PARTICIPANTS:

TPAC Members:

MAURY M. TEPPER, III, Chair
CHERYL BLACK
DEBORAH COHN
DANA COLARULLI
JAMES G. CONLEY
RAJ DOLAS
JODY HALLER DRAKE
BRUCE KISLIUK
TIMOTHY LOCKHART
SHARON MARSH
KATHRYN BARRETT PARK
TERESA STANEK REA
GERARD ROGERS
ANTHONY P. SCARDINO
KEVIN SMITH

Union Reps:

ROBERT BUDENS
HOWARD FRIEDMAN

* * * * *
CHAIRMAN TEPPER: Thank you. You are a very compliant group, we certainly appreciate that. Welcome to this public meeting of the U.S. Patent and Trademark Office, Trademark Public Advisory Committee. We're certainly glad to have some participation here. And to those of you who are watching and listening online, thank you for your time and interest, as well.

We will be hearing a good amount of material today. We've got a lot of ground to cover. But I do want to encourage you, if you have questions, I will try to allow time for that at the end of each of the presentations, and if you are online and have questions, please do send them in to us. You can e-mail those in and we'll try to address as many of those questions as possible.

I'm going to defer introductions for a couple of minutes because we are starting a little bit behind schedule. But I would just like to let
you know, I'm Maury Tepper. I have a day job with Tepper and Eyster in Raleigh, North Carolina. And I am a rookie now, this is my first effort at chairing a meeting like this, so it will be an adventure for all of us today. I'm looking forward to catching up with a lot of issues going on this time of year. And you'll be hearing about some very significant changes involving budget and funding and finance, and so I think, as you'll see by the end, we have a very active, a very capable group working here. We're fortunate to be here supporting the efforts of Trademark operations.

And I'd like to start off by thanking Terrie Rea, our deputy director, and I'm going to ask her just to give us an overview. And we want to thank you for taking the time to be here with us this morning.

MS. REA: Thank you. Good morning, everybody, and welcome to those of you on your computers right now. Thank you for taking the time, everyone here today, to join us for our August TPAC meeting, and, as always, your input
and feedback as practitioners and thought leaders has been critical to ensuring an efficient and robust U.S. trademark system. That's why it gives me great pleasure to introduce a few new additions today.

I would first like to welcome, as Maury indicated, Maury Tepper as the new TPAC chair. He has a great deal of work ahead of him. To those of you in the audience and on the Internet, TPAC is actually a very busy organization, they spend a lot of time assisting us on the Trademark side, and we really appreciate all of their efforts. Maury, as he indicated, is a partner in the law firm of Tepper & Eyster in North Carolina. Maury's legal practice includes all aspects of the creation, registration, maintenance and enforcement of trademarks, copyrights and domain names.

Maury has been appointed three separate times to serve a term on the Trademark Public Advisory Committee. He has devoted over six years so far to TPAC, and we hope it will be many more,
and we are very grateful for his extensive knowledge and commitment to the USPTO.

He is an active participant, I should also mention, in the International Trademark Association, where he serves as chair of INTA's U.S. Legislation Subcommittee. Maury also serves, because he has so much free time, on the Board of Directors from Marksmen, Inc., and for New Century Musical Arts Society. Thank you so much, Maury, for leading TPAC.

I would also like to welcome a new member, Jody Drake. Jody is currently a partner with Sughrue Mion in Washington, D.C., and her practice concentrates in all aspects of U.S. and international trademark law, including trademark prosecution, counseling, opinions, licensing, litigation support and Internet-related rights. I'm also especially pleased to report that she was with the USPTO at one time as an examining attorney and as a senior attorney from 1983 until 1990, so she has many talents to contribute to TPAC. She was named among the top 15 IP lawyers
in Washington by Legal Times in its 2003 Leading Lawyer series, and she's been selected by Euromoney magazine as one of the leading trademark experts in the United States.

Jody is also -- has a lot of free time, so she's a frequent speaker for the International Trademark Association. And most recently, she has been serving as the AIPLA chair of the Trademark Relations with the USPTO Committee in 2010. So thank you so much for joining us, Jody.

And last, but not least, a good friend of mine I'd also like to welcome as a new member, Cheryl Black. Cheryl is a partner at Goodman Allen & Filetti in Richmond, Virginia. Her law practice includes trademark counseling, searching, prosecution, licensing and maintenance, as well as domain name registration and enforcement, and copyright counseling, registration and licensing. Now, once again, prior to her entry into private practice, I am pleased to report that Cheryl was also with the USPTO. For six years she was an examining attorney, and for nine years she was a
staff attorney in the Office of the Commissioner for Trademarks, and she also, as Jody, knows Debbie Cohn extremely well.

So during Cheryl's tenure at the PTO, she actually helped revise the TMEP, the Trademark Manual of Examining Procedure, and she was actually actively involved in the implementation of the Madrid Protocol. Cheryl is also a frequent lecturer on trademark and copyright issues, as well as in the area of social media law. So thank you so much, Cheryl, also, for being with us today and adding further talent and depth to this team.

I would also right now, on the Patent side of the house, like to give you a just superficial overview of the status of patent reform. The patent reform legislation passed the House on June 24, 2011, and it is now anticipated to be taken up by the Senate for full passage shortly after Congress returns in the fall.

As you know, this legislation is a top priority of the administration. It will do many important things, including giving the USPTO the
authority to set fees in consultation with you all. And the bill will create ideally a strong presumption in favor of our being able to keep all of the user fees that we collect. And by helping us more efficiently process applications, it will hopefully also create new businesses and new jobs sooner and help fuel our economic recovery.

Now, Dana Colarulli will actually have more to say on patent reform during his presentation, but Director Kappos and I are eager for the challenge of implementing a broad range of initiatives and rules that will make this agency more efficient, more modern and more agile in bringing cutting edge innovation to the marketplace.

And not only does this legislation further empower the USPTO as the nation's premier innovation agency, but it also equips the country with the tools it needs to accelerate down the road of economic recovery by strengthening intellectual property rights and promoting job creation.
Turning next to Debbie Cohn, Debbie, I continue to be impressed with Trademark's ability to meet and, frankly, exceed all of its goals in all areas of pendency, quality and e-government. Trademark has met or exceeded all of its goals to date. So they have done a fantastic job and they reflect very favorably on the USPTO. Now, we do continue to see a slow but steady increase in filings, which is good news; that means the economy is getting more vibrant. And we anticipate a 4 percent increase in filings over the last fiscal year.

Now, in terms of our customer and shareholder outreach, we are also consistently proud of the Trademark team's dedication to the customer and stakeholder outreach. On June 21st, a roundtable discussion was held on disclaimer, policy and practice with a number of key stakeholders, and on June 23rd, a focus group was held on authorizing e-mail communications. Now, the purpose of this focus group was to look for possible reasons why some users would prefer not
to authorize the USPTO to use e-mail, and we wanted to see what changes the PTO may be able to institute to make e-mail communications more attractive.

Frankly, e-mail authorization is a key component of our ability to process applications completely electronically, so we would like to collaborate with the stakeholder community in trying to achieve that goal. And with your ongoing input, we have plans for more outreach efforts in the near future. I would also like to tell you one last point, and that's that we have successfully completed agency negotiations for the implementation of the pilot program of the Telework Enhancement Act. The program called TEAPP, T-E-A-P-P, the Telework Enhancement Act Pilot Program, is currently at OMB for its approval before implementation.

I know that both Dana and Debbie are going to give you additional details about the new program and how it will benefit and make the agency more efficient. But again, thank you for
your continual support, insight and guidance in making sure that we're able to provide the best support and resources to our stakeholder community. Thank you so much, and thank you especially to our TPAC members here today.

MR. TEPPER: Thank you very much, Terrie. And I think -- I almost wanted to have a standing ovation when we heard exactly how Trademarks is doing compared to performance measures. I think it's a good way to start the day. Before we hear about legislation, I want to just take a brief detour. I'll stick to this as a general roadmap, but I do want to go ahead and introduce for you the rest of our TPAC members.

A special note for two who are not here with us today, Deborah Hampton, who is with Limited Brands in Ohio, justifiably is celebrating her 25th wedding anniversary, and I have to say I think she has her priorities correct. So we knew when we tried to come up with a date that this simply was not going to be a possible meeting to have her presence, and I hope that she is not on
the telephone this morning.

I'd also like to send out sort of our special good wishes to Anne Chasser. Anne is vice president for intellectual property with the University of Cincinnati and a former commissioner. And Anne was planning to be here, she was going to actually take a red-eye flight all the way from the West Coast to make this meeting until, as I understand it, a mischievous and errant, I'm going to describe it as a boulder threw itself into her path, and Anne, unfortunately, fractured her wrist in two places. She had surgery to set everything last night. I think it was successful, but we certainly want to wish her a speedy recovery and all well wishes.

And I do understand Anne is on the telephone listening in, so I hope you all keep that in mind and behave very well throughout the day.

We also have Kathryn Barrett Park with us today. Kathryn is with General Electric. She has been with us on the committee for two years and certainly very well known to you all.
Howard Friedman is our NTEU representative. And today Robert Budens is filling in for Randy Myers, as you'll see on the Patent side.

James Conley, James is a professor at Northwestern. He is our numbers guy. He helps us to understand what lawyers are terrible at understanding and he's done a great job in interpreting a lot of that data for us.

And last, certainly not least, I needed to do this in order, I do want to recognize our veteran in the group. This will be the last chance we will have to meet in person with Tim Lockhart. Time goes fast. Tim has been on the committee since 2008, and his term is going to expire in October. When that occurs, I fear not only are we going to lose a lot of dedication and drive and experience, we are going to lose most of our knowledge of pop culture, movies, humor, and our storytelling quotient is definitely going to go down by about 80 percent at these meetings, so I'm going to miss that.
I've had the chance to work with him in just a few meetings, but he has been a wonderful addition to this committee. He's given an awful lot to the office. And, Tim, if we can embarrass you for a second, if you wouldn't mind coming up here, we have a certificate. Not only is it suitable for framing, it is framed.

MR. LOCKHART: Great, thank you.

(Applause) Thank you, I appreciate it. Thank you very much.

CHAIRMAN TEPPER: And a great risk, knowing Tim. I'd just like to offer, if any other members of the committee would like to say a word for a second. I'm going to let you speak.

MR. CONLEY: Thank you, Maury. I would like to just add a couple comments about Tim that will I think pick up on what Director Rea mentioned and what you mentioned about this committee. You know, we are serving the interests of the trademark user community. We're trying to represent these views on this committee, and Tim has done a terrific job of reminding us of that
from time to time. And that constant attention to
these details has bubbled up in curious ways, his
storytelling capability, as you mentioned. In
some of our deliberations, sometimes these things
get difficult, but Tim has very gently and
carefully kept us on focus, you know, reminding us
of such simple things as answering the phone. And
I'm very grateful for his service in that capacity
and to help us be a collegial group. Thank you,
Tim.

CHAIRMAN TEPPER: Thank you. Tim, I do
want to remind you, October is still a little ways
away, we have the annual report to work on, so
we're going to put a little string on that
certificate. But thank you for the commitment and
the time you've donated to this effort. We deeply
appreciate your service.

MR. FRIEDMAN: I would like to add
before Tim jumps in that I would echo the prior
comments. Tim's very methodical, but very
successful approach to helping out the office was
always very available to both TPAC and to the
office. I think also it will be hard for TPAC to forget the very comprehensive binders Tim's office always brought to TPAC, which is right over there, though, as we saw yesterday, it looks like Cheryl Black is going to ably take over that role for Tim.

And then finally, in his methodical role and in his role in helping out the office and TPAC, he always did it with great humor, and that made our day that much better. So we wish him well and all the best.

MR. LOCKHART: Well, just very quickly I'd like to thank all of you very much. Serving on TPAC I regard as an honor and a privilege. I was very pleased to be asked to serve and I've enjoyed serving with all of my TPAC colleagues, both those on the committee now and those who were with us formerly. I enjoyed serving with Lynn and Debbie and the rest of the very fine USPTO staff.

