PARTICIPANTS:

TPAC Members:

JOHN B. FARMER, Chair
ROBERT M. ANDERSON
JAMES G. CONLEY
MARY BONEY DENISON
JAMES H. JOHNSON, JR.
TIMOTHY J. LOCKHART
KATHRYN B. PARK
ELIZABETH R. PEARCE
MAKAN DELRAHIM

Union Members:

HOWARD FRIEDMAN
RANDALL P. MYERS
HAROLD E. ROSS

Also Present:

LYNNE BERESFORD, Commissioner for Trademarks
DANA ROBERT COLARULLI
Director, Office of Government Affairs

ANTHONY P. SCARDINO
Chief Financial Officer

JOHN OWENS
Chief Information Officer
PARTICIPANTS (CONT'D):

GERARD ROGERS
TTAB Representative

GARY CANNON

JOE WOLF

* * * * *
PROCEEDINGS

(9:00 a.m.)

CHAIRMAN FARMER: I'd like to welcome everybody to our meeting of the Trademark Public Advisory Committee. Just to remind folks that the meeting is being recorded, and webcast, and a transcript will be made, your biorhythms will not be taken, but basically if you're here, you may end up on camera, and if you make any comments, your comments may end up being recorded, and so just keep that in mind in case that matters to you.

For those who are watching via webcast, or as I like to say, for those watching at home, if you go to the USPTO web site, which you've already done behind the webcast, you can also find, or at least should find the materials for this meeting there. So if you see us referring to this report or that report, you should be able to access it and look at it yourself, so that you can play along at home.

We are going to receive questions today,
and for those of you who have been in here before, this features means the same, that is, during each segment, I will first defer to the champion of that issue on TPAC to ask questions, then we'll take questions from any other TPAC members, then we'll take questions from anyone here in our live studio audience, because these are the folks who have taken the time to come, and then time permitting, we'll take questions from cyber space.

And so if you have questions you'd like to send in to ask those folks who are chatting with us here today, you can do so. I believe the email remains asktpac@uspto.gov

I'm supposed to do an introduction in five minutes, and although I said I like the trains to run on time, it's just not going to happen this morning because we've got some special things to take care of.

We have four folks we need to say thank you and goodbye to today, although one of them hopefully we'll be welcoming back. I'm going to start with the person to my left, Lynne Beresford.
But before I do so, I'll say that for all of the people that we are thanking and recognizing this morning, there is a tremendous collegiality and friendship amongst us, and that arises from the mutual respect of mutual hard work and mutual goodwill, and I think that's what makes this organization function so well.

I'm going to start off by recognizing Lynne Beresford. Lynne is our Commissioner for Trademarks. She started here in 1979, reportedly the exact same day as Jim Johnson, a fellow TPAC member over here, and I believe it was not even just the same day, but your offices may have been pertinent. And so here we come full circle today as we'll be saying farewell, but not goodbye forever, to Jim and to Lynne.

The thing about Lynne is that she is the paragon of what a government official should be. I have to admit, I have a bit of a cynical view about government employment, although my mind has been greatly changed by many of the folks I've had the pleasure to work with here, and that's because
I've always been a bit cynical that one would constantly strive for improvement and excellence. If you didn't really have a day-to-day survival, you might be fired tomorrow instead of backing that up, and I've been proven wrong, and Lynne has been the prime example of that.

She constantly strives to improve the office. I won't go on and on with a lengthy biography because I'm not qualified to give it, frankly, but to give you an example of that, when we were meeting with Lynne yesterday, she was talking about the latest generation of the quality standard for the office that's being rolled out.

For those of you all who don't know the history, this will be the third generation of the quality standard within the trademark operation, and that's because they pegged the speedometer twice and they don't work anymore and they have to set a yet higher bar so that they'll have something yet more that they can achieve.

And if you sit back and think about that, that's simply amazing, for a government
organization to constantly be raising its own bar voluntarily. I don't even recall us on TPAC even suggesting that they should do that, they just decided it needed to be done and that they were going to go do it, and that's simply remarkable.

Another thing I really remember that just caused me to be dumbfounded is when I first started working with Lynne on TPAC, this was before the recession, and we had to start watching our dimes a bit better, Lynne constantly told me that she felt that she could bring enough efficiency out of the system to perhaps lower fees, and I thought that is simply amazing, a government official who doesn't have to do this talking about possibly trying to give some money back to the stakeholders in the community, and I just thought that was amazing. And these are just two examples, the quality standard and the fee comment, you know, of course, that's on hold because of the recession, that typifies so many ways in which Lynne has handled this organization, that is, she's constantly striving to make it
better, she confronts hurdles of various types, they never become excuses for not trying to improve the organization, and she does it, and she always seems to do it with a very humble, non-self-centered, non look at me way, she just gets it done.

Lynne, I'm probably going to break the law here, not the finance law, I assure you, 24.99 is the limit here, but I did not check any federal statutes on the wording of this. But on behalf of TPAC, I would like to present you a plaque that reads as follows: "The 2010 Trademark Public Advisory Committee of the United States Patent and Trademark Office salutes Lynne G. Beresford as the best darn Commissioner of Trademarks. Thanks for your superb service."

COMMISSIONER BERESFORD: Thank you so much.

CHAIRMAN FARMER: At this time, I would like to ask - if any other TPAC members, you know, I've already ran on and on, but if you want to add any additional comments, please feel free to do
so. And for Jim Johnson, it's not optional.

     MR. JOHNSON: Lynne, what can I say?

1979, some some years ago, you and I were sworn in
on the same day, and we were at different stages
of our life, I was fresh out of law school, the
University of Virginia Law School, single, and you
were a divorced mother of two who had been a
housewife for many years, and then you went back
to law school and worked in the tax court, and
then you came here to the Trademark Office.

     We had a shortage of offices at the
time, and they were doing some remodeling, and so
we had to flip a coin for who was going to get the
broom closet and who was going to - and the winner
- who got the broom closet was the winner. And we
flipped the coin, and Lynne won, and she got the
broom closet, and I got a very interesting
officemate, and the rest is history.

     But over that time, back then we had a
lot of paid overtime, so we were working 40 extra
hours a week sometimes, so Lynne and I had a lot
of opportunity to share our lives and our comments
and our advice, and she's just truly an awesome person. There are two things about Lynne that really have always impressed me, she's extremely intelligent, but she also cares about people, she cares about doing the right thing.

Her family was involved in the Freedom Riders and the Civil Rights Movement back at a time when you really were putting your life on the line, but she was that committed, she and her family were that committed to justice and fairness.

Lynne, I want to thank you on behalf of TPAC and the trademark community for all that you've done for us, and for all your friends and everything. And I only have one word of advice for you as you go into the future, it's okay for you to retire from your job, you deserve it, but you can't retire from your friends. Thanks.

COMMISSIONER BERESFORD: Thank you.

Thank you, everyone, it's so touching. And I have to say this plaque is absolutely priceless. I have given and received many plaques in my life,
but this one is amazingly wonderful, so thank you.

CHAIRMAN FARMER: You're welcome. Thank you for the reminder. Before I go on for Lynne, I know Lynne did not control this, but I know she had a hand in it. One of the tremendous acts of Lynne Beresford was to leave the operation in good shape, to make certain the operation is left in good hands. And so we very much look forward to having Debbie Cohn as the next Commissioner for Trademarks, and we are very glad that things could be arranged so that such a trusted and proven person would take over that operation.

As a matter of fact, Debbie, it's optional for you, but you're kind of handing off the reigns, if you wish to come up here today in case you wanted to make any comments, feel free to do so, because I know it's sort of a transition period, and so we really look forward to working with you.

Now we've got to recognize some other folks. Elizabeth Pearce, Elizabeth Pearce I've called on the telephone for counsel probably, oh,
two dozen times over the course of my time on TPAC, and the phone has never rung. Elizabeth is so responsive that I've yet to get the phone to ring in her office because she picks it up right away and she's always there to help me sort something out, because I've usually gotten myself in muddle over some issue or over how something is being handled, and Elizabeth just calms me right down and helps me see the sweetness and light of the best way forward and she always provides very wise counsel.

Also, Elizabeth is the most diligent TPAC member I could imagine, and that is, I think with the finance role that she has served, a lot of what she has achieved is just by letting everyone know that she's watching and paying attention.

And so a lot of times Elizabeth will get emailed these massive documents, I mean it's like the Encyclopedia Britannica, they made the font size bigger, and five minutes later you'll see an email coming back in the other direction from
Elizabeth saying, well, I was a bit curious about page 23, footnote seven, in which you commented as follows, and I was wondering if you meant X, and that meant everyone knew that Elizabeth was on the case and she was watching, and I think that simple diligence has produced a lot of good results in the areas that she is champion.

Elizabeth has made many contributions to TPAC, and I will not try to list them all. One of the best ones I have seen is that she and James Conley, working as the dynamic duo, have built a very strong relationship with the folks in the CFO's office and helped bring together a good relationship between the folks in the CFO's office and the main trademark operation, and I think that that's built a lot of mutual confidence and it's made the organization stronger.

And also, Elizabeth is just simply the iron lady. She seems to have the wonderful gift of being very kind and very nice and always using honey rather than a hammer, but lying beneath that is an iron resolve to get things done and to do it
very well. Thank you, Elizabeth.

MS. PEARCE: I, of course, have something to say, as I always do. Thank you, John. I have learned so many things that I didn't know that I didn't know while serving on TPAC. I am the only member of TPAC who is not a lawyer or a law professor, as James is, so I came at it from a very different perspective. And I have appreciated the camaraderie, the teamwork that has gone into this effort. I have met some interesting people, many of whom, and you've heard these stories before, I was in awe of before I got on TPAC, but I've had a chance to really be among some of the best IP minds that I can imagine for the past three years, and that includes Lynne also as the Commissioner. You learn an awful lot being on the inside. It's very different being on the inside than it is being on the outside.

I made a list to make sure I didn't leave anybody out. The CFO's office has done a wonderful job of working with me and James, and I believe that we've made tremendous progress in
three years, which enables me to leave my term of
duty feeling that we accomplished far more than I
would have expected, and I wanted to thank these
people, some of whom are here today, Mark
Olechowski, Karen Strohecker, who I know is behind
me, Michelle Picard, who's not here, who's in the
Caribbean at the moment and who has earned it, I
might add, Mark Krieger, Steve Porter, and Nabil
Chbouki, who does wonderful, very illuminating
charts and graphs that have made things a whole
lot easier for us to understand.

It's a great team that they've got over
there. I can't speak highly enough of them and
how much I'm going to miss working with everybody.
It's not often that you get to work with a group
of people where so many effective results come out
of your efforts. I mean we spend a lot of time in
this world spinning in circles and going through
the motions, but this group does not do that.
TPAC has accomplished a tremendous amount. The
various offices at the PTO that we've worked with
have worked hard also to accomplish with us, and I
leave with a great sense of satisfaction. And I hope that whoever my successor might be will enjoy it as much as I did.

CHAIRMAN FARMER: Thank you, Elizabeth, we really appreciate your service, as we do the service of Jim Johnson. Jim always makes me smile. I remember when I called up Jim when I stepped into the job, he just has this wonderful dry sense of humor. And to tell myself just so I can pass on what Jim said, the name of my law firm is the Leading Edge Law Group, and I called up, and Jim answers the phone and he says, well, I see I'm speaking to the leading edge, I wonder what that means, and it's kind of been like that ever since and it's been great.

