AGENDA

Welcome

JOHN B. FARMER
Chairman

USPTO's Draft Five-Year Strategic Plan

LYNNE BERESFORD
Commissioner of Trademarks

USPTO's Financial Status

MARK OLECHOWSKI
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TTAB Matters

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Trademark Operations

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Trademarks Next Generation

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Office of the Chief Information Officer

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MR. FARMER: Good morning everybody.

Welcome to TPAC. I'm glad you all are here in our
cozier confines this time around. Thank you for
coming. We're thankful that it's not snowing and
thankful that apparently it's not going to show so
we can proceed as usual.

This meeting is being webcast
in addition to transcribed. This transcription of
this meeting will later be posted on the TPAC
portion of the USPTO website. We welcome those
who are not here in person but are watching at
home. You can send in questions or comments for
those of you watching at home to the email address
asktpac@uspto.gov. Again that's ask, a-s-k, TPAC,
t-p-a-c, at USPTO dot gov. Here's how we're going
to handle questions today. It's the same way
we've done it in the past few meetings. That is,
we have time blocked off for various topics and
various speakers and generally their presentations
will only one about a fifth of the time that we've
allotted. Then we'll have questions and comments. I'll first turn to members of TPAC for any questions or comments they may have. After that to the extent we have time I'll turn to members of the audience. Since they've made the effort to come here in person, we'll give them the next priority in asking any questions or making any comments. Then to the extent we have time available still after that, I would read in any good questions that come in from the folks who are watching at home so that they have an opportunity to participate also. It's possible sometimes that questions don't actually make it to me until after we've moved on to another speaker or another topic, and if so, we'll handle that on a case-by-case basis. We are looking to wrap up by, I forget what the schedule runs as, but 12:30 or 1:00 today. I know some people have meetings after this meeting and so we'll try to keep that on time.

I've not checked the TPAC portion of the USPTO website in the past couple of days because
I've been here, but all of the documents that are public documents at this meeting should be on the TPAC portion of the USPTO website so if those of you who are watching at home want to see those documents or those of you who are here want to see them later, you can go to that portion of the website and you can see what we see, that is, the briefing we receive at TPAC members.

I'd like to thank everyone for persevering through what's been called snowmageddon to get ready for this meeting. I know that threw kinks in everyone's plans and still we're ready and we're here and so we're thankful to everyone because of their efforts in doing that. We in TPAC realize that that put some people behind as far as getting their materials ready. That's a way of leading into my next comment, and that is one thing that we've tried to work out with members between our correspondence at the PTO and TPAC is that we aspire to get our public meeting agenda to you all 4 weeks before a TPAC meeting and we've asked and thought we'd
reached an agreement in the past that we would then get the public meeting materials at least 2 weeks in advance so that we've got time to study them and then also to be fair to the public so that it can be put up on the PTO website and the public can see what we're about to do since transparency is a good thing. We've run into a bit of a recurring pattern over the past few meetings where some entities seem to be slow in getting in their materials. I'm not going to name names, but it's often the same organizations that are slow, sometimes on the eve of, and so we ask folks to try to redouble their efforts to get us a materials a little earlier, and if you need us on TPAC to do something different or earlier in order to facilitate your ability to do so, please have a word on the side with your correspondent on TPAC and we will do everything we can to enable you to in turn help us out and help the public out. That's all we need to say about that topic.

        Having covered that, we're going to go ahead and jump into the meeting. I believe
Trademark's Commissioner Lynne Beresford is going
to deliver some opening comments on behalf of
USPTO leadership. Lynne, I give the floor to you.

MS. BERESFORD: Thank you very much, and
welcome to everyone who's here. All TPAC members,
we appreciate your attendance and your attention
to the issues that are important to the USPTO.

I'm speaking on behalf of Sharon Barner
this morning, and she welcomes you and is sorry
that she can't attend. She had something come up
that required her presence. I'm going to talk
briefly about the USPTO's strategic priorities and
the USPTO's strategic plan. As any of you know
who follow the news about the agency, the agency
has been struggling in some ways, the patent
pendency and the patent backlog has been an issue
in the press for a number of years and the funding
issues of the agency are also issues that we've
had extensive reporting about. Coming into this
agency it became obvious to all of us that we
needed a strategic plan that addressed the
problems that the agency had. I have PowerPoint
up on the screen which didn't get into our materials and I have some additional copies of this PowerPoint for folks who want it. I'm going to go through the PowerPoint to talk about the strategic plan and the important items in that plan.

I think perhaps, and I'll say this as Lynne Beresford, the most important difference between this strategic plan and other ones that we have is that we have Sharon Barner who is very process oriented and who has internally demanded that the business units come up with goals and dates and milestones for the things that are in the strategic plan. She wants it much more nailed down than has been the practice in the past.

Here are the strategic priorities that have been identified for the agency, most of them will not be a surprise, reduce patent pendency and patent backlogs; improve the quality of examination; improve and enhance the patent appeal and postgrant processes; demonstrate global leadership in all aspects of IP policy
development; improve the information technology infrastructure and tools at the agency; secure a sustainable funding model; and improve relations with stakeholders. I think most of those items are self-explanatory but they are the cornerstones of our strategic plan at this time. You may have noted that most of those items probably related mostly to patents. Yes, there is a trademark portion of this strategic plan and these are the parts of that strategic plan.

First of all, as always, trademark pendency and quality, even though we have good pendency and our quality is good, one most always pay attention to those things. They're very, very important. So part of our strategic plan is to maintain our first action pendency between 2.5 and 3.5 months. The second part of the strategic plan as far as trademarks is concerned concerns trademark quality and we have two things going on. One, some outreach on the accuracy of goods and services in applications and registrations following the Bose decision and we're planning a
seminar on that matter on April 26, you'll hear

more about that later, to establish what the bar

and trademark owner's position is on this

particular issue. Then of course improved

examination quality, and we establishing a new

external quality measure that focuses on the

excellence of office actions. Sharon will talk

about that more later too, but it's a very

holistic approach to quality. The quality

measures that we have in time in place really

focus on the quality of decision making. This new

measure will focus on the excellence of the entire

office action, everything from searching,

evidence, writing, decision making, the whole

office action, so this new external measure which

I frankly do not think we'll do very well on when

we put it in place I think is the kind of measure

however that will eventually really raise the

level of quality in trademark office actions and

raise the level of quality of the work done in the

trademark organization. Again let me say as the

Trademark Commissioner that we don't have a
perceived quality problem. We don't have people complaining constantly about our quality. Having been here many years, there was a time when that was true. It hasn't been true in recent years. Nevertheless, I think there is still room for improvement and so this is part of our strategic plan.

Then anticounterfeiting and antipiracy initiatives. We're going to be working on an educational program to develop public awareness on trademark counterfeiting and we're partnering with Customs and Border Patrol to develop an online system so that trademark owners can easily request customs recordation. So these are things that we'll be doing as part of the strategic plan.

Sustainable funding. This has been something that is incredibly important for the agency because we can have the best plans in the world and we can have the best intentions in the world, we have to have enough funding in order to put all of those things in motion and keep them in motion. As you can see, our priorities here are
full access to our fee collections, an interim fee
adjustment on patent fees, fee-setting authority
and the ability to have an operating reserve.
Those of you who are familiar with the federal
budget process know that it's a one-year-at-a-
time deal and for some people, carrying money over
is taken as a sign that you didn't do your
budgeting correctly.

MR. FARMER: We don't look at it that
way on TPAC.

MS. BERESFORD: No. I don't think it's
the way most businesses would look at budgeting.
We all know that you need reserves to take care of
things that happen in your business, but this is
not the way the thinking is in the government
necessarily, so that these are the authorities
we're seeking. In line with that we will also be
reforming the USPTO fee structure. Again we're
going to be looking at trademark fees, but much of
this we'll be looking at the patent fee structure
now and what we could do with it both to
incentivize applicant behavior and also provide
Here are the patent goals, 10 months to first action by 2013 and 20 months total pendency by 2014 for patent applications with an inventory reduction to 326,000 cases. Believe me, these are very ambitious goals. And achieve a targeted inventory level of 20 months per examiner. That's going to be done by efficiency improvements, by examination -- that is by hiring some more examiners and patents has some very exciting hiring options going on right now. They've made a push to hire back folks who have actual patent examination experience and they also are making a push to hire folks, lawyers, who have IT experience in patents. So those things are going on right now and I think those are going to help patents move their backlog. Then of course develop and employ a 21st century IT system that permits end-to-end electronic processing in the patent side of the house. I'm happy to answer questions at any time. I'm just giving these comments. Fee-setting authority as it says is
critical to achieve this success. That concludes my remarks for Sharon on the high-level strategic plan. There will be opportunity as we go through time of course for TPAC to comment on these items, and many of the items in the trademark area you have commented on already. We have talked about them and we will continue of course as we always do to bring our issues to TPAC and to give TPAC an opportunity to talk and give us their opinions and their insights into as what we should do.

MR. FARMER: Lynne, specifically on that, I don't know if you can speak for Sharon or for David, but do you have any information on specifically when and how the leadership would like to receive TPAC feedback on this modification to the strategic plan?

MS. BERESFORD: I do not. I think as we get closer to rolling the strategic plan out publicly, I think the plan would be to give the TPAC an opportunity to comment on the strategic plan. I don't know when those dates will be or anything of that nature. But as I said, at least
on the trademark portions of the plan, you've seen
them already and we've already talked about most
of them.

MR. FARMER: We have, but my feeling for
TPAC is that I'm not sure we've really appreciated
when we've had conversations in the past that we
were really feeding into what we thought should be
in the trademark portion of this update to the
strategic plan and I think that we would
appreciate an opportunity in the future to look at
it, to deliberate in order to bring back some
comments just in case there may be areas not
touched upon in the plan that we feel are really
important and worthy of inclusion in it. Mark, I
saw you raising your hand. Did you have some
information on that?

MR. OLECHOWSKI: Thanks, John. There is
actually a set process for issuing and developing
a strategic plan that's outlined in an OMB
circular and that does allow for first of course
informal comments through our relationships with
both of the public advisory committees, but then
there's a formal public comment period where we're required to post the draft strategic plan on the web and get input from the public, answer all those questions whether they be from in your role at TPAC or in your role as a private citizen and then congressional members and everything else. While I don't have the dates in front of me, we're still trying to iron those out, there would be both like I said an informal opportunity as well as a formal public comment period that will come up and we can provide those dates to everybody once we nail those down.

MR. FARMER: One thing I'm wondering is that we are on TPAC trying to get our next public meeting scheduled and I think right now we're looking at May, but we have to see how that works with our colleagues here at the USPTO. What I'm wondering is if that will be too late a time to put this again on the agenda and at that time in this public forum deliver TPAC's thoughts and recommendations or if it needs to happen earlier than that. Do you have any sense of that timing?
MR. OLECHOWSKI: When we're done with the morning presentations, John, let me go back, we have a draft schedule that has not been approved by the front office yet because we're trying to get our arms around it and I'll talk about it a little bit in my presentation where we have the higher-level strategic priorities set. What we're trying to do is get our arms around, and Lynne alluded to it, what all those lower-level action items and action plans and goals and objectives are and once we do that we'll have a better idea of what the timeline is. Certainly in the next -- I don't even want to venture a guess but I'll report back to you here in the next day or so what our draft schedule is. Like I said, it hasn't been approved by Sharon or Dave yet. That's imminent in the next couple of weeks in nailing down that schedule.

MR. FARMER: To fill folks in, I had a conversation with Sharon Barner in the run-up to this meeting and asked the broad question: How does the administration see TPAC providing input
on this? Is it something where it might be shared with us as a confidential document and we provide initial feedback before there's a public rollout or did she envision it as being a public rollout and then TPAC comes in? She said the latter. It seems like there is some potential that we could come back and say this is nice but we think you need another high-level objective, and I don't know how much that might shake things up. For instance, in the trademark goals here I don't see any mention of TTAB or our interaction with technology. I see the potential when you eventually come back to us that we could come back and start at the top and not down at the granular level, so just a heads up for everybody. On to whatever is next.

We're done with opening comments. The 5-year strategic plan is done. Report on financial status. Mark, are you doing that for us today?

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Thanks.
MR. OLECHOWSKI: Welcome everybody. For those who don't know me, I'm Olechowski. I'm the Deputy Chief Financial Officer. I'll echo Lynne's apologies. I know Sharon had intended to be here. I'll make some comments about where I think she is in my presentation because it's certainly important, and Karen Strohecker who is our Acting CFO is with here so we'll get some of these questions answered that you have about 2010 and 2011. I also have some duplicate slides from what Lynne has shown you and if I can go into a little more detail on those, I'll be glad to do that as well especially things on the sustainable funding model.

2010. While 2009 was a tough year, 2010 is proving to be just as difficult a year although for a slightly different reason. We started the year at the PTO with an expected collection level of 1887 and that as the authorized level from Congress was to authorize us to spend up to 1887. What we've seen since we started the year was a significant increase in patent collections, well
above what we were authorized at the 1887. When we submitted the budget a couple of weeks ago we were estimating that we'd collect upwards of $116 million more than we had estimated in the summer which is in fact where Sharon and Dave are this morning. They've been called over to OMB. We've been working with OMB and the Department of Commerce to try to come up with solutions for our 2010 issues.

I mentioned that it's different from last year. If you remember, last year on the patent side we had lots of plans but we didn't have enough fees. This year what we have is we still have ambitious plans, we're getting the fees in but we don't have the authority to spend those fees. It's a little bit different situation where last year we were trying to estimate where we would end up at the end of the year in terms of how much fee collections we'd take in, this year we know exactly how much we can spend, we can't spend more than 1887, and so now the challenge is to get access to more of those fees to do the
things that Dave and Sharon want to get done.

This is pie chart. Everybody likes pie charts. The point of this chart is we started the year with a certain operating plan in effect.

When we began the year we knew like I said we were going to have 1887 and that 1887 in the operating plans had no patent examiner or in fact no attrition hires across the entire agency except for trademarks. It had very, very limited overtime, PCT outsourcing at a contractual minimum of around $5 million, it did not fund a recruitment retention bonus for our examiners who we had taken in over the past couple of years so some very hard decisions were made. While we knew we could only spend 1887, we started to reshuffle the deck and look for additional sources of money within that authority cap. So what we've been able to do in the meantime by like I said some very hard decisions, we've looked at some patent contracts and we've decided not to get some work done. As you're probably aware, we did not pay performance awards to many of our employees. We
got a little bit of money I would say from Congress. We had planned in the budget for a 3.5 percent raise and we only got a 2 percent raise, so that was money we could recoup back into the plan so those dollars were now redirected. Where we are today on the patent side of the house in still spending 1887 is we've turned on a limited amount of overtime, probably around $34 million. We've gotten PCT funding up from the contractual minimum of around $5- up to around $12 million. We've funded the recruitment retention bonus this year for our patent examiners, and we are going to be able to hire about 250 patent examiners. Lynne alluded to kind of a new hiring model that the front office has implemented and it's to hire more experienced IP professionals who may have some experience in the business so that the training pipeline is not as long as it has been in the past, that they can come here and hit the deck running.

There are three categories of those folks. First are retired annuitants. We've sent
back letters to a bunch of our recently retired examiners and asked them if they want to come back and work and we're getting some response from that. We've sent letters and advertisements out to our IP community in general, that if there are folks out there who have the experience whether they worked in a law firm to come on and work for us. And then we've also sent letters to a lot of previous examiners who've left the agency in the last couple of years for various reasons, and so we're getting quite a healthy response back from all of those groups of people and we expect to hire with the money we have around at least 250 people by the end of the year. We'd like to hire more. We'd like to hire up to 600 but that would be dependent on getting access to our fees.

The 2001 president's budget. The president submitted his budget in the first week of February and this is new territory for the PTO. There are some different things in the budget. Lynne alluded to a couple of them and I'll be glad to expand on those. In general terms, we have a
new set of strategic priorities. This was an exciting budget formulation time with Dave and Sharon showing up I won't say late, but in terms of the budget process they showed up late into the process and so them trying to get their arms around the PTO and establish some new priorities, working on the new strategic plan, those priorities, and Lynne showed you the slide, I actually have it next as well, are in the budget and there are initiatives in the budget to support those strategic priorities. In the budget also we're asking for authority for an interim fee adjustment and that is part of the sustainable funding model that we're talking about -- that has in certain pieces and I have a slide specifically on that. We're asking for an interim fee adjustment of 15 percent of our patent statutory fees as well as fee-setting authority, and Lynne mentioned it as well, we believe fee-setting authority is the cornerstone to having a sustainable funding model.

