARMER: Okay. Thank you, Dana. I appreciate it.
MR. COLARULLI: Sure,

CHAIRMAN FARMER: On the reforms that TPAC has requested, I won't go through all of them because we're short on time. I don't doubt what you say and I know that you're speaking for the leadership here. I have spoken to a lot of other folks, including a member of TPAC who's a real expert on affairs on Capitol Hill, and I don't get the same feedback that it would be that difficult to accomplish because it just makes so much sense.

And I will tell you that TPAC could really use all of the assistance that can be provided because the current system for the way our terms are presently spread out though the year and other things you put in the report is just broken. And we really need help and we really try very hard on TPAC to give our all, to help the office as much as we can. And we are inhibited by this. And so, we just call on the leadership to just maybe reconsider their position and if they can give us support in the future, we'd really appreciate it there.
But speaking of supporting you all, I'll turn to my other thing and that is -- I say this at every meeting, it seems -- but it has been the continual and unanimous position of TPAC that the office should be allowed to keep all of its fees. And that the office should be given, in conjunction with being able to keep all of its fees, fee-setting authority, so that it can plan for the future.

I've said it so many times that I won't give the whole speech this time. I'll just add that TPAC is happy to help in any other way on that issue that we can. My imagination has run out. I don't know of anything to do other than to put it in an annual report and to continue to say it at these meetings, but if anyone in the PTO leadership can think of any other way in which TPAC can be brought to bear to try to influence this decision, we're eager to serve because we think it's imperative that it gets done.

And so with that, Dana, thanks for your time and thanks for coming to speak with us. Do
you have anything else?

MR. COLARULLI: I have nothing else unless other folks do, but I'll make it a point to update this body for other legislation certainly that comes up, certainly on the funding as well. Possibly at the next TPAC meeting, you might consider having Tony Scardino and I together because we really do feed off each other.

CHAIRMAN FARMER: Okay.

MR. COLARULLI: I know that Tony's coming here about 11:00 today, so I'm --

CHAIRMAN FARMER: Maybe we'll do --

MR. COLARULLI: We're seamless in our presentations.

CHAIRMAN FARMER: Maybe what we'll do is put your presentations back to back, so you can sort of mesh in the middle. Any other questions or comments for members of TPAC on this? Maury?

MR. TEPPER: Thank you, John. Just a quick question.

CHAIRMAN FARMER: Sure.

MR. TEPPER: Because this is indeed a
continual frustration and an ongoing issue. Are
you aware -- we are somewhat unique in being a
user-funded agency?

CHAIRMAN FARMER: Yes.

MR. TEPPER: Are you aware of any other
eamples that we may look to or consider in the
government of agencies that are supported by their
customers, where their funding comes from outside?
Just for our ability to perhaps study and look at
how they're treated and how they're managed.

MR. COLARULLI: Sure. There really
isn't any other good example is the answer. The
SEC is probably the closest where all of their
funding does come from the fees that they collect.
There is multiple other fee-funded programs
throughout the government, but they don't fund the
full operations of an agency.

You know, PTO really is unique, as you
say, in that way from the rest of the government.
There's a number of other things that make PTO
unique in terms of its funding structure. And
that goes towards things like the PTO paying for
retirement, contributions to the federal retirement. PTO having direct budget authority outside, with Commerce, but also directly within the government, to OMB. There's a lot of things that were added to our statute that makes us a bit different. Some of these provisions came from a discussion before the American Inventors Protection Act in 1999 to actually discuss whether PTO should be more of a government corporation. Those proposals never went forward, but there are some features that make PTO look more like that.

So the answer is, there really isn't. There's been, from my count -- both from outside the PTO and within -- some eight or nine different proposals over the last decade to create a revolving fund for the PTO. To take the PTO off budget -- a term that used a little inaccurately, but essentially, taking PTO a little further outside the appropriations process, so that fees just flow directly to the agency.

And a number of those have failed for different reasons. I think we'll see one of those
proposals at least come to the floor of the Senate from Senator Coburn, I expect, that would create a revolving fund. And to the senator's credit, it tries to hit that balance of keeping PTO within the appropriations process, ensuring that the PTO is subject to oversight, but also ensuring that those fees collected do go directly to the agency. And the administration doesn't have a position on that proposal, so it's a creative one certainly, and trying to hit that balance, as I said. We'll see what happens.

The answer is no.

CHAIRMAN FARMER: Dana, thank you.

MR. COLARULLI: Sure.

CHAIRMAN FARMER: I'm going to go ahead and move us on to the next segment, just so we can stay on schedule. Thank you for coming to visit with us. I look forward to seeing you on June the 3rd. Our next public meeting, by the way, is on June the 3rd, in case that wasn't obvious.

Now we turn to Debbie Cohn and we welcome her to the big chair. She's been
commissioner of Trademarks for a while, but this
is her first time in that role with TPAC. So
congratulations again and welcome and the floor is
yours.

COMMISSIONER COHN: Thank you very much, John. Yes, I've been commissioner for almost 60
days now. Well, actually, not quite, maybe 40
days or something like that. And it's been a
great experience working with wonderful people
and, of course, working with TPAC.

The first item is a discussion regarding
the trademark examining attorney's answering the
phone when called and, you know, this, of course,
relates to the broader topic of customer service.
And I do want to say that customer service is
really emphasized in our organization. It's in
the Examining Attorney Performance Plans in
various forms and, in fact, there is a requirement
within performance plans that examining attorneys
return telephone calls within either one -- either
the same day or the next business day, depending
on when the call comes in. And so we do take it
very, very seriously.

That said, I think we have to recognize that there are times during the work process -- during the examination process where interrupting yourself and picking up the phone is just not practical. It breaks concentration, and anyone who does legal work or other types of work can certainly understand this. So, you know, we want to strike a balance between suggesting good customer service and lots of phone contact, which we know people want, and allowing the examining attorneys to do their jobs in the most effective manner. So I'll just open the discussion with that.

CHAIRMAN FARMER: Sure. We on TPAC had a good visit with you on that yesterday and a little chat about it, and I think it's the sense of TPAC that we agree that it's not anything that needs a formal regime or an office hours regime or anything like that, in that you have a professional examining corps and it will just be a matter of continually chatting with your examining
corps about best practices and customer service
and professionalism. And we know that you do that
frequently already, so it's not anything that you
all have fallen down on, and that that will
continue.

And that we realize that it's a
two-sided deal and that we on the bar side have
tried to make ourselves available to examining
attorneys, also. And I think a couple of the
talking points that came out of yesterday are that
when, you know, an examining attorney calls back,
they should aspire -- you know, you can't be
perfect to call back during the office hours of
both themselves, obviously -- they're in the
office -- but the person they're returning the
call to. We know that that's the point that will
be talked about, anyway. And that both sides of
the deal -- those on the outside and those at the
PTO -- should be very receptive and perhaps
proactive to using e-mail to set specific times to
chat, so neither side has to waste time chasing
the other; so that both sides, the examining
attorney and the outside -- either pro se person
or professional -- can be efficient.

    And we know that you run a very tight
ship on these regards and we'll try to get the
word out to our side of the deal and we thing that
will be the path forward. And I think, for the
time being, we no longer seeing as a championed
issue. You know, if an issue comes up, of course,
we'll have a dialogue in the future -- like we
always do -- but for right now we can consider the
issue addressed and appreciate your attention to
it.

    COMMISSIONER COHN: Great. Thank you, John. And I guess that -- I'm not sure whether
your comments also cover the second issue, which
dealt with returning phone calls during regular
business --

    CHAIRMAN FARMER: I covered it on my
end. I don't know if you have anything else.

    COMMISSIONER COHN: No, nothing else on
that. We try to communicate that concept. People
live and work in different time zones and
examining attorneys should be aware of that when
they're returning phone calls and I think, for the
most part, they are. And so we'll continue to
emphasize good customer service and, Hopefully,
things will move along well.

CHAIRMAN FARMER: The next thing we have
-- and I think you may have some news for us here
-- is status of transition for having examining
attorneys putting their e-mail addresses on office
actions.

COMMISSIONER COHN: Right. And just let
me start out by noting that we did a study on this
and we found that one-third of our examining
attorneys had been doing this all along anyway,
voluntarily. So, you know, we talked about making
it a requirement and, in fact, we have recently
made it a requirement. It will be effective April
1st that examining attorneys include their e-mail
addresses on all outgoing office actions.

CHAIRMAN FARMER: Thanks for that good
news. I will say this is just a great example of
how easy it is to work with the Trademark
Operation because this bubbled up and originated in TPAC and they said, well, we'll take a look at it and they made it happen. And so, you know, we really appreciate it and it just shows how easy these folks are to work with.

COMMISSIONER COHN: We --

CHAIRMAN FARMER: So I think we're on to the next one. The next one was on second -- or maybe it should say, additional courtesy copy e-mail addresses. And I think you may have some news there, also.

COMMISSIONER COHN: Right. This is -- I believe this was a suggestion that came out of our December 3rd roundtable on best practices for electronic communication. And what we're trying to do, as you say, is add up to five courtesy copy e-mail addresses so that the e-mail will not only just go to the correspondence address, but will go to other addresses as well. We found that this was -- people were uncertain about communicating by e-mail because they were uncertain about, you know, leaving -- just having one person as the
communication at the correspondent's address. So the answer, of course, is we can add more people to the list as courtesy copies. And we say that they're courtesy copies because our rules don't allow us to have more than one correspondent's address.

So we hope that this will encourage more people to authorize electronic communication. That said, we don't have a target date yet as to when this will be completed. It's a little more complicated on the backend technology side then we had originally envisioned, but we're working on it and we hope to have it -- at least a date for everybody soon.

In the meantime, one of the other things that came out of this December 3rd roundtable was the idea that before this actually happens, you all can work within your own e-mail systems to actually forward -- to have some e-mail forwarding so that more than one -- even if you only have one correspondent's address with us, that more than one address actually gets the correspondence. And
you can do that and that will achieve the same
effect as having more than one e-mail address. So
we hope that you take that suggestion and that
people go ahead and make that change in the
interim.

CHAIRMAN FARMER: That sounds great. I
mean, it's another example where there was an ask
and you all have pushed it forward and we really
appreciate. And part of the thinking -- just to
explain the background -- is that, you know, many
firms or other organizations use, like,
Trademarks@CompanyName.com, so that, you know,
people come, people go. E-mail is not lost. But
we're really trying to make that contact to occur
quicker between examining attorneys and folks
representing applicants or applicants themselves.
And if they can provide a courtesy copy e-mail
address that would go to the person who is
actually going to handle the file then that might
facilitate that contact and get things resolved
more quickly, while still having the primary
contact go to the failsafe Trademarks@ mailbox.
And so this is another great step they're taking on trying to just make that communication occur earlier.

And I should say that, by the way, in case you need to know who to contact on TPAC, Deb Hampton has agreed to cover all the issues we've covered so far. I didn't have Deb jump right in and run this part of the discussion yet because it's her first meeting her, but at future meetings I will try very hard to restrain myself, and Deb will be running that part of the agenda. And so thanks for taking that on, Deb.

And the next on is what we call the deadwood issue, and Kathryn Park is our champion there. I don't know if there's much news at all, but in case there is, I'll turn the floor over to the two of you all.

MS. PARK: Well, I can just say that we were asked to review a proposed notice for a rule and we did provide comments. We thought it was an excellent draft proposed rule and we're just waiting for it to be published.
And it's making its way through the approval process. We hope that will be completed very soon. And then, you know, just so everyone knows, the plan is to develop a pilot to actually gather some information through our post registration unit. To help us determine whether there actually is a problem and if there is one, what the scope of that problem is, and what we can do about it. And the way we're going to do this and what we're looking at is whether we believe that folks filing Section 8 affidavits and renewals are actually using the mark on the goods that they say they're using it on. So we're hoping to use a small sample and gather some information on that.

CHAIRMAN FARMER: Wonderful. Two things. One, I have no idea who wrote that notice and I'm not asking for that person to lose their anonymity, but it was really well written whoever wrote it.

Also, just so the whole public knows where we are in the deadwood issue, there was a
panel quite a while back on deadwood and a zillion
flowers bloomed as far as ideas to attack it. And
some were controversial, especially whenever I
opened my mouth. And the way that TPAC chose to
address it is, instead of saying that any
particular practice to attack whatever deadwood
problem -- any practice should be adopted that
since we don't really know how extensive the
problem is or whether it's concentrated in certain
kinds of applications, that we hold our fire. And
it's wonderful that the office is going to be able
to do this scientifically valid study so we can
get some real data and see the extent of the
problem and whether it's concentrated in certain
kinds of applications. And when we know that,
then we can suggest appropriate measures, if any
are needed, to address those problems and not come
in with too big or too small a solution. And so
we think it's a great way to proceed there and
thanks for working on it. And Kathryn, thanks for
leading us in TPAC on it.

The next issue is Tim Lockhart's issue,
which is the status of the congressionally-mandated study on trademark litigation. So Tim's here, Debbie's here. I don't know who has any news. I think the comment period's still open, but I'll turn the floor over to you all.

MR. LOCKHART: Debbie, would you like to just give folks an update on where we are?

COMMISSIONER COHN: Sure, be happy to.

As John said, the comment period has been extended for our request for comments. It's been extended to February 14th, so there's still time. We have a report due to Congress on March 17th and we're in the process of getting that ready. Of course, we will have an evaluation -- or an analysis rather of the comments once the comment period has been completed.