And then I'm talking with Jim and I discover that although he presently lives in Georgia, I'll call him a Georgia resident because that implies a permanent intention to stay. I discovered that he went to elementary school at an elementary school I can see from my office, right across the river, and that he went to the
University of Virginia to law school, and I decided then that he's just a Virginian waiting to come back, so we look forward to welcoming your residency back.

Jim is also our utility infielder, and that is, he has tackled a very wide range of issues while he has been on TPAC, and I will not try to list them all today because I'm afraid I'd forget one, and he always volunteers for them.

I mean presently some of the issues he's been working on are things as diverse as doing the international issues here at TPAC, to somewhat instigating and pushing TPAC's deep concern over many of the online services that are not really clear as to whether they're acting as trademark counsel or just a filing service, to taking a look at all the new videos that the PTO puts out to try to help pro se filers, to a bunch of other issues.

You can just always count on Jim to put his hand up and to say I'll take care of it, and those are the magic words, I'll take care of it, especially when you know that they will, and Jim
does, and so he just does it all with great grace, again, without any self centeredness, and he just takes care of business. And Jim also is just a very wise person, and that is, a lot of times you have to keep your bearing if you're a member of an organization like this and have a very strong sense of just what's going to work and what's not going to work, and what's in pretty good repair and what's kind of broken.

And Jim, when he counsels us in our meetings, just always has this great sense of just what makes sense and what doesn't. He just kinds of brings it down to the pithy, this is why I think this will work or why this won't work. And so we've really appreciated that and we tremendously appreciate simply his friendship.

And as I've said earlier with Lynne, with Elizabeth and with Jim, it's a friendship born out of these being generally nice people, and also just the mutual respect and mutual hard work.

And so, Jim Johnson, thank you very much for your service on TPAC and we will look forward to seeing
you down the road.

MR. JOHNSON: Thank you. Three years ago, three of us were sworn into TPAC, Elizabeth Pearce, Jeff Storie and myself. Unfortunately, or fortunately, however you look at it, Jeff Storie was called home, and my only solace is that he's in a better place than this earth. But I've had many, many interesting experiences working on TPAC, this is my second time on TPAC, and it's one of those things where each experience and each one of you and every one I've had to deal with has been a part of a little mosaic, a little tile, and when you're working on a mosaic, when you first put that first little tile in, as you put them in, you don't realize the impact of each piece until you step back and look at the big picture, and you go wow.

They often talk about positions such as this, one's a public duty, but I don't think in this case it was a misnomer, because it's been a pleasure and a privilege to work with each one of you, to work with the members of the Board, with
you, John Farmer, as one of the greatest Chairman of the TPAC they've ever had, with Lynne Beresford, the greatest Commissioner, one of the greatest Commissioners since Thomas Jefferson.

And when someone from the University of Virginia puts your name in the same sentence with Thomas Jefferson, you know you're really good. And Sharon Marsh, and Debbie Cohen, and Gerard Rogers, and Cindy Greenbaum, and Craig Morris, and all my old friends, all the people I worked with all these years. Ann Farson and I used to carpool together back in the day, so it's amazing. So this has been just a truly wonderful, wonderful experience. And I would like to think that this is the beginning, not the end of our friendship, and we will continue. And as Bob Hope often said, thanks for the memories.

CHAIRMAN FARMER: We have one more, but this is with an asterisks. We've kind of been down this road before. We have a member of TPAC who's finishing up a partial term, finishing up the term of Jeff Storie, as Jim said, and because
of just how the political process works, we don't
yet know whether he will be reappointed, although
we strongly hope that he will be.

And so this is sort of a provisional
recognition, because we'll look forward hopefully
to recognizing Bob's additional three years of
service three years from now; I strongly hope that
that is the case.

But Bob Anderson is also completing a
term on TPAC. He's been on TPAC less than a year,
but he has gotten up to speed and to a level of
high contribution extraordinarily quickly.

When we needed to fill a spot on TPAC,
well, we on TPAC, of course, don't fill it, the
Secretary of Commerce makes the appointment, but
we knew what sort of person we needed in that TPAC
has its fingers in a lot of different pies, and we
knew that we really needed someone to come onto
TPAC who had a very strong technological
background to help work with Tim Lockhart and
Howard Friedman on technology, especially with the
new Trademarks Next Generation coming along, to be
able to provide some TPAC oversight.

And we also wanted someone who had some
working experience in the office at some point in
time past who could be a good guide to the
internal way that things work. And so we're
looking for someone with those two traits, and,
you know, we were casting about and talking about
this and that.

And then Lynne Beresford said to me,
well, there's only one person, that's Bob
Anderson, and I said why, and she explained why,
and it was just so incredibly obvious that he was
the man that we needed to get, and fortunately he
was appointed to join us here on TPAC.

Bob has brought those skills to the
table. He has worked deeply with Tim and with
Howard on their technology issues, and this is a
very critical time for that. You know, everyone
knows the historical problems that we've had here
at the office of the computer system, and thanks
to the decision that Mr. Kappos made, we're on our
way to getting a better system, but you don't just
snap your finger, put your money down on the table
and get it, it's a process and it has to happen
and things can go right and things can go wrong,
and Bob, in addition to Tim and Howard, provided
great diligence there, and so we're very thankful
for that.

And also, in addition to the IT issues,
Bob has helped us out a lot on being a good minder
on trademark quality issues and on issues that
we've had some very stout discussions on on
improving the communications between trademark
examining attorneys and folks who are prosecuting
applications.

The character trait that I've really
noticed with Bob is that he doesn't wing it, and
that is, when he takes on a task, that he goes and
investigates deeply, doesn't make a big show of
it, but he goes and he talks to a lot of folks and
he does a lot of reading, and you'll hear Bob say,
oh yeah, I went over to the office the other day
and I talked to so and so and so and so and so and so and
so just to get the lay of the land as to how this
works.

And that doing of homework is just really appreciated and it leads to a great work product and it leads us all to have tremendous confidence that when Bob says, well, I've investigated this and this is what I see, and this is why this will work or why this won't work, we know that it's been very well thought through and very well investigated.

And so Bob, in interim asterisks, thank you for serving on TPAC and for being such a good friend to all of us, and hopefully we'll be welcoming you back very soon for another lap around the track. So, Bob, thanks for your service.

MR. ANDERSON: Since I had a very short tenure, I'll try to keep it short. But I do want to mention two things, I left the office January 3, 2004, and came back approximately six years later, almost to the day, and was quite surprised to find that people still remembered who I was, and also found that many of the people who had
been very helpful to me when I was here for many years were still very helpful, very knowledgeable, and quite pleased to see that Lynne had become the Commissioner of Trademarks.

She became Commissioner in what was probably one of the low points of trademarks, and I think has handled the job in an excellent manner. Sorry to see her go. I was quite disappointed when I heard that even though she had been reappointed, she was now announcing her retirement, which took me by surprise.

The second thing I would like to mention, when I joined – when I was asked to join TPAC and then approved by the Secretary of Commerce, I was concerned about being the new kid on the block and being associated with a number of people, some of who I knew, some that I didn't know.

I found the first time I came in contact with the members of TPAC, that everyone was very friendly, very welcoming, and it was almost like I had been on TPAC for two or three years prior.
I think John has done an excellent job as the Chair of TPAC over the past almost two and a half years now. I think John has created an environment on TPAC that is very welcoming to new members. He gets them up to speed quickly, he tells you what you need to know and what his expectations are, which I think is very important.

I appreciate the camaraderie, I guess is the best word, of other TPAC members, and I appreciate the help they've given me in getting used to being on TPAC. I hope I come back, but we'll see. Thanks very much, everybody. And I do want to mention one person who's been extremely helpful to me, Ann Farson. She got me through all the paperwork, made sure I've dotted all the I's and signed everything appropriately, and when I've been a little tardy on getting papers in, she sends me a gentle reminder so things don't fall through the cracks.

Ann was a great help when I was here during my career, and Ann has continued to be a great help as I've gotten - integrated myself onto
TPAC. Thanks very much, everybody.

CHAIRMAN FARMER: I said to Bob, we expect to see you back, so I won't put you through this. Jim and Elizabeth, we may have covered this, I can't tell one way or the other, I said to each of you that I wanted to give each of you the opportunity to give any swansong you want, any parting words of advice or any comments you'd like to make. And I can't quite discern if you all have kind of already done that with your little gift or if there is more. So if there's any other things you wanted to say now. No? If you think of anything, the floor will be yours at your command on that.

Now let's get down to the public's business. We think highly of each other, but we've got to get to that, too. We next get to welcome and brief comments from USPTO leadership. Lynne, I'm going to guess that you're going to do that.

COMMISSIONER BERESFORD: Yes.

CHAIRMAN FARMER: And so we'll just
1 start there and we'll just kind of naturally roll
2 right into your section of the agenda, if that's
3 okay with you, and so I'll turn the floor over to
4 you.

5 COMMISSIONER BERESFORD: Yes, thank you
6 very much. And I, too, want to say what a great
7 Chairman we have for this Public Advisory
8 Committee. I've been involved with the Public
9 Advisory Committee for more than 20 years in a
10 variety of different roles, and this has been the
11 most active, the most involved, the most
12 discerning committee that I've had the pleasure to
13 deal with, so you have all been a great help to
14 the USPTO, you've certainly more than fulfilled
15 your statutory duties, you've gone above and
16 beyond, so thank you. And also thank you to Ms.
17 Farson over there, she's gone above and beyond.
18
19 On to the business. Just some updates
20 here. The USPTO's strategic plan, sure, the
21 Committee is interested in where we are on the
22 strategic plan, it's been posted, we thank
23 everyone for their comments. We think of it as a
living document, and that means that there will be
- that it can continue to be tweaked and it can
continue to improve. Essentially, the strategic
plan has a certain number of initiatives in it,
and we've talked about all of these before.

There's maintaining pendency between 2.5
and 3.5 months and maintaining pendency, final
action pendency, at around 11 months for cases
without and the parties are suspended, and 13
months for other things. I expect that the final
action pendency will continue to go down as we
refine our process.

Trademark quality, another thing in our
strategic plan, we're working on this new quality
measure, the comprehensive excellence measure.
We'll be benchmarking it this year. We had a
pilot last year of an award, the award for
comprehensive excellence, where we were kind of
test driving what we wanted to have in this
measure.

The best thing I can say about this
measure is, I think it's very comprehensive. Our
quality metrics in the past have been based on a single point, was the decision made correctly, and this is the quality measure we report to the public. And although that's an extremely important quality measure, it's not the whole story. And we're now at approximately 97 percent on that measure, so it's time to look for something else, and we've stayed at 97 percent for a while. So we're now going to benchmark a new measure that looks at the comprehensive excellence of every first action, including the search, the writing, the evidence, the decision-making. Everything in the first action is going to be part of this excellence measure.

I think this is where we should be headed in quality. As you've all heard me before, we've gone to the bar and had the USPTO subcommittee of INTA and the Trademark's subcommittee of AIPLA, and the IPO Trademark Committee, and all the members have reviewed 200 office actions and given us specific feedback on those office actions, that's the information we
used to set this quality measure.