We talk about in the budget multiyear
planning. While the PTO has the dollars or know
your dollars and we can carry them over from year
to year, we've made a much more I'll say
transparent-in-public effort in the budget to
explain to our stakeholders on the Hill and in the
public that we really do need to think about the
funding at the PTO in a multiyear manner where
just because we have something in the 2001 budget,
it's not a 1-year effort as Lynne had mentioned
that many other federal agencies operate under.
We do have know your dollars and so the budget is
formulated to do things in 2011, 2012 and 2013 and
manage those dollars from year to year and the big
part of the management of those dollars is the
establishment of an operating reserve. We've
always had an operating reserve at the PTO. When
we do carry over money that's where the money is.
But some people think that if you carry over money
from year to year that means that you didn't need
it and it's available for us. That's something
we're trying to educate people on, that the
operating reserve is a needed tool for an agency
like the PTO so that they can manage across multi
years and not having to worry about spending all
its money in 1 year when we know we have plans for
the out years.

   Strategic priorities. Lynne went over
these. These are in fact explained a little bit
more in the budget and we are in the CFO's office
working with the front office to take these
strategic priorities, not just these but the ones
from trademarks and the objectives for the CIO and
the CFO and all the other business units and craft
that into a strategic plan. While these are the
high-level priorities, underneath all of those
priorities are initiatives and goals and
objectives and targets that need to be rolled into
a strategic plan so that not only the business
units as Lynne talked about the PTO in general can
be held accountable for a plan that it puts out
there. That's what we're doing now and, John,
I'll get you the draft schedule as soon as we wrap
up so that you can have an idea of when that's all
going to leave the PTO.
The next page as Lynne talked about already, I apologize for having some duplicate slides, I wanted to make sure that we were careful to talk about what was important on both the patents and trademarks side, information technology is another key tenet that's in our budget this year. There is quite a lot of money that's been set aside, and I don't want to steal the thunder from the CIO's presentation, but we talk about our IT systems and not only making sure they're stable and able to accept the plans and the visions that we have for them both on the patents and trademarks side, we have two large projects that have been identified in the budget. Of course, you're familiar with the Trademark Next Generation, and then we have established a project on the patent side called End to End Processing and we've set aside quite a bit of money for those projects in the budget of over $100 million and I'm sure John is going to chat a little bit more about them when he gets his turn to speak to you.

This is a slide I want to spend a little
bit of time on. It is one of our strategic priorities. It's to establish and maintain and really cement a sustainable funding model. For those of you who have been on TPAC for the past year or two, you know that we struggled greatly last year on the patent side in terms of our fee revenues and our ability to get the things done. I think certainly the tough economic times at not only the PTO but the American and world economies in general experienced exposed some vulnerabilities in our funding model, that while it was certainly adequate for the past 20 or some odd years to work this way, what we found out was in a dynamic economic environment that it's probably not the model that we need to have for the future. We're tackling that with our OMB and our DOC and congressional stakeholders to have a model that will more adequately take care of the PTO and its needs for the long term.

A few things that we're doing. We've broken it up into short-term and long-term goals that we're trying to accomplish. Of course, in
the short-term we want to make sure we get access
to all. Our customers pay the USPTO fees to
provide a service and we want to make sure that we
not only provide the service, but we're making the
best use of all those funds. I talked a little
bit about an interim fee adjustment. Certainly in
our budget you can see the numbers. We've asked
for an interim fee adjustment and that is really
some bridge funding to take us from where we are
today to the sustainable funding model and
fee-setting authority where we're a well-oiled
machine and we're up and running. That interim
fee adjustment in the budget we estimated to bring
in over $200 million and that's to give us time to
determine what the fee structure should be not
only on the patent side but on the trademark side
as well so that we'll be working hard to get that
fee structure set.

Fee-setting authority we believe to be
the cornerstone of sustainable funding to give the
director with proper safeguards and everything
else the ability to set, maintain, increase,
decrease, eliminate the fees as necessary to
one operate the agency. Then we talked about a little
two bit about operating reserve. I mentioned that we
three have the operating reserve now and we're really
four trying to formalize it and educate people that
five it's a tool that we need and not just a place that
six we park money so that somebody could come take and
seven use it for something else.

In the long-term, the first bullet I
eight mentioned there a little bit about establishing
nine fees that better reflect the costs of services.

We're doing two very detailed fee studies on both
ten the patent and trademark side to determine exactly
eleven what our costs are for all of our services and for
defee codes. Between the CFO, patents
fourteen and trademarks we're looking at what the fee
fifteen structure should be in terms of covering our
sixteen costs, incentivizing the right behavior, planning
seventeen for the future, those are all things that are
eighteen underway right now. Then once again, the
nineteen maintenance and establishment of an operating
twenty reserve we believe is critical to manage the
A quick diversion back to trademarks. These are the numbers that are in the budget. It's the performance measures for the trademark organization through the budget period and into the out years. I see around the room we have our economists so if there are questions on what we believe or what you might think is happening to applications and workload, we'd be glad to try to answer those questions for you. You can see in 2009 there was certainly a dip in applications in the Trademark Office as there was in Patents and we're anticipating a little bit more slower growth in 2011 before it starts to pick up again. Then you can see as the workload begins to pick up that we plan on hiring more examiners in 2013 but not before then.

Some numbers. Everybody likes to see numbers from the CFO. This is the budget years from 2011 to 2013. There are two things I want to bring to your attention on this page. With the interim funding adjustment you can see that there
are $224 million that we estimate we'll bring in
because of the interim funding adjustment, and
that's all patent fees of course. The other thing
I want to bring your attention to is the couple
lines on reserve activity. This is where we're
trying to make a more transparent public
budget-wise identification of the operating
reserve, so in our budget we actually talk about
what money is in the operating reserve and how
much money will go into the reserve or go out of
the reserve as we implement these multiyear plans.
In 2013, the reserve balance does shrink down to
its lowest amount and that really is because on
the patent side in the budget we're trying to hire
1,000 people in 2011 and 1,000 people in 2012 and
while our fees and our interim funding will cover
those patent examiner hires in 2011 and 2012, they
really become a burden in terms of the finances on
the agency in 2013 because they're now here for
the entire year and this is the one reason we
really need to formalize the concept of the
operating reserve. We don't need that money in
2011 and 2012, but we will need it in 2013 to make sure that we pay all our bills in 2013 so we don't need anybody raiding our operating reserve because we're trying to look out into the out years and make sure that we can manage the agency across multi years.

The last side is the previous slide broken out by the patent and trademark business line. If there are any questions on any of the numbers or any of my presentation, I'll be glad to try to answer those questions that you may have.

MR. FARMER: I have a few, but before I do I wanted to turn to our folks at TPAC to look after money issues, and those are Elizabeth Pearce and James Conley. Elizabeth and James, is there anything you first?

MS. PEARCE: I don't think so. We went over this pretty thoroughly yesterday in subcommittee and I feel that as much as we can predict that we seem to be in a pretty good place. I think it's reasonable to expect that trademark filings are going to go back up again. I think
the plan for hiring new examiners when that happens in 2013 is a good one. I really don't have too many concerns. It's probably the overall economy more than the Trademark Office that I'm worried about at this point.

MR. CONLEY: I have one question for Lynne, specifically the bullet on the strategic priorities about demonstrating global leadership in all aspects of IT policy development. How does that work for the trademark side?

MS. BERESFORD: IP policy development is something that goes on internally between the OIPPE, the Office of Intellectual Property Protection and Enforcement, the director's office and trademarks. Various policies, depending on what policy is under discussion, each organization has more or less weight in the discussion. Counterfeiting and other issues mostly come out of OIPPE and they're the ones who are the lead on making policy decisions there. When you talk about policy decisions, for instance, goods and services identifications, the issue that we're
dealing with after Bose, that would be mostly handled within the trademark organization in conjunction with OIPPE and the director's office. I don't know that I'm answering your question.

MR. CONLEY: No. I was specifically interested in actually the leadership operative there. We're going to do something on the global scale?

MS. BERESFORD: Again that's the director's office and that will be rolled out in what we do and say in such organizations as APAC, WIPO at the WTO and other organizations of that nature when the U.S. weighs in or tries to lead on the various issues that are before those bodies. There will be some leadership of course coming out of trademark trilateral. We'll be having a heads of offices meeting this upcoming year where the U.S. will attempt to move people in the direction that we think things should be going. We're an acknowledged global leader in trademark IT and also in trademark performance measures and trademark quality. We're recognized as the office
that's figured this out and gotten it right. So in those areas we have a lot of clout. In other areas we have to weigh in with what we think is the right position and try to persuade others.

MR. FARMER: I have a comment before I ask a few questions, and that is I think I'm safe in saying that I express the sense of TPAC when I say that we fully support the office getting access to all of its fees. We don't understand why that would not be the case because those fees are paid for services to be performed at the USPTO and to trip away fees but to still require that the services be performed makes absolutely no sense to us. We've called for the end to fee diversion in our last annual report and that's a rock-solid position of TPAC and we applaud your efforts in trying to bring that about. Also we realize on the trademark side that we need a healthy patent side of the office too in order for us to be healthy. So we fully support the tremendous and good efforts of the current administration to heal the patent side and we see
a lot of progress and we've happy with the
initiatives that they're undertaken, and keep up
the good work on that. So keep going there.

A couple of questions. Right now we
still have the 1.887 billion-dollar budget for
this year and I wanted to know if we don't get any
relief, if you don't keep the money -- because
your money is coming in better, now you just need
to be able to keep it, if nothing changes there,
what does that mean for finances and particularly
for whether you may need to borrow some trademark
funds this year?

MR. OLECHOWSKI: I think Dave has been
pretty clear, the undersecretary, that we have no
intention of using the authority to bar trademark
dollars. I mentioned a little bit, John, that I
think the situation while just as grave in 2010 is
a little bit different than it was in 2009. In
2009 we didn't know where fees were going to end
up so we were trying to estimate where we would
end the end of the year and try to have a safety
net of some options in case we didn't collect
those fees. In 2010 it's a little bit different. We know exactly where we need to end up. We need to end up at 1887 and that's what we're shooting for. We're on a trajectory to spend, obviously we won't spend more than 1887, that's not allowed in the federal government, so that's where we're shooting for. We're managing within the authority we have and we're only going to spend to the authority we have and not borrow money unless, not unless, if we get access to our fees then we'll spend more money but not until then.

MR. FARMER: So that means though if all you have is the 1887, and we hope that's not the case, that under that scenario you wouldn't anticipate borrowing from the trademark side?

MR. OLECHOWSKI: We will not borrow from trademarks.

MR. FARMER: By the way, for those of you not in on everything, the administration has been very clear through Mark and through David Kappos that borrowing would be the absolutely last resort and we hear that and we greatly appreciate
that message, so thank you for that.

Looking further down the road, you are asking for a surcharge. No one likes that, but if it makes the patent system, that's wonderful. We realize that's not our turf, that's PPAC's turf, but again we're all in favor of the patent side being healed. If that doesn't come about, what do you see the consequences of that being for what you all need to do down the road financially?

MR. OLECHOWSKI: This is a purely financial statement, it's not a comment on the policy, and we're support to call it, John, an interim funding adjustment and not a surcharge.

MR. FARMER: You can always count on me to say the wrong thing.

MR. OLECHOWSKI: I guess surcharge has a particular connotation in the financial world. So if we do not get the interim funding adjustment, I don't want to say we'll be back to square zero, but our fees are coming in at a pretty healthy clip on the patent side. We're seeing great growth in the fees of our maintenance dollars are
bringing in. Our allowance rate is up. We're issuing more patents for a variety of reasons. While the interim fee adjustment is critically important to getting us healthy again on the patent side, if we were not to be authorized that we'd really be taking a big step backwards and we'd be back to essentially where we are now where we'd be doing probably just attrition replacements of our patent examiners, a limited amount of overtime and PCT funding back down to a minimal level so that we certainly wouldn't be meeting any of the goals. I think it's a critical part and I think the fact that it's in the budget and it's got the full weight of the administration behind it that that's a very strong position to go in to negotiation with Congress, that we're saying that the Patent and Trademark Office is putting these goals on the table saying I can achieve these and here are the tools I need in order to achieve them, I think that's a good place to start the discussions.

MR. FARMER: If there is anything we on
TPAC can do to add our voice in support of that outside of me just saying so here at the meeting, I hope that you will come back to us and let us know.

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Because we certainly care about that outcome.

A couple of questions on the trademark financial side that you or Lynne can field or whoever. I realize that James and Elizabeth probably know the answer really well and some others may not, but since we need to do our business publicly I wanted to make certain that I asked them. On one of the charts you showed, the bar graph that shows total trademark employment, and it also tracked I think our surplus. Yes, that one right there. It's slide number 9. It shows as you go from 2010 to 2011 to 2012 volume picking up in terms of trademark applications, but a slow I'm going to guess attrition-level decline in employment of trademark examiners and then it picks up. I was curious as to why that red line
doesn't more early track the blue line. Is it because of finances that you want to wait until you get a nice healthy inventory and then start hiring? I'm curious about that.

MS. BERESFORD: The answer is we're hiring and doing everything to maintain our pendency levels and this is the hiring level that we think we need to maintain our pendency levels. There are lots of tools that we have to maintain pendency. Among them are overtime and awards, and those have both been cut as Howard I'm sure has mentioned before in our efforts to maintain our application pendency at a certain rate and our core at a certain level. So as we go through time there isn't the need to start hiring up immediately. We have other tools that we can put in place to make sure our pendency stays between 2.5 and 3.5 months.

MR. FARMER: That's perfect. For those who may be new to the discussion, TPAC has long ago fully endorsed the initial pendency of 2.5 to 3.5 months. We think that makes sense for a whole
lot of reasons I won't try to repeat here. So if
that's what achieves it then we fully support
that.

The other one was a slide or two later
where it showed I think some dipping into the
trademark reserve in 2011 and 2012 and if that's
what needs to happen in that time, I was curious
why you see dipping into the reserve in fiscal
years 2011 and 2012.

MR. OLECHOWSKI: I think, John, it's
just a balancing act, the estimates that the CFO
and the trademark organization has made on what we
think revenues would be relative to what the
requirements are, and you can see in 2011 that the
requirements are higher than the revenues that
will be generated. So for programs that are
underway such as trademark next generation there's
a need to dip into the reserve to make sure those
things get underway. Then you can see that we
believe there's a steadying-out of the trademark
surplus or carryover, let's call it the operating
reserve, for trademarks.
MR. FARMER: Trademark next generation for those listening at home is the new computing system for trademarks. That's something that David Kappos directed to happen and we are really happy with that. Is that one of the primary drivers of eating down the surplus, funding trademark next generation?

MR. OLECHOWSKI: From the funding side it is, but then again the other side of the equation is revenues in 2011 are a little bit down.

MR. FARMER: I'm going to guess through if we weren't getting a new computer system or spending an unusual amount on it that that number wouldn't be dropping nearly as much.

MR. OLECHOWSKI: Absolutely.

MR. FARMER: Those are all the questions I have based on mine. Are there any others from other members of TPAC? Any questions or comments from anyone in the audience who would like to ask a question? I'm sorry, Howard. I didn't see your hand.
MR. FRIEDMAN: I didn't raise it high enough. It's actually related to John's last question I guess on slide 7. It notes that 122 million and change is allocated to next generation as well as patent end-to-end processing. Do you have a breakout of how much of the 122 goes to the next generation and the other goes to the other side of the house or is it a better question for John? Even if it's a question for you, would you like to ignore it?

MR. OLECHOWSKI: I'm sorry. I couldn't hear you.

MR. FRIEDMAN: Should I repeat it?

MR. OLECHOWSKI: The trademark portion of that is around $35- to $33 million so part of that is next generation and part of that is the infrastructure. We can certainly get the breakdown to you. I just don't have it right in front of me.