And we're also going -- a portion of the report will include educational efforts on, you know, just what trademark protection is and how to go about getting it. And also about how you continue to protect your trademark. We think
that's really relevant information when it comes
to this particular topic.

There is a seminar going on -- today, in
fact, or yesterday, in fact -- called "Protecting
Your Intellectual Property in the Global Market
Place" at Wayne State University in Detroit. And
I mention that because a portion of that seminar
includes a discussion of this topic. So we have
somebody representing the trademark practitioner
community there and USPTO is there and so we
should have some interesting information resulting
from that. There's a huge attendance; I think 150
people signed up for it.

But that's really the update. You know,
obviously we will have the report in March, so
we'll wait and see.

MR. LOCKHART: Well, thank you very much
for the update. It certainly sounds like
everything is on track. The only comment that I
have is the consensus of TPAC is, if there's any
way to make that report public, if that's possible
to do that, we would -- certainly we look forward
to seeing the report. And I think given the
strong public interest in this topic, as you've
noted, from the attendance at the conference
yesterday and the comments you've received and the
buzz, if you will, in the trademark community, but
if there's any way to make that report public, we
think that would be the way to go.

COMMISSIONER COHN: Okay. We'll
definitely consider that.

CHAIRMAN FARMER: Okay, moving right
along. Our next one is one that spans worlds, and
that is update regarding any possible changes to
trademark fees, such as for paper or electronic
filings. That sort of spans through subcommittees
because the whole should you charge more for paper
issue is sort of in the main Trademark Operations
Committee, but if there's ever going to be any fee
adjustments, that would certainly get the money
committee involved. So we're all interested in
this.

COMMISSIONER COHN: Okay. Well, I'm
afraid I don't have a lot of updating to do on
this one. The topic is still under discussion and
we're actually expanding the discussion to try to
come with possibly some alternatives to, you know,
just charging a fee for paper. And the
alternatives would be to try to, again, encourage
electronic communication with the office because
it's less costly and much, much more efficient.
So I will definitely -- I shouldn't say definitely
-- I hope to have a better update for you at our
next TPAC meeting.

CHAIRMAN FARMER: Okay, that's great. I
know it's the sense of TPAC, just in the broadest
sense, that we understand that paper processes
costs the office more money and they slow things
down. And so there is broad general support --
unanimous support, I think -- on TPAC for the
concept and we'll look forward to looking at
details as they come out.

I think the next thing, quality issues,
and that's a discussion regarding the excellent
first office action initiative. In any other
programs that target substantive quality of office
actions -- and for future meetings, Deb Hampton has agree to head up our watching over quality issues, also. And so, Debbie?

COMMISSIONER COHN: If you look at our performance measures -- the two-pager that we ordinarily include with our materials -- you'll see there's a new measure in there this year and it measures the excellent office actions. And this new measure is in addition to our current quality measures. Our current quality measures for first and final action, as most of you know, measure the quality of the decision making -- correct decision making. Well, we have added to that and this additional measure measures the decision making. It measures the searching, it measures the excellence in writing and evidence gathering and presentation. And so it's really designed to tell us how we're doing with regard to the entire communication, not just the correctness of the decision.

And we feel that's going to be of great help to our users, since you don't only want the
correct decision, you want to understand what the
examining attorney is saying. And so we started
that. We baselined it last year and we've got it
incorporated into our external and internal
measures this year.

In conjunction with this measure, last
fiscal year, for the second part of the year, we
had the pilot awards program for examining
attorney that measured the excellent aspects that
I just mentioned, and also incorporated phone
usage because we know how important that is. And
so we looked at the results of the award program
and found that that award was earned by 33 percent
of our examining attorneys. We are talking with
the union right now about expanding that into
Fiscal Year 2011 and we hope to do that, to gather
more information. We weren't able to gather a
complete set of statistics only because we haven't
done all of the substantive training that we hope
to do in conjunction with the new measure.

We did do some descriptiveness --
Section 2(e)(1) training -- and we did see a good
increase in quality, we think, as a result of that training. We saw that go up. And so we've got a few other things in the works right now and we're planning things for this fiscal year. We're planning some Section 2(d) training. We're planning some training on identifications of goods and services, so we're hoping to really focus on all aspects of the office action, and all aspects of substantive refusals.

CHAIRMAN FARMER: Okay.

COMMISSIONER COHN: Oh, and I should -- excuse me.

CHAIRMAN FARMER: Go ahead.

COMMISSIONER COHN: I should mention that phone usage did increase, we think, as a result of this program. It increased a fairly substantial amount, so we're hoping to increase that even more in the future.

CHAIRMAN FARMER: Okay, great. And the phone usage statistic measures when the examining attorneys pick up and place calls, right?

COMMISSIONER COHN: Well, yes. They may
not connect on that -- you may have to call them back.

CHAIRMAN FARMER: Right.

COMMISSIONER COHN: But it's when something is resolved by phone and the examiner's amendment.

CHAIRMAN FARMER: Okay, that's fine.

Well, a couple things there. One, we just always loved the fact that on TPAC that you all are continually striving towards excellence on your own initiative. And we think that's great and keep up the good work. As I mentioned, Deb Hampton is our champion there. We've gotten an oral descriptive of the criteria for an excellent first office action and I think they sound bang-on to us. But just so TPAC can do what TPAC does, Deb's going to be taking a look at the actual written descriptions, and if we have any TPAC feedback -- I don't know if we will, but if we do -- we'll pass it along. But we think it's a great initiative.

A little bit of history here. Basically
the Trademark Operation pegged the speedometer on their old quality measure and they said let's come up with a tougher one, and they went out and put together a tougher one. And now they're working on trying to peg that speedometer. And so that's the way to go.

The next one is just a general report on current performance statistics. That's in Kathryn Park's area. I don't know if you have any comments on them. They all look pretty good to me.

COMMISSIONER COHN: I do want to make a couple of comments, if that's okay. And as everyone can see, our pendency remains at target levels for examination. Our pendency for most of our non-examiner functions is a bit higher than targeted, but I have -- for the month of January I've talked with the people in charge in those areas and we're seeing movement in the right direction, so we're hoping to have a much better report, even though it's not terrible. It's -- we're getting back to our target levels.
And for quality, however, we are meeting
and exceeding our targets in both examining and
non-examining functions.

And then, just a word about filings. If
you look at the filing statistics, you'll see that
they were ahead -- that year-to-date we're ahead
by 1.4 percent as of the end of December. As of
the end of January, that's ticked up a bit and
we're ahead by 2.6 percent. So just a little
update on that.

CHAIRMAN FARMER: Excellent. We've
always been told by the folks in the PTO that
trademark filings are a real economic barometer,
and so we all get really happy when we see that
number goes up for a variety of reasons.

The next are a few issues that are
mainly just check-ins. I mean, we all know the
status on TPAC, but we want to be transparent to
the public, so they can know what to expect, when.
They're all Kathryn Park issues. The first is
status of the TPAC goal of getting the Official
Gazette published in HTML, rather than PDF.
COMMISSIONER COHN: Yeah, this has been on the agenda for a while and I think we've mentioned before and it hasn't really changed. It's not something that we can really do right now. We're hoping to do it for Trademarks Next Generation, but the underlying issue, the reason that this is on the agenda, I think, was the fact that it was the download speeds for the Official Gazette were really, really slow for many people and we've done things to improve that. So we're hoping that that makes this less of an urgent issue.

MS. PARK: Debbie, it does. And I think, as we said in the last public meeting, there are several of us who've experienced that it's much less of a problem now. And so, it's been a vast improvement. Thank you.

CHAIRMAN FARMER: Okay, and we have the next one. This is, I think, in the same category, but just so we can keep the public up to speed. And that is the goal of eventually having electronic certificates of registration with an
option for a paper certificate.

COMMISSIONER COHN: Yes, that continues to be an interest of ours as well. And we're working on that both from the statutory legal requirement perspective and from the technical perspective. And we're continuing to work on that and, you know, we're hoping to be able to do it before Trademarks Next Generation, but we just don't have a definite answer for you right now.

CHAIRMAN FARMER: That's fine. In both the case of that issue and in the one before, TPAC wasn't expecting anything to happen by this meeting. We just want to keep the public up to date on that long-term goal. And to go back a couple of years, when I first came into TPAC, what part of the dialogue was that, you know, there may be ways in which eventually the process from soup to nuts to trademarks can go faster without upsetting any personnel issues or anything like that.

And thus, we've tried to support the organization in their goal in getting to a
computer state where they can go completely end-to-end for all applications electronically, where they never have to step out into a paper world. And that would probably produce some time savings without changing, for instance, the 2.5, the 3.5 benchmark for initial exam or causing anyone else any personnel problems. And also, on the backend, if you go to electronic certificates of registration, you can still get paper if you want, but -- boom -- it just pops right out and that cuts some time off the backend. And so, the trademark community is served better without any discombobulation with personnel lives within the agency.

And they're getting there. And we appreciate it. And mainly, it's the upcoming changes in the computer system that we all have to wait on. And so thanks for pushing forward on that.

COMMISSIONER COHN: And, as I said, there was some legal statutory requirements that we're trying to work through as well. But, you
know, we agree with everything you've said.

CHAIRMAN FARMER: Right. We understand that those will have to be tackled, too, but we're all headed there.

The last one we have -- this is just another in the update category -- and this is Kathryn's area, and that is TMED issues, goal of keeping it continually up-to-date. And parallel "wiki" TMED -- and I think there's been a recent development on the latter one as far as the ability to put in some comments.

MS. PARK: I was going to say, there's been developments on both, I think. We had a good discussion about it yesterday, Debbie, but why don't you just tell the rest of the group?

COMMISSIONER COHN: Yeah, so there are two things going on, very closely related. One is the changing of how we publish and control the content of the TMED. And the goal is to be able to more frequently update the TMED because Trademarks will be in control and will be able to do it on their own without having to pass it off
to OCIO and wait for them to do their changes.

So, in that regard, we're making good
progress on a new system and you may hear it
referred to later on by John Owens as RDMS.
That's the technical name for the system. I'll
just call it the new system. And so it will --
that's going along great. And we are having
training for our TMEP editor and the other people
involved in that process next week, so we'll
actually know a little bit more then.

The other thing that this new TMEP will
include is a better search system for external and
internal users. That will not be available right
away, so when we publish as a beta in March, which
we're planning to do, it will only be for internal
users. The external users, because our search
system will not be improved yet and there won't be
any positive changes for external users, we're not
going to make it available just yet. And that's
in contrast to the MPEP for patents. If some of
you hear about that being available to the public
in March, it's because their current MPEP system
has no search capability. So, for them, they will
see an improvement.

    We actually have a better search
capability than will be available in March. So if
anyone has any questions, please feel free if I
wasn't clear about that.

    So that's the progress on that side of
the issue. The other issue, you were talking
about the "wiki," the ability to make comments,
and that we have launched. It's called IdeaScale
and I think we did a brief demo last TPAC. We've
gotten some good comments on that. We've gotten
-- let's see, I think we've gotten 41 comments.
We published -- 46 people have used the IdeaScale
site. We've published Chapter 1200 of the TMEP
and Section 900 and something dealing with
specimens, and people have written in and given us
comments. We've gotten comments on the comments.
People have voted on the comments. And so it's
been -- we think it's a really good tool and we're
going to change the TMEP sections from time to
time and give people an opportunity to comment on
that or anything else. We've gotten some unrelated comments as well.

And so we think that will be a great tool for us to use in the future and that's sort of the substitute for the pure "wiki" idea.

MS. PARK: Debbie, do you envision, at some point, you would have the ability to comment on the entire TMEP, it wouldn't be just a section up at a time?

COMMISSIONER COHN: We're piloting it on a section up at a time, but absolutely we can, you know -- we can basically do what we want, so we just wanted to see how it goes and how people respond to it.

CHAIRMAN FARMER: That's great. Debbie, did you have anything else in your section that you wanted to bring out to us? I'm not thinking of anything.

COMMISSIONER COHN: No, I don't think so. Thank you again for, you know, all your support.

CHAIRMAN FARMER: Okay, let me go around
the forum real quick. Kathryn, Mary, and Deb, since you're on the Section Committee, anything? Question? Comments?

Anything from the rest of TPAC? Anne Chasser?

MS. CHASSER: Yeah, I'd like to make a comment. As a new member of the TPAC and having had the opportunity to work with Debbie for five years while I was the commissioner -- and I just want to say how lucky we are that you have stepped into this role after great leadership from Lynn Beresford. And I don't know if members of the TPAC or the public realize Debbie's rich contribution to this agency. She's been with the agency for over 25 years.

But Debbie was the champion of the telework program. And when nobody thought it could happen, Debbie was there pushing it, working with the unions, and it is now the model not only within the federal government, but industry as well, is looking the success of the telework program that Debbie championed. So I wanted to
share that with the other members and tell you how
delighted we are that you're leading this agency.

COMMISSIONER COHN: Thank you very much,
Anne.

CHAIRMAN FARMER: That's great. Anyone
else? Any other comments from TPAC? Oh, Maury.
Yes?

MR. TEPPER: A quick and an easy
question, I hope, other than seconding Anne's
observation as to how blessed we are to have
continuity in leadership and to have someone who's
got such a proven track record and experience with
the office willing to take on this role.