We will continue to refine it as we benchmark it, because we are still learning about what we can do with this quality measure. The NY, New York Intellectual Property Law Association, the Ohio Intellectual Property organization, FIGPI, and a number of other organizations have also ponied up saying they would be willing to review all sections. I'm still amazed that lawyers who are so darn busy in these organizations are willing to take their time to review office actions and give us feedback on them, it's just wonderful.

But that will be the new quality goal that we'll be benchmarking, and we will continue to look for feedback from folks on that quality measure to refine it and to try to make the quality something that is meaningful to the folks that use our services, so that's the plan there.

And the award for comprehensive excellence that we rolled out in the second half of this year, as a pilot, has had some really
positive effects. We've seen an increase in the number of phone calls examining attorneys have made, the percentage of examiner's amendments that have been done in the second half of the year versus the first half of the year, and an increase in the excellence in the writing, especially the area of writing, Section 2D, where we did training on excellence, so we see there are improvements can be made and we're seeing those improvements happening.

And, of course, the final two things in the strategic plan have to do with the IT updates, John will talk about that. Trademarks will separate its systems, for the most part, from the patent systems and will become virtual, and hopefully will be able to add more services to what it offers now, be a more user friendly web site, and be better for our applicants and attorneys to use.

So we're working on our toward what I think is going to be the real trademark office of the century, not the 19th century trademark
office, not the 20th century trademark office, but
maybe the 21st century trademark office.

And last, but not least in our strategic
plan, we have the issue which we called Bose issue
on ID's and whether or not ID's practice and the
descriptions of goods and services and
applications and registrations are accurate, and
we're working on a rule for that.

The rule, which will increase the
ability of post-registration examiners to ask for
specimens or evidence in situations where they
think what they've received is a Section 8 call
for that type of action, that rule package has
been written, it's in final form, it'll be shared
with the Committee in the next week or so, and
then it'll start through the USPTO OMB clearance
process. But you should all be - you will all be
receiving an advanced copy, and, of course, we
always look forward to comments from the TPAC
members about that. So that's what's going on
with the strategic plan.

We have an upcoming roundtable on
December 3rd on electronic communications. Our
very own Kathryn Barrett Park will be chairing
that roundtable, it's at 1:00. And the purpose of
the roundtable is to talk about best practices in
the private sector for handling electronic
communications, both between themselves and their
clients, and also between themselves and the
USPTO. How do people do it to be efficient, have
good records, et cetera.

We have about ten folks coming in with a
variety of experiences in the private sector to
talk about that. We'll webcast it and we're
hoping that other people who have electronic
filing and communication issues will listen and
maybe get some ideas, and we're also hoping that
we'll get ideas from this roundtable that can help
us improve our systems as we move towards
Trademark's Next Generation.

Already this Committee, of course, has
contributed by talking about multiple email
addresses, to send communications out to multiple
email addresses. Again, we think we'll get other
good ideas, and we're really looking forward to this roundtable. Perhaps Dana Colarulli will talk about the telework legislation that passed. But just as a matter of course, we will be expanding our geographic pilot as we go through time once we work out the requirements of the legislation. And trademarks totally supports trademark work at home, it's been a real win/win for the office, I think it's contributed to our very low attrition rate and our ability to keep experienced examiners who continue to want to do the job and work for the USPTO.

The "Trademark Bullies" study, we have a mailbox open, it has not received a lot of comments, but we think that we will continue to get comments, and often you don't get them until the very time that the mailbox closes.

We're going to be having some roundtables of this subject matter. The dates and places haven't been set up, but they will not be exclusively here in Washington, D.C., so that's something that I think we can look forward to,
Let me talk about our consistency issue.

There's been a lot in the blogosphere about consistency in the trademark office. And as you all know, we have a consistency mailbox which is where we try to solve consistency problems, it's very easy to find. You get on the web site, click on trademarks, click on contact us, and the consistency mailbox is in the list of mailboxes that are there when you look at contact us.

I'm looking for my stats on that. We get things into the mailbox, but it's pretty lonely because we don't get a lot into the consistency mailbox for a variety of reasons. Nevertheless, we have gotten a few things in it and we are using. We opened it June 23, we've received 13 requests, five are ID related, seven of the 13 were granted, two denied, four were forwarded to the proper place. So this is where we are in consistency.

I know some of the things on the INTA blog have been what's going on, they say they're
consistent, why aren't they consistent, you know,
but apparently the folks haven't submitted their
issues to this particular mailbox that are talking
about this.

And then trademark user feedback, at the
suggestion of this Committee, we have a user
feedback mailbox on the front trademark page, and
it opened in February, we've had 110 submissions,
nine were positive, 29 were suggestions for
improvements or complaints, 53 were questions that
should have been directed elsewhere, seven
regarding the Madrid Protocol Survey, and two
regarding the accuracy of identifications of goods
and services, and ten related to the so called
Bully Survey.

We answer all of them that are
answerable. We forward the ones to the
appropriate place where they need to be forwarded.

But again, considering this period of time this
has been open, not a lot of input into this
mailbox, but we have lots of, you know, again, we
continue to try to reach out to people and to hear
what people have to say and look for suggestions
and comments.

And I think that covers all the things
for opening remarks. If there are any questions,
I'm happy to talk about them.

CHAIRMAN FARMER: Thanks, Lynne. My
guess is that, you know, we'll kind of now just
march through the items on the agenda, some of
which you've touched on, and we may go into a
little bit more depth, and if there are any
questions, maybe they'll just get flushed out that
way. I'm just going to kind of take it from the
top towards the bottom. I've got first a bucket
of issues under the general rubric of
communicating the trademark examining attorneys.
The first one I'll pick out is the status of
anticipated eventual transition to requiring
examining attorneys to put their email addresses
on office actions, and if you could give us an
update as to where you all stand on that.

COMMISSIONER BERESFORD: I expect that
will happen. What we're doing right now is
working on a clear set of instructions for examining attorneys to know what to do in certain circumstances. For example, if the applicant sends the response to the office action in an email to the examining attorney, we need a clear set of steps for how to deal with that so we deal with it consistently across the operation. And there are some other issues, but we continue to work on that and expect that it will happen.

CHAIRMAN FARMER: We'll look forward to that. And then we'll go ahead and do the other email issue. I can't remember who came up with the idea, it may have been you all, but to foster communications that actually made contact, adding to the trademark application form, where someone might be able to state a secondary email address, the idea being that very often, at least for firms, the primary email address is often an IP@ or a TM@ or whatever, but that will usually only get you to the docket clerk, it won't get you to the attorney who's prosecuting the application, and thus, the possibility of adding a second email
address that may be the attorney who filed the
application so that the examining attorney may
have an easier job of making contact with them,
but at the same time, having only the primary
being the one that would trigger paper if, for
instance, it fails, and so I wanted to check in
with you all as to what you all are thinking about
that.

COMMISSIONER BERESFORD: We're
definitely working on that because we think this
is something that would be helpful to examining
attorneys and to the folks that are prosecuting
the application.

The issue, as you've touched on, John,
is that right now, when we send out an email and
we get a bounce back, we have a procedure for then
sending out paper for that application, to make
sure that they get the communication.

We don't want to be in the position of
giving you the possibility of having three email
addresses and getting three bounce backs and
having an automated process that then sends out
three paper office actions, so we're working on having a primary email address where, if there's a bounce back on that address, we would send out a paper office action. Otherwise, bounce backs on all the other courtesy addresses, that's what we're calling them, would not trigger a paper response.

So we're figuring out how to do that in an automated fashion, and that would be a plan. And we're hoping that — and this I think was a suggestion from TPAC, that we do this, and it's just a really great idea, I think it'll solve some problems that we have now with setting up phone calls, making sure that we can contact the prosecuting attorney directly, I think it will be a good thing for us to do.

CHAIRMAN FARMER: Right, and I think the sense of TPAC has been as long as the primary gets through, we don't think paper needs to be triggered at all if the secondary email address fails because that's just a courtesy to try to establish contact. And for those listening at
home, so that we can show all of our math, I think part of the thinking of TPAC is, if it's easier to establish email communications with the examining attorney, what that might do is an avoidance of telephone tag, where you might be able to send an email and say, hey, can we chat Wednesday at 9:30, that's not really good for me, how about Tuesday at 10:00, okay, that's fine, do you want me to call you or me call you, vice versa, and you just cut back on the back and forth that takes the time of both parties, the examining attorney, so they can be more efficient, not constantly having to get a file, prep up, return a call, you don't get an answer, and then, of course, on the prosecuting attorney or individual's end also.

And that kind of naturally segues into the other two communications issues, and so I'll throw them out at the same time. The first one is morphed a bit, but I put it on the agenda as follows: Explore establishing office hours during which generally one can call a trademark examining attorney and have that call answered unless
And examining attorney is on the phone with someone else.

And related to that, possible changes to expectations as to when trademark examining attorneys return calls so that such calls will be made during normal working hours Monday through Friday. I think that's just a general introduction into what are you all thinking about the future of phone communications of examining attorneys.

COMMISSIONER BERESFORD: It's of course very important. We are a public service organization, and it's very important that we return phone calls and answer the phone. We're getting ready to send out guidance on what the phone rules are to remind folks. We had phone training more than a year ago on how to answer the phone and what to say and lots of other things, so we're going to be reminding folks about that.

We will certainly be encouraging folks to put their - put into their voicemails and on their office actions times when they might be
contacted. It would be especially useful on the voicemail because people call and they can hear, oh, I'm going to be available today between 2:00 and 4:00, whatever, and so it gives you a real good idea of when you can expect to get that examining attorney.

All of those things we're looking into.

As Howard will tell you, they have labor implications, so we're taking kind of a phased approach to them. But again, I am totally committed, and I know Debbie is, too, to customer service, this is what we're here for.

CHAIRMAN FARMER: Excellent; my understanding is that under, I think it's the Ace Award and other things, presently, while there is an incentive given to a trademark examining attorney to utilize the phone, there's not necessarily an incentive to specifically answer the phone, as opposed to always return telephone calls. Returning calls are great, but, you know, the person on each end wants to be the one to have the call at the time that suits them. You can get
a little back and forth. Do you think there may be a future in somehow offering an incentive or something that encourages examining attorneys beyond their professionalism to actually pick up the phone when it rings, if, you know, they're available, if they're not talking on the phone with someone else, as opposed to being in an approach of all these just receiving calls and returning them when you wish.

COMMISSIONER BERESFORD: Well, it's certainly something we're going to look into. We've just started talking about it, and I don't think we have a good idea about exactly how we will do that, but we're certainly willing to look into it. It's something that, you know, again, I want people to be good public servants, answer the phone, resolve the issues, and work with the bar on their applications, on prosecuting their applications, they're extremely important, that's what we're here for. So how we get folks to be more responsive is always a good question and one we'll continue to look at.
CHAIRMAN FARMER: I think there's a consensus among the voting members of TPAC that we would like to see a day when there is an incentive to answer the phone. And we recognize, of course, that that's, in part, a labor management issue that will have to be worked out. And, Howard, in case many examining attorneys are watching, Howard has been very engaged on that issue and looking out for their interest, so those have not gone unrepresented as we've discussed those things.

Are there any questions or comments on email phone stuff before I go on down the agenda? Not seeing any, the next thing we have - by the way, I failed to mention that the issue we just covered is one that Bob Anderson has been watching over for us.