I have been continually most impressed by the dedication and the hard work and the zeal
with which the USPTO staff tries to do its job, and, of course, it does it very well and serves the trademark community very effectively, I think. So I'm sure all of you on the TPAC would agree with me that it's a real honor to be asked to come in and contribute in, you know, whatever way we can to the work of the office. So it's been certainly a great pleasure for me, as well as a privilege, and I've enjoyed it, and I will look forward to seeing great things from the office and the TPAC in years to come. And I'll certainly be watching the webcast in November when you have the next meeting. So thank you all very much. I've enjoyed it. (Applause)

CHAIRMAN TEPPER: Thank you. With that, we're going to turn to a legislative update. We're pleased to have Dana Colarulli with us today. You know, I always think if a weatherman has the easiest job in the world, because, let's face it, you can be wrong and you still keep your job, Dana probably has the toughest. He needs to try to explain for us the inexplicable and try to
predict the unpredictable workings on Capitol Hill. But this is a very important time I think for the interests of the office on a number of pieces of legislation. Terrie has already touched on our moving along.

So with that, Dana, thank you for your time today.

MR. COLARULLI: Thanks, Maury, I appreciate it. When you were describing Anne Chasser avoiding boulders, I was thinking of my job actually. And I think the good news is, there's a number of things that we've been able to do to move the boulders out of the way so we're more effective. Oftentimes I feel like we're running to catch up with some of the boulders and redirect them, so I think we're doing all of those.

What I thought I'd do this morning was give a little update on the patent reform bill, and, in fact, the implementation as it relates to the funding. And Tony is going to talk even more about that and then
highlight some of the other issues that are coming up that you all might be interested in.

Certainly, I think over the last two years, a lot of the oxygen in my office has been taken up with following patent reform, following the patent issues, but there's a number of other issues coming up that we're keeping an eye on.

Now that it looks like patent reform is headed in the right direction,

Congress will start taking up other litigation such as the Protect IP Act,

and I'll highlight those, too.

My role at PTO is I'm the chief liaison with Capitol Hill and trying to keep up with the boulders. But my goal is also to be a resource for you, not just at this meeting, but at future meetings, as well. So as there are issues that I see that I think that will be interesting to you all, I'll be glad to brief you. If there's other issues that, Maury, you or the committee members would like me to come and brief you on, I'm happy to do that, as well.
Let me start with continuing Terry's comments on the American Invents Act patent reform. I couldn't help but include a screenshot of the website that we've already posted up for implementation. Now, before they left for recess, Senator Reid scheduled to vote for cloture on this bill, so on September 6th at 5:30, this will be the second vote that the Senate takes up when they return. That's a procedural vote. It's an indication that the Senate is going to move forward on final action on this bill. Final action could happen within days, or it could be pushed out as far as a week. But I think staff is confident that this is going to move forward at this point.

There's still questions about funding in particular. I think there's at least a few Senators who have placed holds on the bill contingent on understanding the provisions that came back from the House, and their desire to have some conversation, frankly, before the bill
passes. So Senator Coburn and certainly Senator DeMint are two of the Senators who are watching that closely. I think we'll see some additional discussion on the floor of the Senate before they cast their vote for this bill.

But from my perspective, it's unlikely we'll see amendments adopted to this bill at this point. These have been a set of provisions that have been discussed for about 10 years, with the funding provisions in particular, having a lot of discussion. The House leadership brokered a deal that they were comfortable with that I think leaves the door open for us in terms of our funding, and we think it's a good step forward. A lot of the discussion on the Senate floor and the discussion we've had since the House passed their bill is allowing us to get a sense of how this will work in practice, and that's going to be our burden.

There was verbalized a commitment that the agency retain all of its fees that it collects to support operations. I think there's been good
comments by various Members of Congress and leadership that, for the very first time, the agency has been given the authority to set its fees and to set fees to recover the cost of its operations.

The argument has never been stronger, that if we're setting those fees to recover the cost of our operations, then really all the fees that are collected by the agency need to stay at the agency going towards improvements and operations both on the Patent and the Trademark side.

So that is the active discussion. It's a very timely discussion because it's in the context of discussions of the debt ceiling and looking at expenditures by the government overall. We think there's a good argument that PTO should be treated separately and is more efficient if it is. So with that overview, I think we'll all be looking at September 6th for the next vote. There may be some amendments that are offered, but, as I said, at this point, I think it's unlikely they'll be adopted. If they are, that means the bill will go back to the House in all likelihood and it may
push this out to even another Congress. So we're looking to September 6th with some hope and optimism at this point.

In the meantime, we've already started, as I mentioned, discussions about implementation. There's a lot of things we're going to have to get done within the first year and beyond. There's a number of studies in addition that we need to do even before a year is done, so we've posted information up on the website. We've had a couple of discussions with the patent stakeholders on those provisions, and we've started to think about how we might begin the process of fee setting once the bill is enacted.

So with that, I'm going to move on to other issues. I'm going to let Tony speak to the financial parts, the status of where we are, at least in FY '11, in terms of how many fees before this new fund in the bill is enacted we may be collecting that are unaccessible. So let me go to the substantive legislation. Go to the next slide, please.
So two things I'll highlight in terms of pending legislation. One that we're actively watching and discussing within the Department of Commerce is the Protect IP Act. This is online counterfeiting. It's a targeted measure I think the Senate has been discussing now for over approximately three Congresses or two and a half Congresses, to crack down on what was called at one point rogue websites or websites that are set up predominantly for the purpose of selling infringing copyrighted works. The bill creates a mechanism for the Attorney General at DOJ to play a more active role in enforcing online counterfeiting. It also creates a private right of action. The Senate reported this bill out of the Senate Judiciary Committee. It now could move to the floor. It has a hold on it from Senator Wyden, who is concerned about the actual implementation of the legislation and its effect on Internet protocols.

That's a discussion that's going to continue. It's going to continue even as the
House is looking at introducing their own counterfeiting legislation, which they've said to us they're going to try to do in September, as well. And I think that they'll have a provision that's somewhat similar to this in addition to other things addressing counterfeiting. So that's one bill that we're watching very, very closely and determining what the appropriate DOC position views would be. Certainly this is a good step towards enabling IP owners, copyright owners, and trademark owners, to enforce their rights online, and we're looking at the mechanism right now.

Moving over to the House, I'll highlight the fashion design bill, another piece of legislation that's been under discussion over a number of Congresses particularly targeted at the fashion industry. And the discussion is whether this industry faces significant challenges that other industries don't, and whether a sui generis design right in the fashion industry is appropriate. So this is another one where the House
has held hearings this year. It's likely they'll continue discussion on this bill, but it's unclear how fast it might move forward before the end of this year. I think concerns were raised on both sides on the ability of fashion designers to use the existing IP tools available to them to protect their works. And concerns were raised that by creating a new right essentially, are you opening up opportunities for additional litigation in this area? So I think that's the balancing that the House Judiciary Committee is facing. Go to the next slide.

The last issue I'll raise briefly is another issue that we're following. It's not active legislation, but it's an issue that I think both the House and the Senate have monitored because of its significant effect on U.S. industry, and that's developments at ICANN, and particularly the introduction of new top level domain names. ICANN has moved forward with this proposal to accept new applications for domain names. We understand at this point applications
will be accepted as soon as January 2012.

The House Judiciary Committee held a hearing on this in May. There's continued discussion and concern, I think, from a number of folks from the U.S. side, both industry and government, on how these provisions will be implemented; the costs it might impose on companies looking to protect their brands; and, frankly, the trademark protections that need to be part of the process of accepting new applications and establishing new top level domain names. So I think it's still an active discussion. The process, certainly from ICANN's perspective, is now in place and they're moving towards that January 2012 deadline to begin accepting applications. We'll continue to watch the discussion to see how trademarks will be protected as they move forward on this. You can go to the last slide, if you would.

The last issue I'll mention briefly -- which Terry mentioned in her opening, as well -- is the telework bill that was passed last year
and I’ll give you a quick update on our implementation of it. We've given a couple updates to this group on this in the past. An Oversight Committee was created pursuant to the legislation. A number of folks both around this table and at the agency developed very good procedures to guide the pilot here at the USPTO to use the flexibilities under the new law and expand our telework program.

The next steps legislatively that the legislation requires are for us to submit our procedures and a cost-benefits analysis to GSA, the General Services Administration. GSA will transmit their approval of our program to Congress and then we can implement 30 days after. I've been on the outside watching this process go forward, but it has appeared to me to be a Herculean effort -- again, references to boulders -- and moving those boulders out of the way so we can actually efficiently implement this legislation. Certainly this one has been a large boulder that a large team has pushed uphill and, hopefully, will keep it uphill to expand our
telework flexibility.

We're, I think within the next few days here, of transmitting our report to GSA. That's the next step, and then we look forward to implementing the legislation later this year.

With that, that's my prepared report, Maury. I'm happy to answer any questions the group has.

CHAIRMAN TEPPER: Thank you, Dana. I would like to encourage everyone, I think you've heard many things going on. We are proud that the office has been a leader in the government really in the area of telework. A number of the provisions in this act are intended specifically with the PTO in mind. We're proud of those accomplishments.

In the areas of funding, I think it's no accident hardly any remarks made by the President, in the last several weeks at least, do not include the words "innovation," "protection," or "intellectual property." In a lot of ways, we're making some very significant strides in the
ability of the office to control and set its fees
and collect funds. In some ways, we're bumping
into the same walls we've bumped into in dealing
with, you know, accessing and being able to use
those funds. But I just encourage you all to
remain engaged in this, to be ready to support the
efforts of this office. This is vital business.

Are there any questions from the
committee members for Dana? Any questions from
the public?

Well, with that, thank you, and we will
lead into I think a very closely related topic.
Tony Scardino is with us from the CFO's Office and
we want to talk a little bit about the CFO's
update, budget, how we're doing, what's going to
be happening.

MR. SCARDINO: Good morning, thank you.
It's a pleasure to be here, as always. In fact,
since we've met last, Mark Olechowski, our deputy
CFO, has departed, and we are fortunate enough to
have Bruce Kisliuk to my left serving as the
acting deputy CFO. Bruce is in the leadership
team with the Patents Office and a wealth of knowledge for all things USPTO, thankfully, so it's been great to have him around. And he is going to actually run us through the prepared slides that we have today, but I've got several things to say before that actually.

Fiscal Year 2011 is still six weeks until the end, and we are proceeding cautiously. As Dana mentioned, there's a lot of things up in the air in terms of what will change, what may change. Everyone knows how challenging the fiscal environment is right now with the federal government. We are in the midst of that, of course. Depending on what happens, if the AIA -- the American Invents Act -- passes, we will remain part of the appropriations process. However, there will be some changes to how that flows or operates for us, and I'll walk you through a little bit of that.

But Fiscal Year 2012, as I mentioned, is six weeks away, and we don't know what's going to happen. It's most likely that we're not going to
have an appropriations bill passed in the Commerce, Justice and Sciences Subcommittee, which means we'll be on a continuing resolution. How long will that be? That's anybody's guess. Right now, everyone is preparing in the Executive Branch for a CR that will last until November 18th, but truly, that's a guess. We could have a CR for the entire year. We had one as recent as 2007. So we're taking steps now, and Bruce will run us through some of that, to ensure that we can continue to operate under a full-year CR or a six-week CR, whatever it may be next year. Having said that, we could also -- several things could happen, we could have what's called an anomaly, where Congress decides to give us a different rate. A continuing resolution means that an agency operates at the last -- previous year's funding level. For the USPTO, that's $2.09 billion. However, the President's budget request for USPTO is $2.7 billion Fiscal Year 2012. That's a $600 million swing, let's call it. We project to collect closer to $2.7
billion than we do to $2.09 billion, but, again, that incorporates a 15 percent surcharge for the entire year. Track 1 is implemented, so there's still a lot of things that we don't know what's going to happen, but we have to prepare for the best- and the worst-case scenarios.

Another thing that could happen is, we live at $2.090 billion, which is the CR rate, but the AIA passes. With passage of the American Invents Act, we automatically 10 days later get to implement a 15 percent surcharge for 80 percent roughly of our statutory fees in the Patent side of the House, as well as Track 1 implementation. So that could be as much as $250- to $300 million additional money that would come in on top of the $2.09 billion.