I'm pleased and not surprised at the
continuing focus on excellence and I was also not
surprised, Debbie, when you mentioned the training
modules that you're introducing and your ability
to sort of note an improvement in those areas in
examination when they occur. I know that the
Office of Quality probably has a long list of
issues that they work on. For the benefit of
associations or the public, do you have any means
for people to suggest ideas or to -- I don't have
any in mind, but I'm just curious if there's a
mechanism for input on suitable areas for training
or observations as to where examining attorneys
could benefit from, you know, periodic training?

COMMISSIONER COHN: Well, people are
certainly -- feel free to get in touch with me or
Sharon Marsh to let us know your ideas. You could
certainly go through any of the user
organizations, including TPAC, INTA. You know, we
have a strong relationship with INTA, AIPLA, IPO,
and the ADA as well as TPAC. And so any ideas
that come through these organizations would
certainly get to us very quickly. So, yeah, any
way people would like to communicate, we'd be
happy to hear it.

MS. PARK: Maury, I'd just like to say,
as you know and Mary and many of us know from INTA
and IPO, those organizations aren't shy about
sharing any concerns about quality or anything
else. And there's also the suggestion box on the
website, which I think people do take advantage of
as well. So I think you hear in many ways
whenever there's a concern.

CHAIRMAN FARMER: Yeah. To add some
more detail to what Kathryn just mentioned, on the
main trademarks page of the website, there's an
e-mail box there. Another thing that TPAC asked,
and the office delivered. And so you don't have
to be high up and into AIPLA or whatever, you can
just send an e-mail. And so one of the reasons
we've put that in is if anyone wanted to give an
"attaboy" or an "attalady" or whatever on a
trademark examining attorney doing a good job or
if they had a concern. But it's there for general
feedback and so that's another avenue that anyone
can use. You don't have to have an organizational
affiliation.

Any other question, comments from TPAC
members? From our members of the live audience?
Yes, sir?

MR. PELTON: Good morning. I was
wondering if you could comment regarding the congressionally-mandated study -- my name is Erik Pelton of Erik M. Pelton and Associates -- as to whether or not there are any additional public forums or roundtables planned between now and the report to Congress? And also, as to whether or not the comments submitted are planned to be made public?

COMMISSIONER COHN: On the first question, we actually have been talking with the SBA about a forum that they had been planning, but they ended up canceling it because there was very little interest in it. So, as far as I know, there's nothing else being planned.

Whether or not the comments are going to be made public, I don't think I can answer that right now. The comments will be included with the congressional report, so, you know, I think that there will be ways to get ahold of them. I just don't know how we're going to do it.

MR. PELTON: Thank you.

CHAIRMAN FARMER: Any other questions or
comments from members of the audience?

Okay. We didn't have any come in from cyberspace. We're a little bit ahead of time. You know how much I love that. So let's take a five-minute break and we will come back right after that.

(Recess)

CHAIRMAN FARMER: A little bit ahead of schedule and that's good. During our next segment we are going to have a little discussion and visit about the unauthorized practice of law issue and the related consumer protection concern that TPAC has expressed concerning online trademark services companies. And we've got three people that are here visiting with us today and we're glad to have them.

We have Harry Moatz and Will Covey from the Office of Enrollment and Discipline. And we also have Cynthia Lynch, who's in the Trademark Operation. And I'm not sure if I have this right, but I believe she's the administrator for examination policy. And Cynthia, if I've gotten
that wrong, I apologize.

And so I'll turn the floor over to you all and thanks for coming to visit with us.

MR. COVEY: Good morning, members of TPAC. John, before I came down here, asked me to briefly give you an overview of what the Office of Enrollment does when they receive an allegation of an unauthorized practice of law. And for those of you who are watching this on a webcam, I've also created a statement, a written statement, that we're going to post on the TPAC's web page that basically gives an overview of what the Office of Enrollment does when they receive an allegation of an unauthorized practice of law.

Basically what we do is -- and not getting into specifics of any particular case -- the office takes each one of these allegations very seriously, looks at the facts that are alleged, and then determines whether or not it's appropriate to either send a cease-and-desist letter to the party that may be not authorized to practice law before the office. And then we also
work closely with the Trademark Operations and alerting them to these particular instances. Where the potential individual -- where the individual is a practitioner who's authorized to practice before the office -- for example, if the person is also a patent attorney or patent agent -- then we would also look at possible discipline from that angle, too.

So in a nutshell, that's basically what the office does. We do sort of fact-finding. We look at the facts, determine what appropriate action is necessary. Where the office doesn't have authority or jurisdiction over the individual, we then coordinate with local bar associations and states' attorneys generals to alert them to these potential actions by these individuals in the various states.

CHAIRMAN FARMER: Harry, did you have anything to add to that?

MR. MOATZ: Not really. We're very careful -- I shouldn't say not really, but we're very careful when we're trying to discern that the
person is not a licensed attorney. If they are a licensed attorney we do -- check for every jurisdiction. And even in the letter that goes out we're inquiring if you are an attorney, please clarify because something could have been missed. So there's no foregone conclusion when these letters go out, but so far, we've been right when we've concluded that they're not an attorney.

That's it. We opened it to any information that we can receive. And as Will said, we take all these cases very seriously. And most of them do come to us from the Trademark Operations, but people from the outside sometimes report this and sometimes we discover it on our own. Thank you.

CHAIRMAN FARMER: Okay. Thank you, Harry. And also, Cynthia Lynch has been playing a couple of roles in this, I think one regarding letters that may go out and one interfacing with other governmental agencies. And so, Cynthia, if it's okay with you, I'll turn the floor over to you now and you can tell folks about what role
you've been playing in this. And then after
you're done I'll come back just to make sure a few
things are known to the public.

    MS. LYNCH: Sure. I just wanted to
mention that the agency -- and we've done this
through Trademark Operations in conjunction with
our Office of General Counsel -- has conferred
with the Federal Trade Commission, which is the
nation's consumer protection agency, about any
complaints that we have received about document
filing companies or monitoring services. To date,
the FTC has not pursued enforcement action, as far
as I know, against any of these companies. What
they explained to us is that they prioritize their
enforcement action and that is, in part, based on
the volume of complaints that they receive. So
they have been very encouraging of us to continue
to forward complaints that we receive over to
them, and also to encourage any of our applicants
or registrants or members of the public who
complain to submit their concerns directly to the
FTC, so we do direct them to do so.
And I thought I would also just provide here that their online complaint form, you can just go on the FTC's website and submit a complaint. It can be found at www.FTCComplaintAssistant.gov. So we're just continuing to stay in communication with the FTC on that front.

I guess from an operation standpoint, turning to just suspected cases of unauthorized practice, I wanted to mention, you know, in addition to working with the Office of Enrollment and Discipline and obviously in any cases where we find that someone who is attempting to appear as an attorney in a case is not an attorney, once we know that we just refuse to accept filings from that person, refuse to recognize them as an attorney.

We do have other situations where folks are not presenting themselves as attorneys, but are serving or have attempted to serve as the correspondent in a large number of cases for third parties. And in instances where we found out
about that situation, we've done a search and
pulled together all the cases where we find that
person serving as a correspondent for others. We
then send them a letter, basically indicating that
we suspect unauthorized practice and requiring
them to show us what legitimate reason they might
have to serve as the correspondent for so many
third parties; letting them know that if we don't
find an appropriate justification that we are
going to refuse to recognize them as a
correspondent in trademark cases and we're going
to remove them as the correspondent and basically
prohibit them from doing that in the future.

So in the instances where we've done
that, I don't think there have been any situations
where we found that there was a legitimate
justification, and so then we've taken action to
just remove them from those cases.

CHAIRMAN FARMER: Okay. Thank you,
Cynthia. Will Covey did mention a nice written
statement that the Office of Enrollment and
Discipline provided to TPAC. He gave a thumbnail
Will and Harry, I did have a question for you. And that is I've read the statement and it's very informative and it addresses situations where someone is caught in a UPL situation, how you handle it, and that was all very clear. A question I have for you all is what sort of happens in the situation where there is an attorney in the picture, but the office discerns that the attorney is not doing what the attorney should be doing, maybe the person is a figurehead in that they are non-attorneys doing things that constitute the practice of law?

MR. MOATZ: I'll take the question. In those situations, the attorney himself or herself is investigated and if they are aiding the unauthorized practice, lets other people basically conduct the interviews, prepare and sign the documents, we'll have a case of unauthorized -- or aiding the unauthorized practice. And the charges would be presented to the Committee on Discipline,
who can find the probable cause. And usually the
types of charges are aiding the unauthorized
practice, conduct prejudicial to the
administration of justice, on down. There's a
plethora of charges that can be raised depending
on the circumstances. It's not pretty.

CHAIRMAN FARMER: Got it. And just to
-- we had an excellent visit with these folks in
subcommittee yesterday, but just so we can be
transparent to the public, I've noticed in the
blogosphere discuss this issue. Some bloggers
will say, well, why is it that the office can't go
take action against the people who are not lawyers
who are doing this as opposed to only being able
to deal with those who are lawyers for stepping
outside, aside from their ability to refer to
state bars or other folks for UPL things? And my
understanding -- and correct me if I get this
wrong -- is that the office is very limited. It
has its powers under Rule 11.5, but it really has
no authority to take any action against someone
who is not a lawyer. And for someone who is a
lawyer, aside from no longer permitting them to do what they shouldn't be doing for the agency, you really only have the power to turn them over to state bar authorities. Is that a fair statement?

MR. MOATZ: That's correct.

CHAIRMAN FARMER: Okay. So hopefully, that will clear that up.

And now I want to pass along some stuff. A friend of mine is -- well, a contact of mine is the ethics counsel for the Virginia State Bar, Jim McCauley. And he authorized me to pass along this information to you all and so I'll just pass it along. I'm not seeking comment on it from our folks who are visiting with us today. Jim writes that, "We believe the preparation of legal instruments should remain the practice of law."

And he did this because there was recently a bill introduced in the Virginia Senate that would bless the operational model of a certain online filing service. And as a matter of fact, while I know you all can't talk about specific people or entities you deal with, Jim
McCauley is not under that restriction. This bill was put forward by representatives of LegalZoom.com, and the Senate -- the committee within the Senate killed the bill. And so that exception that was sought by LegalZoom.com was denied. I will say that in Virginia-speak, in Virginia, we always have a different way of describing everything. And in that legislative context, a bill is passed by indefinitely, it is not killed. And so that subcommittee or committee passed it by indefinitely.

Jim McCauley authorized me to read the following statement, also. He writes, "Companies like LegalZoom cause consumers to believe that the documents prepared by them are legally sufficient to meet their needs while warning the consumer that they are no substitute for a lawyer. This sort of double-talk enables them to disclaim any liability for the documents they prepare. Lawyers, on the other hand, face multiple exposure and possible discipline for preparing poorly drawn legal instruments for their clients." And so I
pass that along.

I would also add a little bit of
history. I know that some people could look at
this issue and say, well, this is just lawyers
looking out for lawyers and looking out for their
income. And I'll tell you that the concern within
TPAC historically has been deeper than that. Yes,
there's just a flat UPL (inaudible) issue, but
below that and the reason why we've taken a lot of
interest in it is we believe it's a consumer
protection issue, too, and that is that we have
concerns. We're not reaching conclusions, but we
have concerns that maybe some online services are
giving the appearance to an unsophisticated
potential customer pool that they can do more for
them than they can and deliver results that they
may not be able to deliver because of the
limitations on not practicing law. And so it's
for that consumer protection reason, also, that we
have brought this issue up.

We're glad to see that you all are
pursuing this to the extent you have the legal
authority to do so, and that you're talking with consumer protection agencies such as the FTC. And I guess (inaudible) is just please keep it up and please be as vigorous as you can, particularly in trying to get the interest of organizations such as the FTC in this. We realize that they feel like their stack has got to be big enough in order for them to move, but we just appreciate any help that you all can continue to give us to try to get them to give it some priority.

With that said, did you all have any other comments based upon what I said? Anything from anyone else on TPAC?

Oh, by the way, Maury Tepper, who's -- saying Maury is new to TPAC just sounds wrong, but who's back on TPAC; is going to be the champion on this issue, so he will be handling it going forward. Any questions or comments from anyone here in the audience?

Okay. Well, not seeing anyone. We didn't get any e-mail from cyberspace. Maybe we put them to sleep.
CHAIRMAN FARMER: And so, now, in that case, thank you very much for coming to visit with us. We appreciate it. And we will turn to Chief Judge Gerry Rogers of the TTAB. And I'm going to give the floor to Mary Denison in a second, who is our TTAB champion, but, first, congratulations are in order. Last time Judge Rogers visited with us, he had interim tag in front of his name and that's been ripped off his jersey, and he is now the chief judge of the TTAB. And so congratulations on the new job. (Applause)

CHIEF JUDGE ROGERS: Thank you.

CHAIRMAN FARMER: And so Mary and Gerry -- I didn't mean to rhyme that -- the floor is yours.

MS. DENISON: I'd like to second John's congratulations on being awarded the position. We know that you're going to bring the TTAB up to even higher levels of achievement and we're looking forward to continuing to work with you.

And we have some really great news: The
private bar is going to be very excited about your report today on the TBMP. It's exciting on two fronts: Because people are dying to get their hands on the new TBMP on one front, and it will also free up the judges and so they'll have more time to write decisions.

So with that, I'll turn it over to you.

CHIEF JUDGE ROGERS: Great, thank you. Thank you, John and Mary and everyone at TPAC. It's been great working with you all through the year I was acting and I'm looking forward to continuing a productive relationship as we move forward.