MR. FRIEDMAN: Then that's an adjunct to the question that John asked where obviously some money is being funded in here and other money is
being taken from the reserve? And as far as the
35 million, is that in 2011?
MR. OLECHOWSKI: Yes.
MR. FRIEDMAN: With other monies to be allocated in the future?
MR. OLECHOWSKI: Right, because this is the 2011 budget, so that would begin in 2011.
Correct.
MR. FARMER: Are there any questions from the audience on this topic? Yes, sir, over there. Do you want to stand up and identify yourself?
MR. TRAMPOSCH: Al Tramposch from AITO. Our organization is fully in support of adequate funding for the USPTO and our members of course are interested and concerned about fee increases, and I think it's fair to say that they would be willing to support fee increases but that they would need to see, I want to use the right words, that the access to USPTO fee collections goes along with that for the reasons that have already been stated.
I have two questions, Mark. The first one has to do with the interim fee adjustments, and the question is whether the USPTO is still trying to pursue those for the 2010 fiscal year or are you simply looking to get the full fees back for 2010? The second question has to do with the fee-setting authority in the budget for 2011. We'd like to know what kind of obligations there would be on the part of the office to have public input and public comments before fees are raised under the fee-setting authority.

MR. OLECHOWSKI: Let me go backwards because I remembered the second question first. The fee-setting authority should it be granted to the PTO does in fact have safeguards in statute, the statute that establishes the PAX (?) and everything else requires the director to engage with the stakeholders before adjusting fees or anything else. We believe there are adequate safeguards to that effect, and I know the director is certainly committed to making sure he has consulted everybody possible before adjusting
those fees. There are still public comment periods, there are still Federal Register notices, all of those items by the laws of rulemaking that still need to be followed so we're confident that those processes are in place to provide assurances to our stakeholders that adequate and complete visibility is given to all of those things. If you could repeat your first question because I'm not so sure that it was on 2010 or 2011 and I just wanted to be clear about the interim fee adjustment.

MR. TRAMPOSCH: I think at one point we had heard that the interim fee adjustment was going to be sought for the 2010 fiscal year in order to help with the budget and the question is whether that's still the case or whether you're simply relying on trying to get the full amount of the fees during 2010.

MR. OLECHOWSKI: Certainly the interim fee adjustment is part of the president's budget. It's on the Hill that way and it will be discussed in that manner. I can't tell you exactly
minute-by-minute what's going on with other mechanisms that are going through Congress. I know that there has been talk of interim fee adjustment in the patent reform bill. Obviously that has not gone to the floor. But I would say from the administration's perspective that it's in the president's budget and we'll be fighting for it in the president's budget and if there is some other mechanism that's in place before that, I just can't comment on that. I would say that there are two parts to that. If the interim fee adjustment is authorized, that's one thing. We still need access to the fees. We still would need some sort of authority to spend the money once it was granted to us. There are more than two parts, but there are two significant parts that need to be overcome.

MS. BERESFORD: To add to the comment about the ability to adjust fees, for many years trademarks had the authority to adjust all of its fees by regulation and in fact amazingly enough we actually have lowered our application fee in the
past through our regulatory fee-setting authority. So it isn't always used in the way that folks think it will be used, it can be used very wisely to put the fees where they need to be for the agency. Again it's regulatory so that means notice and comment by the public and it's worked very well for the trademark side of the house.

MR. FARMER: Are there any other questions or comments from the public on this topic before we go on to the fee study? Not seeing any, then I think it's back to you again Mark or is going to be someone else for the fee study?

MR. OLECHOWSKI: It's the other Mark.

MR. KRIEGER: Good morning. My name is Mark Krieger. I'm the Director of Finance and my organization and my office in conjunction with the trademarks organization has performed a fee analysis or cost analysis.

We started this project about a year ago and I've given about four briefings on those
topic. The good news is that we are essentially
done with our fee study. The even better news is
that going forward we have what started off as a
project now will be baseline work so that we'll
have this information quarterly. We plan to share
this with the budget subcommittee. We had a
really good discussion yesterday and we'll provide
that quarterly, and we can open it up to a wider
audience if the case calls for that.

This was a joint effort like I said
between the CFO organization and trademark
organization and wanted to do a study on the
actual cost of the work performed, so that we
wanted to have what we charge, what the cost was
and the variance. I'll get into more details of
what we're going to do with that information a
little later.

We do have a requirement. OMB Circular
825 requires that we ensure that our costs are
recovered. We do have some flexibility, the
trademark organization, has the flexibility that
will cover that in the aggregate, so they are not
required if we have a particular fee to recover
costs for that particular fee, we can do it in the
aggregate which gives us some flexibility and
ability to influence behavior if that's the case.
Some of our objectives. We wanted to revise the
trademark and TTAB models to better have cost
information compared to our fees, what we're
charging again to what it actually costs us. Also
we've got some very detailed information on what
comprises that cost. We are able to break it down
to direct and indirect costs, what the support
organizations are contributing to that overall
factor. Lynne and Mark both had alluded to our
strategic priority sustainable funding model and
this is a piece of it. This is the baseline of it
I would say that gives us a very good historical
perspective of our costs.
Some of our accomplishments since the
November meeting. We essentially have finished
the 2008-2009 models. 2008 is still a little bit
under review. We are working with TTAB and we
don't expect any updates, but there may be some
minor modifications. We have developed all the
displays for 2008 and 2009 that we gave to the
TPAC subcommittee the results of and they were
very pleased with our results. What I alluded to
at the beginning was that going forward we're
going to be able to present this on a quarterly
basis, that now this is our baseline work and
we're very excited about that.

As we conclude the fee study and the
cost analysis, we were able to come up with some
preliminary observations. I have to credit Nabil
with the trademark organization. Nabil, if you'd
like to raise your hand, please. He is the one
who came up with a lot of these observations and
he may be better in speaking to them, but I'll go
over them in summary. Our electronic filings are
cheaper to process than paper ones, and he
adequately points out that the efiles allow for
faster processing and better tracking and some of
that is not captured in the cost data but does
show you the efficiency of the efiles. The
processing costs of most paper filings exceed the
fees and we did have some talk about that with the subcommittee on what to do about that. There may be some flexibility influencing behavior there; renewals in SOU extensions, subsidized examination petition and TTAB fees. The next bullet is kind of confusing and I want to break it down for you in layman's terms. In 2008 and 2009, the largest cost variations affect small-volume filings or paper files. What happened is we have fixed costs into the paper applications. Our inventory or the work process actually went down substantially. Essentially your denominator changed but your numerator stayed the same so you saw a large increase in paper filings in the cost of that to process that. The historical unit cost shown did not account for dissemination which are our 41D or service fees and we did exclude a multiyear investment for scanning. That was a large sum of money that we decided to exclude jointly, that we thought it would be better to account for that separately. We did have some conversation about that in the subcommittee in how to address that
and we are working on that.

Next steps. We're going to incorporate TTAB updates into 2008 and 2009 if we have any. We're going to complete final review. My understanding is we're going to open this up to a wider group of trademark managers for review. We are preparing briefing packages for senior executives to look at. The final comment I want to make is in conjunction with what Mark and Lynne referred to as our sustainable funding model, one of our strategic priorities. This is a piece of that. There are a lot of decisions that have to be made going forward. We need to talk about the optimal trademark operating reserve, and if there is a baseline that we want to achieve, we have to incorporate that into our fee structure to make sure we achieve that. This gives us a good historical perspective on fees but does not include any budget initiatives going forward. We would have to include that and adjust our fees accordingly.

That's the end of my presentation. Are
there any questions?

MR. FARMER: Elizabeth Pearce has been tpac's efforts on the fee study so I'll turn the mike over to her.

MS. PEARCE: I just hope it doesn't short out after I spilled all my water. I was so excited.

I am excited actually. The study has been a pet project of mine since I came onto tpac and I think that the CFO's office has done a marvelous job and really exceeded our expectations on how thorough and how easily understandable the results are. I would like to emphasize that at this time we discussed yesterday about actually making any fee adjustments, we don't think that with the current uncertainty in the economy that now is the time to be attempting to do that. We want things to stabilize a little bit. We need to of course take any adjustment possibilities into account when doing overall funding and revenue projections and that sort of thing. So I think it's premature to be making any definite plans
yet, but we've got all the material ready and we'll be tracking it going forward on a quarterly basis so that when the time comes that we can sit down and decide how we're going to revise the fee structure if we want to then we've got that information and we'll be able to move fairly quickly which is great. I think also that this has been a boon to Dave Kappos and the people who come in with him to have a Trademark Office that was so on top of all this information. I think our timing was excellent on that. And I think the fee study has answered a lot of other questions that we've had over the years about fee allocation and what the cost of services were, things that have always been hard to pin down and get answers about, this study has really helped with that tremendously. And I think the cooperative effort between the trademarks group and the CFO's office on this just can't be commended too highly. We're very pleased and we think that trademark community itself is going to benefit enormously from this in the future. So stay tuned.
MR. FARMER: Thank you, Elizabeth. Are there any questions or comments from other members of TPAC on the fee study issue? Is there anything from folks here in the audience? Let's take literally a 5-minute break. Those of you who know me know that I mean 5 minutes. Then we'll come back and we'll visit with Judge Rogers of the TTAB.

(Recess)

MR. FARMER: Our next segment is going to be a visit with TTAB Judge Rogers. Judge Rogers, thanks for coming to visit with us today.

JUDGE ROGERS: Thanks, John. We're of course happy to be here and participate in the meeting and feel we had a very productive subcommittee yesterday and hopefully we can bring the rest of the committee up to date on what we discussed yesterday. I did want to make a brief mention about and follow-up on the director's comments that are posted on his blog about working through the storm and publicly take a moment to note that the board's judges and the board's
attorneys all worked very well through the storm. Like trademarks, we have a particularly high percentage of teleworkers and for the most part people were able to work very well during the storm with some adjustments on a case-by-case basis as necessary, but otherwise work was done. We also wanted to note that Judges Dave Bucher, Charles Grendel and Karen Kuhlke all came in on a day the government was closed because we had attorneys in from Colorado and California, respectively, and we didn't want to send them home without their hearing, so we had them come in. They shoveled out of their neighborhoods, they came in and we had the hearing even though the government was officially closed that day. Unfortunately we couldn't have a hearing for the patent attorney who came down from Philadelphia and showed up and didn't have any patent judges here so we had to send him home. But otherwise we did pretty well.

On the trademark fee study I did want to follow-up and note that we've had a few meetings
with the group working on the fee study.

Trademarks has been much more involved than TTAB has. We'd like to certainly drill down more and be involved more in future efforts there but at the present time we don't have the labor, the resources, to allocate somebody to work on the fee study and to drill down and massage the numbers the way that trademarks had. So while we have suggested some changes that we know they're going to make to the TTAB portions of the study, and we're going to continue to work with them, we hope that we can work with them even more in the future.

Briefly, before we get into the items listed on the agenda, I wanted to bring everybody up to date on some personnel issues at the board. Since the last meeting we had one of our judges retire, Judge Al Drost. We've also got a couple of judges who have some elder-care issues within the family, and so these have adversely impacted a little bit our final decision pendency, which is something we get to when we go through the
numbers. But we had a vacancy announcement out to replace that retired judge, it closed earlier this week and we hope that we'll be getting to the certification, review of the applications and replace that judge as soon as possible. Otherwise, personnel issues are doing pretty well and we think that our staffing levels are about right, and because we're funded through trademark money and not patent money, we can replace people as they leave, and there may be other departures during the coming year because we've got a number of judges who are at retirement age and who are retirement eligible. Hopefully we'll replace them as those attritions occur and keep our staffing levels up.

The statistics which you see here, we do have downturns in new filings. As you can see, appeals down 11 percent, oppositions 25 percent, cancellations about the same. Those are new filings coming in the front door compared to the first quarter last year, so the economy is definitely having a little bit of an impact on
some of our filings there. Cases maturing to
final decision on the merits also are down and
that probably reflects the fact that there are
people who were actively involved in inter partes
proceedings or possibly appeals and decided not to
fund the continued litigation of those cases when
the economy turned down. Even though the final
decisions that are maturing and ready to go to
judges for decision writing are down, we still
have a healthy amount of work for our judges to
do. Pendency, we're still under goal at 9.1 weeks
for the first quarter but it is showing bracket
creep because of a number of things, those
personnel issues I talked to you about, the fact
that we have quite a few judges, almost half of
the judges working in some way or another on the
revision of the Board's Manual of Procedure, which
it's unfortunate that we have to expend this much
staff time on that project but it's a long-overdue
project so in the short-run we're essentially
tolerating a little bit of bracket creep in the
final decision pendency to get the manual revision
done. The interlocutory attorneys and Cindy Greenbaum are doing a great job on the contested motions. They're holding steady. We don't really have a big backlog of contested motions and they're staying on top of those motions and we don't envision that there would be any bracket creep in the pendency on contested motions.

Final decisions on the merits. As with pendency, the final decisions are all written by the judges and because so many judges are working on the manual and we have the retirement of one of our highest-producing judges, unfortunately, the overall number of final decisions is down for the first quarter. Contested-motion decisions are down too. That again may be a reflection of the economy and people being less willing to fight about things during the pendency of their proceedings or to fund discovery motions and motions for summary judgment and things like that. But again, the workload and the staffing levels are about right for us to stay on top of that. The interlocutory attorneys continue to do a great
1. job resolving a lot of contested matters by telephone which is something that the office and the board certainly encourages and we think that the parties have been very happy to have this increase in the number of motions decided by telephone.

2. These total pendency figures which are on the next slide vary and they're improved on this slide, total pendency figures and average pendency, but I wouldn't put too much stock into that because they can vary depending on whether a particularly long-pending case just happens to be captured in a particular quarter or not, so they're good. We're not increasing pendency, but I don't know that you would want to say that this is a trend and that overall pendency from start to finish is necessarily going to continue to go down in the absence of any particular efforts taken to achieve that result.

3. Precedential decisions are right on target. There's an error here. There were actually 14 in the first quarter. We should be up
to around 21 by, I hope, the end of this week.
There are a few that are under review which might
get cleared, there are some that are under review
which are going to take a little longer to get
cleared, and I think by midyear we will certainly
be at the halfway point of our goal which is about
50 precedential decisions, about one a week during
the course of the year.

Accelerated case resolutions we
discussed to some extent at the last meeting and
that involves any number of a variety of
approaches that would result in more efficient
inter partes proceedings at the board. We've
tried to promote accelerated case resolution by
getting an article out in the ABA's "Landslide"
magazine. It's now posted on the website. I made
a presentation, the first time I'd had a public
speaking opportunity, in a bar and grill at the
Westin Hotel near here. They have the Trademark
Bar and the Bar Association of the District of
Columbia wanted a presentation on ACR and
increasing efficiencies in board proceedings so we
went to the bar and we talked to about two-dozen attorneys over there and made our pitch for accelerated case resolution, and we will be doing more of that. We are scheduled in that Ellen Seeherman and I are going to be on a panel at the INTA annual meeting and we'll be promoting ACR and other efficiencies there too and any other opportunities that come our way to talk up ACR and these other options.

The manual of course. This slide really doesn't reflect what we discussed at the subcommittee yesterday. The subcommittee saw an internal document that we have which reflects the actual revision being made on a chapter-by-chapter basis and where we stand with the revision of each chapter, of the various levels of internal review that go on and editing, the down-the-line external reviews that will go on in the Solicitor's Office, and even outside-the-agency reviews by OMB. One question that came up in the subcommittee yesterday and which I had a chance to follow-up on with our
Office of General Law relates to the outside-the-agency reviews. There have been a lot of executive orders from the White House and a lot of discussions with OMB over the last few years about government-wide agency guidance documents and how they're reviewed, how they're cleared, what opportunities the public has to comment on guidance documents and under the current view of OMB, the PTO's manuals, the MPEP, the TMEP and the Trademark Trial and Appeal Board's Manual of Procedure are all considered significant guidance documents and require an extra level of review outside the agency before they're approved for posting. There have to be comment periods on revisions and that sort of thing. How extensive that process has to be is a subject of continuing discussion between people in the office and people at OMB and so the actual review process may change over time but we know that at least currently it exists and it's going to be a significant part of the manual revision process.

That's it for where we stand on those
activities. I think the next item on the agenda, and John, I don't know if you want to have questions on some of these subjects as we work through them or whatever you want.