So we're trying to prepare for the different funding scenarios that really have obviously a great amount of, I guess, flexibility of sorts. The more funding we have, the more hiring we can do. The more hiring we do, the more our backlog goes down, the more of our goals we meet. So lots of challenges for us to kind of make our way
In the meantime, the President's budget office, otherwise known as the Office of Management and Budget, just put out guidance yesterday for all agencies to develop their 2013 budget. That's something that we have been working very hard on all summer long, including the spring, to already do, and we hope to get it to TPAC later today actually. So you'll have a couple of weeks to review it and we'd like your comments. If you want to have more discussions on it, we're happy at any point in time, but that is due to the Office of Management and Budget on September 12th. And then all fall we'll work with OMB to finalize a budget that will go to Congress early in February. So that's kind of where we are in an overview perspective, picking up a little bit on what Dana said. And we're working with the House and Senate to, how would you say, work something out that everyone can live with. I mean, full access.
to fees is something that everyone I think in this room, as well as in the entire community and our entire organization, wants. But what exactly does full access to fees mean? And the Senate passed a bill that would have made us a revolving fund; that certainly would have been full access to fees.

The House, the AIA keeps us in the appropriations process, with every intent, however, to give us full access to our fees. So the challenge is then, well, you know, what are the mechanisms to actually get those fees into the USPTO. As Dana mentioned, you know, this year we're going to collect between $65- and $70 million more than we're authorized to spend. That's today's estimate. If AIA passes in three weeks, things could change a little bit depending on, you know, surcharge, when it's enacted and such, but right now that's our estimate.

The hope is, once this act passes we'll never have to worry about such diversion again.

So, you know, that's kind of on our radar screen
first and foremost, to ensure that we have a new mechanism from a funding perspective that works for everybody. So in the meantime, we're living under the current constraints, and Bruce is going to walk us through that.

MR. KISLIUK: Thank you, good morning. It's great to be here. Like Tony mentioned, I am the acting deputy CFO. I've only been in this position for about two months. And I am a Patents employee, so I apologize in advance for anything I may say that may be misinterpreted.

Okay. Let's just go over kind of a status for FY11, where we are. And I'm going to try to speak at the agency level, but I'll point out where I can specifically address trademark-related fee issues.

So in terms of projected fee collections, you see we had at the beginning of the year a range, and the reason we have a range is because we have certain variables. Some of the variables that we have are whether the filing rates are going to be relatively high or low. And
for the Patent side at least, we had a question as to whether we would have this bill enacted and we would have a 15 percent surcharge.

So the reason that the agency range looked so wide is we did not know when we would have the 15 percent surcharge. And that was also why the Patent's range is wide in the other bullet. The actual current rate right now are estimated collections if we do a straight-line projection. So for the agency, we would be at $2.15 billion, which is kind of the low end of the agency range. The Patent's, the projection right now is like $1.92 billion, again, on the low end, because we did not get the 15 percent surcharge. The Trademark's straight-line projection right now is $2.31 million, so we're kind of on the high end of the Patent -- of the Trademark range.

In terms of the surplus, the projected end of the year, again, we had a range, but the way it looks right now is Trademarks will likely have a carryover. I mean surplus is one time, carryover of roughly a million, which is about
what they had carried into last year, $100 million

-- I'm sorry, $100 million.

Okay. In terms of projected

obligations, the total obligations at least

projected this year is looking at like a $2.19 billion

for the agency, and there is the ratio of patents
to trademarks on the bottom.

So as we close out '11, we are moving

into FY12, and like Tony mentioned and Dana

mentioned, there are many question marks as to

what our status will be, whether we will get our

appropriations passed, whether we'll be in a CR,

the status of the reform bill... So what we are

looking at is, from a financial point of view,

preparing for the worst, kind of hoping for the

best. So at least from Patent's point of view, we

will be in pretty tight straights if we go into a

CR. Because Trademarks is anticipating about

100 million carryover, there is much less concern on the

Trademark side in that situation.

So, on the bullet that mentions

implementing significant cuts to avoid a budget
deficit, while that was an agency exercise, it was
mostly focused on the Patent side and the Patent's
money.

And again, the next bullet points out to
securing a carryover. Again, we anticipate almost
100 million carryover in Trademarks, and significantly
less carryover on the Patent side.

And Tony mentioned we have a number of
scenarios that we're running, both, you know, good
case and bad case, focusing more on the bad case,
of what potential CR could be, either with or
without an anomaly. And some of the key variables
are whether there is or is not an anomaly, and also
how long a CR is, because that makes a significant
difference between how much you have in any given
period of time.

And then Tony mentioned again, we're
moving into preparing for our FY13 budget.
We'll be sending out today, before the end of the
day, we'll be sending out to the TPAC our FY13.
And our timeline, we are expecting to get feedback
from both of the Public Advisory Committees --TPAC and
PPAC-- and DOC before we do our submission to OMB in September.

And this was a slide that was requested by Maury, and what we did was, just to explain what is on the slide, it's a breakdown of the current obligations by business line, and this was as of the end of July. So the rows show the different business units. You have patents, trademarks, the miscellaneous general expense, or we call MGE, the appeals boards, OGC is our general counsel, CIO is our information technology area, CFO is our financial shop, CAO is our administrative, EA is External Affairs, then we group together some other areas under the Director's Office or the Under Secretary's Office.

The columns are the Patent's obligations on that side and the Trademark's. And so this is just a way to see comparably how some of these business units have their expenses by Patents and Trademarks. And I think that's the end of the slide.

CHAIRMAN TEPPER: Thank you, gentlemen.
Are there any questions? I think, you know, on
the best of days, we're required to sort of
operate in three separate years: Always working
on the current budget, looking at where the next
year's budget stands in passage, and planning for
the third year out budget. And so, you know,
today's presentation sort of shows you very nicely
the degree of -- sort of the discreet thinking
that's required on any given day to keep track of
where we are and where we're going.

I hope that the information was helpful
for you to understand where the fees go and how
difficult it is. I think it's really truly
amazing that the PTO manages to accomplish what it
does while not being able sometimes to know what
it can spend, how much of that money can be spent
and when it can be spent.

So we certainly, if nothing else, gain a
deeper appreciation and sympathy for what -- it's
a very unique sort of type of planning. I don't
think that many executives in the business world
would tolerate that, but we do it here every day,
and that is the reality of how we operate.

Are there questions about the budget or about the numbers?

MR. BUDENS: Yeah, if I can, telling Bruce I appreciate the information. From a more immediate point of view, if we end up with a CR without the anomaly, I mean we've already done an awful lot of cutting, you know, of activities and stuff here already. What do you foresee in the additional -- your language of significant cuts, what else would we -- may be facing as we enter 2012 if we end up on a CR? Let's say it's a three-month or six-month CR without the anomaly.

MR. SCARDINO: The challenge, of course, with any CR is unless they decide to do a year long CR, and you know it October 1st, you don't know how long you're planning for, so you've always got to keep a reserve to get you through. I mean, right now, like I said, it could be a seven-week CR; it's very possible that it could be extended. Last year I think we had seven CRs, went all the way through April 15th. So you
really don't know what you're working with, no one
does.

So, you know, again, the exact cuts,
Director Kappos would still have to make some
decisions working with, you know, Commissioner
Cohn and others, but right now we would do the
usual suspects, which is no more hiring, no
overtime, limited PCT possibly. I mean, these are
all things that, you know, again, none of these
should be taken as a decision. Director Kappos
would have to make that decision, but those are
the things that are controllable. Things like
salaries are not, so nobody would be RIF-ed, and
we've got enough money to keep the lights on and
keep everyone paid. It's all the things that
would get us towards more production-based things
such as overtime that would be challenged.

MR. KISLIUK: And one other thing that's
worth mentioning is that, and this is something
we've done in past CRs, is that a lot of our
contracts, we pay large money at the beginning of
the year. So one of the exercises we are going to
do, we are doing it already, is to go to those contracts and try to fund them in a more limited term. So we --

MR. SCARDINO: Incrementally.

MR. KISLIUK: More incrementally. Now, it does -- just to let you know, and a nod to our procurement job, it is a huge effort due to the number and volume of contracts when we have to go through that exercise, but it's one that can put off those expenditures in those increments, and it is a pretty significant amount.

CHAIRMAN TEPPER: Thank you, gentlemen. We appreciate the explanation. Understand that we're not asking you to predict or identify specific cuts. And further, this is the TPAC and not the PPAC, so we're focusing on the Trademark operations. I do want to make sure that I understood I think what was implicit, Bruce, in your address, and that is, regardless of an anomaly operating under a CR, the carryover, those funds can be utilized by Trademark operations --

MR. KISLIUK: Absolutely, yeah.
Carryover is basically fees that have come in and they remain available until it's spent, so they can be spent any fiscal year, right. I usually see the obligations. We aren't going to spend all of -- coming into the year, we had roughly $100 million in carryover on the Trademark side, and then we've brought in enough fees to basically cover all of our expenses this year, so the carryover more or less remains the same amount going into next year.

CHAIRMAN TEPPER: Okay, thank you. Do we have other questions? Any public questions? Gentlemen, thank you, we appreciate that. And again, I will challenge any CEO in the private sector to try to run a business in this fashion, so we do appreciate the difficulties here.

We're going to kind of turn to my favorite part of the day. We're going to have an update on Trademark operations. Commissioner Debbie Cohn I think is very well known to all of you. She is currently running the little engine
that can, and so this is, you know, a nice opportunity to -- it is a pleasure to get to come to a meeting where things are going so well, and, you know, thanks to Debbie's leadership and her very capable team. I'm going to give her a chance to just go over recent operations with you all, and we'll talk about a few things sort of coming down the pike.

   MS. COHN: Great, thank you so much, Maury. Good morning, everyone. And I was wondering if I can get the little slide clicker, yeah. Let me echo my grateful thanks for a job extremely well done. And we very much enjoyed working with you. I know I can speak for everyone on the Trademark staff when I say that.

Well, this is rather small. Those of you at the table have probably more readable copies in your handouts, but let me -- I was going to go through some of our statistics, the usual performance measures that we discuss at these meetings and highlight some of it for you. But before I do that, I want to mention the Trademark
Dashboard, which is a great visual for looking at Trademark data and actually being able to compare it and getting more information than you might normally get from charts and graphs. And we launched the Trademark Dashboard in May. We asked our users to give us feedback. We have a mailbox up there. And we got quite a bit of feedback. And I wanted to mention that we have made some changes as a result of that input and feedback, and so the Dashboard that you see now when you click on the data visualization link on the USPTO website is new and improved and contains some of the information that you have asked for after the first launch.

We added another measure for disposal pendency on the Dashboard that includes applications that have been suspended or were involved in interparties cases, and we changed the presentation a little bit so that we combined some measures into a single chart so that they can be compared with one another. And we've also tried to make the chart itself and the colors a little
easier to read so that you can look at the data in an even easier fashion.

So I hope you continue to give us feedback on the Dashboard. And I appreciate TPAC's initial help in all of this. It was really a great resource for us to figure out how to put it together.

And so with that, I'll start talking about the data itself. And the first item I'd like to address is quality, and this is quality of examination, the compliance rate for the legal decision-making. And we are doing quite well on that. As Terry Rea mentioned, we're exceeding our goals. I'm really happy and proud of the work that's being done in the Trademark operation. We're ahead, as you can see, on first actions and on final compliance.

And our new measure, the Excellent Office Action, is also doing quite well, we're ahead on that. And, you know, we've done some training, we plan to do more on the Excellent Office Action for our examining attorneys. And we
have also offered an incentive to examining attorneys to try to reach above and beyond what's required in their performance plan for an acceptable office action and inspire them to do excellent work, and they are really rising to the occasion. As you can see from the quality results, we're at 21.9 percent as opposed to our prediction, which was 15 percent for the first year under the standard.