As Mary said, we finally see the light at the end of the tunnel on the TBMP revision project. The revised manual has been approved for release by the Office of Management Budget, which approves release of the TMFP, MPEP, and TBMP all as guidance documents issued by the agency. And so we are in the stretch run of proofreading the Word documents that were each of the chapters and which are being converted to XML documents, and that will serve as -- those XML documents will
serve as the base, if you will, in the RDMS system
that Commissioner Cohn referenced earlier. And so
we hope that that system is going to be -- and I
think we'll hear more about this from John Owens
later on -- is on schedule to be deployed on March
4th. And we will have our documents proofread and
ready to be loaded into the RDMS system when it's
up and running. And then we'll take the month of
March essentially to get the documents loaded, to
make sure that they've been loaded properly, make
sure that the content is all there, and then be
able to deploy it to the web in March.

We are going to be following the lead of
Trademarks, so we will use the IdeaScale feature.
And I would certainly urge anyone who has the
opportunity to do so to get on the web now and to
use the IdeaScale feature that's available for the
TMEP and become familiar with it. Since our user
community is pretty much the same user community
as Trademarks has, we're not going to reinvent the
wheel and we're just going to follow their lead
and allow everyone to become familiar with that
IdeaScale commenting feature and then they're be able to use it for the TBMP, also. And in terms of searching, like the MPEP, as we heard earlier, ours was not a very searchable manual before, so you will have increased searchable capabilities when the manual is deployed in RDMS. And I did want to note that you certainly are going to be able to search the manual using a web browser even as we enhance the search capability in the RDMS system. So even searching by web browser will be an improvement over what you had in the past where you had to get online and then search within the PDF document. So that's where we stand with issuing the revised manual and allowing people to comment on the revised manual. Another question I know everyone will have is how are we going to keep it revised so that we don't have to spend such a gargantuan effort again in the future to revise it? And as has been alluded to earlier, the RDMS system allows us to control the revisions. We'll be able
to make the revisions more frequently. And because we had to essentially cut off the revision of content as of November 15th, we already know things that need to be revised in the content that will be deployed in March. For example, there were some changes in the federal rules that kicked in as of December 1, but we won't get them in until our first revision.

What we will be most likely to do is to have Judge Lycos, who's been shepherding this project through to completion, continue to work on the manual in addition to her ramping up her work on deciding cases, so that our first revision would come before the end of this fiscal year. If we were looking at a schedule where we would issue a revision twice a year, every six months, the revision would come at the end of the fiscal year. We don't want to do that. We don't want to be competing -- have competing the time that would be necessary to prepare a revision on the manual and the time that the judges and the attorneys want to be spending on casework at the end of the fiscal
year to be where they need to be at the end of the fiscal year for performance appraisal purposes.

So -- and because of the content revision being cut at November 15th, we will strive to get a revision out sometime in the third quarter or no later than the beginning of the fourth quarter because then everyone will be free to do their end of the year push on motions and final decisions. And then we will, hopefully, settle into a schedule where we will have a revision every six months, probably in the June and December timeframe. You know, that may change based on our experience, that that's what we're thinking right now.

Any questions on the manual? Mary?

MS. DENISON: No, I'd just like to say that we would encourage you to -- once we get the baby put to bed, so to speak, and the first revision is out, the manual is out, then get working on the revision. Because at that point, it's going to be slightly out of date and it would be great to have the June date, if we could, for
the first revision. That would be really
fabulous. And we know you've put an awful lot of
work into this and we're just delighted it's
coming out. And did you say when it was coming
out exactly?

CHIEF JUDGE ROGERS: It should be in March.

That's still our target. That's still our goal.
And, of course, if there are any glitches with the
full deployment of the RDMS system, maybe we'll
get set back a week or two, but that's still our
goal is to get it out by mid-March.

MS. DENISON: So users should look for
it sometime before April.

CHIEF JUDGE ROGERS: Yeah. And we have been
talking with Public Affairs about putting out a
release and some information that we can
distribute to all of the IP organizations in
addition to posting something on our website that
will herald the release of the manual, in part
because it may be an opportunity for Public
Affairs to educate all PTO constituencies about
the IdeaScale feature that's going to be available
for all of the manuals or is available in part for some of the manuals now and will be more widely available. And the board's manual will be the first one fully and completely deployed in the RDMS system, so we'll certainly be taking some steps to make sure that people are aware of the release of the new manual.

MS. DENISON: Thank you. You want to go on to developments with accelerated case resolution?

CHIEF JUDGE ROGERS: Yes. And unfortunately, I didn't get it into the slide deck, but as we discussed at the subcommittee meeting yesterday, we've taken the suggestions from AIPLA. And we've worked out a chart that we will be able to post shortly on our website that shows the five different suggestions that AIPLA has offered in response to the TPAC's invitation to offer suggestions for plug-and-play or turnkey options for ACR. And it's a nice visual way to highlight the differences among the five different AIPLA proposals. Hopefully, posting that up on the
website will encourage other IP organizations to also come forward with their suggestions for ACR plug-and-play or turnkey options.

We'll also be having a meeting -- myself and Cindy Greenbaum, the managing interlocutory attorney, and Judge Peter Cataldo, who's been working a lot on our ACR initiative, and our staff attorneys. And we've discussed this with the interlocutory attorneys already in some of the recent staff meetings. But we'll be looking to them to derive from their experience, that is of our staff attorneys, additional suggestions for plug-and-play or turnkey options that we can also post on the web. So you can see that the process is to generate suggestions from the bar, but also from within, and then to get them all up and posted on the manual -- I mean, on the web page along with the manual.

And then we will also shortly post the updated case list for cases where parties have agreed to ACR or the case has been decided by ACR. And again, that's a tool that doesn't provide
options to choose from, but it does provide resources for parties to look at and see what has been done in other cases. And Judge Cataldo's recently updated that case list, and so that will be up on the web very shortly.

MS. DENISON: Thank you. We're very excited about this chart, which I have if anyone wants to look at it. It should be up shortly in some modified version. And we're thrilled that this has happened because we think it will encourage people to use ACR because it will make it much easier for them how the process could go. They don't have to sit down and figure out we drop this, we add that, and it will just make it easier for people to agree upon it. And we think that that will ultimately end up in shorter cases, cases resolved more quickly.

And Judge Rogers mentioned to me while there haven't been a whole lot of cases that have gone through the whole process with ACR, there are quite a few cases where the parties opt for ACR and they actually end up settling quicker and so
they never end up going through the whole process.
And that's a very positive development. So we
believe that anything that we can do to promote
ACR is actually in the interest of trademark
users of the system.

And we view this chart as a fluid
document and I think Judge Rogers does, too. And
we would urge -- this is based on AIPLA's initial
comments and we would still welcome comments from
any other bar group or any other person. And so
once the chart goes up, I believe you're going to
put up some sort of an e-mail contact so that
people can give comments on it and that sort of
thing.

CHIEF JUDGE ROGERS: Sure.

MS. DENISON: So people should feel free
to comment on the different proposals. And if
people have other creative ideas, I'm sure that
Judge Rogers would consider them.

CHIEF JUDGE ROGERS: Absolutely.

MS. DENISON: Because we're just, you
know, open to any ideas because the ACR process is
sort of a creative process. It's what you make it. And so, again, I'm just emphasizing that it's a fluid document and we would love input.

CHIEF JUDGE ROGERS: Yeah. And we also continue to stress the availability of ACR. It's one element in the strategic plan. It's five elements that relate to TTAB practice and one of those is to continue to promote and encourage the use of ACR and development additional options. So it's something that we will be talking about whenever one of our judges or attorneys goes out and speaks at a CLE program. So, hopefully, that will also generate more suggestions coming into the website.

MS. DENISON: Thank you.

CHIEF JUDGE ROGERS: Now, one thing we did talk about -- we didn't actually get much of a chance to talk about in the subcommittee yesterday, but will require some looking into, is brought up by some of the AIPLA suggestions, and that is the possibility of needing to make revisions to the ESTTA online filing system. Because some of the AIPLA options suggest having the system
automatically generate accelerated case resolution
schedules based on selections that the parties
might make of various turnkey options. And so
we'll have to look into that and see how much work
that would entail and whether we'll be able to do
it through the system or whether we're going to
especially have to require parties who want to
choose one of these options to instead get on the
phone with one of our staff attorneys, and then
work out a schedule and then have that enshrined
in an order. But either way, we can pursue the
options that have been suggested by AIPLA and
maybe suggested by others. I'm just not quite
sure yet whether we'll be able to have the system
automatically generate schedules that are
different from the norm.

MS. DENISON: I understand the
complications with that. I would encourage you to pursue it,
if you could do it, I think it would actually save
you some time and manpower.

CHIEF JUDGE ROGERS: Sure.

MS. DENISON: So it would be great if
you could do it. But I think it's wonderful that
you've got this going up without that.

    CHIEF JUDGE ROGERS: Yeah.

    MS. DENISON: Thank you. Next, I think, is the settlement RFC that's coming.

    CHIEF JUDGE ROGERS: Yes. Yes, and so we've worked very well, I think, with the TPAC going through a couple of drafts of this Request for Comments on the settlement talks. And before I discuss a little bit more detail on that specific Request for Comments, I did want to bring everyone up to date on some discussions I had with Deputy Director Barner just before she left in regard to the TTAB elements in the strategic plan. And our thinking is that we will finalize this particular Request for Comments on this element in the strategic plan on settlement and mediation.

    And we will also be preparing a Request for Comments on another element of the strategic plan that relates to TTAB, and that is outreach and discussion with stakeholders about what useful performance measures we should adopt, what
performance measures will allow stakeholders to assess whether the board is fulfilling its mission. And that will be a separate Request for Comments I will be working on in the near future, after we very soon finalize this Request for Comments on settlement issues.

But then we are thinking of the possibility of a roundtable, working through the TPAC, to have what would essentially be the first of a series of annual meetings with stakeholders about TTAB issues. And at that we would be able to discuss responses received in regard to these two different Request for Comments in addition to the continuing developments under ACR, which is a third of the five elements in the strategic plan that relate to TTAB.

So that's how that RFC figures into the bigger picture. But the specific Request for Comments on settlement talks, I think we've made a lot of progress on working through a number of drafts in-house and with the TPAC. And as we were -- as Mary and I were discussing earlier, what I
now want to do is just get a look at all of the comments that have come in in regard to the Trademark Litigation Study and see if there are any ideas or comments or thoughts from those submissions that might be worked into this Request for Comments. And then we'll get -- so we should be able to look at those next week after the comment period closes, make some final revisions to the Request for Comments, and then, as with other Requests for Comments or Notices of Proposed Rulemaking, it will then go out and get internally circulated and then will eventually be issued. But, hopefully, that will be in the very near future.

MS. DENISON: Yeah. So we're delighted that the RFC on settlements is coming out and hope we'll see it in March.

CHIEF JUDGE ROGERS: And now we turn to the statistics and how the board is doing on the incoming filings. This first slide in the slide deck shows incoming appeals, oppositions, cancellations, just so you know kind of what our
incoming workload is like. And I think for the
last year we've been kind of watching these
figures and trying to figure out whether the
economy has been bumping along the bottom, when
things are going to improve. We know, of course,
that trademark filings are picking up a little bit
in the Trademark Operation and so we're waiting to
see when those will be reflected in incoming
filings at the TTAB.

So appeals, you can see in the middle
column here, were down only slightly from the
fourth quarter, but down significantly from the
first quarter last year. So year after year it
was a significant difference in terms of incoming
appeals.

On the other hand, oppositions and
cancellations are holding pretty steady. And you
can see in the first quarter of this year we
actually had an increase in new oppositions from
the fourth quarter of last year and an increase
year-over-year compared to last year. So
certainly opposition practice seems to be firming
up. And I'd say that cancellation practice,
again, in terms of incoming cases, is holding
pretty steady. I'm not quite sure what the
explanation is for why appeals are down and maybe
that's just a matter of practice and the economics
of selecting and adopting marks, but we'll just
keep an eye on those statistics and see how they
go. And we'll have to monitor them to make sure
that our staffing levels stay appropriate based on
the filings that come in.

In terms of what we're putting out on
final decisions, you can see that, again, in the
middle column, focusing on the first quarter of
the current fiscal year we did not issue as many
as we had in the first quarter last year.
Certainly not as much as we issued in the first --
in the fourth quarter of last year, but it's
traditional that the fourth quarter has a lot of
cases issued as people try and finalize their
year-end production. And the first quarter is
typically a time when people take time to catch
their breath after the close of the prior fiscal
year. We also have a lot of people take
use-or-lose leave in December. So the first
quarter figures are always a little bit down.

And we also had the retirement of Judge
Hairston at the beginning of the fiscal year and
then just recently the retirement of Judge Walsh.
So we're -- again, even though we had gotten
ourselves back to 18 judges when Judge Wolfson and
Judge Lycos were promoted, we are back down to,
you know, 16 now. So we expect that those figures
are going to pick up as we move forward. And we
were also, of course, completing a lot of work on
the manual, so -- and a lot of judges were working
on the manual revision, so that also kind of ate
into our capacity to issue final decisions.

In terms of the time, one thing I would
like to note on this slide is that in discussions
with Deputy Director Barner, we did set the goal
for this year at 12 to 14 weeks for finals. And
you can -- and that is the measurement of issuance
of final decisions from the time the cases have
been tried and/or argued and are ready for a
decision. So we've traditionally focused on that as a performance goal for issuance of finals because that's the part of the process that is within the TTAB's control. So as a guide for assessing whether the TTAB is doing its job, you're looking at a figure that's totally within the TTAB's control.