MR. FARMER: What I was thinking we might do is you've touched on some of these issues and some you say I've already addressed that, but just go down the agenda. What I wanted to also do is loop in Mary Boney Denison. She is the person on TPAC who takes the lead on TTAB matters and she works closely with Judge Rogers and Cindy Greenbaum, and thus maybe will go to the topic, any additional comments you have, I may then flip to Mary, I may have some or other TPAC members, and go down one at a time if that's okay. If there are any topics that we don't hit as a result, we'll hit those at the end if that's okay with you.

JUDGE ROGERS: That's fine.

MR. FARMER: On current speed statistics, my guess is that you'd say you've already checked that box.
JUDGE ROGERS: Pretty much. If there are any comments or questions about those and the significance of those statistics I'll try and respond to them or explain them as best I can.

MS. DENISON: I joined the TPAC back in October 2008 prior to your becoming Acting Chief Judge and during that time I have primarily spent most of my time working on the TTAB. First I enjoyed working with Judge Sams and then there has been really a seamless, from my perspective, transition to you as Chief Judge which has been a real pleasure for me. I've also appreciated Cindy Greenbaum's help throughout all of this.

The number-one complaint about the TTAB when I came onto the TPAC was the speed with which decisions were being made. I know this both from my personal experience where I had some cases which were taking a year or two to be decided and also because I was serving as the Chair of the USPTO Subcommittee for INTA and so I heard about it from a number of other people. Judge Sams, Judge Rogers, Cindy, the entire TTAB team has
worked very hard to change it from years to weeks. When we have his report up there talking about whether it's 6 weeks or 8 weeks or even 12 weeks, this is a dramatic, dramatic improvement which is greatly appreciated by the users of the TTAB system. So I wanted to applaud the TTAB on the progress. Some may say the filings are down, but the truth be told, the filings are down but now some of that extra time for decreases in filing is being used to work on a very important project which is now the number-one issue with the private bar which is the TBMP improvement.

JUDGE ROGERS: Thank you, Mary. We appreciate any measure of satisfaction that is expressed and may come our way.

We'll get back into the manual again momentarily in a little more detail, but on the agenda I think the next item is the request for comments and the possibility of the board issuing a request for comments on certain subjects which we have discussed with the TPAC in the past. However, in the subcommittee discussions
yesterday, when a draft of this request for comments was presented to the subcommittee members and we had an opportunity to discuss it for the first time, there was some additional discussion about whether the request for comments should be broadened or whether other subjects might be suitable for any public request for comments, whether we might want to fine-tune some of the subjects that are presented in the draft request for comments, and we had I think a very productive discussion about how we might get broader public input not just on the ultimate questions that we want people to comment on, but on what the questions should be. So I did also talk with General Law yesterday because there are certain requirements for how you take public comments and how you survey the outside bar and individuals. One of the ideas that we had discussed yesterday which I ran by General Law, they are now looking into it, I don't have a final opinion, but it looks like it's certainly something we're going to look into and we may be able to pursue, and that
is the TPAC coming up with a memorandum or letter
to the office, to the board, regarding the
anticipated request for comments and how broad it
should be and setting the agenda for the request
for comments and then possibly floating that or
posting that in advance of the next TPAC meeting
so that the bar and AIPLA or INTA or other
organizations would have an opportunity to say,
yes, we think the request for comments is a great
idea but we'd like another subject included in
that and that kind of thing. So we are certainly
looking into that, following-up with General Law
to see if that will be a way that we can go and
we're happy to work with the subcommittee or
anybody on TPAC about what we should present in
that request and how we should present those
issues for discussion.

MR. FARMER: We're thankful for that.
When you're looking into that one of the questions
we also wanted to look at is whether the draft
request for comments itself could be something
that's public and subject of comment at a TPAC
meeting before it's actually published as a request for comments or whether the law doesn't permit that and whether instead we just have to give you feedback on the topic generally but that when it goes, it's got to go to the Federal Register as a request for comment. So we'll stand by for word on that also. Mary, I didn't mean to run over you there if you had comments on that.

I have a few questions related to speed but they really don't come up until when the tie into other topics later down the list and so I'll hold those. I take it that was your coverage of B. Did you have anything else on the RFC, the request for comments, Mary?

MS. DENISON: No.

MR. FARMER: I think that takes us down to a fuller discussion of getting the TBMP up to date and you've been some. Is there anything else on that, Judge?

JUDGE ROGERS: Yes. Unfortunately the judge who was coordinating the revision of the manual has had to take some medical leave for some
surgery and there may be some follow-up treatment involved, so we've had to arrange a transfer of responsibility for the revision of the manual from the judge to one of our interlocutory attorneys who had been part of the revision effort already and so she just this week has taken over coordination of the revision of the manual. The timing was unfortunate in terms of public notice and we weren't able to get out the lengthy document that we were talking about yesterday in subcommittee which shows the revision status of each of the chapters and what reviews have gone on and what reviews are still to come because we didn't get that finalized until just earlier this week as part of this transition, but fortunately we were able to get it to the subcommittee in advance of the meeting and were able to go over it yesterday.

We hope that the transition will work very smoothly. We think that it will. We think we'll be able to continue to pursue our goal of getting the manual up and posted on the web by the
end of this fiscal year. Part of that may be
impacted by external agency reviews and how much
OMB has to go on and that sort of thing. I did
hear just anecdotally yesterday when I was
discussing this with General Law that there was a
certain chapter of the Patent Manual of Procedure
which had gone through a lot of lengthy revisions
and was floated to OMB after a long period of time
and then OMB said you've got to hold off on it.
You've got to have a longer comment period. And
so they do have some sway over how the material
proceeds even when we've finished our work on it
in-house.

Traditionally I don't think OMB has been
as concerned with the Trademark Manual of
Examining Procedure and probably is not going to
be as concerned with the Board's Manual of
Procedure as they may be with the patent manual,
but a lot of that is uncertain territory. That's
why we will continue to progress and get our work
done on that manual. The document that we shared
yesterday with the subcommittee showed that, for
the most part, all of the chapters, the writing is
done. I would say 95 or more percent of the
manual has been rewritten. We then have certain
people who are assigned to do reviews of the work
of the person who was primarily responsible for
doing the writing of the revision and so those
reviews have also been largely completed or are in
process. Some chapters have moved faster than
others. Some have already gone to the solicitor's
office and have gone through all of the internal
reviews, the revisions have been presented to the
solicitor's office, and some have even been
cleared. Others are still working their way
through internal TTAB reviews, but we expect that
this process is just going to continue in the
coming months in the fiscal year.

MS. DENISON: We had talked yesterday of
the possibility of putting up a brief article on
the PTO website which would talk about the status
of the TBMP because there are a lot of people,
users of the TTAB system, who are very interested
in this topic and I don't think that the average
person, at least I certainly did not, have an understanding of how complicated the process is. I think it would also be helpful in addition to putting it up that you've got nine judges, three interlocutories and four paralegals working on this to also say how many thousands of hours, I can't remember what the figure is, but it is a significant project and I don't think that the people who aren't involved in it really have a full understanding. So I think if you can put something up on the website at the PTO that that would be helpful to people. Thank you.

JUDGE ROGERS: Yes. Yesterday after the subcommittee meeting I went back and I asked one of our IT people if we could look into having a kind of two-step link to the manual on our webpage because right now we have a link on the TTAB webpage that takes you right to the manual, but it occurred to me after our discussions on this point yesterday that perhaps it would be good to have that link take you to a page that described or disclaimed the condition of the manual and
explained to people this is out of date, if you're going to use it, read it in conjunction with subsequent rule amendments, and also noted the revision process that's going on so that people would have to look at that first and then there would be a sentence that would say if you want to continue and use the manual as last revised in March 2005, click here and then you would go on to the manual. So hopefully that will be something that we can do relatively easily. It will be a couple-page document or so which will warn people who sometimes use the manual and don't look at subsequent rule revisions, even though the manual says on its first page when you get there last revised in 2005, some people don't pay attention to that and they get caught up in out-of-date sections of the manual. So we're looking into that and we may be able to do that as early as next week or so if it's not a significant IT hurdle to have that kind of double-link on the page, but that's something we're looking into.

MS. DENISON: Sounds great. Thank you.
MR. FARMER: Some things on that. I think that's a good idea to have that separate page because I'll bet some folks, the same thing with the TMEP, you tend to think this is it and that's where I'm going to find everything. To make one thing clear for those listening at home, one thing that Judge Rogers talked with us yesterday is once this new manual is posted in HTML, you'll be able to search the whole thing in one search. You won't just have to search chapter by chapter. That's a wonderful functionality that the TMEP has because sometimes you're not quite certain where a particular topic is going to be addressed and we're really looking forward to that functionality. We realize you have put in a lot of work on that and we appreciate that too.

I have a comment in this area and that is not for the benefit of anyone here because it's a paradigm example of preaching to the choir, but I think the sense of TPAC is that for the bureaucracy outside of the PTO that there really isn't a need for a lot of review, review, review
of this. I know I'm speaking to people not in the room, but it's the sense of TPAC that this manual is not a policymaking as much as a restatement of what policy already is. It's incorporating rules changes that have been made and they're not just incorporated into the TBMP and incorporating decisions of the TTAB and perhaps higher courts that are already established law and it's just a matter of putting it into the TBMP. So if there is any change that bureaucrats out there beyond the PTO are listening, we on TPAC think that maybe you don't need to hold it up a good bit. I've got a question we'll come back to later.

Then on another topic, one thing that we learned in chatting with Judge Rogers, and Judge Rogers, if I misstate this please tell me, is that the judges themselves have been doing and the interlocutory attorneys the heavy lifting on getting the TBMP revised. I think you told us that you wanted to make sure you get it just right because the manual is so determinative. We on TPAC understand that. I think the sense of TPAC
though is, and I've misstated and TPACers please
correct me, that that's a lot to ask for you to do
in addition to doing your other job which is
keeping up the good pendency improvements that
you've achieved. As a matter of fact, as Mary
said earlier, compared to where you used to be a
few years ago, pendency has improved greatly, but
if you look at the stats I think you see a sliding
up of a couple or 3 weeks because you've had folks
working on the TBMP which in the grand scheme of
things historically is fine, but we I think feel
that if there's a way that other resources could
be provided to the TTAB that can do that heavy
lifting initial drafting for you so that you can
still exercise control through review and through
comment so that it comes out right but you save
your precious people hours in order to keep up
your good pendency and make whatever further
improvements you may desire to achieve, that that
would be a mutual-win situation. And if the PTO
ever finds within itself the way to give you all
those resources under your authority or elsewhere
in the office that we would fully support that.
If you have any comment on that, that's fine, but I just wanted to throw that out there as the TPAC view on the issue.

JUDGE ROGERS: As we discussed yesterday, I do think it's important for the judges and particularly the interlocutory attorneys to be involved in the revision effort and the review because the manual is largely procedural in nature rather than substantive and so the interlocutory attorneys are clearly the ones who are well versed in what our current practice is procedurally speaking. I'm not sure that we would get the nuanced understanding of what needs to go in the manual from people outside the board, but we're certainly open to dealing with or working with for example examining attorneys who have worked with the board on training details or people in the solicitor's office who review our decisions and therefore are also aware of our procedures. So there are certain options there depending on workloads in
other parts of the office where we might be able
to put together a team that can work on future
revision efforts. One of the things we also
discussed yesterday was the possibility of an
additional senior-level position being deployed at
the TTAB that would essentially be the equivalent
of what trademarks has where they have a full-time
manual editor. The board's person would not be
responsible just for the manual but would be
responsible for potentially other substantive
issues such as reviewing decisions for possible
issuance as a precedent, perhaps preparing weekly
summaries of decisions, some of the things that I
do or other people are doing now at the board.
This was first floated a year and a half or so ago
and has been discussed in-house with the General
Counsel's Office and OGC has a certain number of
senior-level positions. It's not exactly clear
how they can be deployed, but we're certainly
lobbying that if we can get one of those positions
and the position description exists we will be
able to have somebody who's really devoted to the
manual and wouldn't be taking time away from other things that they have to do and would also be able to, as we move forward, keep the manual updated on a more regular basis and therefore not require a gargantuan effort to do a revision less frequently.

MS. DENISON: Given the level of concern that currently exists in the private bar about the outdated TBMP, I think that anything you can do to avoid being in this situation in the future would be welcomed and TPAC fully supports the idea of having somebody come over and be in charge of this project in the future. I hope I'm not speaking out of line. I think everyone here does agree with that. I know that the private bar would be delighted to know that there is somebody who would focus on it full time so that we don't find ourselves in this situation in 5 years.

JUDGE ROGERS: Something which we didn't discuss as much yesterday but has been discussed in the past, and I don't know if Lynne would be able to comment on how this stands on the
trademark side, of course there have been discussions about or there's been talk about possibly wiki versions of the TMEP and we're certainly amenable to having some kind of a companion version to the official TBMP that might be a wiki version and would take comments and suggestions from the bar. But I think if we were going to do that, it's probably going to be something we would want to coordinate with trademarks because we'd have largely the same group of practitioners who would be making suggestions for each of the manuals and we would probably want to have a similar structure. So it's something additional to think about as feeding into future revisions.

MS. BERESFORD: I think more than 2 years ago trademarks started trying to get a wiki version of the TMEP. I think we put a WRF in a couple of years ago on this matter. We haven't been successful there, but Director Kappos is very, very interested in having a wiki available for manuals and a way for the public to comment on
the manuals. Certainly in trademarks we have a manual editor, the job is open right at the moment, but we do have a manual editor and our finding has been that the editor needs a staff of a couple of attorneys to help. I think if we go to a situation where I would like to see where we at least have the capability of updating and issuing if necessary a revised manual maybe on a monthly basis, that I think to some extent will solve the OMB problem because the revisions will be quite discrete. I agree that we want a manual that's up to date enough that we don't have to do the massive effort and throw the new manual over the transom and let everybody read the thousands of pages that are there. All of this I think can be a model for both TTAB and the trademark examining operation should go. People shouldn't have to wait for important updates to come into the manual and they shouldn't have to be warned to watch out, this may not be up to date. It should be pretty up to date all the time and I think that's really where all of us want to go with
this, and I think Director Kappos fully supports that.

MR. FARMER: I agree with everything that's just been said. I think the sense of TPAC is we would fully support a parallel wiki that would help folks understand and provide comments that may be useful to the TTAB and it may be useful to the practicing community. There's music to my ears when we talk about a possible monthly update of manuals in the future because in the bar there's a tendency to go to the manual and you can throw up all the stop signs you want, but people are still going to go to the manual. A little bit of history. One thing I learned yesterday, and I think this was handled right but just for the benefit of folks listening at home, is that one of the reasons we were told, and again if I get it wrong please correct me, I certainly get things wrong, is that one reason why the TTAB made the strategic decision to hold off on the TBMP revision was to get pendency under control first. That's a fine order of priorities that we saluted
that it had to be gotten under control, but we all hope that the economy recovers and that there are busier times ahead for all involved. So you're going to face that pressure down the road as the economy picks up and we wouldn't want the TBMP to potentially get pressed to the back burner there. And that to reiterate is one of the reasons why we're so supportive of you having resources where you can delegate and review and comment as opposed of having to be original drafters so that you don't find yourself having to make that tough choice between two unattractive options in the future. Thanks for working with on it. We really appreciate it. Unless there's anything else on TBMP, we'll move over to another initialism, ACR.

JUDGE ROGERS: I don't know that there's that much more to say on it other than what I said earlier and that is that we are certainly trying to promote ACR. It's certainly something that we have noted even in precedential decisions that parties are required to discuss in their initial settlement-and-discovery planning conference and
it's something that we are promoting whenever we
have the opportunity to do so.

Something we haven't talked about yet
and which we've talked about in subcommittee and
that is the possibility of coming up with various
menu options if you will where we might present
four different ways that parties could move
through discovery or four different options for
moving through the trial phase of a proceeding and
where parties could discuss and possibly agree on
a particular plan for discovery or a particular
plan for trial and we would post those options and
make them available for individual parties to
consider. That's something one of our judges has
been tasked with working on and has engaged in
some preliminary discussions with the
interlocutory attorneys who discuss these options
with parties in discovery conferences. Of course
he's still writing decisions and he's also on the
manual revision so it's kind of the third thing on
his list and we probably won't get to those menu
options until a little bit later in the year when
he's finished with his work on the manual and he can move into that and work with some of the interlocutory attorneys to come up with those menu options, but it's certainly something we'd like to get done and made a part of our practice this year.