For e-government, we are at 72 percent, and this refers to the percentage of cases that are processed electronically from beginning to end. We ended fiscal year 2008 at 68 percent, and we're now at 72 percent. And we're trying very hard in different ways, and you'll hear about these ways primarily through public outreach to try to figure out what people really need and want in order to increase their use of our electronic systems. And obviously I'm not talking about initial filing. We're really -- we've really achieved great goals in that. We're in the 98 percent range for initial application filing. Now
our challenge is to get people to use electronic
systems throughout the process and to, as Terry
alluded to, authorize e-mail so that we can
communicate with them electronically. So you can
look for more in that area, and I'll mention more
as I continue on.

Application filings are, of course, of
great interest to everyone, especially this week,
because, as we know, trademark filings do relate
to the economy in real time. And so you're
looking at third quarter results, which, of
course, is the end of June, and the cumulative
increase over Fiscal Year 2010 or where we were in
June in '10 is 6.1 percent.

I do have some more updated information
for everyone, and that is as of the end of July,
our cumulative increase was 6.5 percent, so we
went in the right direction. And although August
-- you know, we're still in August, I do have some
dates as of August 13th, and filings continued to
go up the first few weeks in August, and the
cumulative result is 7.8 percent increase. So
obviously, you know, no one can predict the future, or at least I can't, but we're hoping that this is a good sign and that things continue to improve in filings as we move forward in time. You know, that remains to be seen, of course, but -- and then, of course, in Fiscal Year 2010, we saw a total increase of 4.8 percent over the prior year, when many of you probably remember we did see a pretty drastic dip in filings. So we're still making up for that dip and we're headed in the right direction.

Which brings me to the examiner full-time equivalent positions, and I'd like to talk a minute about -- talk for a minute about our hiring, which we currently just completed offering positions to 13 new examining attorneys, and that will help make up for the fact that we haven't hired in a few years now. Our full-time equivalent for examining attorneys has dropped down, and we're planning for the future and building up. Thirteen is not a huge number, but we want to do what's safe and what we can. We're
going to revisit the issue later on in the year,
and we do have plans to hire more, but those plans
are really dependent on filings and production and
inventory and all of the things that we should be
looking at and are looking at, so those plans will
be subject to change if we need to change them.

A word about the attorneys that are
coming on board. They are new examining
attorneys, but -- all but one was a prior
examining attorney in years past, and all of them
are very experienced trademark attorneys. We made
that a requirement in our job announcement. They
all have a lot of trademark prosecution
experience.

We will provide training. We don't
expect them to hit the ground running, but we're
going to be able to tailor our training program to
the specific needs of the group. This is the
first time we've actually done something like
this, where we've really just focused on getting
experienced trademark attorneys.

There was quite a bit of interest in the
position, and we got some really wonderful people, and we're very excited. They're coming on board at the end of August -- at the end of September, excuse me.

Turning now to pendency, and I'm trying to see whether I need to flip the slide. Okay, great, thank you. So as of the end of June, we're on target for pendency. We're within our range of 2.5 to 3.5 months for first action. We're at 2.7 and we're very happy about that. For disposal pendency, also doing quite well. As you know, disposal pendency is dependent quite a bit on first action pendency, so we're very pleased that we're doing well in all three of our measures. We have two disposal pendency measures. One, of course, includes the suspended and inter partes proceedings; and the other, where it's 10.2 months, excludes the suspended and inter partes proceedings. So you can see what the Trademark operation is doing for those cases that don't go to the board or get suspended, and you can also see sort of the overall PTO pendency for
the cases that -- all cases, no matter what their status.

And then I think I'm going to -- yes, I'm going to skip over that and just talk a little bit about our non-examining but still very important processes in the office, and that's our review and amendment processing, our legal instrument examiners, our quality of the non-legal work with the very important work of entering data into the files and reviewing and making sure the file is in the right condition for publication. And, as you can see, the pendency and the quality for both of those areas is doing quite well. Our Trademark Assistance Center is performing at optimal levels. They are answering 80 percent of their calls -- well, excuse me, they're answering 92 percent of their calls within 20 seconds of receipt, so that's doing quite well, and they're way ahead of their target, which is 80 percent of calls within 20 seconds of receipt. And then I'll just move through the rest. Intent to use, our Madrid processing, our pre-exam units all really
optimal pendency and quality. We had a little bit of a backlog in post-registration; we're moving through that. The post-registration numbers have come down since the end of the third quarter, so we'll be seeing quite an improvement at the end of the fiscal year from them. And our Petitions Office is right around their target of one-week processing, the Section 2.66 petitions to revive, so we're very happy about that.

Moving now away from the statistics, I don't know whether anybody would like to ask any questions about the statistics before I move off of them. Okay.

So now Terry Rea mentioned that we had a roundtable on disclaimer practice, which we did on June 21st, and I guess that's the end of my slides. So we had a roundtable on disclaimer practice on June 21st, and the reason we did that was basically twofold. Internationally, a number of countries have made drastic changes to their disclaimer practice. In particular the UK and Canada actually did away with their disclaimer
practice. Disclaimers constitute a lot of work and time for our examining attorneys and for you, our users. They make up about 30 percent of our office actions, 30 percent contain a requirement for disclaimer. And, you know, we've had some issues where it's often a difficult area to administer, because we do have some nuances in how we apply the disclaimer policy.

So we thought it was a good topic to bring up for discussions at a roundtable, which we did. And the bottom line, the sense of the participants was that they actually like the disclaimer policy as it is today in the United States and don't want to see any significant changes to it, so we're not going to be making any significant changes to it.

The purpose of the roundtable was to really get a sense of the user community. We felt that we did get a sense. And so what we're doing in response is issuing some further guidance, giving examples and clarifications on our current policy so that people will be better able to
understand it and better able to apply it. So
we're hoping that that will be a benefit to both
internal and external users, and that should be
out over the next few months I anticipate. The
other --

MR. LOCKHART: Debbie, excuse me, and
how do you plan to put that out? Will that be in
the TMEP, will there be a separate document posted
on the website, or how will that be done?

MS. COHN: That will be an examination
guide and then will be incorporated into the next
revision of the TMEP that follows the issuance of
the guide. The other focus group or the other
outreach effort that Terry mentioned was the
focus group on authorizing e-mail correspondence,
and we had that on June 23rd, and that was
actually targeted. It was an invitation -- only
focus group targeted to people in the area, to
users in the area who don't currently authorize
e-mail -- or didn't at the time; maybe they are
doing it right now.

So they may file electronically and they
may send us submissions electronically, but they
didn't authorize us to communicate with them
electronically, and we wanted to find out why.
And it was a very good focus group. And as a
result of that focus group, we're making a few
changes. One of those changes was actually
discussed previous to the group, but they sort of
reaffirmed that this was a very good change, and
that is that we're going to be adding multiple
correspondence addresses on the TEAS application
form. So when you fill out your TEAS form, you'll
be able to add up to four additional
correspondence addresses as courtesy copy. So
there will still only be one official
correspondence address, but up to four additional
recipients will be able to get a copy of whatever
is sent to the official of correspondence address.
So we're hoping that that alleviates
some of the concerns that have been expressed
about missing correspondence, things getting lost
in e-mail and all of the concerns that might
prevent somebody from authorizing e-mail from us.
The other change that was a direct result of this focus group is that we are going to now be sending -- and this is all effective in October some time -- electronic notices of publication earlier than we do now. So one of the complaints in the focus group was, well, you know, if you authorize e-mail, you don't get your notice of publication until it actually publishes and it's in the official Gazette; if you don't authorize e-mail, you get a paper notice several weeks prior to publication, and that was a concern. So we are going to start issuing an additional notice of publication earlier in the process, several weeks before actual publication.

Another change that you should already have seen, and I'm moving away from the e-mail correspondence now and into a topic that is near and dear to everybody's hearts, and that is assignment. Another change that you're going to see that was effective on August 12th is that the assignment documents are actually available now on the web. So that's something that we -- you and
we have been asking for quite a while, and so
ty they are available. It's pretty easy to do. You
can look at our news and notices, trademark news
and notices if you want to see the official notice
that was sent out. And some of you may have
already received an official notice from us if
you're a subscriber.

A couple of other changes in the
assignment area, we are going to require that
entity type and citizenship are now mandatory in
entering the assignment and the receiver of the
assignment, and that will shorten the time frame
for recordation. So we won't have to go out and
ask for this information, it'll be a mandatory
field. And we're also going to be able to now
have ownership information received from the IB
for Madrid. Request for extension of protection
will be entered into the databases viewable on the
web. So these are all great changes.

And then there's another change coming
up in October, and that will be that the notices
of recordation and non-recordation for assignments
will be sent by e-mail rather than fax where e-mail has been authorized. So I know we've been asking and you've been asking for those things for quite a while, and we're really happy to report that they're in place or getting in place.

I do want to mention for a moment, both Terry and Dana talked about the Telework Enhancement Act Pilot Project, the work-at-home new developments, and the agreement that was reached. And, you know, people around this table, in particular Robert Budens and Howard Friedman and Judy Grundy in the audience, a number of PTO employees, worked very, very hard to come to this agreement between management and all three unions, and I really congratulate everybody.

This was a big task and it was done and it was done really well, and we're very happy that we're going to be able to do something that benefits the office, will benefit employees, and will move us forward, and we will continue to be a leader in telework. The pilot program that we have developed is a seven-year pilot program. And
we think that seven years will be a good amount of
time to be able to test and move forward and see
where we end up, but we see these as all really
positive changes.

So we expect that around 25 percent of
the trademark-examining corps who currently
telework will have the opportunity to be part of
this pilot program, which means they'll be able to
move away from Alexandria, or far away, more than
50 miles, and have their official duty station
change, and only have to report back to the office
on an as-needed basis.

The great thing about the pilot is it
allows us, or allows these employees, to waive
their travel expense requirements, which is
normally required by law, so that they would be
obligated to pay for the first few trips. And
we've established a minimum number of trips and
that gives us the opportunity to have this program
and to -- without having the office have to foot
the bill for an, you know, undetermined amount of
money that may or may not be successful in the
future. So we think this is really a win-win for
everybody, and again, thank you all who have
participated in making it happen.

Moving on to the TMEP, we are expecting
to complete our next revision sometime in October
or soon thereafter. October is our target. I
know that we've talked in the past about a new
system that allows us to control the content and
control the updates and we're working very hard on
that. It will not be ready in time to allow us to
do that for the next update, but we thought it was
more important to actually have the update on time
and we'll continue to work on making the system
what we need it to be for the future.

We do have our sort of "Wiki," Wiki-type
tool that is called IdeaScale, and we are going to
incorporate the suggestions and comments made in
IdeaScale as we do the next update; we're doing
that right now. So thank you for using IdeaScale.
I want to encourage people to use it more.

We're also talking about changing the
sections that are up there in IdeaScale, although
people have felt free and they should feel free to
just say anything, to comment on any section.
They've been doing that. We're going to actually
change the sections to target it in a different
area, and we're talking about the idea of possibly
opening up just the whole thing.

And then the ID manual, I wanted to just
mention the ID manual. And we're working on
improving our ID listings, making the manual more
user friendly. Somebody mentioned recently that
they noticed that a previous entry appeared to be
deleted. What we're doing is trying to eliminate
the really redundant entries. We have our folks
working on a project right now. We think that
it's just gotten a little bit too voluminous and
it makes it difficult to use and we're trying to
figure out a way to structure it so that it's
easier to use for everybody, both inside and
outside the office, so you'll be hearing more
about that in the future.

I'd like to mention an upcoming meeting
that we're having for the Trademark Trilateral in
December. It's December 5th through 7th, here at
the USPTO; we are hosting it.

Right now the Trilateral consists of us,
the European Union's Trademark Office, and the
Japanese Trademark Office. We have invited this
year -- and this is historic -- we've invited
Korea and China to join us as members. Korea has
accepted. We have not gotten a definitive answer
from China yet, but we expect that they will be at
the meeting in December.

So the offices get together on a yearly
basis to -- and then have other contacts
throughout the year to work on collaboration
projects and things of common interest, and it's
really great to hear the different practices in
the office and to benefit from everybody's
experiences and knowledge, so we're very much
looking forward to hosting that here in the United
States December 5th through the 7th.