However, we know that there's concern -- and some of this has been brought up in the Trademark Litigation Study -- about end-to-end processing, much of which is not in TTAB's control, but nonetheless is a useful statistic to look at. And so we're probably going to get information like this up on the website and do a better job, as we were discussing yesterday in the subcommittee, about explaining TTAB's goals, existing goals, and what might be performance goals in the future and what goes into them and how they're measured, and those sort of thing.

But if you look at some of these end-to-end processing figures on -- appeals are always pretty steady, so average end-to-end
processing from the commencement of an appeal to
its final decision, you can see the fourth quarter
to the two first quarter figures, both in terms of
averages and medians, they're pretty steady. I'm
not quite sure why we had a much different median
in the first quarter of last year, but the rest of
the figures on appeals are all pretty consistent.

The place where we tend to have a lot of
fluctuation are the average figures on end-to-end
processing for interparties' cases and the median
processing. But the one thing that does really
stand out is if you look at the ACR cases --
again, three of them issued in the fourth quarter
of Fiscal Year '10 and two issued in the first
quarter of the current year -- it's significantly
lower average figures than for cases that were
tried under traditional schedules.

Now, the first quarter of FY '10 we only
had one ACR case go out, and you can see that was
significantly higher. But that's because as
people become familiar with ACR cases we sometimes
have cases that have been pending for a number of
five years and the parties find themselves on the eve of trial and they say, you know what? We don't want to go through another six months. We're just going to agree to ACR now.

And so that was one case and it was probably a case that had been -- obviously a case that had been pending for a number of years, but where the parties agreed on the eve of trial or at the beginning of trial that they wanted it wrapped up through an ACR proceeding. So that's why that figure is kind of high. But otherwise, the ACR figures are a nice alternative to the figures for traditional trial.

On contested motions, we're doing very well. We've been very steady in this regard. We've had fewer attorneys working on the manual revision than we have had judges, so they've been able to keep up with the filings. The pendency figure for the first quarter of FY '11 is actually slightly higher than the 7.6 weeks. It was around eight weeks. There was a slight revision after I had prepared this chart, but still well under the
FY '11 goal of 10 weeks.

And one thing I note that has been coming up in some of the comments on the Trademark Litigation Study is that -- and in other forums is that the TTAB sometimes takes too long to get decisions out on contested motions. That's not a new chorus. We've heard that chorus before for many years. It is important to recognize that the reported figure when we issued these figures is an average figure. And so there are certainly motions that get decided within a couple of weeks, and then there are some that take longer than the 10-week goal, and that's how we get to this average figure. The possible explanation is that for some of the motions that take longer is that there are often situations where there are multiple contested motions: One motion begets another motion begets a cross-motion. And then, by the time you get around to deciding all the motions, you've got a whole passel full of them, and so the time, you know, kind of accrues until they all get decided.
But you can also see from this slide that especially in the fourth quarter of the year we spent a lot of time on the phone getting input from practitioners about the particular motions that were pending before us and using the phone to try and resolve them. So we're confident that continuing to make extensive use of the phone in getting motions decided will help us continue to reach the goal on contested motions.

So I think that's about it on where we stand with the statistics. And I would just close this -- and before we hear any questions or comments -- with the idea that we're open to considering all sorts of measures that might help the bar figure out whether the board is doing its job. And again, we'll have a Request for Comments on that and discuss it at a roundtable later in the year. So these are just the traditional performance measures that we've traditionally used.

MS. DENISON: Great. Well, thank you. I have to say we're a little disappointed in the
statistics for the first quarter, but understand

that you still were working on the TBMP and have

been down several judges. So we would expect that

the second quarter's going to look a whole lot

better with the TBMP out of the way. And you can

get through the backlog of cases awaiting decision

pretty quickly, we hope.

CHIEF JUDGE ROGERS: Yes, and I hope so, too.

Because I have to ride herd on that backlog of

cases awaiting final decision and it's been

growing, so. And Bernie Abdi, my secretary, and I

end up working in a file room that is overrun with

hard copies of files that have been printed out

and awaiting decision by the judges, so we're

going to stay on top of it.

MS. DENISON: Yeah, and maybe we could

just go straight into the judge vacancy since

that's just come up.

CHIEF JUDGE ROGERS: Yep. Yeah, absolutely.

I've worked with Office of Human Resources on a

vacancy announcement. Again, another subject I

discussed with Deputy Director Barner just before
she left the office, and with Director Kappos in our discussion of the transition was the need to fill vacancies on judge positions as they arise. And we certainly aren't planning any expansion of the judge ranks at this point in time, but we do want to backfill vacant positions so that we can keep our staffing level current and try and work off this backlog. And so we've gotten approval to go ahead and hire two judges to replace -- well, to fill the position that I formerly filled and to fill the position of Judge Walsh, who retired in January. And so it could be as early as next week that we'll have a vacancy announcement out to hire another two additional trademark judges.

MS. DENISON: That's great. We would urge you to do that as quickly as possible.

CHIEF JUDGE ROGERS: Yeah, yeah. And it's in my interest to do so, so I'll certainly follow up on that.

MS. DENISON: Okay. And the final thing was the old cases under the pre-2007 rules.

CHIEF JUDGE ROGERS: Yeah. Again, something
it's in our interest to work off those cases as quickly as possible. And we did forward to the TPAC members for a discussion in the subcommittee a report by our technical program manager who has been monitoring that backlog of cases. And it continues to go down. The number of cases proceeding under or being practiced under the pre-2007 rules continues to shrink. We're not going to put any particular effort into trying to get them to wrap up faster because I think we've got other issues that are more important, such as getting the manual out and keeping it revised and working off the backlog of current cases that are awaiting final decision. And a lot of those earlier cases, I mean, some are actively being litigated, some are on appeal, and some continue in settlement talks. But every one of those categories of those older cases continues to drop.

And so I think at this point it's really just a matter of the best use of our resources is to monitor the situation and to continue to do the things that we've been doing, which is to make
more frequent inquiries about bankruptcy
proceedings that are holding some of them up from
final resolution and civil actions and settlement
talks and essentially trying to ride herd on them
a little bit more. But other than that, just kind
of monitor the situation and hope that time will
heal that wound.

MS. DENISON: You know, I'm not sure the
public is aware of this, but there are hundreds of
cases still pending under the 2007 rules. And so
the board actually has to operate under the old
rules and the new rules and that just makes for
a more complicated day-to-day existence,
for the judges to put on this hat or that
hat when they're deciding a case. And so my
understanding is that you have been following up
with some of the people in the cases and doing
more frequent reminders and asking for status
reports. And we would urge you to continue to do
that because the more of these old cases you get
rid of, you know, the sooner, the better. I think
it will make your life better.
CHIEF JUDGE ROGERS: Yep. No, we're in complete agreement with TPAC on that score.

MS. DENISON: Do you have anything else?

CHIEF JUDGE ROGERS: No, not in particular.

MS. DENISON: Okay. Well, I'd just, again, like to reiterate that we're delighted that you're permanently the chief judge and we --

CHIEF JUDGE ROGERS: I'm still on probation.

MS. DENISON: Okay.

CHIEF JUDGE ROGERS: Till the end of November.

MS. DENISON: A few more months.

CHIEF JUDGE ROGERS: Director's prerogative until the end of November.

MS. DENISON: And we really hope that you will bring the TTAB to a new level of excellence. Thank you.

CHIEF JUDGE ROGERS: Thank you.

CHAIRMAN FARMER: If it's okay, I'll jump in with a few things now and, first of all, echo what Mary just said. We are hearing from our dialogues that hope may still be alive for the possibility of there being a non-current judge
helper position, part-time/full-time, maybe
additional duties, to help with keeping the TBMP
up to date. And Mary, I think it's the full sense
of TPAC that we think that would be a wonderful
thing, if it can ever happen. We've called for it
in some previous juncture, and I can't recall if
it was the strategic plan or something else, but
we realize that you all are really going to be
focused like a laser beam on pendency. And to the
extent you all can keep the manual up to date with
the lowest possible lift and go after that, we're
just 100 percent behind you on the effort to
getting that support that you may be able to get.

The other thing that I had -- actually I
have two more things -- is --

CHIEF JUDGE ROGERS: John, if I can just respond
to that for a moment.

CHAIRMAN FARMER: Oh, yes, please.

CHIEF JUDGE ROGERS: I just wanted to say that I
think for the first revision we will focus on
having Judge Lycos ride herd on that because she
has shepherded this manual through to its
completion and she's also already got a to-do list
and a number of things that we know need to go
into the first revision of the manual. So I think
for the first revision at least we will continue
to work with her. And then some individual
champions, to borrow a TPAC approach to things, we
do have, for instance, Judge Mermelstein, who
focuses on ESTTA and online filing issues and
Madrid Protocol issues that come up in board
proceedings. Judge Cataldo will focus on parts of
the manual that may need updating because of ACR
issues. And so we have a group that will work on
that first revision, but then we will be thinking
about these other options to transition into a
stable platform for making future revisions.

CHAIRMAN FARMER: Sounds fine. Thank you for that.

And then on the ACR plug-and-play I have
a question for you, so I'll ask the question and
then I'll tell you why I'm asking the question and
we can go forward from there. And that is I know
that we now have some more material up on the
website thanks to what I believe was the AIPLA submission. We thank them for putting that in. We would welcome more submissions.

My question to you is are these truly plug-and-play in that can someone now just go and say we'll take Option D, tell it to the TTAB, and it is done, or is there an additional lift?

That's the question part.

And then the explanation behind the question is that, you know, our longstanding goal has been to get to that stage where you can just literally pick it and go and thus the uptake we feel will be more likely. And so for the benefit of the public is it truly plug-and-play now or do we still have a little bit to go before we get there?

CHIEF JUDGE ROGERS: I don't think the AIPLA options -- which, again, were set forth in a narrative form, in a letter form -- are completely plug-and-play. When I looked at that narrative document and then tried to take all the information and put it out into a chart form that
would allow parties to compare the different approaches and try and see the positives and negatives of each of the different approaches and how they could decide which one they would prefer, I have a few lingering questions that I want to go back to AIPLA with and make sure that I understand completely each of their proposals.

    And to the extent that we don't have a system that can automatically generate these kinds of schedules that the various options from AIPLA contemplate, it probably is useful for most parties to engage one of our staff attorneys in a phone conference and say I'd like to adopt that AIPLA plug-and-play option. But then the attorney can have a little bit of a discussion with the parties just to make sure that they understand what they're adopting, but also to offer them any other assistance that they might need in terms of discussing possible stipulations of fact. Because, for example, one of the things that the AIPLA proposal contemplates is that in any of their options the parties could submit
stipulations of fact up until the time the ACR submissions would be made. And it's often, we've found, useful for the parties to sit and discuss the claims and defenses that are present in the case with one of our staff attorneys to aid them in identifying facts that could be stipulated to and need not be the subject of even ACR litigation.

So at least for now, I think, it's still useful for most parties contemplating ACR to have a conference with one of our staff attorneys and to discuss how we can best pursue the schedule that they would like to pursue. But at least the AIPLA plug-and-play options will give them ideas that they can come to the attorney with and say we'd like to start with this. And then if there's anything else we can talk about that will enhance the experience, let's have that discussion.

CHAIRMAN FARMER: Thanks. What I take from that is that it's going to be a bit of an evolutionary process and that down the road, with more experience and as systems mature, it may get
to be a shorter path from a willingness to pursue ACR to having it implemented with a little less customization and a little less dialogue. But it's just going to take a while for things to clarify and for systems to be able to work with that.

CHIEF JUDGE ROGERS: Yeah.

CHAIRMAN FARMER: Do you think that's a fair statement?

CHIEF JUDGE ROGERS: I think so, yeah.

MS. DENISON: John, I would just like to comment that it's never going to truly be plug-and-play unless they can get the electronic part worked out so that you can see that. And so I think this is just the first step and, hopefully, in a week or so, this chart will be up. That will give people, you know, a start. We look at this, again, as a fluid document and the whole process as fluid. And so, hopefully, Judge Rogers will be able to get more information about how the electronic end of it will work because that will definitely facilitate things. But this is really
just the first step.

CHAIRMAN FARMER: Right. I agree entirely with that.

CHIEF JUDGE ROGERS: And those discussions regarding ESTTA and the electronic end of things will also kind of morph into our transition to Trademarks Next Generation. So it's going to be a continuing process, I think, for the next few years. And, fortunately, the strategic plan runs through 2015, so we can continue to work on it as long as it takes. Now, that doesn't mean I'm not hoping to have electronically available plug-and-play options sooner than 2015, but I'm just saying we anticipate that this is going to be a subject of continuing attention for the board for some time to come.

CHAIRMAN FARMER: Okay, thanks. The last comment I had was in the area of performance benchmarks. I know you're discussing a possible RFC on that issue to see what the trademark community would love to have there and some roundtables. I would encourage the TTAB to
consider putting something rudimentary out there now and then it can be morphed to that process.