MS. DENISON: We fully support the development of the options because we believe it will make it easier for people to use it, because if you see that this is an expedited process but you have to make it up yourself, I think people are much less likely to be creative enough to use it and so we think it will receive greater utilization if you set up concrete examples and then they can modify them to suit their needs.

MR. FARMER: That would be great if you're having your initial conference and you can say why don't we consider option A for discovery and menu option C for the ultimate resolution, I think that sort of plug-and-play solution is much more likely to be adopted. One idea I just had now so I apologize for not revealing earlier is
that I wonder if that would be a good thing to
require express discussion of by the parties when
they have that initial conference after the answer
is filed to say one thing you must talk about is
look at the ACR options once you have your menu
and talk about do you want to elect option A, B, C
or D for discovery or option 1, 2 or 3 for the
resolution once discovery is concluded. A, that
might break the ice because when you're in
litigation you want to look big and strong and not
weak and you want to look like you can go the
distance, and also if you expressly point them to
that and they know they got to read that before
they get on the phone, then your uptake level
might really increase. We fully support this
effort and go for it.

JUDGE ROGERS: We certainly will.

MR. FARMER: I think that takes us next
to discussion regarding how TTAB deals with cases
that linger for quite a while. There was a case
recently that got a little publicity that
triggered that, so I'll turn the floor over to you
to discuss what you are looking at in that area.

JUDGE ROGERS: That case is one of the

cases that is on our docket and is technically a
proceeding, to the extent that it's proceeding

under the old rules that were in place for cases
commenced prior to November 1, 2007. One of the
things we've done is even though a lot of these
cases that are suspended for various reasons that
were commenced long ago but aren't actively being
moved forward are not having any adverse impact on
motion pendency, they're not having any adverse
impact on final action pendency and they don't
even have any adverse impact on pendency from
start to finish of a case at least not until they
get decided and if they never get decided they'll
never have any adverse impact on it. But
nonetheless it's thousands of cases that are still
sitting there and churning and require extensions
or suspensions every few months and requires us to
maintain a separate set of options in our ESTTA
filing system for particular cases that need
different schedules than cases proceeding under
the current rules, so what we're trying to figure
out is, to get a handle on what percentage of
cases on our total docket were commenced prior to
November 1, 2007. We have that number. Then
we're working on further subdividing that list of
cases and figuring out how many don't have an
answer, what are the reasons they are suspended,
should we check on the status of those bankruptcy
proceedings or those civil actions. We should be
sending inquiries about settlement talks that may
be going on and that sort of thing. So we're
going to try and break that large group of older
cases where they don't seem to be moving into
smaller groups that we can work with and figure
out what's going on with them. The goal would be
over time to just weed them all out of the system
and to be able to progress only with a docket of
cases that are progressing under the current
rules, so that's an initiative that we're working
on now.

MR. FARMER: Thank you for that. I
think one thing that you said that you will be
getting to us, and if you just said it and I didn't quite grasp it I apologize, that you are going to be providing to TPAC some statistics on cases that have been around for more than 5 years or something along that line. For the folks listening at home, we'll be taking a look at that, because from the TPAC perspective it may not impact the pendency statistics, and actually I didn't realize that until yesterday that when you look at the mean, median, first quartile, third quartile average pendency of contested or inter partes cases that that doesn't factor these in, then I realized it's hard to factor in infinity because the case hasn't ended yet, that would throw the averages off, and so that was a revelation to me.

One thing that we look after at TPAC is the integrity of the overall register and the register is helped when these old cases get off because there may be an opposition or a cancellation that is causing someone else who may be in a branding position to think I'm not so
certain this is resolved, I'm not certain if that
will be a blocking event or not and so just for
the sake of keeping the register clean and keeping
the pool of available marks as wide open as it
should be, it's a service to that in order to
clean these old cases off, and we are glad to see
you are undertaking that initiative to go through
to find them, to categorize them and to weed them
out.

JUDGE ROGERS: We'll be breaking down
those categories of cases into further
subdivisions as we discussed yesterday so we'll
certainly get back to you on that.

MR. FARMER: We're pleased you're doing
it and go after it. The number of precedential
decisions TPAC has had on its champion's list, the
list of issues we look after possibly increasing
the number of precedential decisions, you told us
some information yesterday about how you decide
when to issue precedential decisions, and while
we've heard it, it may be beneficial for others
for you to lay out how the board goes about
deciding when cases will be precedential.

JUDGE ROGERS: Unlike the patent board which mails decisions, panels come to a final decision in a particular case and they mail it and so it's only that particular panel that has input into what's said in the decision. I may not have this exactly right, but I think this is the way it works for the most part on the patent board. If they then want to float a particular decision that's been issued for designation as a precedent, then it gets circulated around among the patent judges and they vote on it, but it's simply an up-or-down vote. It's not a process whereby other judges can offer input into what the decision would say or should say because it's already issued.

We do it a little differently at the TTAB. When we have something, and this is true whether it's an interlocutory attorney's decision on a motion or whether it's a judge's final decision on an ex parte appeal or an inter partes case, if we think it's a good candidate for
issuance as a precedent, the panel can suggest that right from the start or the interlocutory and Cindy Greenbaum can suggest that right from the start. Even if a panel or an interlocutory doesn't suggest a decision, we have a review process in place where decisions ready for mailing get reviewed by somebody before they go out and then if that person thinks maybe we should consider this as a possible precedent, then they'll kick it up to the chief judge and we'll think about circulating it around. So a certain number of decisions then get circulated among all the judges if they're final decisions on the merits or all the judges and all the attorneys if they are procedural decisions on motions and we take comments and we get as much input as we can to make sure that the decision is as fine as it can be and reflects a majority view before we issue it as a precedent. Then we are required to and do send those decisions which we decide should be issued as a precedent to the Office of General Counsel and the solicitor's office for further
review and then they have an opportunity for input. Sometimes depending on the nature of the decision we may bring in trademarks or external affairs if they are international issues that are presented. So we have I think a more extensive review process and I think it makes for some really good precedential decisions when they finally go out the door, but it is a little involved. That's why we think it's about right for us to be issuing maybe 50 precedential decisions a year, about one a week. If we tried to increase that number, it would be a lot more staff time and a lot more review time by everybody at the board because we do circulate them in the way that we do.

If eventually we change to a different model we might be able to increase the number if we sacrificed some of that review, but at this point in time the system works well and we are able to get out 50 or so precedential decisions a year without it adversely impacting other functions of the board, so I think that's pretty
much where we want to stand.

MS. DENISON: I appreciate the many
different directions the judges are pulled in at
the TTAB, but I do hope that you will not use the
one-a-week figure as a hard- and-fast rule and
will always be open to adding more if you think
there are important issues that are being
addressed.

JUDGE ROGERS: Absolutely. Even on the
breakdown this year I think we had eight
precedential decisions go out in October and two
in December, so it's an average figure and it
really depends on the nature of the decisions that
are presenting themselves to us. We're certainly
not a traffic cop trying to meet a quota of
tickets, we're certainly trying to pick the right
decisions and get them out as precedents.

MR. FARMER: As to what Mary said, I
think it's the sense of TPAC unanimously that we
would like for you to be able to say if an opinion
says something important we'll find a way to make
it precedential even if that doesn't necessarily
produce an even flow. And to give an offer on top of that, if there's anything we on TPAC can do to help you out to be able to do that as far as advocating to whoever for whatever resource or for a change in how you get to where you're doing precedential decisions, certainly let us know and we'll be glad to because those precedential decisions sure are helpful when you're trying to work on it and sometimes when you're getting ready for a TTAB case you'll find an older case and you'll say gosh darn it if only this were precedential because really does go to the heart of what I'm looking at here, and so again any way we can help you reach that goal we'll be glad to do so.

JUDGE ROGERS: Of course, anybody can cite any TTAB decision now whether its precedential or not and we'll certainly allow parties to do it, but we'll I think obviously place greater weight on prior precedential rather than nonprecedential decisions.

MS. PARK: I wanted to say, Judge
Rogers, that on the precedential decision front
that I've been very impressed recently with the
number of decisions that have been designated
precedential that have addressed a lot of issues
of critical importance. One that I read recently
was the Capital Citibank case against Citibank
which talked a lot about dilution, and it was a
68-page opinion I believe. So I think the quality
of the precedential opinions that have been coming
out has really been very helpful to the trademark
bar and I wanted to acknowledge that.

JUDGE ROGERS: Thank you. That case in
particular does involve a dilution claim. As a
little background, when David Sams met with
representatives from the various organizations
concerned with trademarks and TTAB proceedings and
we struck an agreement to issue more precedential
decisions, we also had suggestions from various
bar groups and others and even from trademarks
about what issues people would like to see
decisions on and certainly dilution is on that
list. So we actively try to look for decisions
that will help develop those areas of the law that
we know people are concerned with. And if the
TPAC ever wants to look at or revise that list and
make suggestions we're certainly willing to take
it under consideration.

MR. FARMER: Absolutely we'd love to do
that. Adding on to what Kathryn just said, your
Daimler-Chrysler opinion was also very helpful as
we all were trying to figure how where to go in
the wake of Bose, and so that was a good one. I'm
sure we all wait with great anticipation as the
Bose fallout continues to see what you all do with
whether reckless disregard will be satisfactory.
A lot of trademark bloggers have been asking
whether even though they should have known
standard with Medinol has gone whether evidence
that someone must have known that they had been
using the mark whether that will cut it. And
we're not asking for an advisory opinion today,
it's just you can imagine that there are a lot of
folks out there waiting to see how those come down
when the appropriate case presents itself.
MR. JOHNSON: Judge Rogers, you mentioned that there's a list of issues.

JUDGE ROGERS: Not one list, but I think we got a list from AIPLA and this is a number of years ago at this point because we've been issuing now 50 or so decisions a year for a few years. I can try and find those older lists, but I don't recall exactly which organizations, IP organizations or bar associations provided them to us. We did get a few and I know we asked Sharon Marsh at that time also what trademarks would be interested in seeing primarily in ex parte cases.

MR. JOHNSON: Whatever list you could compile, we'd like to see that. Would it help you if TPAC compiled a list for things we think would be of interest for precedential decisions?

JUDGE ROGERS: Yes. We can take the lists that we've received in the past and synthesize them into one so that we're not placing the blame on any one organization for stacking the deck on the issues and send it to the TPAC and if you want to add to it then that's certainly fine
MR. FARMER: Please do. We think that would be great. James?

MR. CONLEY: Judge, from the point of view of these decisions that come down, is there equal time allocated for the judges to write dissenting opinions if they're so interested in these precedential decisions?

JUDGE ROGERS: Yes. In fact, there's one decision which we haven't yet decided whether we will actually circulate it around the board for issuance as a precedent but it is a decision that is probably going to go out on a 2-to-1 basis with a dissent and the question is whether to make it precedential or not. Just because there's a dissent doesn't mean it wouldn't be made precedential. In fact, I was the dissenting judge on an opinion that went out as precedential a few years ago, so the fact that there's a dissent doesn't keep us from issuing something as a precedent. We don't require unanimity before something will go out as a precedent.
MR. CONLEY: I think my question was more about the time that it takes.

JUDGE ROGERS: A judge who writes a dissenting opinion can always request production credit and judges are on a production system like examining attorneys and like interlocutory attorneys and pretty much everybody else at the PTO and so they shouldn't feel that they don't have the time to write a dissent if it's necessary because they're not going to get productive credit for it, they will, and they just have to put in a request for it and generally it's granted.

MR. CONLEY: Thank you.

MR. FARMER: You anticipated and answered all my questions.

JUDGE ROGERS: I'd like to try and keep you on schedule.

MR. FARMER: I think that puts us down to G and that's more of a report because there have been some decisions recently we wanted to get the word out about some changes in the rules of evidence.
JUDGE ROGERS: We did issue back in the Fall 2009 Research in Motion versus NBOR which actually takes care of one point which we've been thinking about doing through a rules change and that is when we amended our rules to say that you could submit PTO records or use PTO records to establish status and title of your pleaded registration and you wouldn't have to get a certified copy. The rules said you could do it with your pleading but it was silent about whether you could do it with a notice of reliance during trial, but in Research in Motion we went ahead and said clearly that was the intent of these amendments of the rules and you can do it at trial through notice of reliance just as you can do it by attaching these materials to your pleading. So that was a point that needed clarification and we've taken care of that. Then earlier this week we issued a decision in Safer Inc. versus OMS Investments and that's opposition 91176445. Who knows? It might be on the TTAB blog or some place else by now. I know some blogs will get these
decisions up and reviewed within a few days of their being mailed and this was mailed on the 23rd a couple of days ago. But this includes a lengthy discussion of internet evidence policies and what we will accept and how it has to be offered and how it can be challenged and that sort of thing, and it's clearly a broadening of the types of internet evidence that we will accept into board proceedings. We're taking care of some of these evidentiary issues trying to make it easier for parties to our proceedings to get evidence into the record. Of course, preserving for ourselves the right to figure out how much value that evidence should be accorded later on, but we're trying to make it easier through these decisions. We also know that we're going to have to do a rule making at some point during the year, but again I think the manual, the request for comments and other things are a priority to get done first and then when we can transition into working on a rule making we will certainly do so as quickly as possible. That will be to take care of some
vagaries that exist in the 2007 amendments but also to address subsequent activities such as the federal circuit's issuance of the Cold War Museum case. I don't know that we actually have to address anything in rule making through the Sones decision that came down recently on specimens, but if there is anything that comes down from the federal circuit which deals with PTO rules, then if we have to do rule making we'll certainly look at that.

MR. FARMER: That sounds great. Mary, do you have anything?

MS. DENISON: One thing is we didn't really talk about the request for comments today because it's a little bit early, but I wanted to applaud the TTAB for considering the possible involvement of judges, which has not traditionally been the case, in settlements and I think that the private bar would welcome that because many times people are anxious to settle a case particularly in this economy but don't want to be seen as the person initiating the settlement discussions,
whereas if it were built into the schedule and a
requirement, people would be more likely to settle
earlier which would of course help you out
ultimately. I also want to again reiterate how
pleased we are at the improvement in
decision-making time and encourage you to keep
your eye on the ball and keep the number in weeks
so that the outside bar and the users of the TTAB
will be happy.

JUDGE ROGERS: Yes.

MS. DENISON: Thank you for your good
work and keep it up.

MR. FARMER: Absolutely. To close out
this topic, the TPAC is staying in a different
hotel this week and it causes me to walk a
different route to the USPTO and it had me walk
right under the entrance to the Eastern District
Courthouse which reminded me of how old I am
because back when I was a clerk for Judge Cacheris
he was the judge working on designing the
courthouse and the architect used to come in all
the time with the plans and now it's a building.
I noticed when I was walking under the entrance of the building there was a statue and it says on the inscription below the statute, "Justice Delayed, Justice Denied," and that certainly is the mindset of the Eastern District. That made me think of this because I think it's very exciting time with the TTAB when I look at the requests for comments on ways to provide speed when it's appropriate, when I look at getting some plug-and-play options in place for ACR, when I look at getting the TBMP up to date and all these other things I see a lot of excitement and a lot of good coming developments that will build on the already strong improvements you have made in getting pendency down so that I really look forward to seeing those things unfold over the coming years and I think it's again exciting. With that said, let's take a 5-minute break and then we'll come back and chat with the trademark operations folks.

MR. FARMER: There was a question that came in during the last segment and I forgot to
Someone wrote in to ask, To whom has responsibility for the TBMP been transferred? The answer is Angela Lykos. Judge Rogers gave that to me. With that I'm going to turn things over to Lynne Beresford for our trademarks operations segment.