Maury, I'm just going to go on to the
additional outreach efforts. I know it appears
later in the program, but if it's okay with you.
We're also, you know -- I know everybody is familiar -- is probably familiar with the Trademark Litigation Study that was done and sent to Congress in April. And at the last TPAC meeting, when asked, I said that we had not heard back from Congress yet on that, and we still have not heard anything official back from Congress, but we are taking some actions right now to try to do some outreach based on the recommendations that were made.

So we're going to be trying to engage the private sector on some of those recommendations, which were providing free or low-cost advice to small businesses, offering legal education, helping to look at trademark policing and educate on trademark policing tactics so that small businesses and non-attorneys have a better understanding of the issues involved in cease-and-desist letters and other tactics. So we're reaching out. We're beginning to do some outreach right now to bar groups through the country and other user groups on that.
We have completed our trademark pro se videos. We've talked a lot about them in the past. They are -- all are available on the web, and they are really -- they're so informative and they're very entertaining, and I really encourage all of you, even you experienced trademark practitioners, to take a look, because they highlight the really important areas that people need to know about. And even though they're geared towards pro se applicants, it never hurts to get an entertaining reminder of things we should know. The other --

MR. LOCKHART: One question.

MS. COHN: Yeah.

MR. LOCKHART: Do you have any sense of how many folks are watching those? Is there a way to track that or --

MS. COHN: Yeah, we do. Sharon, do you have any numbers? I know that we do have -- it's a lot.

MR. LOCKHART: Is it thousands?

MS. COHN: I'm going to ask Sharon to
come up. I think she has some more information on that.

MS. MARSH: Sharon Marsh, USPTO. I don't have the statistics in my head, but we can count people who viewed it on Facebook. It's posted on Facebook and the USPTO website. We are not able at this time to count the number of hits on the USPTO site. But on Facebook, a large number, it's thousands of people have looked at the videos.

MS. COHN: Yeah. Thank you, Sharon. Another outreach effort on our part is the Trademark -- the annual Trademark Expo, which this year is October 14th and 15th. And for those of you who are not familiar with it, we have it here on campus, and it's really a public education program, where we have exhibitors and lectures, and, you know, there's a big education component to try to educate the people about the value of trademarks in the marketplace, how to apply for a trademark, and, you know, we have a large segment on counterfeiting. It's really a great program.
In the past we've had, you know, maybe 16 or 17 exhibitors in the Madison area upstairs. This year we've got something like 30 exhibitors. We've had a huge response. We've got some great exhibitors coming, and it's going to be a terrific event, so please come, bring your families. Last year we had around 13,000 people walk through, give or take 1 or 2, and so this year we expect a big crowd, as well. We're really doing some outreach efforts on that.

MS. PARK: Debbie, I have a question about that. As part of the Expo, will you have some of the things that might help fulfill the obligations to education, small business and prose about the importance of policing trademarks?

MS. COHN: Yeah, we are planning on having some lectures for small businesses and it will definitely include that, absolutely.

And then I wanted to mention our -- swinging back to IT for a moment -- and I know John Owens and Raj Dolas are going to be with us later and give us a really comprehensive view on
what's going on with IT, but I wanted to mention
that we have a team of trademark experts from all
over the office, all over the Trademark operation
rather, who are working right now on what we call
our Business Architecture Project. They're almost
completed, and working using the comments that
have been submitted over the past year and a half
I guess now from the public and from our internal
users to try to come up with a list of what our
new system is going to look like and in what
order, what are the priorities. So that's
currently underway, and we're actually in review
mode on that right now, and we really expect that
that's moving along very well. And I just want to
say, they have done such a fantastic job. They've
really -- we've had a consultant working with us
who is really expert in this area of developing,
and, you know, transformation of systems, and he
has commented more than once that this team of
people is probably the best he's ever worked with,
so I really have to mention that publicly, but
you'll be hearing more about that later.
And I think that's it for my presentation. You're going to hear some more from Sharon about our notice of proposed rulemaking and some other legal issues, but I think that's it for me. But I'd be happy to take any questions if there are any.

CHAIRMAN TEPPER: Thank you. Are there any questions for Debbie? Questions from the public?

MS. PARK: I have one question, Maury, and this is just for my own information. But when you talk about the Trademark Trilateral, what is the role, if any, of the public to attend or take part in sessions, or are there official observers that will be part of that couple of days of discussion and best practice sharing?

MS. COHN: Normally the public is not present at most of the meetings. This year we're talking about having a user group session. We've sent out letters to AIPLA, INTA and a few other of our user groups to ask if they would like to have a representative speak. We expect that we'll
devote a few hours at least to that, but that's
just in the very beginning stages of planning.

CHAIRMAN TEPPER: Thank you. Well, I
think I'll get back to Deputy Director Rea's
observations about what some of us do in our free
time. You're probably by now aware that in the
Commissioner's office they have no free time. It
is remarkable what they manage to accomplish, all
of the things going on at once here.

One of the things that jumped out at me,
I hope you noticed this, you know, as the Advisory
Committee, we have the chance to be here and try
to bring to the office some feedback from the user
community. They are actively seeking that out on
an ongoing basis. Not only that, they are
responding to it. I think before we can even have
the chance to get together and talk about things
that ought to be changed, the office seems to be
aware of them, has made changes, and it's always
about improving their processes, so we applaud you
for that and thank you for that report. We're
moving right along actually. I'm very pleased
that we are pretty close to on time.

We're going to hear just a little bit --

and I knew this was going to happen. We're very

pleased to have Sharon Marsh. And is Amy here,

too, or are you solo today, Sharon?

MS. MARSH: We decided it made sense to

save Amy for the next meeting.

CHAIRMAN TEPPER: Thank you, okay. I

knew that we would not get to Sharon's formal

presentation before Sharon had to come up and

answer questions because Sharon is a vast

repository of knowledge and is on top of all of

our policy and developing issues. And we got

pretty close, but that did happen, so thank you

for always being here to keep us on track and to

give us the answers. We're going to talk about

just a couple of -- you heard the mention of the

proposed rulemaking and a couple of other issues

that are developing in the policy area. Thank

you.

MS. MARSH: Yes. To start with the

rulemaking, if you recall, about a year and a half
ago we held a roundtable here at the PTO on the implications of the Bose decision and the future of the use-based register, and I think two important points came out of that discussion. First of all, the importance of an accurate register. People who are selecting trademarks and doing clearance searches for trademarks search the USPTO register. And it's important that the marks that are shown on the register are actually in use, because if they're not, the person who's interested in that mark has to incur expenses to investigate and decide whether or not the mark is a blocking mark or not.

Secondly, I think the thing that came out of the roundtable was it highlighted that we have a different set of rules in place currently for initial exam and post-registration maintenance document examination. In initial examination, the examiner is allowed to, under Rule 2.61(b), in appropriate cases, when necessary for examination, to ask for additional information and affidavits and exhibits, and there was not a
similar rule in the post-registration area.

So on July 12th, there is -- we issued a Notice of Proposed Rulemaking. It's in the Federal Register and on the USPTO website. And the proposed rule harmonizes the rules so that an initial exam, in review of intent to use documents, in review of Section 8 affidavits and Section 7 amendments, a request to amend the registration, the examiner can ask for any information, exhibits, affidavits or declarations that are reasonably necessary for proper examination or to assess the accuracy and integrity of the register. We have not yet received any comments for this rule. The comment period closes September 12. Anything we receive will be posted on our website.

And the rule also permits the office to ask for additional specimens in appropriate cases. So I think we are just waiting to hear public reaction, and we will consider whatever comments are received and then make a decision about how to proceed.
The other things in the policy area I wanted to mention, as Commissioner Cohn explained, we are on track to issue the next edition of the TMEP this fall. Before then, probably within the next few days, I'm told, we will be issuing an exam guide on grade and model numbers. Kind of an esoteric topic, but one that has very little coverage in the current TMEP. I think applicants and their attorneys will really appreciate this one. It is extremely detailed. It covers all the case law and has many, many examples that I think will be useful when you're trying to decide what the office will do with a designation that might be considered a model number. In addition, coming up this fall, the next edition of the Nice Classification, the 10th edition, takes effect on January 1, 2012. And so in the first quarter of 2012, we will be doing some training for the staff on the upcoming changes.

Also in the works we have -- our training office is working on some training on certification marks and procedure in ex parte
appeals at the TTAB, and that will be for the 
examining attorneys.

And lastly, we also -- I hope in the 
first quarter of 2012 -- will be doing some more 
training on the excellent office action issues. 
This time we're looking at office actions where 
there is a refusal under Section 2D, likelihood of 
confusion issues.

I think that's the highlights, and 
unless there are questions, we might be able to 
take a break. Thanks.

CHAIRMAN TEPPER: Now, how do you top a 
comment like that, recognizing I'm the only thing 
standing between you and a break? Do we have 
questions for Sharon? Thank you.

MS. PARK: My question, Sharon, is, is 
there any update with respect to what's happening 
or proposed to be happening with the Madrid 
Protocol or any future plans for further 
discussions on some of those issues?

MS. MARSH: It's interesting that you 
mention that. We are meeting this fall, in
October, with a group from WIPO, the Madrid -- the 
IB staff, and they are very interested in, number 
one, hearing any problems we're having in Madrid 
administration. And that's always very useful 
because there are day-to-day issues that it's 
helpful to talk to the staff about.

But in addition, WIPO is very interested 
in trying to increase the level of participation 
of the Madrid system by U.S. trademark owners. 
And so to prepare for that, we may be trying to 
gather some information from various user groups 
about ways that Madrid could be made more 
appealing to U.S. trademark owners.

CHAIRMAN TEPPER: Thank you, Sharon.

Are there any other questions?

Well, I do want to remind and encourage 
everyone, if you have not read the proposed 
rulemaking notice, it is very clear. I think it 
provides a good explanation, and Sharon mentioned 
September 12th is the deadline for submission of 
comments. I know the office appreciates and looks 
forward to the feedback from the associations and
from practitioners and users, so I encourage you
to take a look at that and to participate in the
process.

With that, we are going to take a 10 --
actually I'll give you a 15-minute break because
we have been so efficient this morning. We'll
reconvene at 10:45.

(Recess)

CHAIRMAN TEPPER: All right. Welcome
back to everyone. Well, we went from being five
minutes ahead to being five minutes behind, so
we'll see what we can do to make up for that. I
think it shows you that we enjoy our breaks just
as much as anyone. We'd like to continue on.

We're pleased to have with us today
Chief Judge Jerry Rogers from the Trademark Trial
and Appeal Board. We have, I think, a lot of --
several issues to update you on and some new
developments to announce. So Jerry, I'll turn to
this to you.

MR. ROGERS: Thanks, Maury. I do want
to start. We started the morning with new
personnel on TPAC, and I guess I'll start my part
of the presentation with an announcement for those
who may not have heard that Secretary of Commerce
Locke, before he left to become ambassador of
China and to -- I think he was even there trying
to sort out the basketball wars with Georgetown
and the Chinese team the other day -- before he
left he did sign appointments for two new judges
at the Trademark Trial and Appeal Board. And
we're pleased to have on board now Tom Shaw, who
was an associate solicitor here for the PTO and
for 10 years was a managing attorney. So he's got
great ex parte appeal experience that we will be
able to use in our ex parte appeal operations.
And we worked very closely with Tom, the board
did, in developing the revised TBMP, and, of
course, we worked very closely with the
Solicitor's Office as they prepared to defend our
decisions at the Federal Circuit. So we're
looking forward to a very fruitful relationship,
having Tom on board as a judge.

And we also announced recently the
second selection that had been signed off on by
Secretary Locke, and that was the appointment of
Linda Kuczma, who's a partner for at least about
six more weeks with Banner & Witcoff in Chicago.
And Linda is also a former president of the IP
firm of Wallenstein & Wagner, where she was a
partner for 20 years before she went to Banner &
Witcoff. And she's a frequent author and
lecturer, and she's also been intimately involved
in the Lefkowitz Court Competition, which is near
and dear to us being named after a former chairman
of the board; and an Illinois super lawyer for the
last five years running in intellectual property,
so we're looking forward to having Linda join the
board, too. And at that point, we will then be
back up to 18 judges, which is where we were when
David Sam retired almost 2 years ago. So we're
looking forward to having a full staff of judges,
a full complement of judges to work on our cases.