Jim Johnson has been monitoring for us with an update and discussion of TPAC concerns about trademark filings being made by online non-attorney services and/or non-attorneys working for online services. So what's going on with that?
COMMISSIONER BERESFORD: We've talked about this numerous times, and we have relatively limited ability to do anything about this. We report unauthorized practice when we find it to our OED office. They, in turn, report it to the state bars, who take action on it. But we have relatively limited ability to deal with this. So we do what we can, but we don't have a plan to do anything more at this point than we have been doing.

MR. JOHNSON: Lynne, as I read the rule, and maybe I just don't understand it, I thought that only lawyers could represent others before the PTO. When you look at the web sites of several of the known online trademark people, they state that they will help you prepare your application right there on the web site, so it seems to me that's proof on its face, at least from the way I look at that, they're engaging the unauthorized practice of law before the office, can we challenge them on that basis?

COMMISSIONER BERESFORD: First of all,
some of those sites have lawyers working for them, you know, and we're not in the position to investigate, so there's that issue. Also, we suspect that we get a number of applications that look like they're filed by the applicant, but have been actually prepared by one of the online services. When it's clear to us that someone is engaging in the unauthorized practice, through one means or another, we take action, ROED investigates, and then we take the person off, we send them a letter and tell them we will not correspond with them anymore and we'll only correspond with the applicant, or if the applicant gets a legal representative, we'll correspond with them.

And again, we report folks to their state bar. But, again, we have limited authority. And, you know, I don't see us getting into the business of investigating these folks, I don't think we have the capacity or the statutory authority to do that.
anything else? While Lynne is the reporter to us on this issue, this is not Lynne's primary responsibility, so I'm not taking Lynne to task. But I personally feel, and I think this may be a sense of TPAC, that we hope that the USPTO as a whole will become more aggressive on this issue, more aggressive than it is presently right now.

We feel that this is a very serious issue, and it's not just a protect attorneys and their incomes issue, it's a consumer protection issue. We would like to see the office I believe become more aggressive in trying to uncover violations of I think it's Rule 11.5, and feel that even if it doesn't have the power to prosecute someone for unauthorized practice of law, that they can be aggressive in trying to uncover it and making certain that it's followed up on.

And I will point out that some of these services have started to be taken to task by various state bar organizations for their activities. And also, one thing we've discussed
before is trying to get the attention of the
Federal Trade Commission.

It takes a big megaphone to get their
attention because they have limited resources and
don't pursue a reissue, but I think that as I can
tell, unanimously calling the office to use its
standing to try to get the interest of the FTC to
look at this issue, because I think there's a
concern amongst members of TPAC that maybe these
services are not entirely clear as to what they
offer and what they don't offer to consumers, and
we don't want folks to be left high and dry, to be
thinking that they're going to be given more in
the way of clearance or be given more in the way
of registration prosecution than they're going to.

I've looked at those systems or those
services myself recently, and I felt, for
instance, in one case, that it was not entirely
clear as to whether the service was going to be
there with you once the application gets its first
office action, whether they're going to see you
through until the end, and I think that's a
consumer protection issue.

And so, again, Lynne, we're not picking
on you, because I know that that's the
responsibility of other folks in the office, but I
hope the leadership of the PTO hears that we think
this is a big issue and it deserves a harder push
than it's receiving right now. Does that call up
any other comments from other folks on TPAC?

MR. LOCKHART: Does the Federal Trade
Commission have a Public Advisory Committee like
the TPAC or the PPAC? If so, maybe they would
have an interest in urging the FTC to pursue this
matter.

CHAIRMAN FARMER: That's a good
question. Jim, you were about to say something?

MR. JOHNSON: I also want to note that a
lot of examining attorneys have complained about
the efforts of these online practitioners because
they mark up the works for everybody else. So,
again, I understand and appreciate the limited
abilities to do it, but let's make sure we explore
all avenues before we walk away from challenging
this, because it looks kind of serious to me.

Thanks.

CHAIRMAN FARMER: Sure; and one thing I noticed when I was investigating these services recently is, I think when this impression was great for the public, is that they don't understand, is that you can do practically the same thing yourself on the USPTO web site.

Now, that doesn't mean that I'm encouraging a bunch of folks to file pro se applications, it's certainly your right to do so and to represent yourself, you may or may not fall into pot holes, but, you know, for instance, the service will offer for a price of over $100 to do a direct hit conflict search for you before they file your application, and you can just go to TEAS and type in the exact mark you want and do that yourself and save over $100 and have a very quick answer.

Or, for example, I've actually gone through one of their filing processes to take a look at it, and, you know, it's not that different
than just using TEAS or TEAS Plus in answering the questions directly on it, they're just populating it into those forms. In some cases, I'd say that the services that they offer may be a little less word intensive, and so they may appear to be a little less stressful, but ultimately it's filling in the same forms, and they don't really give you the additional guidance beyond the very robust guidance that's already on TEAS and TEAS Plus, because through work such as Lynne's been working on videos and all these pop-up windows and stuff, you get explanations, that stuff is there already.

And so I think one misimpression that the public may get getting is that this service is offering something that the PTO doesn't already offer. And so I'm just, again, very concerned that the public may be not fully understanding the value proposition that they're getting. So sorry to get on my soapbox about that. Anymore on that issue before we go on to the next one?

The next one is the Deadwood issue, and that is, update regarding ensuring accurate
prescriptions of goods and services, i.e.,
minimizing deadwood, especially in the wake of the
Federal Circuit decision in In Re: Bose Corp. And
we wanted to know where you all stand in your
process of that. I think you all may be working
on setting the table to do some studying.

COMMISSIONER BERESFORD: Yes, we have a
rule that you guys will be getting in the next
couple of weeks to change the process, to change
the ability of post registration examiners
slightly to give them more ability to request
specimens when something looks suspicious or to
ask for more information if they don't really
understand what they're seeing in the Section 8
affidavit.

Once that is done, then we will be
coming back to this Committee and asking them, we
want to do a study to see what really the Deadwood
percentage of issue is in post registration, there
are a number of different ways we can do that, and
we'll come back to this Committee to talk about
that, to find out what you all think is the best
way to proceed in this issue.

We want to make sure we do something that's meaningful, and, of course, the best way to do that is to get input from people that actually work in the area, so that's the plan at this point.

CHAIRMAN FARMER: Kathryn Barrett Park is our leader on this issue. She's done a lot of work on it, too. Kathryn, if you have any questions or comments, I'll turn the floor over to you since you've been leading us on this.

MS. PARK: No, I think we agree that a study is the next right step. And I take it, Lynne, that the rulemaking is sort of the pilot that we had talked about, for want of a better word, last time.

COMMISSIONER BERESFORD: The rulemaking sets us up to do the pilot. So that's what the rule - that's why we're waiting on this rule, and, again, we'll have it out soon. I've talked about it to lots of different people. I don't think it's anything that will raise anybody's eye, but
one never knows when you propose a rule. I think it doesn't make much of a chance except to give a little more ability of post registration examiners to ask more pointed questions when the situation arises that they might want to do that.

MS. PARK: One other question I had is, when we were in Phoenix at the INTA meeting and I attended the subcommittee meeting, that group and I think other IP organizations and other users have put in comments on the long list of possible suggestions that came out, and I wondered where those other suggestions are, are they just on hold until the study is done?

For example, INTA was in support of having sort of increased solemnization of the form and a checklist and things like that, and I haven't looked at what the other groups and other comments have been, but where are those right now?

COMMISSIONER BERESFORD: We're talking to the IT folks about having a check box for each item in the post registration, whether or not that would be a good idea. We're trying to get to
chatting with the Canadians about their Section 45, what they don't and do like about it, because we've heard a variety of things. At the INTA subcommittee, somebody said I used it and it was great, so somebody with actual experience, you know, so that's one thing.

But we've also talked to people that went, oh, you don't want to do that, it doesn't work very well, well, the question is why not, can it be tweaked. So we've got a call into the Canadian office to see if we can figure out what they think about this procedure.

The other items on the checklist are, we're talking about them internally, about how to do them and how to go forward with them, they haven't been forgotten. And, of course, we're reading INTA's comments and other comments that we've gotten, and I think it's fair to say from reading the comments we've gotten, everyone wants the register to have as much integrity as possible. The second thing is, they don't want to do that by having to have lots and lots of
additional work in their boxes. And so the idea here will be to do this pilot, and then if we think there's a problem, to figure out how to solve the problem without let's say causing problems for the innocent, you know, unless it's absolutely necessary.

So there are some things that we have to find out, and, of course, it's a plan as we go down the road. And I feel certain that trademarks and this committee will work wisely together to do it the right way.

CHAIRMAN FARMER: Just to provide some transparency to the public as to where TPAC is on this, we on TPAC have looked at a lot of the ideas that came out of that roundtable that Kathryn participated on, Mary was at, I participated on, and other folks on TPAC were not there to put in their two cents.

There are different views. Some people would like to keep things pretty much as it is, some people, like me, typically aggressive, want to see every good and service proven, and the way
we've decided to approach this, and please correct me if I misstate it, is to stand back and wait and see how that study looks so we can see whether we have a big problem or a small problem. If there's just a little bit of Deadwood in there that wouldn't call for a sledgehammer approach, if there's a lot of Deadwood in there, then there may be the basis for more significant changes to trademark practice that could effect people's cost and expense, and we're just going to stand by so that we don't come forward advocating the wrong sized approach to the problem, and so we'll be cautious, and we'll look forward to hearing back as to how the picture looks and we'll address it then. Kathryn, is that a fair statement?

MS. PARK: Absolutely, yes.

CHAIRMAN FARMER: Next we have an update regarding any possible changes to trademark fees such as for paper or electronic filing. And Elizabeth Pearce has been our fee study lady and so she's really been on top of this issue, so off to you. I'm just giving you, Elizabeth, a heads
up.

COMMISSIONER BERESFORD: Yes, we have a rule that we're writing right now for a charge for paper filings, again, that should be coming out, and probably soon after you see the post registration rule, you'll see this paper fee rule more to encourage people to file electronically than anything else, but also because we recognize that processing paper costs us extra money, so that rule is in progress, and we plan to bring it out in the next month or so.

In terms of changes to trademark fees, this is a question - this is really a big policy question from my standpoint at least. When we look at fees and we change fees, we usually like to have a reason for doing that. And one of the guiding principals over the years has been, the most important thing we do is, give people notice of who claims rights and what. So we strike to keep our application fee low so that more people are encouraged to file and put their mark on the register. This has been one of our guiding principals, and we continue to embrace that.
When we looked at the paper fee, we were talking about, yes, it's more money to process paper, but from the policy standpoint, it's also better for the bar and the office and people who use our systems to encourage more electronic filing because it encourages the accuracy and the speed of information getting into the database. Again, we don't have anything against changing fees, we also have to look at the economic landscape and what's going to happen in the next couple of years, but changing our fees is something where we think we have to have a discussion about what it is we want to accomplish with the change of fees, and that's kind of the whole picture from my standpoint.

CHAIRMAN FARMER: Elizabeth, do you have any thoughts on this? I'm especially interested in Elizabeth's thoughts, because while this issue is developing, Elizabeth won't be here several months down the road as things develop, and so I'm very interested in what she's been thinking about the issue.

MS. PEARCE: I think Lynne covered a lot
of what we discussed in subcommittee yesterday about this. It's very much an issue in progress.

The paper filing issue, trying to encourage people, to drive people toward doing electronic filings is very important, and that's been successful more and more, that is exactly what's being done, there are fewer and fewer paper filings out there.