MS. BERESFORD: Before we start talking about our statistics and things of that nature, I always like to showcase something that we're doing in trademarks that I think is exciting. We have a committee within trademarks for pro ses. We're looking at ways to better inform people who are pro ses using our website and using our services. So what I'd like to spend 5 minutes doing is we are developing videos to be posted on the website eventually that will explain the various parts of the application process to applicants. So instead of reading the five paragraphs on what owner means, they can watch a minute-a-half video about what owner is. We're going to see half, 5 minutes, of the first video we've created which is the basic video on filing trademark applications...
and using our website. Here is the first 5 minutes. Take it away.

(Video played.)

MS. BERESFORD: There's the first 5 minutes of our basic video to talk about the trademark registration process which we hope will hope will help pro se filers what they're getting themselves into. I will say that at the end we give a little tip that if you're confused or if you think you need help here, we suggest hiring a trademark attorney. We have always a very generous percentage of pro se applicants and we're always interested in doing the right thing. Thank you very much for doing this. Now on to the agenda. Thank you, John, for indulging us.

MR. FARMER: Is that already up or is it going up?

MS. BERESFORD: It will go up in the future. It's not up yet. It's still in draft form. We're still going through the clearance process.

We'll start off with the list that's in
the agenda. I'm going to let Debbie Cohen and Sharon Marsh handle most of these issues since I talked a bit earlier, starting out with how to encourage the electronic filing of postapplication documents such as responses to office actions.

MS. MARSH: Thanks, Lynne. The slide up there is related to a different topic so we're not working from the slide on the screen right now.

This is an ongoing topic at the PTO. As you know, we want to have a system that is pretty much 100-percent electronic both on the side of the office and the users so we continue to look at ways to encourage e-filing of trademark documents. As you know, for the initial application we're almost to 100 percent. It's a very high number, 98 percent perhaps. But we're also considering some other steps to encourage users to use the electronic forms. The first one on the list is eliminating the certificate of mailing procedure.

If you recall, 2 years ago, almost exactly 2 years ago in February, we issued a notice of proposed rulemaking to suggest that users would no longer
have the ability to use certificate of mailing or express mail for any document for which a TEAS form exists. We got feedback from most of our major user groups including AIPLA, INTA and IPO, and the comments were fairly similar. They certainly support our egovernment efforts but they felt that this was a bit premature, pointing to problems with filing large documents and technical issues that still remained with the systems. So 2 years have gone by and I think we've addressed at least some if not all of the issues so we're considering again proposing that we eliminate the certificate of mailing or express mail options for people if there is a TEAS form that could be used.

Second on the list is improving eforms. As you know, we on an ongoing basis look for feedback from users both internal and external about how to make the TEAS forms better. Our TEAS manager Craig Morris reminded me this morning that we actually have an enhancement coming up in June as part of a series of changes to the forms to make them better, so that's another way that we
will continue to encourage efiling.

The third one on the list is charging a fee for filing paper responses to office actions. This way those who prefer to file paper could still do so, but there would be a separate additional fee filed to reflect the extra labor required to both scan and enter data into USPTO systems on paper filings.

The next one is efiling, a required efiling for postpub amendments. This would be the first step toward making use of our electronic forms mandatory. We added a postpublication amendment form about a year ago, Craig? And also restructured the system for processing postapplication amendments. We now have a team of paralegals in the policy petitions area that processes those and it works very well so we are considering whether we should make use of that form mandatory, that if you want to file a change to the application after publication and before notice of allowance or registration you would have to use the electronic TEAS form.
The last item on the list is a good one.

I like it because it's more of a carrot than a stick. A few months ago our staff in the policy and petitions area was looking at notices of cancellation and what they discovered was that we have situations where in some cases if a registration is cancelled or expired, cancelled, Lynne Beresford as the Commissioner sends out a formal notice that the registration has been cancelled for things like if there has been a TTAB decision or a court decision, if the office accidentally issues a registration that it shouldn't have and has to cancel it, in those types of situation a formal notice of cancellation is issued by the Trademark Commissioner. Other situations, for example if you fail to file your Section 8, we do not issue any formal cancellation notice. So one thing we're considering is perhaps having a different kind of system where we would every time a registration is cancelled issue a notification that the mark has been cancelled but it would not be a formal notice with signature of
the Commissioner. Instead, a standard notice
would issue and be posted into the application
file in the trademark document retrieval system
and the egovernment aspect to it would be that if
the registrant has on file with us an electronic
address and has agreed to electronic communication
with the office, in those cases the registrant
would receive an email from us with a link to the
notification. In addition, registrants who agree
to email communication would also receive reminder
notices when registration maintenance documents
are due, the Sections 8 and 9 filings. These are
the ideas that we are considering. We of course
are interested in TPAC's feedback on these and we
will at some point make a decision about whether
to proceed with rulemaking notices.

MS. BERESFORD: The use of the
electronic form for postpublication amendments, we
thought this absolutely the perfect place for
requiring the use of the electronic form because
there is such a short time period here in order to
get things done and have your registration issue
with the correct information in it, so that was the reason this was picked. We think it's a win-win for the bar here because they will get things done in a manner that's timely. Other than that, I think the other things, Sharon, are well explained.

MR. FARMER: By way of introduction, we have various champions on TPAC and Kathryn Barrett Park is our champion for general trademark operations and so for this segment I'm going to mainly let Kathryn take the lead and then others of us on TPAC if we have other stuff will sweep in behind her. Kathryn, the floor is yours.

MS. PARK: I wanted to say, Sharon, on the last issue that you addressed, the proposal to modify the procedures for notices of cancellation, we did discuss that briefly yesterday afternoon. You answered the question that I think some of us had which was what if there wasn't an email on file and this will apply when the registrant to indicated, so I think that we would support that change.
MS. DENISON: On the elimination of the certificate mailing procedure, you said that that would be not available for anytime when there was an electronic form that you could use, but it's my understanding that there is now a universal form which covers essentially everything. Does that mean that this is in effect elimination of the certificate of mailing in toto?

MS. MARSH: Perhaps, yes, because we do offer that option now.

MS. PEARCE: I only have one concern on this. If we're going to still allow paper filings even though we may wind up with a different fee structure for them or something along those lines in order to steer people toward electronic, for as long as we've got paper filings isn't it reasonable though to keep the certificate of mail?

MS. MARSH: I think the point is we want to encourage use of the electronic forms and so the extreme option is to just stop, to make really harsh measures so that you can use the paper system if you want to but you're going to give up
the certainty of express mail or certificate of mailing. The other option is what I mentioned about you can file paper but there's an extra fee for the extra labor.

MS. PEARCE: That I have to admit I'm more in favor of. I'm all for revenue generation anyway. I think that there are members of the trademark public that might take offense. There are some contrary people out there. I would rather see us charge them more for the privilege than eliminate the privilege altogether at least for the time being.

MR. LOCKHART: As a practical matter, how many certificates are you getting now a year? Do you have a feel for that? How many people are still using that paper procedure?

MS. MARSH: We don't have good data on that. We actually have a group now that is starting to look into that. For some technical reasons it's a bit difficult to count the paper coming in but we are going to try, and if we get data we certainly will report it to TPAC.
MR. FARMER: As far as where we go from here, I want to make sure that we're on the same page. Would you like TPAC then to come back to you and say yea to one, nay to two, so forth and so on? Are you looking for that sort of response from us?

MS. MARSH: Yes, I think that would be good and perhaps if you could list your preferences in the order of what you think would work the best and if there are any that you think are just simply unacceptable that the bar and users will not accept, that would be good information as well.

MR. FARMER: Some of these may not be mutually exclusive in that some you could do more than one. What I'm thinking, Kathryn, is that maybe one thing we'd put on your champion list is to gather this feedback and funnel it back just like we did with the automation list, and so we'll do that. Before I leave that topic, I saw a question from Al Tramposch.

MR. TRAMPOSCH: I can wait.
MS. PARK: I have a question, Sharon, on the third one, charging a fee for filing paper responses which I agree with Elizabeth is generally a good idea. Is there a cost basis that that would be based upon?

MS. MARSH: Yes, that's a question that would have to be sorted out, does it have to be based on cost and if so what would that be. If we think that's the way to proceed, those issues would be developed.

MR. LOCKHART: You've been allowing efilings of applications for quite a while now but there is still the dual track for paper applications with a higher fee. How much pushback if any have you gotten from the trademark community about the higher fee for a paper application?

MS. MARSH: I don't believe we've gotten a lot.

MR. LOCKHART: So there seems to be a recognition by paper filers that there is an increased cost of processing that so that it's
appropriate to pay a higher fee? Then I suspect as Elizabeth and Kathryn have said, if you were to continue to allow the dual track, then if you just charge a higher fee for any paper filings assuming you have a cost basis for knowing what the fee ought to be, that might be a reasonable way to proceed at least for the foreseeable future. I'm sure eventually you're going to go to all electronic filings, but maybe we're not quite there yet. If you're still getting some paper applications, there are some people who prefer to do things in paper.

MS. PEARCE: As a member of the budget committee, this is one thing that came up in the fee study. All of these fees were studied for paper filings and electronic filings, so I think the costs of all of that have been run and the CFO's office has got all that information. They are substantially higher for every aspect of paper filing versus electronic filing. So how much would be the appropriate extra fee I don't know, but I think all of that work has been done,
Sharon, and the CFO's office should have that for you.

MS. COHEN: The only thing I'd like to add to Tim's comment is that this will be the first time we're charging any kind of a fee for a response to an office action so I think that's where the kickback will come, not just simply paying a little more for paper, but actually have to pay for something you've never paid for before.

MR. LOCKHART: But the fee would only be charged to people who file in paper.

MS. COHEN: Right.

MR. LOCKHART: I would think people would understand that. Actions have consequences. If you choose to file in paper, you're going to pay a little more money.

MS. DENISON: There could also be some sort of disclaimer or something. I'm not sure where the appropriate place to put it is, but when you pay the 375 up front, you've got to look somewhere to find the fee and then when you find the fee to know that you're mailing in 375, you
need to be told that actually it's going to cost
you more than $50 or $100 extra, it's going to
cost you more to go through the whole process
because there are going to be extra fees for paper
filing all the way along.

MR. LOCKHART: That would be true if the
paper applicant chose to respond to the office
action in paper, but the paper applicant could
respond to the office electronically.

MS. DENISON: That's true.

MS. BERESFORD: Let me say first of all,
charging a fee for paper responses makes sense
from an accounting standpoint because it does in
fact cost us more to process paper and I think we
have the information in the fee study for that.
Just looking historically however at the rule for
certificates of mailing, the historical reason for
this was slowness of the U.S. mail and the concern
about whether or not things would get here. The
landscape has changed dramatically since then. If
you're at the last minute filing you can fire up
your computer and file something at the last
minute here at the USPTO. You don't really need a
certificate of mailing anymore. Further, I think
our study will show us that certificates of
mailing are not something that pro ses use because
they don't know about it. This is something that
attorneys and experienced practitioners know about
and use. They are also probably pretty much aware
of our electronic systems too. There may be a
reason that they're responding in paper. I think
no one likes to give up an alternative way of
doing things, but looking historically at the
reasons for the certificate of mailing, I those
reasons have disappeared. Nevertheless, of course
we're going to look at all the feedback we get
from TPAC and again I think we've been successful
by offering carrots for electronic filing, way
more success than we would have been by trying to
force people to use it. So perhaps adding the fee
will be the choice here and if it's like changing
the fees for filing paper applications, it's been
very successful at lowering the number of paper
applications that have been filed.
MR. LOCKHART: Yet a third option might
be to say during the coming year we're going to
charge a fee if you choose to do these
certificates of mailing and maybe keep some
statistics on how many you get in paper. If it's
a miniscule amount, at the end of the year
eliminate the option.

MR. TRAMPOSCH: Do you feel like you
have adequate safeguards in place for the times
when the computers are not working? I know it's a
bigger problem on the patent side than on the
trademark side, but it's not necessarily the
office's computers. It may be the attorneys'
computers, it may be circumstances in the office.
People get used to last-minute filing with
computers and when things aren't working they need
to have a way to get on file immediately.

MS. MARSH: I think the answer is that
if you're waiting until 11:59 to file on the last
day, you're taking a risk. I think if there were
widespread PTO problem the office would certainly
look to some way of giving filers a way to have
the filing be considered timely if possible, but there are limits on what we can do especially when the statutory deadline is in place.

MR. FARMER: I think Lynne may have insight there also.

MS. BERESFORD: Depending on which part of the process you're in, you have a petition to revive and our standard for petitions to revive is pretty much the I forgot standard, I didn't mean to do it, I didn't do it intentionally. At least in the application process if you want until the last minute and your computer system is down or our computer system is down, you aren't kicked out of the process completely. You have a routinely granted petition to get yourself back into the process. It's not the end of the world. As we go through the process there are other parts where you do have a statutory deadline that can't be waived. In those areas, but that's not in the application process, you might have an issue.

MR. FARMER: Mainly you were talking about the application process?
MS. BERESFORD: Yes.

MR. TRAMPOSCH: I think though if you do away with the certificate of mailing you're not talking about last-minute filing anymore, you're extending the time that there's a danger that the computer systems are not working or electronic filing cannot be done for one reason or another. So I think that there is a danger there and we should factor that in to consideration.

MS. MARSH: Thanks.

MR. FARMER: Let's go on to registration certificate issues. I don't want to rush anyone, but we do need to pick up the pace a little bit in order to try to keep the trains running on time.

MS. COHEN: No problem.

MR. FARMER: Registration certificate issues?

MS. COHEN: I'm going to handle that one. I'm going to take the second point first while Sharon is handing out some show-and-tell materials. The second point is the progress of our having the electronic certificates of...
registration with an option to obtaining a paper certificate. I have to report that we really haven't done anything on that, that we had some automation issues and given the priorities of our near and what's coming up in the future, we have veered away from focusing on that. So I don't have anything new to report on that issue. We recognize that it is something that we want to have in the future and we will try to build that in of course to our next generation.

Moving to the first item, as you all know, we had changed the size of the paper and the registration certificates that we're issuing and we're about to make another very minor change that has to do with the typeface and the readability of the registration certificate and I wanted to pass out both the current certificate and the new proposed certificate so you could take a look and see what we're planning on doing. I'll highlight the differences if they're not obvious to you. The old certificate had a date in very small print that some people complained was hard to see so
we've increased the size of the date and the typeface and put it in bold. We've also justified the left margins because we think that presentation is also easier to read. Then we've changed the size of the word "trademark" and the type of register. You can comment now if you'd like or send us some comments. As I said, we're not looking to make major changes in this area but we did see some obvious changes that we thought were good to make and we wanted to let you know what those were and give you an opportunity to tell us if for some reason you don't like them.

MS. BERESFORD: A point of clarification. We're only looking at the front of the certificate. Nothing on the back of the certificate has changed.

MS. COHEN: You won't see anything on the back of the new proposed certificate simply because we just made a one-sided copy.

MS. PARK: I think judging from the quick colloquy with my colleagues, we all think that it looks good, Debbie.
MS. COHEN: Thank you.

MR. FARMER: Then there's a report on the progress of moving toward the eventual issuance of electronic certificates of registration with the option to obtain a paper certificate if you need one. I'm sorry. I just blew right past you then.

MS. COHEN: That's okay.

MR. FARMER: The Bose fallout?

MS. BERESFORD: I mentioned this earlier. We're planning on having a seminar here or discussion that we're jointly sponsoring with the George Washington Law School April 26. We'll be sending out letters soon. We'll be sending out a paper in advance to talk about the issue of definite IDs, accurate descriptions of goods and services in light in the Bose case to try to figure out should we have next steps and if so what should they be.

MR. FARMER: We on our committee have Kathryn Barrett Park leading TPAC in thinking about the issue also and if we come up with any
thoughts we'll make certain to pass them along.

The next one is a brief report on current trademark operations speed and quality performance metrics. So I think we're now to the chart.

MS. COHEN: Yes. I'm trying to get this on the previous page if I can. This is a report that you're used to seeing. I'm not going to go through every item except to point out that we seem to be on track for pendency, for quality and for all of the other measures that we have in there and I'd be happy to take specific questions about anything if you'd like to give them.

I wanted to mention because Gerry Rogers earlier talked about the productivity of the TTAB and working through the snowstorm and as you all know we were closed for four consecutive ways. Our production statistics have told us that for those 4 days we actually did 85 percent of the work that we did for the same 4 days in the previous week which is a significant number because 85 percent of our examining attorneys work from home. Those people who come in to the office
obviously didn't come in, the office was closed, so we were very happy about that. And our Trademark Assistance Center was fully operational and answered 91 percent of their incoming calls within 20 seconds. They didn't miss a beat. So we were pretty much unaffected by the snow except for the shoveling, but we did very well.