So let me tell you next where we stand
on incoming filings and the work that the judges
and the attorneys are processing. In terms of
incoming filings, we're seeing some of what Trademarks is seeing in terms of some increases, some decreases. It's a little uneven, I guess like the stock market this past week and these past few months, so we see some increases and some decreases, but I think some of the increases are being derived from those increases that Trademarks is seeing.

So through the third quarter, we've seen appeals down from the third quarter last year, so appeals are down slightly, but July was the highest month during the year. So maybe we're starting to see work coming out of that increase in trademark filings.

Extensions of time to oppose were up significant in the third quarter compared to the first and second quarter. Oppositions were up just slightly over the second quarter. But again, these are slight increases and maybe they're a harbinger of more things to come based on those trademark filings.

Cancellations were down a little bit,
incoming cancellations, but only very slightly.

And so I think we're kind of getting a leveling off from the drops that we had seen in the last few years in most of these categories.

In terms of oppositions, though, which is always a significant category, I expect that we will finish the year up slightly over last year, but it will still be below the very strong numbers that we had from 2006 through 2009. We'll still be below those real high-water mark years, but on the increase.

As for final decisions on the merits, the things that Tom and Linda will be helping us write as they both get fully engrossed in the job, we had pendency improved in the third quarter compared to the second quarter. It went back up a little bit in the month of July, so the time to issuance of final decisions was back up over that third quarter figure of 15.8 weeks for the month of July. But some of that is attributable to the fact that we are working off some older cases, and as we work off older cases and try and reduce the
backlog, pendency may take some bumps up from time to time. The significant thing, as we discussed in the subcommittee yesterday, was we ended the month of July with 207 cases waiting to be decided on the merits, both appeals and trial cases, and that was the first month in a number of months where we ended with no more cases than we had started with.

For a number of months prior to July, our backlog was continuing to grow, which meant that pendency was going to continue to grow until you could stem the rise in the backlog. So that's a hopeful sign, that we were able to get out as many decisions as cases maturing to ready for decision in a month. So hopefully, that's a sign that with the full complement of judges, that we'll be able to keep working down that backlog and that pendency will eventually follow.

Commencement to completion times, this is something that we posted up on the website before the last TPAC meeting for the first time, and the third quarter figures are now up on the
website with comparisons to last year. And they are -- pendency was down in the third quarter average, total pendency for appeal, so that's, again, a good sign, but up some for the year. The same with the median pendency on appeals, down in the quarter, but up some for the year. You'll see a very high figure there, average total pendency for trial cases for the third quarter, 270 weeks. That's a pretty high figure. But while that quarter was up, we're actually down a little bit through the third quarter this year compared to last year in terms of overall total pendency.

And I think the ACR figure is the one that often illustrates the fact that some cases can skew the average. It's more noticeable in the cases that are decided under ACR, because the numbers are fewer. And so if you look at this figure, you can see that we were taking from commencement to completion 76 weeks or so to get rid of 2 ACR cases. In the first quarter we did three, in the third quarter, but they were almost twice as long on average.
But when you have small numbers of ACR cases, one lagger can really skew the average. And we also are at the kind of point in the adoption of ACR where people are not necessarily adopting it very early in the process, and sometimes people will go through pleading and go through discovery, have a lot of motion practice, and it's only after they've done that that they will then decide we'd like to go through an ACR process for trial. And so some of those late adopters don't necessarily help bring down the overall average. But over time, we hope that more people will adopt ACR as an alternative to traditional discovery and trial earlier in the proceeding, and we will then see some of the benefits of that.

On contested motions, our next slide, that's a great sign. We are just where we need to be, we're under goal. We're under goal for the third quarter. We had seen a slight uptick in the second quarter, but we made progress in the third quarter. And for the year pendency, the third row
down in this chart, we're at 9.1 weeks. And the
goal is 10 weeks on average to get contested
motions decided, so we're doing pretty well there.

And we have more contested motions being
decided following a phone conference than we had
at this point last year, so that's good, too, that
the attorneys are still making great use of the
phone to help resolve some of these matters.

And the backlog of decisions -- motions
awaiting decision is manageable, we think, for the
group that we have now. But as Debbie alluded to
earlier, we're going to have to keep an eye on
filings, and if filings go up, then we'll have to
think about amending or altering the size of the
interlocutory staff if those small increases that
we're seeing now and extensions of time to oppose
and then oppositions become larger increases. But
at this point, we just don't have enough
information to know whether there are going to be
larger increases and sustained increases. And the
way the stock market has been going the last few
weeks, if that's any indication of what the future
holds, maybe it'll be just a blip in the increase.
I don't know, we'll see.

Another thing not on the charts, but
which I know everyone is always very interested in
as a statistic, is the number of precedential
decisions that we issued. And we're running
slightly behind last year, and I expect that we
will finish the year behind where we ended up last
year in terms of the total number of precedents.

We issued 10 in the first quarter; 10
again in the second quarter, which is about
average; maybe it's 10 to 12 average for a
quarter. The third quarter slipped down to four,
but we've already had four go out in July, and
another three in August. So we're going to be in
the fourth quarter right back up to our average of
10 to 12, and the third quarter just appears to
have been an aberration for potentially a number
of reasons, one of which might be that I was away
in training for the whole month of June and I
wasn't here to push as many precedents out as I
might otherwise have done.
The other decision I made, and this has occasionally been made in the past, was I decided to suspend the process by which judges -- one assigned judge reviews all decisions readied for mailing to see if they should be precedents, and that usually results in some additional precedents. But because of the increase in final decision pendency, we wanted to get that extra judge time just on issuing decisions and not reviewing other peoples' decisions, so that was a price we were willing to pay to keep pendency from creeping up too much.

So that kind of leaves me the -- well, I guess I should ask if there's any questions about the statistics first before I move into the next subject.

MS. PARK: I have one question, or maybe it's a suggestion.

MR. ROGERS: Sure.

MS. PARK: I know on the ACR statistics that 159 weeks looks like a real -- it doesn't look like ACR is effective when you see that, and
I'm wondering if it's possible to track ACR or have a statistic which isn't maybe as meaningful, but from the time the parties elect ACR, what the time frames are. Because I actually think we don't want to discourage people from opting for ACR by making it look like it takes a long time when that length of time, like I understand it, may be because things happened before the parties got to that point. So just a suggestion.

MR. ROGERS: That's a great suggestion. And we also don't want to deter or dissuade anybody from choosing ACR at any time. And we had those cases where the parties are on the eve of trial and they elect ACR. And we said that's fine, at any time if you can be more cooperative and realize any efficiencies, you know, we're here to help you do that. But that's I think a great way to see what kind of progress the parties are making in electing ACR.

And I will get into ACR -- well, I might as well get into it now. I'll just skip ahead on my list here. We mentioned the last time that,
just before the last meeting, we had posted on the
website the suggestions that AIPLA had presented
to the office. We had hoped that we might get
some additional suggestions from other groups, but
we have not at this point in time. We're still
left with the AIPLA suggestions. But we have
developed -- we're in the process of developing
and very nearly have completed developing some
options of our own that we will post on the
website. We're taking a slightly different tact
then the AIPLA did. They took an approach where
they were talking about different kinds of cases
where you would retain or give up certain options
that are otherwise available to you in an
inter partes proceeding.

We're focusing on it from the
perspective of, well, how much time do you want to
spend at the board? Do you want to get in and out
in 10 months? Do you want to get in and out in 14
months? Do you want to get in and out in 18
months? Our traditional trial schedule, if you
just follow it without extensions or suspensions,
would get you out in just under two years. And so we're focusing our attention on some ACR options that would get you in and out of the board in less time than that on the theory that if you want to just get in and out in two years, then you can simply agree to follow the existing schedule without any extensions and perhaps without suspensions for motion practice, and the parties can do more on the phone with interlocutory attorneys and that sort of thing.

So there's the possibility of just agreeing to comply with the existing trial schedule or elect some shorter options, and then we would, of course, explain in our proposals -- which we'll eventually post on the website -- what you're going to have to give up to get in and out in that time frame. But we're hoping that that approach will allow attorneys to discuss with their clients with more certainty how much time they can expect to be at the board.

Now, of course, this all depends on both sides agreeing to the ACR procedure. But if both
sides know that they can get in and out of a board proceeding in a certain amount of time, then maybe that's something that will influence their discussions about whether to adopt ACR or not.

So I expect that we'll have those options developed pretty quickly. I've worked on the drafts with Judge Cataldo, and I have a meeting scheduled next week with all of the judges where I hope to discuss them with the judges as a group and get some additional input, but we hope to get them posted on the website in the very near future.

And they're not necessarily things that provide all answers for all people, but they are suggestions, and then they are options that people can use in their discussions about how they might like to structure their own ACR procedure. We had a question yesterday in our subcommittee discussion about whether anyone has actually adopted any of the AIPLA suggestions, but if they have, no one is doing it by saying I'm adopting AIPLA option A or option B and identifying it for
us in that way. So it may be that we actually
have some people who have agreed to one of those
options, but we just haven't been apprised of
that.

Questions on ACR?

CHAIRMAN TEPPER: Any questions or
comments? I think obviously this is an area where
we all think we know what we want: We want faster
resolution until we actually have to go through
it. So I am -- I do encourage those listening in,
members of the public, do provide your feedback
and suggestions. We're grateful to the board for
the time they're investing in developing these
options, we look forward to seeing them. But as
you know, their time is a valuable resource, as
well, so the more input and feedback we can
provide, I think the better it will be for all
involved.

MS. PARK: I did want to add that I
think it's a good idea to approach it in a
slightly different way from the AIPLA way, which
is to think about, you know, time frames versus
steps that people would elect or not elect,

because that can help focus thinking, too, if
you're thinking about by when you need something,
you know, to be decided finally. So I think
that's a good approach.

MR. ROGERS: Thank you. I'll also
mention now, harking back to the precedents, of
course, our sustained issuance of a lot of
precedents over the last few years fueled the, in
large part, the revision of the TBMP, and it's out
there. We've been receiving some comments, not
many, but we have a mailbox. And I want to
reiterate to the public that we have a mailbox for
TBMP comments, and so we're certainly willing to
take into account any comments on the manual and
suggestions for improvement in the future.

We will soon be following, I hope, the
lead of Trademarks and put out at least a portion
of the manual through IdeaScale for comment. I
think a logical first step would be to do perhaps
Chapter 1200. And I'm just thinking out loud
here, but Chapter 1200 is our chapter on appeals,
and so it's a focused, single chapter, and it might be a good starting point for us, especially for trademark practitioners who are more likely to be involved in an appeal than an opposition, to get that out there and get some suggestions on it. And our hope is that we will be able to get someone in place in the near future who will be primarily in charge of keeping the manual revised. And I would expect our first revision of the current edition of the manual to come out sometime later in the spring. So that would basically be about one year from when we issued it, and by then, I think the RDMS system will be firmly in place, and hopefully we will be able to use it for future revisions. And then we'll follow an every six month revision practice and be able to get in any editorial changes that need to be made based on comments received or any updating that needs to be made based on the issuance of presidential decisions.

CHAIRMAN TEPPER: Thank you, Jerry.

Just to clarify, I think -- I want to make sure
everyone is understanding. The RDMS system is the same system that we heard about that will be coming for updating the TM\(E\)P on an ongoing basis, and basically you'll be using the very same technology at the board.

MR. ROGERS: Yes. And we have told the CIO, and I think I've told this group before, that since our stakeholders tend to be the same stakeholders that are trademark stakeholders, we will follow the Trademarks lead. They have been much more involved. They and Patents have been much more involved than we have been in the development of the system, and we're very thankful to Trademarks and to Patents for doing a lot of the heavy lifting and working with the CIO's Office to get that system up and running.