But what we'd like to do is, for the sake of the integrity of the register, and I think Lynne expressed that well, get as many things into the register as quickly as possible and keep the fees low so people will file. One thing I would like to add to that is, I think it's also important to make it economically reasonable for them to renew existing registrations, because we've got common law rights in the United States. A lot of times people, if they're having economic issues or budgetary issues, may choose not to renew and rely on their common law rights instead.

I don't think that that is the best possible solution for the trademark office. So
one thing I would urge the trademark office to 
consider is whether or not there are any economic 
imperatives on renewal fees also, and to make sure 
that we do not make that process onerous for 
people, and thereby, encourage them not to renew 
and to rely on the common law rights, that was 
something we discussed yesterday a great deal and 
I think they're aware of that.

COMMISSIONER BERESFORD: Thank you.

MS. PEARCE: I don't know that there's 
anything else. I see that Nabil is here, I 
thanked him earlier and he was not in the room. 
He did some beautiful charts yesterday which 
explained a lot about what the cost of various 
filing stages are. This is something that James 
Conley is going to continue to stay on top of, and 
I think we've made a lot of progress. And that 
was the only other thing I could think of that we 
covered that Lynne didn't mention was the renewal 
fees.

CHAIRMAN FARMER: The only other thing I 
can think of on fees, and I think it may have been
mentioned in passing, is that I think that there
is strong unanimous TPAC support for maybe a
surcharge on all paper filings. And I think that
what you all were seeing was that you can never
make up how much more paper costs because of what
it does to the system, and so we really are trying
to not only cover the cost of those filings, but
encourage folks to use the electronic system.

MS. PEARCE: Yes, I would like to point
out that, yes, the paper surcharge is not going
to, by any means, cover the additional cost. It
is purely a measure to continue to encourage
people to go to electronic filings when possible,
which are very convenient and work very well. My
office does everything electronically now and it
works beautifully. We are big believers in TEAS
Plus, which I think is a great system, and I would
encourage everyone to use that. And anything else
that you file in subsequent prosecution or in post
registration, do it electronically, it's really
very, very easy, you get immediate response back,
you get that receipt. Once you do it, you'll
think, gosh, why was I ever doing it any other way? It's a great system and I hope everyone continues to use it.

MR. LOCKHART: I just wanted to echo Elizabeth's comment about taking a closer look at the cost of renewals, because at the present time, unless I've got my numbers wrong here, one can register a mark if you use TEAS Plus for $275 per class, but to renew it, it's $500 per class, and that just seems like a pretty big difference.

CHAIRMAN FARMER: Anything else on that issue? All right. The next one I think we may have covered fully, but just in case we didn't, the status of the Trademark Bully Study, I think, Lynne, you gave us the update, Tim is our champion of that; did you have anything, Tim?

MR. LOCKHART: I have nothing further. I think Lynne touched on it in her opening remarks and I have nothing to add.

CHAIRMAN FARMER: Yes, I was just checking the thing off the list as we go down. And we may have entirely covered this one, but
I'll read it out just in case. Some quality issues, discussion regarding the excellent first office action initiative. I'm not sure if that's the same thing as the new quality benchmark or not, and any other programs that target substantive quality of office actions. You may have already covered that one fully.

COMMISSIONER BERESFORD: I think so, but I think I have covered it, but I'm happy to answer questions if there are questions.

CHAIRMAN FARMER: I don't know that there are any questions. Bob is our quality champion; anything from you, Bob?

MR. ANDERSON: No, I don't have anything further that would add to what Lynne said.

CHAIRMAN FARMER: Okay, wonderful, okay. Well, we're just ticking right along. Let's see, this is the general just oversight stuff, report on current trademark office, speed and quality performance metrics. Lynne has given us - certainly tell us about it, but she gave us, you know, the chart in advance, and it appears to me
that everything is right where it should be, but,

Lynne, I'll let you add anything to that you want

to.

COMMISSIONER BERESFORD: Yes, I think

the - looking at the end of the year statistics,

we were two- tenths of one percent under our final

action compliance measure. It was within the

error rate, but it was at 96.8 instead of 97

percent. On E-government, we raised our total

number of disposals. The number of disposals

handled totally electronically has risen now to 68

percent, which is great, because it means people

are more and more using the electronic systems.

And our pendency numbers are right on

target, we're at three months for first action

pendency, and disposal pendency is at 13 months

for files with inter parties and suspended cases.

And for the pendency cases without inter parties

or suspended cases, it's 10.5 months, again, I

expect that to go down.

And when you look at the productivity

and quality measures for our staffing
organizations within the trademark organization, what our legal instrument examiners do, what our intent to use paralegals do, what our processing paralegals do with pre-exam and post registration, all of those areas are meeting our quality goals and meeting their pendency goals, all of them are ticking along.

We've seen tremendous improvement in those staffing organizations, and we've seen tremendous improvement in those staffing organizations over the past couple of years, we've rolled out work at home for many of them, and this has proved to be a benefit for them and for the office. So I really see that throughout the organization, all of our organizational statistics are looking really good for quality and really good for timeliness.

MS. PEARCE: I'd especially like to commend the ITU unit. I just wanted to say thank you to the ITU unit, they've really improved their pendency since last we met.

CHAIRMAN FARMER: We have a ghost in the
machine. Let's see, next one, status of TPAC
goal, get the Official Gazette published in HTML
rather than PDF. And it requires tremendous
concentration. We have someone deliberately
throwing people off guard.

COMMISSIONER BERESFORD: Right. The
goal of getting the HTML for the Official Gazette
is one that I think will accomplish in Trademarks
Next Gen. We haven't got it on the plate right
now. The best we could do is improve the
downloading speed of the Official Gazette. But we
hear you loud and clear and we think this is
something that would be beneficial to trademark
owners, and so it's in the cue, so that's the best
I can do on that.

CHAIRMAN FARMER: Yes, excellent, and
it's gotten better. I mean they've gotten the
file size down, and so it does download better,
and we understand that you've got technological
limitations that just keep you from getting there
right away, and while we're pushing towards the
goal, we realize you can't just make it happen
tomorrow. Kathryn, did you have anything to add to that?

MS. PARK: No, I was just going to echo that it's really gotten a lot better already, so thank you.

COMMISSIONER BERESFORD: Good, yes, thank you for the folks in the office, Craig and others, who realize what is happening, so that's great.

MR. LOCKHART: We did talk about this a little bit yesterday in the IT Sub Committee, and the feedback we got was, publishing the OG and HTML could be done once the TMEP upgrade is complete, and it's really a question of what is the priority of this for the trademark operation. I mean the higher priority it is, the sooner it could be done. And, frankly, I did not know the answer to that as far as where it falls in the relative priority, maybe that's something, Lynne, that you could address.

COMMISSIONER BERESFORD: I don't know where it on the priority list either. We're far
from having the TMEP, however. I mean a new TMEP was posted, and just for everyone's information, we also have archived copies of earlier TMEP's on the web site. But we are far from, and this is another topic further down, we are far from getting the TMEP in a form that is fully searchable and easily changed and maintained, so that when that happens, then perhaps we'll - and, for me, I think the TMEP was considered the more important goal here, maybe it shouldn't be, but that's what we've been looking at as the higher goal.

MR. LOCKHART: You're absolutely correct, that was the impression I had yesterday, from yesterday's meeting, that the TMEP upgrade is the more important goal, and then they said after that, they could take a look at the OG, and how soon after the TMEP upgrade they look at the OG was really just a matter of how badly the trademark operation wanted it. So they may be looking for some additional feedback from your office on that.
COMMISSIONER BERESFORD: Yes.

CHAIRMAN FARMER: I think to add on top of what Tim just said, we feel like the question was sort of posed for us, but we didn't know everything else on the list, so we could meaningfully say, well, it should be high, low or middle because we wouldn't know where we're butting in relative to other tasks and so we'll just rely on your organization to slight it where you think it's appropriately slighted, if that's a fair statement.

And since we're on the TMEP, why don't we go ahead and go there. I had known the discussion of progress towards the TPAC goals, having it continuously up-to-date, and you've just reported you all have just put out a new revision, which is good.

And also, I know it's been a goal of yours to eventually get to being able to have a parallel wiki one, and so maybe you can let the folks listening at home know as to where that stands.
COMMISSIONER BERESFORD: I don't think much progress has been made on the wiki TMEP. I think what we – and I'm not sure much progress has been made on having the TMEP – having an editor for the TMEP that's useful that we can quickly update it or update it on a regular basis, more regularly than once a year, but that's still on the wish list for OCIO to accomplish. So I don't know when that will happen, but it's still on the list.

CHAIRMAN FARMER: And it's my understanding there, to flush out what you just said, is that it's technological hurdles, it's not just something that the trademark operation hasn't done, it's just technologically the path has not been paved.

And I've been hearing that there may be some new tool available that you could use for the TMEP, I can't remember its name, but I'm hearing that it's not going to enable the wiki that you desire to achieve, that it's going to be more like a blog where you can post blog comments, which is
nice and maybe useful, but it's not the goal - it
doesn't enable the goal you're trying to reach.

Did I kind of get that right?

COMMISSIONER BERESFORD: Yes, there is a
tool that was developed for the patent side of the
house and it is a very nice tool and it will do
exactly the kind of things you're talking about,
but it isn't particularly well suited for we think
the kind of comments you would want to collect on
a legal document like the Trademark Manual of
Examining Procedure, but it a very - it's a tool
that was I think demoed to the subcommittee
yesterday and it's a very - it's an interesting
tool, and again, developed for patents, but, of
course, we can use it, too, and so this is
something that will be available we think
relatively soon.

MR. LOCKHART: And there could be some
utility to it. As Lynne says, it's not, you know,
the wiki version, but it has some usefulness.

CHAIRMAN FARMER: Right, and I think,
Tim, tell me if I get this wrong, but I think the
sense of TPAC is it's, you know, it's a nice tool
and we welcome it, but we still hope that at the
appropriate time, when it's the appropriate use of
resources, that we will get the wiki capability
and that the office won't see this tool as having
checked that box.

MR. LOCKHART: That's correct.

CHAIRMAN FARMER: Anything else on TMEP
before I roll on down the road? I'm going to skip
back up to I, and I think this is probably sort of
like the Official Gazette thing. But just so we
can keep the public informed, it said discussion
of progress toward the TPAC goal of having
electronic certificates of registration with an
option to obtain a paper certificate.

COMMISSIONER BERESFORD: Yes, I think
this will be something that comes in with
Trademark's Next Generation. There are so many
things that we've put forward as part of
Trademarks Next Generation, and there's a
relatively, you know, there's only so much
bandwidth in OCIO to deliver, so this is on the
delivery list, but it's not something that we
expect to see any time real soon, so --

MR. LOCKHART: If I can just ask a
question. Was this issue, getting electronic
certificate with a paper option, was that put into
the list of requirements for Trademark's Next
Generation?

COMMISSIONER BERESFORD: I believe it is
in that long list of things. When you use the
term "requirements", you're using a technical
term, which we've given a list of things that we'd
like, technically those aren't requirements,
because as OCIO will tell you, the requirements
are a very specific list of things and so on and
so forth, so it's something we've asked for, but
it is not a requirement.

MR. LOCKHART: I stand corrected, thank
you for that. But it is on the list of things
that we would ideally like to have, so if we don't
get it before Trademark's Next Generation, we'll
get it as part of Trademark's Next Generation?