I think that there are three performance benchmarks that are just obvious ones that should be put out there. There are three time-based ones. One is the time for processing ex parte appeals. In other words, appeals from decisions of examining attorneys. The second is final decisions in contested cases and in contested motions in interparties' cases. And it seems like those are just the three obvious time benchmarks that are most within the power of the board because you're not then captive to how quickly parties move through the process, so it's not the same as end-to-end pendency, for example. And that those are ones where you could easily have a publicly available chart, just like the Trademark Operation gives us, where you report -- and I'm borrowing from their chart -- we have Fiscal Year 2010 actual, Fiscal Year 2011 target, Quarter 1 results, and variants from plan. And those, I think, are the ones that are just obvious ones --
to reuse that word -- to put out there.

And then it may be supplemented, it may evolve as you go through an RFC process for a -- or some panels or whatever. But just, you know, those, I think, are the first ones at least that I look at when I dive in. I don’t know if Mary has a different view on it.

And then by having benchmarks the public can also be educated and see what it is that the TTAB is looking to accomplish in each of those three areas. And it also helps set up some expectations for them so that they know that, no, it's not reasonable to expect that an ex parte appeal will be decided in one week or a final decision in a contested case, an interparties case, would be in five weeks or something. So it's not only an organizational accountability standard, but it's also an expectations-setting standard. And so I'd just encourage you all to go ahead down that road and then you can morph it as you need as we learn more from the trademark community.
Mary, I don't know if you had anything building on that or not. Judge Rogers, if you have any comments on that -- you don't have to have any comments on that since I realize it was a speech and not a question.

CHIEF JUDGE ROGERS: No, no, that's fine. And I think we indicated in our discussions yesterday that it's my goal to get information up on the board's website about these existing goals, which are the three that you've just discussed, and then invite people to go to the website and to monitor our progress in meeting those goals and to explain them a little bit more. So as you say, that's useful for creating understanding and dealing with parties' expectations. So we'll be happy to do that.

CHAIRMAN FARMER: I think that's great. And for instance, in the materials you gave us, one thing I liked is for one them -- I think it was the final decisions -- you stated a goal.

CHIEF JUDGE ROGERS: Yeah.

CHAIRMAN FARMER: I think it was 12 to
14 weeks. I know in some years past it's been 10.
But I think when you have that goal up there, in
addition to how you all are doing, that's very
helpful. And so as you all put that up on the
website, I think that will be helpful for your
organization and also for the public. And so
thanks for moving ahead on that.

Did anyone else -- Mary, I don't know if
you've got anything else. Anyone else on TPAC
have any questions or comments on these issues?
Okay. Anyone in our live studio
audience have any questions or comments on this?
Once again, we've gotten absolutely
nothing from cyberspace.
And so in that case, I think we are up
to our next break. So we will take a five-minute
break and then we will come back with Tony
Scardino, the CFO. Thanks.

(Recess)
CHAIRMAN FARMER: Our next guest is Tony
Scardino, who's the CFO of the USPTO. Tony, thank
you for coming and the floor is yours.
MR. SCARDINO: Well, thank you for having me. I kind of want to start with a pretext because it would be almost impossible to give a financial report without commenting on where everybody is today in the federal government. You know, you read the news. We get updates every hour. I just got one just now. You know, the House Republicans are furiously trying to find $100 billion from the President's Budget Request of 2011, and that just within the last week has changed. It used to be they were looking for $58 billion, but it was against 2010 funded levels, which is the CR that we're all living under. It's almost like, 58- to $100 billion, how are they going to find the difference? Well, they changed the numerator, but they also changed the denominator. They're not going against '10 levels. They're going against Fiscal Year 2011 President's Budget Request. So it's not exactly a $42 billion delta. Having said, I don't know where they're going to find the money. How do you cut
government programs that much between now and September 30th and find some numbers, like $78 billion they really have to find? We don't know how they're going to do it.

So today's news is, you know, the Republicans are fighting amongst each other. And I'm not trying to be political, but it's a matter of, well, if you said you were going to cut discretionary non-defense versus if you include defense, it's about a $16 billion difference if they include defense as part of the cuts. So where does the Department of Commerce fall within this? And that's what we're trying to figure out.

There's going to possibly drop a bill today, certainly by Monday, which is going to give you the outline for how they're going to find or cut the President's budget by $100 billion. So we're trying to figure out, okay, if they just list the programs, they may not list PTO. Well, that would be wonderful. But that doesn't tell you about anything.

Because we've asked for what's called an
anomaly. Okay, we want them to include access to all of our fees as well as the 15 percent surcharge. That's -- you know, there's a public session and that's the President's Budget Request. So there's nothing secretive about that.

However, we don't know whether we're going to get that or not, so many things could happen. At least four is the way I see it. We could have a full-year CR and $2.016 billion, which is where we're funded at right now. That's probably the worst-case scenario, but it could really happen.

We could also -- actually there's a fifth scenario. We could go back to '08 levels, which is $1.916 billion, a $100 million cut below the level we're living at right now. That's actually, obviously, the worst-case scenario.

Or some better scenarios: We could get full access to our fees and we can get the surcharge authority. Okay, just like the President's budget requested. That's the best-case scenario. Or we could not get the
surcharge authority, we can get just full access
to our fees. Because right now we're collecting
at a greater rate than we're allowed to spend.
We're allowed to spend at $2.016 billion. And if
our current projections continue, we'll collect
about $2.2 billion. So that means at the end of
the year some of that money becomes unavailable to
spend. Last year we had $53 million that was
unavailable to spend; this year would be a greater
number. So, you know, my crystal ball is as
cloudy as anybody else's because this story
changes every half a day.

And in that, we don't even know if
they're discussing PTO since we're different, but
we're not. I mean, we're part of the Department
of Commerce, but because we're fully user-fee
funded, we don't really affect 302(b) allocations,
but we're just not sure how we're being treated.

So as Dana mentioned earlier today,
we're working very closely with the authorizers
and the appropriators, but, as you can imagine,
their lives are very, very, very challenging right
now. So it's a little difficult to get their
time. They've been very nice about it, but
they're just very busy.

So I use that as a pretext because what
I'm going to give you right now it's just -- you
know, it's a snapshot in time and that snapshot
will change possibly by this afternoon if they've
released their kind of blueprint for what the
2011's going to look like.

So I'll be happy to take questions, but
why don't we go through this for a second? I'm
not really sure about the intermission thing, but
let's see.

Okay. So our projected fee collections
are based upon getting a full-year CR with what
we're calling an anomaly that says we can still
collect the surcharge and get full access to our
fees. The surcharge would go into effect
mid-March, so that's the range of what we would
collect on the Patents and the Trademarks side.
Similar, you see $2.436 million, that is the high
end of what we think we would collect, but that
would enable us to do everything we want to do
this year in terms of hiring more examiners, RIT
development, you know, overtime and PCT,
everything that we need to do to kind of meet our
strategic plan goals for 2014 and 2015 in terms of
pendency and backlog reduction.

As we discussed at our last meeting, you
know, at the end of the year, going into 2011, we
had some carryover, some money that came forward
on the Trademark side and the Patent side. About
$100 million on the Trademark side; a little more
than that, slightly, on the Patent side. So what
we would project right now still is 85- to $100
million in carry-forward surplus going into next
year. You know, it's things are pretty -- I mean,
you know, the workload, as Debbie says, you know,
is starting to inch up a bit. And in order to
maintain the same pendency, you know, we're
working towards that with overtime and others.
But we won't spend a lot more money than we
brought in to this year, but we are hoping on the
Patent side, of course, that's where, you know,
the drain with all the hiring we're doing and some
of the IT development, that's where we needed the
help with the surcharge.

So, as you'll see, down at the bottom
here, the percentages, projected obligation 90
versus almost 10. That's important when we get to
the next slide.

Okay. As you can imagine, over the last
four years our obligations have shifted more to
the Patent side because that's where our
workload's grown and our staffing has grown. So
we're spending more money, you know, in terms of
the split, we're spending more money on the Patent
side. So I think it's important for everyone to
see that, you know, it takes a lot to move 1
percentage point. (inaudible) going from 89 to 90
percent, that still means percent or 90.4 percent
of all of our money spent was on Patents'
operations, so. As I mentioned, the currency arc
has us at $2.016 billion. That is last year's
level plus the supplemental of $129 million. That
was 1-8-8-7 billion plus the 129, it gets you to
But we're collecting money at a greater rate than that.

So we've -- because of that, Director Kappos has asked us to delay everything that we can possibly delay in case we have to live at the CR level for the year or else we can't continue. You know, we couldn't overspend, so we'd only have seven months to kind of adjust. So if we spent too much money during the CR period, you know, then you've only got seven months to adjust for that.

So besides hiring in areas like Trademarks, TTAB, and patent examiners, we've slowed up all non-patent examiner and other hiring. So if we lose somebody in the IT world or CIO or CFO, we're not filling that job. We're kind of on hold. We're going through the process. And then if things look good after March 4th, then we will actually give job offers.

So there are exceptions to everything, but it makes it challenging for all government agencies to operate when you don't know what
funding level you're going to have. Similarly, travel, training, supplies, equipment, everything that comes our way, if it's not absolutely critical, we're saying let's hold off till after the CR. Pretty common for all federal agencies. It's just difficult when we know we're collecting the money, if we only had access to spending all the money.

So if we had a full-year CR, as I mentioned, you know, Dave Kappos, Director Kappos, testified a couple weeks ago before the House Judiciary Committee and they said what would happen at a full-year CR? He said it would be a disaster. I don't think I gave him that word, but I wholly support him using that word because it would be disastrous. Everything that we've been moving towards, we would have to actually stop just to maintain, keep people on board with salaries, just to be able to pay them and keep, you know, our systems on, the lights on. But we couldn't do any more development.

And, of course, that would then affect
patent pendency and backlog. It can only go the other way, the opposite way of where it's going right now.

Now, here's the trick: Monday, the President releases his budget for 2012. It's very challenging when we've been developing a budget for six months with the Office of Management and Budget and the President's Office, the entire government's been developing their budget, and they don't know what we have for '11. So how do you actually drop a budget or develop a budget or deliver a budget for '12? So our situation is very dependent, of course, if we either ramp up or we ramp down. You know, everything that we say that we're going to be able to do with '12 depends on a surcharge authority and full access to our fees. If we don't get this authority in '11, we will not be able to meet many of our targets, which then, of course, means there's no way we'll meet them in '12 regardless of what we propose. So it's very challenging.

On Monday, we're going to have a press
release go out and, you know, we are hoping for the best. But you have to also plan for the worst in case of if '11 results in a funding level that does not sustain all of our goals and targets, we're not going to be able to meet our '12 targets. If we stop hiring, that means you cannot continue to process the workload. So, you know, we continue to educate, you know, our new staffers on the House Appropriations Committee especially because it's a good dialogue, it's just we're different than others. We're not full budget authority and we are collecting money. With the money we're collecting is workload that just piles up. So I know you all understand that. I just -- you know, it's the mantra that I'm constantly telling people because we're a little different.

So here's the schedule. You know, you've all seen our budget. I can't release anything here in a public setting until Monday; it's embargoed. But it would support us meeting our strategic plan goals in 2014 and 2015. So I consider it a very fair budget. I think it will
have the support of our stakeholders and 
constituents and members of Congress. But it's 
just a matter of whether we'll be able to do that 
in sync with what they decide to do for '11. 

So Director Kappos is actually 
testifying on March 2nd to the budget that gets 
delivered on Monday, so it'll all be publicly 
available. We'll get you individual copies, but 
it'll be on our website as well on Monday. And 
so, you know, starting next week we'll be getting 
many, many, many questions once it goes public. 

Any questions or thoughts? I know I 
went through that pretty quickly, but I've been 
talking to it a lot this week. 

CHAIRMAN FARMER: Thank you for doing 
so. Just for everyone who knows, our Money 
Committee on TPAC consists of James comely and 
Anne Chasser. And so actually I'm going to turn 
things over to them if they have any questions or 
to lead any discussion for this. 

MR. CONLEY: Thank you, John. Tony, 
thank you for your comments and thank you for your
group's representation in the subcommittee yesterday. We had quite a discussion about this.

TPAC certainly echoes, you know, the interest in resolving these issues and moving towards a more sustainable model as per what has been expressed in our annual report, and the record reflects that. We want to do whatever we can to get you that kind of surety in our planning so that we can have operations and IT investments that advance our collective interests.

And in yesterday's meeting, you know, we were looking over what were the foundations of many of the things that drive costs and the like, and some of that is the manifestation of what has been put in place over time through the ABI accounting system. And I thought it would be good just for the record for you to comment on how the workflow has changed since, for example, when I started on TPAC in 2008, when we had to go through the trouble of doing this annual study. But because of the system and its maturity, now our visibility of costs on an ongoing basis has
considerably improved.

MR. SCARDINO: Yes. Okay, I've been here five months, so I wasn't here in 2008 when you joined. But I would -- and I've talked to my staff and my colleagues, and credit you and your colleagues for helping us to kind of make the system more mature. You know, it's an annual requirement (inaudible) circulate 1-25 (phonetic), so it wasn't anything that was just placed on us to do.

Having said that, since we are -- how would you say -- more transparent than most organizations on money coming in versus money going out, you know, statutorily we have to be, our modeling has improved and our systems of collecting this data has improved tremendously where it's just a normal part of our workflow. We collect this data actually on a quarterly basis and we provide it to the subcommittee on a quarterly basis. So we'll still do an annual report and provide that information, but it's just a normal part of our process now. It's not like,
oh, time to do the annual report. That's just part of our process.

And, you know, I applaud the subcommittee as well as the committee for helping us to see the wisdom in that as well as it really was an inevitable place for us to go.