Also to highlight the filings, you'll see on the chart, and this is of course as of the end of December, the first quarter, that we were about 2 percent behind where we were last year. We've actually increased a bit since then. And as of the end of February we expect that we're going to be about 3 percent ahead of where we were last year. So that's good news. Our inventory of unexamined cases, we're at about 78,000 classes in inventory which is about where we want to be. So we're trying to manage to that 2.5 to 3.5 pendency and we think we're really on track to do that with the current measures that we have in place which is to continue a number of the details that we have going on which have resulted in some really
good projects and results in both Sharon's area in
policy and some other areas throughout the agency
where we've been able to help out. We do have a
modified award in place for the examining
attorneys for production and our calculations tell
us that it will get us exactly where we need to
be. We of course don't have overtime at the
present time, but as Lynne mentioned earlier, as
filings go up we'll put that back in place.

The next page talks about more of our
internal service. The Intent to Use unit needs to
improve in their pendency and they're on track to
do that. All of the other areas are really within
their targets for the year.

MS. BERESFORD: Let me say I think this
may be the first time we've shared this internal
document with TPAC or made it public, but this is
really the tracking of all the segments within
trademarks that support examination. With this
you can see the quality goals and the pendency
goals that we track in every part of trademarks.
Examination gets the flashy part and gets all the
attention, but we really pay attention to all the
other areas of trademarks to make sure they are,
and they are, more than a little, they're doing a
great job.

MS. PARK: John, let me ask one
question. This second page, is this going to be
what you mentioned about going up on the website
so that somebody could see that currently it's
going to take 2 weeks to get your statement of use
reviewed?

MS. BERESFORD: No, this is just a
report. We keep statistics on how every unit
under trademarks is meeting its goals and this
reflects the staffing organizations within
trademarks and how they're doing. What we're
talking about is putting a timeline up on the
website. Initially it will be a timeline that
doesn't show how long on the average it takes in each
part of the process. We hope that one of the
things that will happen with Trademarks Next
Generation is we'll have an interactive timeline
so that you can put your serial number in there
and it will tell you where you are in the process, what the average wait is in that part of the process and what the next steps are after that part of the process. It will be a living timeline that gives you up-to-date information on what's happening in each part of the Trademark Organization. This kind of information will be gathered obviously more rapidly when we have the timeline in place, but this is the kind of information we will need so that you know if something is in preexam how long it's going to be there or if it's in ITU how long you can expect it to be there.

MR. FARMER: Off to Excellent First Office Action Initiative.

MS. MARSH: I can do that one. This is a quick one. We wanted to make two points this morning with you. One, we are adding this year a new external measure to use existing data that's already collected by our Quality Office and identify the percentage of cases that are excellent in all areas, we made the right
decision, we explained any refusals or
requirements well, we attached evidence that was
on point and persuasive, we did a good search on
all issues. This was a baseline year. We see
what the statistics show and then the plan I
believe is next year to make it an official
external measure.

Secondly, we've also started last fall
an outreach effort. We took data that we had
collected on quality, real cases, and gave a
couple of our user groups, INTA and AIPLA, the
cases to review themselves. They have committees
that specialize in PTO matters and those committee
members volunteered to review cases. We've gotten
the data back from like I said INTA and AIPLA.
They are very close to each other and very close
to our own results. That was very reassuring that
within a percentage point on all issues about
correct decision, good explanation, good evidence
there seems to be consensus about what's a good
action and what's not and the percentages that are
good. We are going to continue this with a couple
of other groups, perhaps IPO and also ACC, the Association of Corporate Counsel, so we will report on that data when we get it.

MS. PEARCE: I had one quick question. I was noticing going through all of your data that you've got here that you are on target or ahead of target in some cases for everything, except the ITU unit seems to be having a problem, they've got a particular backlog and I've noticed this with a lot of my cases and Howard and I had discussed this. Is there a reason why they're so badly backlogged?

MS. COHEN: I'm not sure there is a particular reason. We have worked on the backlog. We assigned some overtime to those folks and they've gotten the backlog down so that you will see a much different number next time.

MR. FARMER: There you have it. Is there anything else on the Excellent First Office Action Initiative? Discussion of progress toward the TPAC goal of having an electronic complaint and praise procedure and I think there is some
news there. Who wants to give it to us?

    MS. BERESFORD: Debbie?

    MS. COHEN: We're going to have to cross it off the list because it is up and running.

It's on the front page of the website. If you scroll down on the trademark in the trademark section you'll see the link to the, I'm trying to think of exactly what it's called, TM Feedback. If you click on it there's an instruction on how to use it and what it's supposed to be used for and you can get into the mailbox and send us feedback on any issue that you want to complain or praise us about, only trademark matters, please. If it's an issue about a particular case we're hoping that people will continue to work with examining attorneys and when necessary contact managing or senior attorneys if there are issues to discuss. But any other general type issues we are going to be monitoring it. We have folks in the policy area who will be monitoring and reporting on it and so we will always know exactly what's going on through that mailbox.
MR. FARMER: We on TPAC have a to-do item to take a look at. It just came up so many of us have not had a chance to see it, but we'll do that and we'll provide feedback back to you. Tim?

MR. LOCKHART: Assuming that you're getting a fair number of input pro or con through that link, I would be interested to hear at the next TPAC meeting what the thrust of it is, what the typical comments are, is it more thumbs up, thumbs down, whatever, just to see how that's working.

MS. COHEN: I think that's a great idea and we'll be happy to do that.

MS. PARK: I want to say, Debbie, Lynne and Sharon, I've looked at it and I think it's a very nice added feature and I think it addresses the concerns that we had had, and I also think it's very clear in the direction it gives that it's not a mechanism to circumvent the official processes for responding to office actions and the like. My person opinion is it's very helpful and
good.

MR. FARMER: We will definitely study it. As a matter of fact, it's something we'd certainly like to get the word out on. I know for instance we have representatives here from INTA and AIPLA amongst others. To the extent that you can let your folks know that this now exists, we think it would be beneficial to the communities that you represent.

MR. JOHNSON: As a follow-up to what Tim said, I'd also like to know not only what was reported but what actions were taken in response to those comments such as why something wasn't done or if it was a silly comment, no response necessary.

MS. COHEN: Okay. Got it.

MR. FARMER: The next one is discussion of progress on the TPAC goal of having the TMEP continuously up to date. I think we kind of got that earlier. Is there anything additional or did we check that box? I'll presume we checked that box unless someone says otherwise.
MS. MARSH: I don't think we have a lot to add. We are looking for ways to update TPAC more frequently, and as Lynne mentioned, we're also moving toward a wiki-style TMEP. The patent manual staff is also moving in this direction so we're going to be working with them. I noticed Mr. Kappos in his blog post earlier in the week on the patent manual made the comment that, "Good commercial authoring environments for large monolithic documents having multiple contributors are readily available." So if he's right, there's got to be software and systems out there that can get us where we want to go.

MR. FARMER: That's wonderful. We look forward to the journey into reaching the destination. The next item is discussion of progress toward the TPAC goal of if a statement of use is denied approval and an intent to use the application should become eligible for extensions as if no improper SOU had been filed. I think there is some news from TPAC on that end and that is we ourselves are going to deliberate on that
more also since there may or may not be unanimity, that's a hard word, of opinion, so we'll have more coming from us and Kathryn is going to lead that.

MS. PARK: I wanted to say that Lynne gave me some statistics earlier today which I'll share with TPAC, but I think while it's an issue we want to consider may not be of the order of magnitude that it requires being bumped up to front of the list and may well be something that can be accomplished as part of the Patent Automation of the Future project, so I think that may be a way we would look at it.

MR. FARMER: So that one's on us and we will come back to you. Discussion of trademark operation initiative to access the user-friendliness of the trademark portions of the USPTO website.

MS. BERESFORD: This is something that I would love to do and I think I've asked TPAC if they have ideas about how to do this to let me know. In inquiring around about at the PTO, no one has come up with really good suggestions.
Everybody says survey your users. I'm not sure.

We're willing to do that. There's a whole process for survey because it invokes the Paperwork Reduction Act problems that you have to get a survey approved and you're collecting more paperwork, and I'm not sure that will get us exactly the kind of information we want because we don't want just a general idea of how useful or not useful it is, we really want to know about the particular parts of the website, how useful is each one, how useful is TEAS and how useful is the search system and get comments on that. I haven't been able to figure out a way to do this as yet or a way to benchmark this and I look for suggestions from members of TPAC or anybody else who has suggestions on this.

MR. LOCKHART: One thought that occurs to me although maybe this would be feedback that's more general than what you're looking for, would it be possible when somebody electronically files an information and you get your electronic filing receipt that pops up, could there be a link in
that probably up near the top and say click here
if you wish to provide feedback about how useful
or user friendly you found the website? People
look at that and if they could just click and go
in and give you comments, again it might be of a
general nature.

MS. BERESFORD: That's something we can
consider.

MS. PARK: You may get something
feedback in your new user feedback.

MS. BERESFORD: I think so.

MS. PARK: So that might be a good
place.

MR. TRAMPOSCH: AIPLA is right now
preparing a survey at the initiative of the patent
side of the house requesting feedback on the USPTO
website. Our board also asked us to cover
trademarks. So perhaps you could help us with
crafting our questions to give you good feedback.

MR. FARMER: Sounds good. Let's go on
to J, the Trademark Automation of the Future
project including what steps are being made to
move it forward and how community input will be
gained.

MS. COHEN: I will take that one. As
you know, TPAC has submitted a list to us of
various priorities actually in priority order and
it was a really helpful list for us to look at and
to use as a starting point for seeking user input
from our other external users, and that's exactly
what we're planning to do. In fact, we're
finalizing a letter today that will go out to
INTA, AIPLA, IPO and various other organizations
that is going to forward the TPAC list and use
that as a starting point for seeking their input.
At the same time we're going to put a notice on
our website to seek input from individuals and
anybody who might be interested. We're in the
process of setting up a mailbox and that will be
in the letter so that all of the input can be
funneled into one place and we can have a way to
coordinate it and look at it.

At the same time, we're seeking input
from our internal users which we think is every
bit as important as getting input from our external users. NTEU 245 has recently submitted their very well-organized list of priorities and we're going through that and we're going to further discuss it with them. We are working with managers to try to coordinate input from NTEU 243 which is a bit more difficult since their jobs are so much more varied. We need to coordinate that a little bit differently but we're in the process of doing that.

Lynne had sent out a message in mid-January to everyone in trademarks asking for their input and describing the best we could the project, the upcoming Next Generation of Trademarks and we want your ideas and so people are aware and encouraged to send in their ideas to a mailbox that was set up for that.

We're trying to cover as wide an audience as possible both internally and externally. We expected to have the input completed by the end of March but it looks like that's going to move a couple of weeks back. I
can blame the snow. I think that's one of the
reasons at least. But it's quite a task gathering
the input and so we're thinking by mid-April we
should have a really good idea and we can start
analyzing it. From there we're going to be
working with OCIO and all of the tasks that
they're involved with and I think sometime in
October they're going to be able to develop start
the requirements development or finish the
requirements development, I'm not sure. I'll let
John address that in his presentation. I know
he's got a slide on that. I think that's it for
now. I don't know if anyone has any questions
about the project and where we are. We're still
in the gathering-the-input phase, we're in the
midst of that, and we think that based on NTEU
245's input and TPAC's input that it's been going
very, very well.

MR. FARMER: I think that's great.
Kathryn Park led our efforts on TPAC to go through
that and it was a fair amount of work, so Kathryn,
thank you for leading us on that. Also I want to
say that I think the way that this issue was
handled was just wonderful and it's the paradigm
for how TPAC and the office can interact. You
came to us, you gave us something to react to, you
gave us time to react, we were able to formulate,
able to kick back and I think it's just the model
for how TPAC can and should operate. Overall
since I think we're at the close of our segment
here I'd say that you in the Trademark Operation
are doing a fantastic job and keep up the good
work.

MS. DENISON: I just had an inquiry
about the video. I realized that I didn't see the
whole video, but I had a slight concern which
maybe would be allayed if I watched it again, at
any rate, about the search reference. I think
it's a good idea that you're telling people they
have to search, but I didn't get the sense that
somebody who didn't know anything would understand
that if you typed in P-i-n-t-e-r it might get a
refusal for P-i-n-t-a-r. So I thought there
should be a little bit more of a disclaimer about
the search process because it really makes the
search process sound earlier than it is in
reality. I don't know if it's possible to change
it, but I would at least if you can look at that.

MS. BERESFORD: Thank you for that
suggestion. We'll definitely look at it.

MR. JOHNSON: And it's the same issue
that we raised with the disclaimer on the website,
that searching PTO records is not all you need to
do.

MS. BERESFORD: I haven't looked at all
the videos. It's possible that we'll have a
separate video just on searching and that would go
into this more generically and give more
information. This was really to be an overview of
the system. Again we think our pro se -- we can't
tell them everything. We are not producing the
"Lawrence of Arabia" for trademark filings. We
want to give them something that people will
actually listen to and maybe not make mistakes.
But I understand your concerns about the
searching.
MR. FARMER: It sounds like that might be a good opportunity to reference in one video that there's another one.

MS. BERESFORD: Yes, that's possible too.

MR. LOCKHART: In the video that tells them even the quick overview of searching, they're going to go that website and they're going to see the disclaimer because that's where it is.

MS. BERESFORD: Yes.

MR. FARMER: We're about 3 minutes behind which is fine. Let's take a 5-minute break and we'll come back and chat with the CIO.

(Recess)

MR. FARMER: We're now going to our discussion with the OCIO, so John Owens, we'll turn the floor over to you.

MR. OWENS: Thank you very much and good afternoon.

To let folks know, 2009 was a very good year for us. We initiated over 62 infrastructure modernization projects. I won't read them all of
here. Several of them were core to the system
development process and procedures developing here
in OCIO as well as core to the infrastructure of
the agency. On the first page I'll point out a
couple, establishing a system development
lifecycle by which we unilaterally manage our
projects. Of course, I have spoken before on how
important that was. Right down to the federal
desktop core configuration which we were several
years behind on. We completely rolled out FDCC
1.0; 3.0 is currently in formulation but we rolled
out 1.0 and I hope to catch up to version 3 before
they release a version 4 and we're on a good track
to do that.

We've also released FDCC 1.1 which
allows us to deploy a tool called the SCAP tool
which allows us to monitor our desktop environment
for deviations from that baseline as well as any
changes to the controls to allow us to lock down
the environment even further. We've employed
enterprise configuration management so that we
have tighter control over what we have and what
we've deployed. We're completed our
service-oriented architecture. The one on the
very bottom of the page is quite honestly one of
our largest successes. We have gotten to the
sixth phase of PTONet III deployment. This is the
complete redo of our internal network to be fiber
back channeled and that deployment only has two
phases left and we are ahead of schedule, so that
has been a very strong effort for my organization
which certainly affects all employees including
trademarks because it brings gigabit Ethernet to
the desktop, we're a little bit behind, but we're
very proud to see that continue.

Let's talk a little bit about trademark
next gen because that seems to be what people are
focused on. At a very high level we have eight
major tasks undergoing. I'll go through them one
at a time. The first is requesting public and
examiner employee input and this is being managed
by trademarks and we have been kept very closely
involved. I have really appreciated Lynne's
efforts in this area. I certainly would like to
thank Howard and his union for bringing us employee feedback. And of course the public for giving us what you all want because the product that we build at the end of the day needs those business requirements as the foundation so we build what you want. I'm sure we will never be able to make everyone happy and certain choices will have to be made, but having all of that information up front is critical to the success of the program.