COMMISSIONER BERESFORD: I would think
so, yes.

CHAIRMAN FARMER: We only have two more agenda items for Lynne. And I'm thinking we discussed maybe these would be more appropriately asked during the OCIO part, but I'll just check. One was on maybe changing the handling of trademark assignments and the other was the potential use of CAPTCHA technology for using tess and tory databases such as that. Lynne, if you have comments to go with those, although I think I kind of get the impression that we need to ask someone else mainly on that.

COMMISSIONER BERESFORD: Yes, the assignment operation is assessment in OCIO for many years, and John Owens or someone from his shop would be able to answer the questions about fax and also about CAPTCHA.

CHAIRMAN FARMER: I certainly think leaving the CAPTCHA issue for OCIO would be a good idea, but there was one thing that came up yesterday that I did not understand, and maybe Lynne or someone else could enlighten us on this,
what we were told in the IT subcommittee is, as far as sending the notice of recordation of assignments out by email instead of fax, that could be done pretty easily from a technological standpoint. But there was an issue about sending out by email notice of recordation of assignment of a document that reflected patent application numbers, not numbers of issued patents, nothing to do with trademark, but the application numbers for pending patent applications, and that was news to me; is that something that anybody could address?

COMMISSIONER BERESFORFD: Well, perhaps somebody from the patent organization can talk about that. Why that's holding back trademark assignments, one doesn't know, but that's news to me, too, I have no idea. And I don't know how faxing them out - well, I don't know.

MR. LOCKHART: We discussed that, too. I mean I don't understand, if you can send it out by fax, why couldn't you do it by email, but maybe that – and I don't know who would be the appropriate person to look at that, but --
COMMISSIONER BERESFORD: We have a volunteer.

CHAIRMAN FARMER: Step right up and introduce yourself, please.

MR. CANNON: I'm Gary Cannon from Trademarks. And I did meet last week with assignments on this topic. So I can't really speak for them as far as when they can do it or anything, but they did see that technically it would be rather straightforward, send out the email, and that they had to clear certain issues, and one of them they wanted to consider was whether or not any of the data might also include any sort of patent data, as well as trademark data. And they were just going to clear it, it's not that it was raised as an issue that it couldn't be done, I believe that it — since '95, the office has accepted trademark assignments as separate from patents, but they just wanted to clear the issue.

CHAIRMAN FARMER: Don't take off quite yet. Tim, did I pick up on this correctly
yesterday when you all were briefing us on it? I think presently the assignment documents themselves are not posted online, right, it's just the record of the assignment?

MR. LOCKHART: Yes, that's my understanding. You can see the record title to whatever the trademark documents are, but you don't see the actual assignment documents. We did talk about making them visible.

CHAIRMAN FARMER: And I think especially because I think presently they're just taken on face value, the office does not get into the meat of the assignment and make a judgment as to whether it's an effective assignment or so forth or so on.

MR. LOCKHART: And I don't think that's going to change.

CHAIRMAN FARMER: Right, and I'm not saying it should, but where I was going with that is that if those can eventually be put online, since the office doesn't examine them, so to speak, it may be a public service to have them
posted publicly so that someone trying to assess a chain of title can do that assessment more accurately.

MR. LOCKHART: Gary talked about this a little bit. You said you needed to run some performance testing?

MR. CANNON: Yes, this is another topic that I brought up when I talked to the assignments people. They said they needed to run some performance testing, they said that it's something that could be done, exposing those documents on the internet, but that they would want to run a performance test before they did it to make sure that they could meet the capacity needs or if they had to make any adjustments.

MR. LOCKHART: Then I guess one way to move forward would be, perhaps we could ask that by the next TPAC meeting, that somebody take a look at this issue about whether or not any of the patent related information would be exposed by sending out a notice of recordation by email and whether or not the bandwidth and the computer
resources and so forth would permit the viewing of
the actual assignment documents.

MS. DENISON: Yes, I learned yesterday
that if you file a trademark recordation sheet for
assignments, it doesn't automatically fill in the
ownership data if you file more than nine
properties, I believe, and so I would just like to
make sure that when we're going through this whole
changeover, that someone look at that to see if
that technical difficult can be handled, because
it's important for the database to be correct when
people look for - they do an owner search, they'd
like to know what people really own, not if it was
the 10th or 11th or 12th property, then it didn't
show up, so that would be very helpful I think to
users.

COMMISSIONER BERESFORD: Does that
information appear on the web site, that there's a
limit to how many - no, because that would be
something that should just be on the web site so
people understand what the limitations are.

CHAIRMAN FARMER: So I guess the
practice that comes out of this is, always make
your trademark assignment a separate schedule so
you don't have to put up a bunch of business
details on what could become a public document.
Okay. Anything else on that issue? Before we
take a little break, any other questions or
comments from TPAC members on trademark operation
stuff generally? Anything from our folks visiting
here today? I don't think anyone in cyberspace is
going to talk to us yet. In that case, we'll take
a five minute break and we'll come back and visit
with Judge Rogers of the TTAB.

(Recess)

CHAIRMAN FARMER: We will now have a
discussion with the TTAB representative regarding
TTAB matters. Gerard Rogers. Mary Boney Denison
is our champion on TTAB stuff, and so as hard as
it is, I'm going to defer to Mary to let her kind
of drive us through this, and then when I can't
resist it anymore, I'll jump in at the end with
other questions.

MR. ROGERS: And an able champion she's
been. I think she's kept my feet to the fire
during my last year as acting chief, so you can
rest assured she's been doing her job. The first
item on your list, the status report on the coming
appointment of a new TTAB Chief Judge, the front
office has done all of the heavy lifting that they
need to do to get the position filled. I think
the candidates that they had selected were not SES
members, so there is requirements that people be
vetted through the Office of Personnel Management,
and that process is going on now, and I suspect
that it'll all be wrapped up sometime very soon,
but I think that's about all we can say on that
subject.

On a subject of other judges, as you
know, we have hired two judges in this year,
Angela Lykos and Frances Wolfson. Angela - well,
I couldn't say that one of them was hired in
particular to replace Al Drost, but one of the
two. We hired the two because we had to fill the
position vacated by Al Drost at the beginning of
the year, and we hired two of them because we also
anticipated the vacancy that would be created when Paula Hairston retired.

And since our last meeting, Judge Hairston did, in fact, retire. So the fact that she's retired does not mean we are considered to have another vacancy, a judge vacancy to be filled, because that was anticipated and was taken care of when we hired Angela Lykos and Frances Wolfson.

We do know that, because of the age of our ATJ staff and their experience and time in the office, we'll probably be expecting additional retirements in the coming calendar year. How many and when, I can't really say. But at this point in time, based on the objective measures that I see, whoever is the Chief Judge will probably be replacing judges as they retire, assuming that we are able to do so under the continuing resolution that the office may be operating under.

Because we do have, as we will discuss in a moment when we get to TTAB statistics, a growing backlog of finals awaiting decision. So
based on the objective measurements that we have,
we're doing fine with the paralegal work, we're
doing fine with the attorney work, our staffing
levels appear to be appropriate there, but we have
fallen behind on getting final decisions on the
merits out, primarily because we had far more
judges working on the revision of the manual than
we did others members of the board's personnel
group.

So we hope to fill those positions as
they become vacant and work off that growing
backlog of cases awaiting final decision. But
that's probably about all there is to say on
hiring plans, if you will, right now.

Since we've mentioned that those hiring
plans are influenced or have been influenced by
the revision work on the TBMP, I guess we can go
into that unless there are any questions about
hiring plans. As we discussed in subcommittee
yesterday, we have made great progress, even since
two weeks ago when I sent out a chart to you all
about the completion of the board's work and the
solicitor's office review on the various chapters
of the manual, and so as of yesterday, when the
subcommittee met, we had a full sheet of
checkmarks on our table, which was a great visual
I think.

And basically what that means is that
the board and the solicitor's office, we have
finished our work revising the content of all of
the chapters of the manual, so that's a great step
to have achieved.

We've also sat down and had some
preliminary work done with the CIO on getting the
Word documents, each chapter of the manual as a
separate Word document, getting them converted
into XML, which will serve as the springboard for
posting the manual on the web in two versions,
both an HTML version and a PDF version.

As we discussed in the subcommittee
yesterday, CIO is working on the final stages of
the RDMS system, the Reference Document Management
System, if I have the acronym or initialism
correct, and I'm told that the board's manual will
be the first manual for the office that will be deployed under the RDMS system, and it will be followed by future revisions of the MPP and the TMEP, when they're ready to launch down the road. So in some respects, we're a bit of a guinea pig, the board's manual or procedure will be a little bit of a guinea pig working through this OCIO RDMS system, but presumably will get a lot of individualized attention then to make sure that it all goes well.

We did have a meeting with a contractor who was working on the conversion process to convert the Word documents into XML, and we've had a test conversation done on one of our shorter chapters, so that chapter is now being reviewed to make sure that the conversion process didn't corrupt any of the content or the text and that everything looks good.

And again, this is just the conversion of the Word document into XML. And if that process works well, we will then move on and convert all the other chapters into XML to get
them ready so that when this RDMS system is up and running, and we hope that OCIO will have that up and running by the end of the year or early in January, we can then take all of the XML documents that we've created and move them into the RDMS system and get ready for our work to have the manual posted in both HTML and PDF. Now, concurrently with this work we're doing with CIO on the technical end, we will have to get content clearances, and so the first thing we'll do is, when we finish the index of changes and summary of - narrative summary of what's been revised in the manual, we will be running that by Deputy Director Barner and answering any questions that she and her staff have about the revision of the manual. Now that the reorganization is official and we're reporting directly to the front office, that will be our next clearance step. And then once we've discussed the manual with Deputy Director Barner and her staff, we will then go on to seek the OMB clearances that are necessary for guidance documents that are issued by the office.
I'm told from attorneys in general law, that based on the good working relationship the office has with the OMB desk officer, as evidenced by the clearance that was obtained for the recent revision of the TMEP, that it should be a relatively smooth process for us.

And so, again, we'll be working on those content clearances at the same time that we're working on the technological conversion that we need to complete so we can get the manual up on the web in the form that everybody wants it to be there in. And we also discussed yesterday the schedule for revisions, and there is I think some concern that we not have too much judge time spent on maintaining the manual and revising the manual moving forward, because all of the judge time spent on revising it now has contributed in some sense to the backlog of cases that we have awaiting final decision.

So we're thinking probably semi-annual revisions to get in precedential decisions that have issued and perhaps more frequent targeted
revisions if, under this new RDMS system, it's as agile as we're being led to believe, and can make more targeted revisions as may be necessary based on changes in the federal rules or based on decisions that may come down from the federal circuit. But that's where we stand on the manual.

MS. DENISON: I want to say that we're delighted, all of TPAC is delighted that the TTAB's work has been completed. I guess the only thing left to be done is the summary by Ms. Lykos on — that's being done this week. And so in terms of your involvement, the work is done, and we're delighted that that has happened. We are disappointed, we had hoped that this project would be completed by the end of the fiscal year, in September, and it's now looking like it won't really be online until the end of the second quarter, in fiscal year — in order words in March, so that is a disappointment, but it's done, and we're just going through the approvals, and so the users will be thrilled when this is up, because this is a big beef that there hasn't been one in
six years, so everyone will be very, very happy
when this finally gets up, and I'm delighted that
the TTAB has finished its job, and they made huge
progress between the last TPAC meeting and this
one to get it done, so thank you for all your hard
work, and the amount of time spent on this was
just unbelievable, so now you can get back to
writing decisions.