MR. CONLEY: No, and as these, you know, funds become more challenging to manage in a predictable way, seeing all those costs in real-time is very helpful from a managerial perspective.

MR. SCARDINO: Exactly. I mean, that's the reality is we would like to provide oversight in others. You know, we can get asked at any point in time by GAO or House Surveys and Investigation, but the reality it's a management tool first and foremost. So it's very helpful for all of us.

MR. CONLEY: We didn't have any other questions, Mr. Chairman.

CHAIRMAN FARMER: Okay, thanks. Any questions or comments from other TPAC members?
Howard?

MR. FRIEDMAN: Well, I would just reiterate, as we have in prior meetings, that we are different. It is one of those matters where labor and management and industry are all on the same page. It is imperative that we get our money, that we have fee-setting authority, and that it helps the economy. It creates jobs and it allows people, when they get appropriate protections, intellectual property protections, to get financing and to get venture capital funding. And we will continue to work -- labor will -- with the office and with industry to do whatever we can on the Hill.

CHAIRMAN FARMER: Great, thank you. Any other comments or questions from TPAC members? Anything from the members of our live audience? Okay. Tony, then I think we're done. Thank you very much for coming and giving us your report. We appreciate it.

MR. SCARDINO: Thanks for having me.

CHAIRMAN FARMER: Okay, great. James,
your mike is still on.

We will now go over to John Owens, the chief information officer. And our TPAC champions on technology are Maury Tepper and Tim Lockhart. And so I'm going to sort of stand aside and turn things over to you, John, and I'll let them be your primary interlocutors. So thanks for coming.

MR. OWENS: Thank you and good morning. I have to say it was nice to welcome back Maury to the team. I look forward to working with you on the IT matters.

So after last time, I want to give you all a brief review of Trademark Next Generation. And I'm going to set a little expectations here after talking to Mr. Kappos and, of course, Debbie. First is we're going to take the time to do the right thing. I know Mr. Kappos as well as myself always like setting very aggressive goals, and sometimes we don't meet them, but we're just not going to run out and spend your hard-earned money. Right? We're not into that. We want to
do the right thing for the agency.

As I reported last time, we did hire an independent third-party expert to come in and review both the CIO and Trademarks. And we are working very closely with Gary Cannon and Debbie in Trademarks and my team to incorporate the recommendations into our plan to build the best system we can for you.

And if I could just make one comment, I think that one of the things that it brought to light -- at least for me and I know several members of the team -- was that Trademarks is a lot more complicated than a lot of people think. So it was a good amount of progress actually made behind the scenes.

So we did hire a Trademark Next Generation program manager dedicated just to this program to help us take all the various pieces of the current system and where we'd like to go and migrate and merge them together; working as a liaison with a direct-reported line to Mr. Kappos as well as myself; program plans delivered on
12-2010 to stand up a separate virtualized internal platform.

We hired contractors temporarily to help us with architecture. We are letting, as soon as we are allowed due to finances, an SL position or two for architecture in the -- architects in the organization that are actually federal employees, but this is a good stop-gap measure until that happens.

And the IT platform plans and investment decision documents are sent up for -- were provided for recommendation on 12-16. So things are moving. Now, they are moving a lot more behind scenes and it all affects you, but I would like to talk a little bit about a product delivery that we made in conjunction with Trademarks in a greatly improving collaborative environment, and that's TDR II.

I would like to point out that we demoed this for everyone last time and we did make our beta date for deployment on 1-28 of this year. The beta version is up and available. We are open
to receiving feedback on that product online. We have future pilots versions in iterative releases going to start happening, the first one to include multimedia services, sound, and video. We're hoping to get that in March.

Two additional cloud pilots are in the planning -- early planning stages: One for TARR and the other one for search. And we are exploring a private cloud for Trademarks as I had talked about previously, which is basically a virtualized infrastructure. And we're planning on releasing that into production so we can migrate our systems to it in the fourth quarter of this year.

If you had noticed a little snippet of the website up on top when you go to the Trademark Document Retrieval System, or TDR, you have the option of using the legacy system or the new one. I would highly encourage your members to please use the new one and let us know. It is much more interactive. It is exactly what you saw last time cleaned up, tested, and rolled out. I was very
proud of the team.

Remember, the front end to this product is housed in the global cloud and the backend is securely kept here behind our DMZ. So this is one of the first efforts not only for the federal government to go into a public space, but because the documents for TDR are public we felt it was more than capable of using a public offering in this instance for the publicly available data while securing our backend behind our security systems here with very secure links between Google and ourselves.

So please, please, use the system and provide us feedback. We'd love to hear what you have to say.

Some more planned activities that we have. We are updating the Trademark Next Gen capital investment decision paper in March with all of the sundry plans and changes that we'd like to implement. There are several main portions. First is that separation and virtualization that we've talked about before, we want to create that
separate Trademark environment. We are going to stand up, as I said, that virtual cloud internally before the end of the year and we would like to start to migrate systems to it. Approximately 28 that can be migrated will be done through the plan that we currently have through 2013.

We're going to develop an infrastructure that brings in common, what's known as services-oriented architecture components: The enterprise service bus, a more robust content management system, a business rules engine, and a workflow system. And we plan on getting those core components of a foundational system for the next generation by the end of this calendar year.

We are also going to do a study on case management systems which we plan on having done for the fourth quarter.

We're going to improve our internal processing, focusing on the completion of several products mostly FAST. That will bring additional functionality to several teams internally. We also are going to look at TICRS next generation,
developing a new generation of TICRS based on this
new architecture, a similar functionality that was
brought to the public with TDR II, but for use
internally here at the USPTO.

We're going to continue to improve our
e-government initiatives by upgrading the current
web-based services to include additional features.
Some more functionality will be provided to TEAS
4.8, and more details in the near future. And
we're going to continue to develop our reference
systems, the document reference system which will
allow us to house not only the TMEP, but the MPEP
and other documents for the various court systems
and reference manuals for the agency, and that is
ongoing.

Speaking of the TMEP, I don't know if it
was previously talked about, but the release of
the initial look at what it will look like, a
commenting system for people to comment. It's a
couple of chapters or a chapter 1200 and Section
904.03 for the TMEP. Please don't ask me what
those are.
We're provided to the public with the use of the IdeaScale tool for comment. As I understand we have received zero to none after talking with Meryl. Comments on the tool, that's been very easy to use. But we are receiving comments on the sections. And for any CIO that's good news because I don't want you to have to comment about the tool. The tool should be seamless enough to use. And the comments back on the substantive work that we'd like to do or get comments on, on the chapters and such, is what's important. So that is going splendidly.

Also, the reference document management system, that is the RDMS system that we are migrating to for housing the TMEP, MPEP, TBMP, et cetera. It is planned for a beta release internally on March 2011, and that's for internal use only. It will not supplant the external system that's currently available today.

Now, depending on how that goes, as long as we have an equivalent or better performance on the system and functionality on the system, we
will then set a date for public release of the
product.

Other progress. We demonstrated for you
the last time the new employee universal laptop.
Beta was deployed on 1-15. It fixed several
issues that Trademarks had during beta 1. I think
off the top of my head beta 1 had 93 bug reports,
which, in general, considering there's over 100
applications for the various business units, was
pretty doggone good.

We did hit one small snag with Beta II,
with FAST that I believe were already corrected.
But the production rollout is still planned for
March. And we plan on the complete deployment
everyone in the organization to be done by FY
2012.

In conjunction with that, as you had
seen last time, we are providing a new phone
system for the agency. And that's the same phone
system that will be available whether you're at
home or in the office. For those of you in the
audience that have seen or used beta 2, you have a
new phone on your desk. And that phone is part of a larger changeover. As we change out your computer, we give you a whole new voiceover IP phone. We totally upgrade the telecommunications and collaborations suite, including new video conferencing tools at the desktop for the employees to use. And this will also happen at the same time starting at the end of March.

So we've had a few issues lately. The first being the (inaudible) with PTAS. And what that is is the Patent and Trademark Assignment System. We had deployed a patch to this very old system. It was one of our worst systems, as a matter of fact. And we tried to patch it together to hold it together while we operated next gen back in November. What we did not notice right away was that the system as intermittently failing to deliver assignments. And when it came to light it developed a little bit of a backlog.

What we have done, using an agile development methodology, is we are releasing almost weekly patches to the system, which, on our
current schedule, will end in May. In the meantime, we are also looking at developing a new system which, hopefully, will fix a few of the issues that have been brought up here before, namely e-mail and replace of fax and deeds, the underlying documents available to the public at the same time.

So it's a two-pronged approach. First, we have to get stable what we have. And the second, we're looking at what it would take to actually upgrade the system to allow for the e-mail instead of faxes in particular that was talked about last time.

We also had some issues with the Trademark Examiner Search System. Several batch processes that happen in the evening got large enough where they started to collide or overlap. We re-spread those out with the appropriate amount of time and we're looking at ways of optimizing that system for better performance because without it, examination slows down and we don't want that to happen.
I'd be open to comments, questions.

MR. LOCKHART: Well, John, you know,

once again I want to thank you and your team and
also the senior folks on the Trademark Operation
for a very good subcommittee meeting yesterday. I
thought we had a very good exchange of views. You
know, obviously you're continuing to move forward,
making a lot of progress. I appreciate your
resetting of expectations regarding when we're
likely to achieve Trademarks Next Generation.

Is it fair to say based on your slide
headed "Planned Activities, Continued" -- I guess
this is number 6 -- that you say we're going to --
in terms of implementing the program plans and
separating and virtualizing the systems, and
you're saying that roughly 28 systems can be
migrated through February of 2013. So is it fair
to say that we're about two years away from
substantial implementation of Trademarks Next
Generation realizing that you're going to be
taking steps along the way? And I realize it's
not a situation where, you know, on a Friday we're
under the current system and on a Monday we're
under the new system. But is that fair to say
that we're about two years out?

MR. OWENS: If you're looking at the
overall scope of the project, two or three years
from end to end would probably be accurate. I
would like to point out, though, that we have done
some things to start it where we thought it was
appropriate. And that -- by "we" I mean
Trademarks and us, the CIO; namely the TDR
product. Here we had a product that regularly
failed, that wasn't useful, that people had a lot
of complaints about, and we introduced a
replacement that was not only much more modern and
embraced some of the newest technologies that gave
the folks in CIO and Trademarks enough time to get
to know and understand and work with, but is much
more stable.

You will continue to see -- I think one
of the major things that changed is the concept of
going from one gigantic big bang, we're going to
do it all at once, one day we'll flip a switch to
a much more evolving system where over a period of
time you will see changes like improvements to
TDR, improvements to tests, and so on and so
forth. As we migrate the backend systems,
hopefully, you will see -- which is the goal --
better performance, better stability, better
resiliency, like I had talked about before. But
those major improvements that will affect the
consumer base or our constituency will be seen
along the way. It's not going to happen all at
once. You won't have to wait till the end.
I know Trademarks, Debbie and her team
and Gary, have collected an enormous amount of
feedback from what customers would like to see,
and some of those things we're already
incorporating into plans that we have going on
today so that you will see progress slowly but
surely sprinkled throughout that amount of time.
As I said, one of the things that I think we
learned over the last few months was the -- which
I thought the situation with the Trademark system
was enormously complex. I think now I understand
that it's gargantuanly complex, much more complex than I had originally looked at myself or even parts of the team. And I think we've come to a new understanding that evolutionary method to get us from where we are to where we want to go is much better for the agency and much better for you all. But what it'll mean is you will see slow and steady progress instead of being able to count down the days to an hour and a date and a time that, you know, more than likely wouldn't have come.

MR. LOCKHART: No, I appreciate that and I think that's a good approach. It makes a lot of sense. And so I know the trademark community will continue to see the incremental rollout of these various improvements and enhancements to the system as we move toward full implementation. So it looks like we're going to be about two years along that evolutionary process before we could say it's substantially complete. Okay. But I certainly do appreciate the fact that -- like you already have information going into the cloud,
you're already in the process of implementing it.
You certainly have a lot of planning activity
still going on, but you're also implementing
things. And so I do appreciate that.

It looks like from your slide on VOIP
that you're going to start rolling that out at the
end of the next month. And do I remember
correctly that you think it's going to take about
a year assuming the funding is there to get all
the new laptops and phone instruments out?

MR. OWENS: That would be accurate.

From the start of March on, to hit every last
individual here, every contractor and so on, well
over 12,000 PC setups, which we're delivering the
phone at the same time we're delivering the PC.
And you might say to yourself, well, why are you
doing that? Just to recap last meeting, a couple
of reasons.

One, the voiceover IP system is heavily
tied to the collaboration system called UBCS that
we are deploying, which means the phone system,
the voiceover IP, whether the user has a headset
or a handset, combined with the videoconferencing tools that we're -- and document sharing tools we're putting on everyone's desktop, are all the same Cisco products. Well, a couple of Microsoft products thrown in there. So they're innately tied together because if I don't deploy them at the same time, what'll happen is we will actually regress in capability.

Today, running under Windows XP, we have a legacy system for a company that's defunct -- Nortel -- and the system is known as MCS. It's their collaboration suite. That product does not work on Windows 7 in a stable manner and, therefore, if we were to deploy the new laptop with Windows 7 and all the latest capabilities, we would not have that functionality. And that's not going to be useful for us as we deploy across the United States a wider workforce. So there is an unfortunate but inherent tie to this voiceover IP system which provides that fundamental infrastructure on that brand-new network that I and the team have built over the last few years
that is now done, and that extra bandwidth that I
had ordered from, you know, to increase the
capability of the data coming in and out of the
agency. So there is a focal point there.