The trademark next gen task order was issued as you both know. The receipt of that study did take a small hit of about a week due to snowmageddon you may have all heard about here in Washington, D.C. It was received last Friday. I have been spending my evenings reading through the results of those two studies. They are to compare and contrast our own knowledge and plans so that we can properly formulate an adequate business case with enough different points of view so that we know the course that we're going on is the best for not only the agency but for the public. This
is intimately part of what's called the Capital Investment Decision process that the federal government employs which is defined under the Clinger-Cohen Act which just so happens to set up the Office of the CIO. I am intimately involved in that process due to my position, and that Capital Investment Decision process of course has a series of steps which are accommodated in a document called the "Capital Investment Decision Paper." It is the CIDP that you saw once upon a time for the roadmap and you will again see for Trademarks Next Generation which will give you the overall guidelines of how much things are going to cost, how long is it going to take, what are the major moving pieces, what are the major initiatives, and later we will flesh out the details and the requirements.

That brings us down to the ITRB. The senior leadership here at the USPTO will approve that document, the "Capital Investment Decision Paper" for moving forward. We will then use those initiatives to work in parallel as we gather
requirements not only from our constituency internally but also translating the business requirements because trademarks had over the years very well-documented their process. In fact, out of all the processes that I've seen here at the USPTO, theirs is the most completely documented in very exacting detail. I believe taking that detail along with the requirements generated by the public and internally we can come up with a good architecture and design as defined in the CIDP so that we are ready to let a major contract or series of task orders on a contract loose in the beginning of the next fiscal year which is the current point in plan. I'll stop here if anyone has any questions. That was kind of a mouthful.

MR. LOCKHART: I take it then that you anticipate having the requirements fully documented and the system design and architecture pretty well done by the end of this fiscal year and you'll actually start constructing Trademarks Next Generation in the next fiscal year, fiscal 2011. Correct?
MR. OWENS: With this plan of course I'm always looking for ways to pull it in and we may hit something that may delay some part of it. It's not one big moving entity though. Breaking it up into parts using methodologies to work on parallel parts at the same time is certainly something we're going to be looking at. The first phase of any development effort is concept design, architecture, requirements and prototyping so that we may actually develop some prototypes this year. We also have to get our clouded architecture and hardware developed in- house so that we have a place to actually do development. You have to build a prototype system to build development on here. That may all get done this year. In fact, according to this we should get most of that done this year.

MR. LOCKHART: I appreciate that.

MR. OWENS: We're not waiting. We all wait until the end of the year and then a big bang happens. This is lots of iterative. This is just a 500,000 view of all of that.
MR. LOCKHART: I understand and I appreciate that clarification. That's helpful.

Assuming that you do start building the system in simple terms this fall, are you still on track you think for about an 18-month timeline from there to have it done or what's your projection?

MR. OWENS: Until we get the requirements, I couldn't say. I know that Mr. Kappos would like it done in 18 months. Lynne and I have talked about this. But it's easy to say something and sometimes much harder to actually build it. Will something be done? Undoubtedly something will be done. We hope to show some positive results this year and progressing down the path to the process we have defined before us. But I am not willing to comment to a particular date when I haven't read all of the requirements yet. It's like build me a Space Shuttle. What kind of Space Shuttle do you want?

MR. LOCKHART: I understand. I know there are a lot of moving parts and you're still gathering a lot of information that you'll need to
make more precise decisions. Realistically we're probably looking at at least about 18 months from this fall before you could roll it out? And it could be longer?

MR. OWENS: I think that you will see parts of it being developed as we go along and parts of it employed and you will see smaller improvements. In fact in my conversations with Lynne and Lynne correct me if I'm wrong was to show iterative progress moving forward so that people can see things are getting done. I wouldn't say you're going to wait to 18 months to see something. How much of the project is done in 18 months I cannot tell you. The SIPIC document that we're formulating now will certainly bring like the roadmap did and all of you saw the roadmap here which was a SIPIC document and saw that it had stages. In the year we executed on that very well. We hit all of our major milestones. Even a couple of projects that were slightly behind we caught up with at the beginning part of this year. That will be the tool we use
to manage this program at a very high level and you will see the same thing and that will bring some depth and clarity. Also in each individual segment, we had nine major initiatives in the roadmap, let's say we have four or five in this one, each one those four or five will have a set of requirements, a complete set of documentation and you will see them evolving over time and integrate.

Let me tell you about the importance of requirements. There are lots of studies that show that requirements are the basis by which we will succeed or fail right up front and we have actually taken some steps to bring in requirements experts from industry to train not only my organization but trademarks and patents alike. I know in our session before this one it was asked how long was that training and it was about 5 days, but we have those folks on contract to come back to help us at various stages along the way to evaluate how we're progressing in gathering requirements and translating them from business
requirements to technical requirements, so we're very happy with the success of that effort.

Again I thank the folks both externally that are providing us their input but also internally our business unit and our employees who Howard represents of course are providing us feedback as well. That's being handled by trademarks. So if you follow, we're gathering external requirements, internal requirements, and then of course we have the business processes documentation that I talked about earlier which feeds into trademarks and trademarks is going to work to formulate the business requirements. CIO will work with trademarks to take the business requirements and formulate those into technical requirements so that we mutually agree on what we're building, how we're building it and why.

The responsibility for the business requirements is of course trademarks and finally the OCIO's is my own, but together we will work to make sure that these are defined. We use a rational suite of products here built by IBM to
track requirements and those requirements are tracked. They track every business requirement to a series of technical requirements. It's not necessarily a one-to-one mapping. We will make sure along the way that we don't lose anything, or if we make a choice to delay something that it is well documented so that we can go back to it in the future.

Part of the processes that I developed over this last part, part of the systems that I have employed, are all the foundational things, configuration management, change management, bug tracking, documentation, all of those best things, the SDLC, the software development lifecycle that I've told you about, all laid the foundation so that my organization could handle a project of this magnitude and have an ability to succeed. So we're in a good position here.

I was also asked to provide some information about hiring. The authorized ceiling level for this year for me was 474. My overall number is 549. That has not changed, but due to
budgetary constraints I can hire up to that number. I currently have on board 454 unless someone has decided to leave me in the last 2 weeks I don't know about yet, but I have been experiencing some retirements. There are people who are deciding to leave. I have the ability to hire 29. Three of my senior executive service positions are open, 9 architects, engineers and developers, 13 technical managers and 4 program analysts are among the list that I've discussed with Mr. Kappos to fill first. Good leadership in contract management is on the top of my list. So much of our work here via contractor that I wanted to bring in or promote those individuals who have those skill sets in the organization.

I also have details which I'm very grateful for. Two of the three detailees have returned to trademarks rotating in Ron Sussman to replace Chris Donenger as I guess my special assistant for trademarks. They keep them intimately abreast of what's going on. I have also been assured by Debbie and others that as
soon as this project kicks off in a rapid manner
that more trademark help would be oriented toward
working on trademarks next gen which I would be
very happy to take.

Looking forward to some of the other
initiatives Mr. Kappos has asked us to look into
include a single laptop program. We issue more
computers, this is hardware in general both
desktops and laptops than I have employees. In
other words, some employees have both a desktop
and a laptop. That's double the licensing, double
the software licensing, double the cost, double
the maintenance. Because of that, many companies
have gone to a single laptop per employee program
which is relatively simple unless you're here.
This helps us get around some of the things if you
remember in the roadmap. We have an aging desktop
hardware situation where most of our computers are
between 3 and 5 years old which is industry
standard for end of life though some folks have
slightly older than that that they're using
personally. I'd like to keep the hardware here
between a 3- and 5-year lifecycle. We need to reduce those costs. We need to adopt Windows 7. I have had conversations over at NSA and they've worked very closely with Microsoft to improve the security of that project and Windows 7 will be where FDCC 3.5 and 4.0 come from and we are trying to move the government in that direction. Of course we also need a way to deploy the baselines that we created last year. We created three baselines, a trademarks baseline, a patents baseline and of course a generic baseline for the rest of us who don't do examination or need to use those tools, but paying contractors to go touch 20,000 pieces of hardware to put the new baseline on isn't cost-effective. What I can do is put those baselines on using a vendor to deploy new hardware and I'll save us a lot of money that's not waste.

MR. FARMER: Just to everybody is clear, when you say baseline I think you're talking about three different images?

MR. OWENS: Computer software images
that contain all the software related to that
segment.

MR. FARMER: One for the trademark
folks, one for patents and one for everybody else?

MR. OWENS: Yes.

MR. FARMER: Can you talk to us a little
bit about what your timeline is for doing
everything that you've got under the single laptop
program?

MR. OWENS: We are currently in the
evaluation stage. Next year I have budgeted in
the president's budget one-third of what I would
need to get the replacement program going. Not
that that would affect trademarks in general
because you do have funding on your own, but for
the rest and of course the core infrastructure to
maintain and operate it certainly also needs an
upgrade. Unfortunately during our initial testing
that trademarks was more than happy to assist us
with we found that our applications because they
are so old do not run properly on Windows 7 and
this is a problem. Microsoft is going through
extraordinary measures to get people to upgrade to Windows 7 including working on their compliers and several software relation packages to keep current software products working on Windows 7 and we are going to look into what it will take to make the minimal number of changes necessary and we'll document all that, I am not quite done with that yet, to upgrade our current pieces of software to manage on that operating system because if we are 18 months or more beyond the start of fiscal year 2011 before we can deploy trademarks next gen, I would be in the 7- or 8-year timeframe for much of our hardware here and cannot wait that long. So I want to keep the examiners up to date with their examination software but also the tools that they use and I need to get them on the proper baselines with the proper security controls so having a little bit of overlap where we go a little bit back and touch the applications that we have does make sense and we will be performing the rest of the analyses on those tests as we are right now over the next few months. I'm hoping to get that
all locked down of what we have to change by
midsummer and then have a plan ready to go so that
we can start utilizing some of that money that's
in the president's budget next year for
deployment.

MR. FARMER: So that you think you'll
have these compatibility issues with Windows 7
worked out by midsummer, late-summer or something
like that?

MR. OWENS: Documented with a plan and
then the execution of the plan.

MR. FARMER: Then you're going to have
money to do about one-third of your laptop
replacement next fiscal year?

MR. OWENS: That is in the budget for
the next fiscal year, yes.

Let's a little bit about data.gov and
our efforts with Google. The president gave us 1
year to deliver all of the data here at the USPTO
that's publicly available to the general public in
bulk. We did sell to recoup fees of actually
processing and putting it on disk and so on some
data some of which was trademark's and because of
the very short timeframe and the need to modernize
our systems, we didn't have the ability to host it
today. As you know, I have talked about in the
past the inability to meet the demand even for our
currently publicly available systems most in
public and private on the patent side but all the
same it's all the same. So hosting large volumes
of data for download for the general public just
wasn't going to work for us at this point in time
so we searched out an organization who is
delivering content who had the ability to scrape
our websites efficiently working with us in
partnership without crashing our systems and that
was already doing something for free and of course
Google has Google Patents, not necessarily Google
Trademarks, but we did engage Google and a couple
other companies in a fact-finding conversation
and realized that Google would be the stopgap
measure until we redo our systems, and they're
willing to do it for free. So we are going to be
delivering them all of the bulk data including the
bulk data that we currently sell for trademarks to
them to host for anyone to download which means
anyone will be able to manipulate it. Just so you
know, that will be the trademark daily XML
applications -- TTAB which has current
subscription number EIP-5905T-0L. I'm sure if you
orders those that makes sense to you. And
trademark daily application image 24 hour box XML
tif jpeg EIP-5909T-0L. So they will be hosting
those for us for general public download for free
very late in March or early April.

Elearning is an initiative Mr. Kappos
had us kick off. It's an initiative to work with
a single company to host all of our training that
would provide training to anyone the USPTO deems
needs the training and our international partners,
that's internal and international partners, for
free but be able to charge the general public for.
They're willing to enter this conversation for
free so they're going to host all of our content
and they are going to deliver all of our elearning
classes, and then of course if someone were to
take it from the outside because they needed training, report back to us whether or not the training had happened. This is a good deal for us concerned. We don't have the bandwidth nor the systems to store or host the data so this is a brand-new initiative. I'll provide further timelines as I have them.

Just as a general note, our public search facility in this building will have a small reduction in hours. It's normally open 8:00 to 8:00. After the 6 o'clock hour we funded all of that support through a contract. We are going to now be open 8:00 to 6:00. We have just announced that. That reduces 2 hours and will save us $250,000 a year. We are looking at an effort to keep the doors open but no staff on board for the last hour or 2 hours at the end of the evening for those folks so that the hours would remain the same, 8:00 to 6:00, but doors will be closed at 8:00 p.m. and we're trying to find out if we could do that legally and safely to accommodate the folks who work out of that facility for the
1         public.
2               MR. FARMER: John again I want to thank
3     you and Scott and the rest of your staff for
4     chatting with us yesterday at length and giving us
5     this very comprehensive briefing today. I know
6     you've got a lot of touch challenges in terms of
7     legacy systems and financial constraints, but I
8     certainly think you're doing a fine job with what
9     you've got and I want to commend you for that. We
10    at the TPAC got a pat on the back for helping put
11    together the preliminary list of external
12    requirements and I want to commend the Patent and
13    Trademark Office, especially the trademark
14    operation and Howard and his union members for
15    getting together the requirements for the
16    examining attorneys and the internal folks. I'm
17    so happy to hear that you're comfortable with that
18    process and you feel like you're getting the
19    external and internal requirements or will in a
20    comprehensive, systematic and thorough way because
21    that's absolutely key I think for Trademarks Next
22    Generation, so I think we are all so pleased that
that process is going well. I've asked most of my
questions as we went along and you certainly
answered those.

This is not a really so much as a
comment and I'm not sure if it's something that
your office should address or maybe the OCFO, but
we know there are going to be considerable costs
going to our standard laptop configurations to
doing the other things that you're currently doing
and certainly Trademarks Next Generation is going
to have a considerable cost. One thing that would
be of interest to TPAC and probably the public at
large would be the savings to be realized by
leveraging this technology and fixing problems and
going to the new system in a cloud computing
environment. So you might want to coordinate with
OCOF and at some point, maybe the next TPAC or the
one after that, if we could get some information
about the savings to be realized because I think
when people look at just the cost, that's only
part of the picture and we are going to be saving
money too. So I think that would help us go
through the cost-benefit analysis and see exactly
the actual cost and the savings to be realized.
That would be helpful.

MR. OWENS: Actually as part of the
Capital Investment Decision process and the
"Capital Investment Decision Paper," return on
investment and cost analysis as you saw with the
roadmap is in there including savings or estimated
savings. So we will do some of that analysis
during that process and of course will be happy to
provide that when it's complete.

MR. FRIEDMAN: I would just quickly add
so I don't incur the wrath time-wise of John
Farmer that particularly in view of John's
gracious comments and Debbie's gracious comments
as well as Tim's, I too want to commend our
bargaining unit for responding and giving such
good input regarding the survey. I think about a
third of our bargaining unit responded, obviously
a very high rate, and secondly, I also want to
commend in particular ecommerce union
representatives for compiling the report and
coming up with such a comprehensive and very
readable report. So thanks for all the comments.

MR. OWENS: It was fine work and well
appreciated by my office. If I have time, sir,
just one last thing. Earlier today you were
talking about the TMEP and that a couple of years
ago something was submitted that was not
successful. I can tell you what's happening with
the patent document. We are taking that document
and marking it up in XML and we are going to
create a standard template using readily available
commercial products to do the formatting online
whether it's in a wiki or just online is to be
talked about yet. But we do have a plan in place
and I'll be happy to engage trademarks on that
effort just so you know we do have a plan to
facilitate the PMEP and we'll work with trademarks
to get what they need.

MR. FARMER: That sounds wonderful.

Thank you for your presentation, John. Are there
any other questions or comments from TPAC members
for the CIO. How about from folks who are sitting
in?  I think we're doing with that segment then.
Thank you very much.  We appreciate it.

Now the floor is open generally.  Does anyone here from the public have any comments or issues they want to bring forth to TPAC?  Not hearing any, before we adjourn TPACers, if I could just huddle up with you for a second after we adjourn, I have a proposal for how we finish out our day with Elizabeth and Kathryn having to depart because their flights were getting wiped up headed back up north.  So if you could stay in place, but everyone else, thank you for coming.
We appreciate it.  Thanks for your input.  And thanks to the folks at the office for working with us.  We appreciate it.

(Whereupon, at 12:47 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

/s/ Carleton J. Anderson, III
Notary Public # 351998
in and for the Commonwealth of Virginia
My Commission Expires: November 30, 2012