MR. ROGERS: Yes. I did mention that to
all of the judges when I had them in a full judge
staff meeting last week, that we have quite a few
inter partes cases. As you know, our final
decisions are on ex parte appeals and on inter
partes cases, and we keep a running spreadsheet of
cases based on the date they're ready for a
decision, and so when a judge requests an
assignment of work, cases to work on, it could be
ex parte cases, it could be inter parte cases, and
I explained to them in this meeting that we had
quite a few inter partes cases awaiting final
decision and that they should request them sooner
rather than later to try and work through some of
them before everyone starts taking their leave in December. So hopefully we'll be able to get a little bit of a head start for next calendar year. December is traditionally a little bit of a slow month I think for production, as a lot of people end up taking their use or lose leave, but hopefully we'll be getting some work out of our judges before they start taking the use or lose leave, and then they'll hit the ground running in January.

MS. DENISON: Yes, and TPAC understands that you're not going to do monthly updates, it's a pain in the neck, it takes up way too much time, and I think that - my sense is that TPAC is fully supportive of semi-annual updates, and, you know, you can work that out however you want, how often you have to meet, you know, to do that, but I think that twice a year would be great.

MR. ROGERS: Yes. Of course, we may have a group of individual chapter champions, if I can borrow a term from the TPAC, to meet periodically throughout the year just to discuss
the status of the chapters that they're overseeing in cases that have issued and any rules changes that may have occurred and whether they warrant consideration for revisions, but again, those periodic meetings would just feet into these semi-annual revisions.

MS. DENISON: Right. And as you know, TPAC had supported the hiring of a full-time person to work on this, and that did not happen, so we would very much like to stay in the loop as to whether it's causing problems to have the judges involved in this on a regular basis, and if it's slowing things down too much because we're willing to take up that fight again if it's necessary.

MR. ROGERS: Yes.

MS. DENISON: Thank you.

MR. ROGERS: Thank you. And before we leave the topic, I did just want to also publicly acknowledge that the solicitor's office not only reviewed our precedential decisions, but they also reviewed every chapter in the manual, and
basically that was two people, Christina Hieber
and Tom Shaw, and they did really good work, made
a lot of thoughtful comments.

They helped us get out the quality
precedential decisions that we issue, and they
also helped us tremendously with the manual. So I
just - they kind of operate behind the scenes, and
you're not often aware that they're doing a lot of
important work besides defending the Office of the
Federal Circuit, but they do provide a lot of
support I think to TTAB. Next subject,
accelerated case resolution. As I noted on the
one page, or two page statement of statistics that
I had sent a few weeks ago, for the last two
fiscal years, we were getting about one ACR case a
quarter submitted for review and for issuance of a
final decision.

But in the fourth quarter of the
recently closed fiscal year, for whatever reason,
we had an explosion and we had five cases
submitted for issuance of final decisions as ACR
cases.
We're hopeful that all of the talk that we've been doing about ACR and all of the publicity that TPAC has been giving the ACR process, the information we've put up on our web site, that all of this together is having a positive effect and leading practitioners to consider ACR as an option.

I'm hopeful that that increase during the fourth quarter of FY '10 was not a blip and that we'll continue to see more cases pursued through ACR, and I'm hopeful that that's going to happen. And, of course, we do have, and we received through the TPAC the AIPLA submission, the plug and play options. I was discussing with a member of another organization, another bar organization whose initials shall remain anonymous at this point in time because they have to vet their thinking on this up the line, but there may be other plug and play options coming from other groups who have looked at the AIPLA suggestions and are now thinking, you know, that there may be some holes they'd like to fill or there's some
additional suggestions they'd like to make.

And so I think we were discussing in the subcommittee yesterday how we might reach out to other organizations and try and get additional suggestions that we can eventually put up on the web site as a whole litany of possible plug and play options, but while it may be a little slow getting this response, I think we'll be likely to get some more.

MS. DENISON: I was delighted to see all the effort that AIPLA put into doing the plug and play letter because it is very helpful, and it was obviously a lot of work, a lot of thinking went into that, so we're very grateful that they made the effort to do that.

I would be thrilled if another bar group also participated. I don't think that we should let that delay things, though. And, as promised, I'm going to work on drafting something up, because I think that it's not something that's obligatory, and we could start with options A and B and change it later, it's easy to fix things on
the web site. If people don't like A and B, then
they won't use them. But I don't really see that
we have to wait and see that we get comments from
everybody that might want to participate, because
these are just options, and no one is being
required to do anything.

MR. ROGERS: Right.

MS. DENISON: So I would hope that we
wouldn't wait indefinitely in the hopes that
another bar group would come through with
comments.

MR. ROGERS: Right; I know it's been the
desire of this Committee to have the board post on
the web site, not just the information we have
about ACR and the list of cases and this kind of
broad invitation that you can create your own kind
of proceeding, but to actually give parties
default options.

And I've certainly been discussing that
with Judge Peter Cataldo, who's been kind of the
point person on ACR at the board, and we will
certainly be working on developing those plug and
play options. And I'm sure that by our next meeting, we will have already posted them on the web site.

MS. DENISON: Great; the reason that we're pushing this, just for the public's information, is that we don't think ACR is going to get wide spread use until the plug and play options are available, because it just will make it easier for everybody than having to create their own accelerated case resolution plan.

If they could choose between options A, B and C, they're more likely to do it than if they have to make it up and have an argument with opposing counsel about it. So we're pleased that five people used it, but five isn't really much of a statistically significant number in terms of use of the system compared to the number of cases that the TTAB has, so we would hope to see significant numbers, because it will lighten the load and reduce the cost of proceedings for the people involved.

MR. ROGERS: Right, and those are always
my watch words when I talk about ACR to any group that I go and make a presentation to. It's economical and efficient, because I think that's the way it has to be looked at. And if that's what you want for your client, you can still get a decision on the merits, you still have full appeal rights, you can still have an oral argument, but you're just realizing savings and time and money in discovery and trial if you adopt some more efficient and economical alternatives. But I know I'm preaching to the choir on that point.

The next item on the list is having the TTAB become more assertive in encouraging settlement, and this, of course, is also an element in the strategic plan. Commissioner Beresford mentioned the trademarks elements in the strategic plan. There's five elements in the plan that relate to TTAB, and one of them is reaching out to the bar and reaching out to stakeholders and determining what kind of involvement they would like, by whom, and at what junctures and various stages of proceedings to try and
facilitate settlement talks of the parties.

As the Committee is aware, we have a draft request for comments. We had some very productive discussions in the subcommittee yesterday about revisions to that draft, and so we'll be working on those sometime very soon. And hopefully before Judge Kuhlke, who's my point person on this request for comment, starts taking her use or lose leave in December, but I know she's got a few weeks left before she starts that, so hopefully we'll be working on this quickly in the next few weeks and then be in a position to get something out quickly early in the new year. And we'll incorporate as many of the revisions as we can that we discussed yesterday and be prepared to get that out very soon.

The strategic plan kind of mentions the involvement of judges in settlement talks. One of the themes we discussed yesterday was kind of broadening the scope of the outreach effort and thinking not just about judge involvement, but attorney involvement, and possible outside
volunteer mediators or other ADR that the office
might be able to set up, possibly having somebody
detailed or working at the board in a mediator
kind of position, where that person would not also
work on the cases, but would just be assigned
mediation duties.

So there's a wide range of things that
we're considering in which we'll try and have
reflected in the final request for comments when
it goes out, and then, of course, see what the bar
has to say about it.

MS. DENISON: We're fully supportive of
the effort to involve the TTAB in whatever role in
settlement, because we think, again, it will be
good for the board and good for the user, so thank
you, we appreciate that, and we'll have some more
comments for you shortly.

MR. ROGERS: Back to the two pager that
I had distributed before the meeting, because
we're now on the speed statistics and case volume
statistics, and this also implicates the strategic
plan to a certain extent.
The two major performance measures that are reflected in this page of statistics are the time it takes the board to issue decisions on contested motions and the time it takes the board to issue final decisions on the merits for cases that have been argued or briefed.

These are the two traditional performance measures. There's other performance measures that we track internally as kind of management tools, but the two publicly reported ones are the pendency to a decision on contested motion and pendency to a decision on finals.

The goal has, as we discussed in the subcommittee yesterday, fluctuated some years, it's been at ten weeks, some years it's been at 12 weeks. The fluctuation of that goal is something I've discussed with Deputy Director Barner, and I think we're going to try and standardize some of the board's performance measures so that they don't change from year to year, and the public and the stakeholders will know what the board is expected to do every year. But another aspect of
the strategic plan is also to discuss alternative performance measures for the board other than these two traditional measures, so that as we move forward, if there are other indicators that would be more reliable and more indicative for stakeholders about how well the board is doing and whether it's realizing its mission, then we can adopt some of those other performance measures and report them.

For example, one of the things I threw out to the INTA subcommittee meeting in Phoenix was, perhaps we want to track an inter partes cases the total time spent in discovery, and how many cases get out of discovery and into trial within the six months that's established by the normal, the traditional discovery and trial schedule, maybe, you know, that's going to be an important measure, how many cases are we keeping on track and keeping on the normal schedule.

Just one example, but I think the front office and Deputy Director Barner are willing to discuss with stakeholders almost any performance
measure that they think would be useful in assessing the performance of the board as opposed to simply the two traditional pendency measures on motions and finals.

MS. DENISON: The TPAC applauds the concept of the standardization and publicly of the TTAB speed goals, and however we can help with that, we're happy to do that. Thank you.

MR. ROGERS: Okay, great. And as for the goals for the past year themselves and what we accomplished, when it comes to finals, as alluded to earlier, we issued final decisions on the merits in about 12.4 weeks from the time those cases were ready for a decision.

So, again, based on some prior years, that would have been very close to goal. Based on this year's goal of ten weeks, we were a few weeks over goal, but not dramatically, so considering all of the time that was spent by judges on the manual.

The number of decisions issued was down, significantly, again, largely attributable to
judge work on the manual, but also, in part, attributable to the fact that the number of cases maturing for final decision on the merits was also down.

I'm not sure whether that means that the economy caused people to finance fewer inter partes cases through trial, maybe it meant there were fewer appeals coming in because people didn't want to finance the appeals, it's hard to say, but trademarks is reporting that their filings have leveled off or are on the increase, and so even though our incoming filings, our incoming appeals, our incoming oppositions, our incoming cancellations were down or only steady during the year, we expect that we will probably see increases in the near term, and how soon it will take those cases to work their way through trademarks and to the board, it's hard to say, but eventually these statistics, these incoming filings are going to go back up and cases maturing to a final decision on the merits are going to go back up.
But, of course, in the meantime, we've got a backlog of - it was 127 cases awaiting final decision at the end of the fiscal year, it was up to 150 at the end of October, so we have work to keep our judges busy for some time to come, and so if we get a little bit of a respite before our incoming filings on the front end pick up, then that will probably be useful. On contested motions - I'm sorry, Mary, did you have something on finals?

MS. DENISON: No.

MR. ROGERS: On contested motions, the attorneys produced fewer decisions on contested motions this year. Again, that's probably attributable to the fact that there were some attorneys, not as many judges, but some attorneys working on the manual revision, but they were able to beat the goal.