We also wanted to make sure we did not
disrupt the examiner more than once. When we have
been practicing during beta 2, coming into your
office at night, taking away the old equipment,
migrating all your data, putting all the equipment
back, so when you get in you have a phone and a
laptop when you arrive. Now, I've been a victim
of my own work here from day one. I started as a
beta 1 customer. The only phone on my desk is a
Cisco phone. I use it every day. The laptop and
the only computer I have in my office is one of
these laptops. And I believe in eating my own dog
food. So several members of my staff are exactly
the same way. We pay the penalty first. And I
have to say that the system works pretty well even
in the beta condition that it's in.

So because we don't want to have that
disruption, we're going to change it over all at
once. Now, that does make us heavily reliant on funding. Now, I know you all heard from Tony a minute ago, but remember, even though the laptops -- of course, we've already purchased many of them and with Trademark funds we could easily purchase the rest -- we cannot use Trademark funds to purchase a foundational system for the entire agency. And you can't get half of a VOIP system and you can't get half pregnant. It's just not done. So we do have a serious constraint there with making sure that we acquire the funding to move that program forward.

And though some IT projects were delayed to make sure that you all understand, Mr. Kappos did not delay universal laptop during the CR or the voiceover IP system because it is critical to our future success here at the agency. Replacing these 7+ year old computers and outdated systems with a fully modern, single baselined with variances for the Business Unit, fully FDCC controlled, fully secured desktops that allow mobility across the United States is critical to
the success of the entire USPTO, not only
Trademarks.

MR. LOCKHART: And, John, refresh my
reollection. What is -- what do you call the
report that you put out I think about once a week
that has the status of all the pending Patent and
Trademark IT projects? You got an acronym for
that, I think.

MR. OWENS: Well, yes. We use the
Enterprise Project Management System from
Microsoft. It's basically Microsoft Project on
steroids. All project tracking status are done in
that enterprise system. It has been for well over
a year. Our customers have access to that system.
Chris Doninger and company, you know, Gary and the
people in Trademarks, folks in Patents, have full
access at any time to look in the system. What
you can pull out of it is a full accounting of
what we're spending, what we're spending it on,
the current status, burn rates for our
contractors, the amount of money we spent, and it
all ties back to the financial systems, the BPI
model that was before mentioned. All of that ties together in the system, so we have a complete and accurate reporting on each and every project that is going on, where it is, what it's doing, what it's spent. And that is available to everyone. That is the system we use. EPMS is the acronym for it.

MR. LOCKHART: EPMS, yeah. Well, I appreciated your discussion of that in the subcommittee meeting yesterday. I think that's a very useful tool, although, you know, as I said, quite frankly, some of the technical details are above my level, but I know that you understand it all. And I think it's great that the Trademark folks have access to it and they can provide comments on it on an ongoing basis.

And I want to thank Maury for what I thought was an excellent suggestion that our subcommittee spend a few minutes, you know, every time we're here for the TPAC meeting reviewing the most recent version of that and just getting an update, you know, at a more granular level than is
appropriate here exactly where you are. But I think that's a wonderful information-sharing tool, and I was just real pleased to hear that certainly on the Trademark side, but also on the Patent side, that people have access to that information.

I only had one final point that I wanted to make, and this came up in our meeting yesterday. We were talking about PTAS, the Patent and Trademark Assignment System. And one of the characteristics or maybe a key characteristic of Trademarks Next Generation is that it will separate out completely trademark processing from patent processing. And here we have a legacy system where the assignments are processed, you know, both for patent and trademark through the same system. And apparently, this issue about would it make sense -- and I don't know that I've thought this through enough to know that I have a firm opinion on it yet, but would it make sense to separate out the trademark portion of that and record those assignments and issue the Notices of Recordation completely separate from the way it's
done on the Patent side? And maybe is that something the Trademark Operation should be doing as opposed to your shop? And again, I haven't really thought it through yet, but apparently that's an issue that hasn't gotten a lot of attention.

So I would recommend that you and Debbie and your folks think about that maybe between now and when we come back in June and maybe, you know, give us your thoughts about whether it makes sense to completely separate that out as you're talking about going toward e-mailing the Notices of Recordation and making underlying documents available for review. You know, does it make sense to separate that out and should it remain under OCIO or perhaps should it go to the Trademark Operation as part of Trademarks Next Generation?

MR. OWENS: I will be more than happy to have that discussion with Debbie in Trademarks. That's not a problem. I think it was we just hadn't got to it yet, but more than happy to have
that conversation.

MR. LOCKHART: No, I appreciate that fact. It's just, you know, as you say, this is an extremely complex system that you're trying to develop. You're having to keep these legacy systems operating. You know, you're flying the airplane while you're trying to build a new airplane on top of it. So I certainly recognize the complexity of that. But it's interesting that, you know, we have a lot of smart folks around this table, but that particular issue, I don't know that it had ever come up before, so I think that would be something worth looking at.

MR. TEPPER: Thank you. John, just a couple additional questions or points to follow up. And I'm very pleased that you have come to appreciate the complexity of trademark systems. I'm convinced we need you to come out and help us get the word out to some of the associations and the external customers of the agency, who often take a look at the form and say, well, why can't they just change that blank? That looks like it
ought to be really easy.

MR. OWENS: Be happy to.

MR. TEPPER: Also glad to hear that you believe in eating your own dog food, although I hope it's at least steak, if not caviar, for our future system. (Laughter)

MR. OWENS: Sometimes I don't ask.

MR. TEPPER: You touched on this, but I would like to go back and maybe just underscore a little bit more for the benefit of the record. We've heard our CFO's presentation today and you mentioned some of the impacts on these projects and the systems here that, you know, failure to obtain the funding that we are seeking would have, but if you could go back and maybe just clarify a bit. And you don't need to go into detail, but I'd like kind of underline just how significant an impact it would be if we are not able to obtain funding on everything that we've heard today from your shop.

MR. OWENS: Sure, I'd be happy to do that. So IT over the years, prior to when I
arrived, funding had been taken out of the IT shop
to fund other initiatives, mostly in patents, for
a number of years, mostly hiring actually and
patents. And, of course, the IT stability waned.
You know, the IT organization did not grow. We
did not change out. Everything from the legacy
desktops that are on everyone's system, you know,
is the foundation of everyone's interaction with
our systems today to the very old, archaic
hardware and software we had deployed.

And those of you on the TPAC today that
had reviewed it or were here at the time, my
office had produced, just as I -- with my help
before I took this position, a roadmap, a
five-year roadmap to improve the infrastructure of
the organization and never get into that situation
ever again. Because it is incredibly detrimental
and it takes a lot of time and effort not only
from the CIO's part, but from an entire agency's
part to get out of.

Now, during the issues we had with
finances in 2009 and so on, that five-year plan
went to a seven-year plan. And when Mr. Kappos came on board, he told me, no, it will be a five-year plan. You have to catch up. And, of course, that had to come with the appropriate level of funding, which we were happy to receive. And I have to tell you, if you look at the status that we produced on that board -- on the dashboard an about that program, we are back on track having mostly recovered. A couple of smaller programs in the yellow, but mostly everything else green for the entire roadmap today and we are back on the five-year plan. Now, we still have two more years on parts of the plan and then, of course, we just operationalize the rest.

But where the big overlap is is not with Trademarks Next Gen. I mean, Trademarks Next Gen is funded out of trademark fees, and they have a fence around them and I understand how all that works. And, of course, that's not the issue. The issue is those foundational programs that tie the entire agency together, and they have significant overlap.
Now, we already put in a new network, but things like bandwidth in and out of the agency. There's no way to separate the bandwidth needed in and out of the agency to just go to, you know, 500 desks. You just can't do that. The voiceover IP system, significant overlap; the collaboration tools, significant overlap. The support of development or deployment of any core system or upgrade or patch that would affect the entire core as a whole, of course, all relies on that unified money, most of which -- some 90 percent, I believe -- comes from patents. And if we are not allowed to retain and use our fees and do suffer from them being diverted from this agency, we will not carry those core foundational programs forward. And that will impact negatively trademarks, not directly, but indirectly. And that pain will be felt just as hard as it would have been felt if it was directly affecting the Trademark Next Generation program.

So what I think is important to realize is, is that we as an agency operate with some
common environments, whether it's the environment here or upgrading servers or whatever. And even though we are migrating to a separation of systems, there are fundamental infrastructure systems that will never separate because it just doesn't make sense in the business and there's no reason to increase costs just to duplicate something that would not have significant use.

So I am very worried. And in fact, the things that keeps me up at night is whether or not lately I will get the fees that -- well, the agency will get the fees to fund the programs that I have going and we do not slip back into a deficit when it comes to executing the roadmap that quite honestly is doing quite well, and I'd like to continue it that way.

MR. TEPPER: Thank you, John. I think we all agree that's the last thing we'd want to see as well.

You also mentioned in your remarks, I know you mentioned Chris Doninger and you mentioned Gary Locke and meetings with Debbie and
some of the reporting tools you have, but I think it'd be helpful if you would maybe provide just an overview of the mechanisms in place for OCIO maintaining and receiving input from Trademark Operations on these projects, on the content and how you all are able to adjust along the way.

MR. OWENS: Just a small correction.

Secretary Locke doesn't attend the Trademark meetings, but it's Gary Cannon, my counterpart in Trademarks that I meet with. Though Mr. Locke is a very nice guy, he's got bigger problems.

(Laughter)

The -- actually Trademarks' relationship continues, in my opinion. I'd like to hear from Debbie as well as she'd like to grow and improve.

We have several meetings at a working level that happens without management every week on every project. We have the EPMS system as the central gathering point for all of the projects' status. We have two major programs: One on legacy and one on future systems, each of which hold meetings. And then we have this big meeting
called the TM meeting that's gone on for some
time. And I think from where it was when I first
started a couple of years ago for where it is
today has incredibly improved the collaboration
and communication between the two organizations.

And we regularly scrubbed EPMS reports.

We regularly take in work and have conversations
at at least three different levels in the
organization. The first and the lowest level
would be the working level right up and through
what's known as the IT liaison level, which is one
of the fundamental first steps in our executive
review process for funding programs. So the
number of times we meet from beginning to end, you
know, whether it's Debbie or I or my deputy and
Debbie or some combination thereof, right down to
the people actually doing the work, meeting with
the contractors, and delivering the products and
services is happening at a much greater level than
I've ever seen it before, and it continues to
improve.

And I think that some of the systems
that we've employed in a centralized way, again, another central system -- the EPMS system -- has helped that collaboration by not having, you know, 10 or 12 pieces of paper all circulating, but one centralized system that everyone can put in their comments, everyone can derive the status, everyone can look and track the spend, the money, who's going what, the time, the schedule, and so on in a very standard way has helped that collaboration immensely.

COMMISSIONER COHN: Yes. I think that we have made extra and very pointed efforts to increase our communication with one another, to increase our collaboration, and to commit to making sure that we achieve the goal, which is to, you know, improve our systems, maintain our systems, but -- you know, particularly with regard to Trademarks Next Generation, to move forward and get something accomplished. So, yeah.

CHAIRMAN FARMER: I have one really quick question and that is as far as access TDR is concerned, I don't know about others, but I know
in our shop the common way we would get there
would be to go into TESS and to search for a mark
either by serial number if we're just checking
something on our docket or just entry of the mark
if we know we're going to get to it that way. And
then at the top of the screen there are various
options to go into other databases, and one of
them is TDR. And then you click on the TDR button
if you want to see where things stand or maybe
you're checking on a mark that you're trying to
push aside in clearance.

I think presently if you take that route
-- go to TESS to get to TDR -- it takes you into
old TDR. And A, am I right? I think I am. And
B, if so, if there's a plan to migrate that link
over so that folks who entered the system via TESS
go into the new TDR.

MR. OWENS: See, that's an interesting
user observation that no one in my shop would ever
know. So I'm more than happy to take that
feedback, Mr. Farmer, and I will figure that out.
And either we'll put two links there, an old one
and a new one, or have an intermediate step there. Hopefully, just two links that will encourage people. I don't really want to replace the old one just in case something happens or someone doesn't get what they want, but I do want to highly encourage and make sure both options are available. Thank you, sir, for that observation.

CHAIRMAN FARMER: Thanks. I didn't know I was that smart. It was actually just a question, but thanks for looking into that.

Any other questions or comments from TPAC members?

Any question or comments from members of our audience?

Okay, thank you. John, thank you very much for your time. We appreciate it.

Are there any questions or comments or whatever from anyone on TPAC regarding any other issues that they want to bring forth at this time?

Any questions or comments or statements from folks who've attended today that they wanted to bring up to TPAC?
Okay. In that case, we're done. Thank you very much for your time. Thank you for coming. Thanks for all the people who have visited with us over the past couple of days.

Administrative note -- well, two. One, our next public meeting will be on Friday, June the 3rd, same bat time, roughly the same format. And we in TPAC have already set our schedule for public telephone conferences and we will try to get those to the office so they can get those up on the web soon for those who like to listen in on those.

And for our TPAC members only, what I'm going to suggest, so I can grab you all before we all dissipate, is that we just take like a 15-minute break, grab lunch, and just bring it back here and let's have a quick working Executive Session.

(Whereupon, at 12:01 p.m., the PROCEEDINGS were adjourned.)
CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

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Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192