But then we don't want to have a system or put in place any requirements for the revision of our manual that will be any different than what Trademarks is doing. We want it to work harmoniously. And then, again, that's why we'll follow the lead of Trademarks on the IdeaScale.
And whatever Trademarks wants to do in terms of soliciting and receiving public comment on the TMEP in the future, we will likely follow the same route in terms of receiving public comment on the TBMP, make it easy for people to work with the office on both manuals.

MS. PARK: Yeah, I just wanted to make one comment on the revision of the TBMP. We all know that it was -- the version that's out there, the 3rd edition, was a long time in coming, and it's been well received and something that the user community really needed. So just to clarify, the next -- you're going to revise it, so an update will be out probably at around the one-year anniversary point. But that is not dependent on whether or not RDMS is available, is that correct?

MR. ROGERS: That's correct.

MS. PARK: Okay, I just wanted to clarify.

MR. ROGERS: We will do what is necessary to get the next revision out. And one of the things that we did in putting out the
current edition was transition from a format that was not easily revised to a format that is much more easily revised. And so even if we have to do it in the current format and without RDMS, we will be able to do it and we will stick to that schedule.

And we did -- on the public outreach front, we had the Request for Comments, the Notice of Inquiry, Request for Comments on settlement talks and whether the board should be more involved more frequently, or whether judges should be involved or attorneys, or even if the board was not involved, whether the parties should be required to discuss settlement more often. So we received comments from that. All of those comments are posted at the board's website and can be read there.

We received comments from three firms, three law firms, four individuals, and four organizations, IPO, AIPLA, the ABA IP Section, and INTA, and so all of their comments are up on the website and accessible for anyone to view. I'm
not going to stress any particular comment, but I
do think that there's a couple of general
observations that can be drawn.

We have the existing requirement for a
settlement discovery planning conference. It
seems that most people view that as an improvement
over previous practice, and so that's something
they value in the process. However, many seem to
view discovery as something which is necessary in
many cases before settlement can be seriously
discussed and, therefore, there are a number of
comments that argue against any requirement for
detailed settlement discussions with anybody from
the board before discovery can begin. That's
pretty clear that that's the point of view of many
commenters.

Any involvement by the board, any board
personnel or mediator should be on consent of the
parties. That seems to be a predominant theme as
opposed to the board injecting itself into
settlement discussions or requiring the parties to
attend settlement discussions.
And as we heard when we amended our rules in 2007 and implemented the settlement discovery planning conference for the first time, recusal and maintenance of confidentiality is not surprisingly still a major concern of a party should anybody from the board become more involved in settlement talks. There's some support, because many commenters, whenever you and I think Debbie alluded to this earlier, whenever the office puts out a Request for Comments or a Notice of Proposed Rulemaking, we often get a lot of suggestions that are not necessarily on point with the issue, but they're often very useful anyway because they reveal some of stakeholder thinking for us. And so we -- not quite on the point of settlement, we received a number of comments in these comments on the Request for Comments that suggested other ways for improving processing time at the board. And so, interestingly, a number of the comments kind of diverge from settlement discussions and said maybe it would be useful for the board to think about limitations on the number
of extensions and suspensions that are granted to
accommodate settlement talks. So that's something
that we can certainly consider, having more of a
discussion with stakeholders about whether we're
too liberal in granting extensions and
suspensions.

It was something that we heard in the
2007 rulemaking, and we understand that many
practitioners value the liberality with which the
board grants these extensions and suspensions as
opposed to a district court. But, you know, maybe
there's some opportunity for savings there, that
was another one. And there was some support for
perhaps a second conference of the parties after
discovery closed, but before trial was to start.

So I think that these are suggestions
that we're going to consider and we're going to
have discussions in- house about any process
improvements that we might be able to design that
would result either from these comments or from
any other stakeholder suggestions.

And one of the things that we've been
talking about in-house is more outreach, more
opportunity for outreach to stakeholders. I've
secured a couple of dates in November for
auditorium space here, and so we're thinking about
possible outreach to stakeholders sometime in
November that would involve discussion of
processing times and opportunities for improvement
at the board.

So I'm not prepared to really discuss
whether it would be a roundtable or a stakeholder
classification or something like that, but we're
working on that and we're looking forward to doing
that after we wrap up the end of the year and the
performance appraisal month in October and then
maybe in November. Before we get into the holiday
season, we can take the opportunity to have that
kind of discussion with stakeholders on processing
times and improvement.

So that's -- oh, one other thing. We
have, of course, talked about putting up more
information on the website about processing times
and the slides we've gone through today and the
ACR options and things like that, but we will also be developing a Dashboard. We'll follow -- again, we seem to be following the lead of Patents and Trademarks and others, but we will try and move from just posting some charts and information on the website into having a full-fledged Dashboard up on the website sometime in the near future.

So that's all I have, thanks.

CHAIRMAN TEPPER: Thank you, Jerry.

That's certainly a comprehensive view. Are there any questions for Jerry? Questions from the public? You guys are quiet today.

All right. Yes, please, Kathryn.

MS. PARK: Just one comment. I think it was a great improvement to be able to see some of these performance measures on the website. And I would think that a Dashboard would be very helpful to the user community and probably, you know, building on what's already been done in other operations, not that difficult probably to do, and some easy ways, even if it's not perfect, because I do think those kinds of tools are very helpful.
So I -- you know, if there's anything TPAC can do

MR. ROGERS: Well, and I think you've

CHAIRMAN TEPPER: We would like to

MR. ROGERS: Okay. Well, I think maybe

I've shied away from the Dashboard, because I have

color-deficient vision, so the Dashboards always
don't mean much to me. I look at all those color

charts and I have difficulty discerning weather

maps and Dashboards and knowing what all the

colors mean. But nonetheless, I know the rest of

you have good color vision and so we'll get
something out there for you.

CHAIRMAN TEPPER: We appreciate all of the updates, Jerry. It's good to see that you've got a close eye on the numbers. We'll look forward to continuing to watch those decline for you. And also, once again, to encourage everyone, do provide your feedback to the board when they are asking for it. I know it's a little bit like asking my kids where they want to go to dinner: I will get many different answers; ultimately a decision must be made. So, you know, this is your chance to speak up and have input. Recognize that that will all go into making a final decision so that we can get on with these approaches.

That being said, we need to also thank Jerry for getting us right back on time. We're going to have -- do we have John Dunay? Okay, thank you. We're going to have a presentation from the Office of the Chief Information Officer. Kevin Smith, our deputy CIO, will be filling in for John Owens.

And Raj Dolas is also back. I'll go
ahead and mention, I think we had the chance to
meet Raj at our June meeting. Raj is in charge of
planning for the Trademarks Next Generation
Project.

So, gentlemen, thank you for your time
today.

Mr. Smith: Yes, thank you very much.
John actually fell ill last night, so he was
totally planning on being here, so things happen.
So I'm glad to be able to come to present to the
board, to the Public Advisory Committee again.

So within the first slide, the first
update from the OCIO standpoint, it's from the
universal laptop. We're actually at 3,400 laptops
being deployed as of the beginning of this month.
This program started on the last day of March of
2011. It's about 4 months, 4-1/2 months into that
program, and we're about a third of the way there,
maybe about 40 percent of the way there for the
role out. The entire rollout of this program
across the agency is expected within March/May
time frame. The target is for May of 2012, and
we should be able to make that, and actually we're
going ahead of those time frames right now. We're
actually doing more per night than we suspected.

Within that from the completion status, the Under Secretary's Office, the CFO's Office, the BPAI and OCCO Office have all been done, completed 100 percent. And the Chief Administrative Office, as well as the OCIO are partially complete, nearing the end of that.

The ULP update within the Patent Office, we've actually done 2 major tech centers, 1600 and 2900. These are the designs, as well as the organic chemistry areas for Patents. The next section is 2100 and 2600, the computer architecture, software, and the communications groups within the Patent's organizations. The rollouts are going very smoothly; still going through getting things out of their office. 2010 is a little new for people, so there are still questions on that, but overall the rollouts are going pretty smoothly.

From the Trademark's perspective, we
always had Trademarks a little bit later in the
schedule to make sure we worked out the process,
the physical logistics of getting laptops out to
the people, making sure all those things were
worked out appropriately. So going through that,
we went from -- we initially thought we'd do 50
laptops a night. We're actually up to 65 a night,
and our production schedule is rolling them out
logistically. So we want to make sure we put
Trademarks further back in the schedule to make
sure that it was accommodated first, to make sure
we smoothly rolled it out.

The second thing that we had been
concentrating on within the completion of the
trademark applications is to make sure they're
working the most effectively they can over the
laptop, especially for home users. So we actually
have been making some changes to the applications
to benefit the home users for use with the UL.
And some of those testing phases are going through
right now, where we're going to be working with
the Trademarks organization, testing a few of the
changes with the -- some of their employees to make
sure that they're appropriate for home users and
make sure it's going to adequately fit the
business needs for the rollout of the laptop.

So all of those things falling into
place, we're looking to have a deployment out
there within the next few months for Trademarks.
So we're looking to be able to meet that schedule.
This is based on the testing of things we're doing
right now, today, to move the laptops off of the
Trademarks organization.

MR. LOCKHART: I'll go ahead and ask
this question now before you turn things over to
Raj and we get into Trademarks Next Generation,
but can you describe for me a little bit, please,
what the approval mechanism is going to look like?
I know you've started testing, you're going to be
continuing your testing, and at some point
presumably OCIO is going to be happy with the
Trademark configuration. How is Trademarks going
to give you the green light and say, yes, we're
happy, too, so that both offices are in agreement
that, okay, now deployment is appropriate?

MR. SMITH: This is going to go out from the standpoint of the OCIO has been doing different configurations to help make sure that anything we're doing, first off technically is sound, but more focused primarily on does it meet the business needs. We have not come up with a formal process more than we're going through with the Trademarks beta users; there's about 30 of them now. We're going to give this to a handful of them, and we're going to have a conversation. We're going to go through the demonstrations of it. We're going to have beta users use it for a while, and if the business doesn't like the performance of it, the OCIO is the delivery engine for Trademarks, we have to come up with something that's going to be appropriate.

So the signoff has to come from the business. We cannot give something to Trademarks that is not going to be usable for them at the end of the day. And we're going to do our best to work to whatever solution we have to get to
make sure that it's effective for both the OCIO as well as Trademarks.

MR. LOCKHART: And, Debbie, I just want to make sure your office is comfortable with that. And you've got, I know, several people probably looking at this process, and at some point you're going to say yes or no before they begin the deployment.

MS. COHN: Yes, just to clarify, we're working closely in the testing environment and elsewhere with OCIO on this, and nothing will be deployed until it's working properly, and it has to be working properly from the Trademark's perspective in order to be deployed.

CHAIRMAN TEPPER: Thank you, and I appreciate the clarification. Understand, too, the timeline. I know you mentioned planning rollout within the next several months. I think as someone who does lots of work on the other side, I want to know that the examiners have a system that works first. So we'll take the whenever, sooner is better, we understand that,
but reassure that we're going to hold on until
everything is working and acceptable and we'll
proceed at that pace.

MR. SMITH: No, I absolutely agree.

We're just working to make sure it's effective and
then put Trademarks into the rollout schedule as
soon as possible after that go has been given from
the business.

So I'm going to now pass it to Raj
Dolas, who's the portfolio manager for the
Trademarks Next Gen portfolio, and I'll have him
go through the logic.

MR. DOLAS: Thank you, Kevin. Good
morning, all. Glad to be here again a second
time.

So the update for Trademark Next
Generation portfolio is Fiscal Year '11 is
primarily a planning year. We have fast forwarded
some of the work that we're planning on doing in
Fiscal Year '12 by planning to do some prototypes
this year. We will be executing some prototypes
starting hopefully next month, so we'll have at
least one month under our belt for prototypes. But the portfolio primarily focuses on two tracks: One is modernizing the platform infrastructure, and the second is modernizing the application and improving the functionality of trademark applications.

Like I said, the planning is going on. It is on track, things are going as we had planned, and we're fast forwarding some work and doing some prototypes this year. The platform infrastructure improvement work has three major programs: Separation and virtualization, which is separating trademark applications and make sure that they run on their own piece of hardware so that they're not interfered or impacting by other pieces of -- other applications that run in our data center; cloud computing, as well as infrastructure improvement, where we are going to evaluate some business tools which will lay a foundation for the next generation application. All the three programs -- the project is in three programs -- have been kicked off. They are doing
somewhat -- we're doing some work from project planning perspective, making sure that there's funding available, making sure the people are allocated to that, and these programs are expected to kick start in Fiscal Year '11.

The application and function improvement track is based on the business architect's work. A few of them are here right now. A lot of the work that they have done is very -- it's driving the architectural decisions for all the Next Generation applications. We are following -- we're basing the data architecture and application architecture on top of the business architecture to make sure that all the business things will be met when we start developing the applications for Next Generation. There are two applications that we have started working on, and we'll also continue -- we'll also kick off some prototypes later this year.

That's all I have for update. Do you guys have any questions for me?

MR. LOCKHART: I'll ask this question,
and I'll understand if this is not something that you can answer at this point, because I know that you're still developing a system architecture, but do you have any sense of when you will have something that you can make available to the public in the form of a document or maybe, I don't know, PowerPoint slides or whatever, but something that says to the public, this is how we think Trademarks Next Generation is going to look, how it's going to work, these are some aspects of how the user interface will look and operate? Because obviously there's a lot of curiosity out there among trademark practitioners in the trademark community about how it's going to look. So do you have any idea, at what point could you start to make some of that available, or maybe is that question premature at this point? Perhaps it is.

MR. DOLAS: Well, a lot of the work that we do is based on the business architect's work, and the priorities of what we're going to do will depend on the priorities that business asks us to work on. So a roadmap is a valid question, when
will we have a roadmap? We'll know what we're
doing, I mean, which pieces of the puzzle we're
starting to develop, in the next few months
probably. And we're using agile methodology to
develop this, so we're not going to plan three,
four, five years out into the future, but we're
going to plan on shorter time frames so that we
know what we're doing. We'll know what we're
doing in shorter time frames and we'll be able to
adjust our direction, you know, if need be, using
the agile methodology. So our plans will be out
there probably for 1 year, at the most 18 months,
but we want to go further than that.

MR. LOCKHART: And so do you anticipate
then, by the end of Fiscal '12 perhaps, being able
to publish something that the public could look at
and get a sense of what -- how you think the new
system is going to read, or would it be after
that?

MR. DOLAS: It may be after that. My
gut feeling is that, but we may have a document
that may lay out a roadmap for us.
MS. COHN: Raj, if I could just jump in just for the sake of clarification. I think what Tim is asking is really, will the public be able to have an idea of what the priorities are and, you know, sort of the order of things and how we're proceeding? And we are working on that right now with the business architecture team, and that is very near completion within the Trademark's area. Then the next step is to work with the OCIO folks to tell them what -- this is how we see it and this is what we want based on our needs and our, you know, compilation of comments submitted by our external users, based on what you all need. And so we're working on that now.

Once we sit down with OCIO and sort of have them tell us, well, you know, this particular requirement can be done in conjunction with that, so there may be a reordering of things based on expediency and cost and all of that, but the basic priorities will be set by us, and we're in the process of completing that now.
So I'm just -- I'm not sure what the end of Fiscal Year '12 that you just referred to, what you're talking about having completed at that time, but my thinking -- and correct me if I'm wrong -- is that we will have the direction to show you way before that.

MR. DOLAS: Yeah, thank you for clarifying. What I meant, Fiscal Year '12 is we may have a document of the roadmap, but we may or may not have applications for you to show. You know, there may not be any public facing applications that may be available in Fiscal Year '12. Does that answer your question?

MR. LOCKHART: Yes, it does. I mean, I understand that the Trademark operation is putting together sort of the wish list based upon internal input, external input. They're going to give that document to you at some point. You're going to figure out what's doable and how it's doable. And then I guess what my original question went to, because I was aware that the Trademark operation was putting together the wish list, but at some
point I would hope that you're going to be able to
post on the website or release to the public in
some way a very high-level description of the
functionality and the user interface of the new
system. And I'm talking about, you know, before
you start writing the code and before you have
something to, you know, demonstrate or beta test,
but you'll have a document that just says, okay,
we think when we're done it's going to look like
this, it's going to work like this, and it will do
the following things.

MR. SMITH: And I was just going to
answer really quick to say part of this, and I
understand the question is that we are, as a
collective group from Trademarks and OCIO, working
together to come up with that. The publication
and what's released is the decision between
Trademarks and the OCIO when we're ready to do
that. And we actually haven't had the
conversation when to publish it. We will have
things being developed as plans, but the actual
answer to publication, I'd like to see if we could
answer that at a different time when we have more
idea of when we could do it.

MR. LOCKHART: Yeah, well, I do -- as I
said, I realize my question is somewhat premature,
but this is my last meeting, so I wanted to go
ahead and ask it, because, you know, I, for one,
am very eager to see, at the appropriate time,
when your office and the Trademark operation are
in full agreement. It'll be great to have
something out on the street that people can read
and say, okay, I've been hearing about this for a
long time; now I have a sense of how it's going to
look and what it's going to do.

MS. COHN: Just to further clarify, it
is our desire to make that information available
to the public as soon as we possibly can, and so
we're going to be moving with good speed with OCIO
to come to these decisions and to get a document
together to be able to do just that. We realize
how important it is. We've talked about it
publicly. I know I personally have talked about
it publicly for, you know, quite a while now, and
it's very important that we actually get things
done in a timely manner.

CHAIRMAN TEPPER: Thank you. I do hope
-- I want you all to be prepared at our next
meeting to receive an e-mail question from T.L. in
Norfolk that we will all be answering, so.

MR. SMITH: Thank you.

MR. CONLEY: I have one additional
question, if you don't mind, Maury. Kevin and
Raj, I just want to make sure that our listeners
understand that the resources that are made
available for TMNG are not subject to the vagaries
of funding in Washington. I mean, you all have
the resources to complete this from the reserve,
and that's my understanding. Is that yours, as
well?

MR. SMITH: We're going through a hiring
plan. We have resources now working on it, and
we're going through a hiring plan to add resources
to the mix.

MR. CONLEY: Okay.

MR. SMITH: And as far as the agency
decisions of how those happen, if that's what the agency is moving forward to make sure this happens, we're putting the ads out to get more skilled people in. So if that's the position of the agency, then that's where we'll go with it from the hiring aspect. But I can't speak on the position of the agency from the Trademark standpoint; Debbie could.

MS. COHN: I think I can answer, James. The money that's being used for this development is Trademark money. And if you'll think back to the recent past, when we've had some financial issues in the agency over the past year or so, and we have not stopped work on this effort, we don't plan to stop work on this effort. We plan to use Trademark funds to continue.

MR. CONLEY: Thank you.

CHAIRMAN TEPPER: I'm going to throw one additional question. And, Kevin, this is probably more on your side of things, but I did want to at least touch base or hear a little bit. We've had the chance to kind of look at what's coming down
the road, and I know that the rollout of the ULPs has been an ambitious and time-consuming project, and, of course, Trademark's Next Generation looking forward. One of the lessons I was personally reminded about, I'll share the anecdote that I came home from vacation a couple of weeks ago on a Saturday afternoon and noticed my e-mails had stopped. And since I am at a small firm, I went in and discovered my server was down, and that immediately became an issue of top priority for me, you might expect. Now, I had my IT person out there on a Sunday, and we were back up and running, but, of course, you know, disruptions to the existing system, although we may take them for granted, when they don't work, it becomes a very significant problem to the business.

Can you speak a little bit about support of existing resource and the legacy systems and how we're doing in terms of just sort of supporting the ongoing system while all of these changes are sort of taking place kind of above and out there in front of everything else?
MR. SMITH: Absolutely, I can speak about that. I mean, we are actually looking through a balance of the legacy support, as well as moving into the future and every decision we make within the OCIO. Within the legacy applications, some of the things that are happening to the legacy applications is, every time we go in to add some enhancements to them, they're fragile, so to speak, from the development aspect. And this is something that's been addressed before, that this is the reason we're going through Next Gen, the reason we're going through to update things. So we go through and add some enhancements. Sometimes things have gone from an outage standpoint, where the OCIO has to go through, recover them, bring them back online. And these are at the forefront of what we do every day, every day to improve the business, to enhance some of these applications. There is some risk in doing that moving forward, and lately there have been a few incidents that have been unplanned as far as things, would-be outages and things we've
had to recover from as quickly as possible. And it's absolutely a focus of our organization going forward, because we're a service provider for the production units here at the agency, and our job is to make sure things are online and available and online as quickly as possible.

And so we realize there's been some risk in some of the changes that have happened. This is partially why when we go through some of the future developments, we're looking to make things able to be more resilient going through with some of the enhancements. So every time we make an enhancement to an application, it doesn't actually make it a little fragile, more fragile than we'd like. So we're working through that process, but it's definitely a focus.

We haven't ignored it. It's just lately a few things happened where it came back to the forefront, just like you said. The system works all the time. It's on 99 percent of the time, but, you know, the one time it's off for an extended amount of time, that's the first thing
that's on your bucket list: Oh, my gosh, I've got
to hit that right now; I have to fix that
immediately. And we've -- we're aware of it, and
it's not a -- it's a priority in the OCIO. It's
not something we're not addressing.

CHAIRMAN TEPPER: I appreciate that, and
I recognize we're asking for everything at once.
I will -- and I'll try to remember to make this
request to John for sort of future presentations.
As you probably have seen from the material, you
know, when we review Trademark operations and when
we review the TTAB, we're sort of getting some
statistics about, you know, pendency, timing, how
we're measuring.

I think it would be helpful for us,
along with the timelines and sort of future
projects, if we could maybe start seeing some
information on, you know, how's the support line
working, response times, operational, just
day-to-day operation issues that will help us have
a sense of how we're doing minding the shop day to
day?
MR. SMITH: Absolutely taken. Sometimes the OCIO is blamed for throwing too much data at people, so we don't bring it to some of these. But point taken, and we'll look at the next time bringing some of those things here.

CHAIRMAN TEPPER: Much appreciated. Are there other questions for the CIO's Office?

All right. Well, thank you, gentlemen, we do appreciate that. And I believe that I have the happy task of letting everyone know we are once again slightly ahead of schedule.

My next agenda item was a discussion of PTO outreach events and upcoming events, and I believe you have already heard about those. Commissioner Cohn, are there any others we need to cover? I think you've talked about the meetings and the --

MS. COHN: Yeah, I think I've covered everything, so no need.

CHAIRMAN TEPPER: Thank you. In that case, I would like to announce our next public meeting will be on Friday, November the 18th. And
from what I've understood, we may need to check
with Chief Judge Rogers for a conference room and
auditorium space. But assuming that that's not --
MR. ROGERS: (inaudible) days.
CHAIRMAN TEPPER: Excellent. All right,
Friday, November the 18th, I would invite you all
again to participate. In the meantime, I think
many of you know that we have an annual obligation
to issue a report to the President. We have been
very much engaged recently in preparing those
materials. When they are complete, you will see
TPAC's report available on the PTO website. I
hope you will find it as fascinating to read it as
we have found to write it. But that report should
be available before our next meeting, so I
encourage everyone to keep an eye out for that.
You also heard a mention, it is sort of
budget time. The TPAC will be receiving and
discussing the budget, and we will be undertaking
those activities in an upcoming meeting. That
will not be a public meeting, and that is simply a
requirement we operate under. But just be aware,
this will be a busy time for this committee, so
stay tuned, and we will look forward to seeing
everyone again on November the 18th.

Are there any final public comments or
questions? All right. With that, I will adjourn
the public session of our meeting. We will, TPAC
members, be meeting briefly just to review a
couple of personnel and budget issues in Executive
Session. Thank you all.

(Whereupon, at 11:45 a.m., the
PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

-----------------------------------
Notary Public, in and for the Commonwealth of
Virginia
My Commission Expires: July 31, 2015
Notary Public Number 258192