So where we needed to be, the figure was up somewhat from the previous fiscal year, but it was certainly still well within goal. Another performance measure, if you will, if unofficial is
the board's issuance of precedential decisions and
we were able to get out 54 decisions this past
year, up five from the previous year, and I'm also
pleased to say that a number of them I think were
very useful in terms of dealing with evidentiary
issues, making it easier for parties to get
evidence into the record in inter partes cases.

We had a number of cases dealing with
dilution and with foreign marks and foreign
applicants, and so we think that we're not just
pumping out precedential decisions to meet a
number, but we're actually getting out decisions
that are useful because of the subject matter. So
that would be about it on the speed statistics.

If there's any questions, I'm happy to answer
them.

MS. DENISON: I've heard a lot of
compliments on the quality of the decisions that
have been coming out this year from the TTAB, so I
want to commend you and the other judges on that,
because people seem to be happy with the quality.
And we're pleased that there are more precedential
decisions coming out, and we hope that in the future there will be even more, because people always want precedential decisions that they can use in their litigation.

We are disappointed, as you know, with some of the speed slippage, but we expect significant catch up in the second quarter of the fiscal year since the role of the TTAB and the manual is done.

MR. ROGERS: Right.

MS. DENISON: Thank you.

MR. ROGERS: And even though we're now two years into the new rules regime, if you will, we're still facing issues of first impression that are going to be the basis for precedential decisions. For example, we now have a lot of cases that have spent some time working their way into the trial phase, and, of course, we've had many decisions we've already decided under the new rules, but for cases that were bogged down in discovery for a while, we're having some cases now that are reaching the trial stage, and I was
discussing with two of our attorneys yesterday
pre-trial disclosure issues that have come up, and
you know, just another example that there are
always things coming up under the new rules that
are going to give us opportunities to issue
precedential decisions, not just final decisions
in appeals that are always nice to see and deal
with substantive issues, but also decisions on
these procedural issues as they come up under the
new rules.

CHAIRMAN FARMER: If I can just jump in
for a second, thank you for that. For those who
may be looking for it, Judge Rogers' group sent
their statistics and stuff on to us, but I think -
we didn't realize that they weren't also going to
be posted on the web site, and I didn't think to
send them along, so we'll get that fixed. But for
those looking for the statistics who may be
watching at home, this will be posted later on the
web site.

And I'm not sure if they're in the
written materials, but if not, they'll be made
available, so if you hunt for those, it's not you, and they will be there, so just a little note on that. And I'll try to make a note myself when I do my post meeting follow up to send out a message to folks, because I've never made this clear before, that when you send stuff to TPAC that's public, it also needs to go to Ann Farson and Pat Beck so they can put it up on the web site, and I've never made that clear before, so I'll clean that up.

MR. ROGERS: I'll share responsibility for that. You don't have to take all the blame on that, John.

CHAIRMAN FARMER: I think I do deserve it, but thanks.

MR. ROGERS: And then I guess the last item on the list is the update on any cases that have lingered on the docket for a very long time. We do have one of our administrative staff members who's kind of constantly monitoring, periodically monitoring the cases that are proceeding under the prior version of the rules governing inter partes
cases, those commenced prior to November 1, 2007.

We're down to under ten percent of total cases pending on the board's docket, as we discussed in the subcommittee meeting yesterday.

Quite a few of those are cases that are on appeal, quite a few of those are cases that are under suspension for settlement. Quite a few, a couple of hundred at least, are cases that, at least in theory, are on track because they're in discovery or they're in trial or there's some kind of motion practice going on. We've had some preliminary discussions with attorneys in Howard's unit about what we can do to try and draw a lot of attention to those cases and to work on those cases in particular and keep them moving. We've talked to the paralegals about it.

We're still trying to get all of our parts working together, but I expect that at some point we're going to have an effort that will lead us to the point where all of those old rules cases are either submitted on the merits or on appeal, but no longer proceeding under the new rules, and
that will be an accomplishment for us, because it would be nice to have all of our inter partes cases proceeding under one set of rules.

MS. DENISON: I agree completely with what you said. And I hope that the involvement -- the TTAB and settlement will hope to get rid of some of these old cases, because it would be -- it is a significant drain to be operating under two sets of rules, and so the sooner you can get these cases resolved, I think the better for everyone.

MR. ROGERS: Thank you. That's about it for me. If there's other questions or comments?

CHAIRMAN FARMER: Yes, I have one question, then I'll have a few comments. And also for anyone else on TPAC, I'll open the floor up for them, too. A genuine question, and that is, I understand this RDMS, if I'm getting it right, system is coming up that will allow folks to put up comments on what they see in the TBMP in case they may see things that need supplementing or whatever. Is that going to be a system that's open only to folks within the TTAB or is that
going to be a public system where perhaps a
litigant can notice that, well, this doesn't jive
with certain case law and they would submit their
comment?

MR. ROGERS: Let me actually clarify
this. And I'm sure the CIO's office in their
presentation later on will clarify any
misstatements that I've made. But the RDMS system
is a utility, as I understand it, for delivering
content to the web, and it makes it easier to get
it up on the web in the XML and the PDF formats
that we want to have the TBMP out there in.

And it also makes it easier for us
using, as I understand it, oxygen software for
making revisions and getting them quickly and
easily posted to the web. But it has nothing to
do with the wiki version or the ability to comment
on the manuals that are posted, it's the idea
scale application that's going to be out on the
web for use with the MPEM, I guess, and by
patents, in which trademarks and the board have
looked at and seen, and I think the subcommittee
saw yesterday a demo of.

And so we're essentially not going to try and reinvent the wheel, and whatever trademarks is going to eventually settle on is what we will eventually settle on, too, because we know that we've got the same core group of users, and we want everybody to be able to interface with trademarks and the TTAB and the respective manuals in the same way.

CHAIRMAN FARMER: That's wonderful. And I asked Lynne a question on the side earlier, because I had never thought about this, and she's been talking about the wiki version of the TMEP, and I asked her, this is for the public to also submit comments and stuff, too, it's not just to close this and for examining attorneys, and she confirmed that, yes, that's the case, I just hadn't thought about that before.

And what I'm hearing from you is, the same thing will eventually be true for the TBMP, so that if a litigant sees something that doesn't appear to square with current law, they would have
an ability to flag it for you all, so when you come up on your next semi-annual revision, you'd catch that.

MR. ROGERS: Yes, absolutely.

CHAIRMAN FARMER: Wonderful. I wanted to throw in a few additional comments on top of Mary's excellent leadership. I realized at the start that the TTAB has made tremendous progress over the past several years. I mean I remember as a much younger trademark attorney, when I had more black hair and less white hair, that I had summary judgment motions that pended over a couple of years, and the TBMP, of course, has been out of date for quite a while, and so we certainly recognize that, compared to those days, things have improved dramatically.

And although we have suggestions for improvement from time to time, we haven't lost sight of the fact that you all have made great strides and we really appreciate that.

I do have a few concerns. One you raised earlier, and I salute you for doing so, and
that is, I have a concern that the judges are
taking on a lot of tasks, and maybe part of it is
just to make certain they get done and get done
well, because you can make certain it's done well,
but you are, you know, of course, responsible for
getting out decisions in a high quality and timely
fashion, but on top of that, you also have TBMP
revisions, and on top of that, you may have a
substantial role in settlement. I realize the
settlement part has to play out, and other folks
may be doing that, and I just – that's just a lot.

And, you know, we'll see how it goes
down as it goes forward, but we just don't want
you all to have so many things on your plate other
than deciding cases that you all can't maintain
really good pendency numbers, and so we support
you all to the extent you all ever think that you
need additional resources to delegate some of
those tasks and review them, and also, we would
encourage you all when you can to consider
deleagating some just so that those pendency
numbers can always be good.
We certainly understand that you all had to get the TBMP done and that caused a little slippage, and we appreciate getting it done, it's just we want to make certain that you all have all the time you need to stay right on top of those decisions, and so that's one thing there.

And also, I do salute you all to — I think it's, you know, a reasonably firm commitment to getting the TBMP revised every six months, we really like that, and I think it's you all's intention and our hope that that will be something that you all stick to pretty well, and it's not an aspiration that becomes delayed, but it becomes a fairly regular thing, and I think that will be a real service to the bar, and we're thankful to hear that that's coming down.

As sort of got flushed out earlier, I personally, and I think this speaks for TPAC, would love to see you all at some point have the sort of published quality benchmarks that the trademark operation does, that the benchmarks that are keyed off, which you all think is a good,
1. stout level of performance, maybe not perfection, because we never achieve perfection, and we on
2. TPAC certainly don't, but so that the public can
3. say, okay, this is what you're shooting for, a
4. published benchmark that you benchmark yourselves
5. against, so they not only need to see your speed
6. statistics, but they know what you're aiming for,
7. and they can see your progress towards that goal.
8. On ACR, that's headed in the right
9. direction, I'm glad you all are working with Mary
10. on that. Just to make certain that there's no
11. possibility for two ships passing in the night, I
12. think the TPAC vision, and I think you all are
13. seeing it, so mainly this is just for the public
14. to know that we're working on it, is that ACR be
15. truly plug and play, so that it's not where you
16. look at a document that offers ideas, and you
17. think, well, we could go in this direction or that
18. direction, although you certainly have the
19. latitude to do so, but that it's truly we'd like
20. discovery option B and trial option C so that
21. parties don't have to negotiate and draft and go
back and forth to select the options, once they've selected those two things or whatever, then there's no ambiguity left, there's no document that has to be drafted and signed off, you just say that, okay, we've selected those and we're done.

Now, of course, if they want to invent their own ACR, you've certainly signaled that you all will work with them, because the whole idea is to give parties flexibility to invent what they need. But as Mary said earlier, we believe that there should be truly plug and play options that are available for folks to select like a menu so that they can pick up on them.

And then the last comment I have is just that when we had the chance to visit with you all, I sense a little bit that there could be some labor management, not difficulties, that's too strong a word, but some tears that may be somewhat stymieing efforts to move forward on things that you all want to move forward on. And I just hope that however those things can be addressed, that
they can be addressed so that internal issues
don't keep you all from reaching the goals that
you want to.

I don't know what should or could be
done beyond that, and I'm not here to point any
fingers, it's just that we want you all to be able
to get where you need to get, and if there are any
labor management issues that need to be sorted
out, I hope that the folks that sort those things
out will do so so that you can move forward on
your goals, because we encourage progress.

And so that's all I have. I don't know
if that causes any comments from other TPAC
members or any comments from you, Judge Rogers. I
won't turn it over to the audience quite yet. But
those are the few things that run in my mind.
Anything from audience members? I haven't gotten
an email yet. We put the folks at home to sleep.
Judge, thanks for your service, and thanks for
your time and for working with us so closely, and
we look forward to seeing you again soon.

MR. ROGERS: Okay, thank you.
CHAIRMAN FARMER: We're going to take a
- no, we're not going to take a break. Let's go
straight into the financial stuff.

MS. DENISON: Thank you, Judge Rogers,
and Cindy Greenbaum also.

CHAIRMAN FARMER: Yes, thank you to
Cindy, too. Cindy spends a lot of time with us
and we appreciate that. I'm not quite clear. Are
we actually doing a financial report or are we
just hearing from Dana Colarulli on some
legislative stuff? There you are. How are you?

MR. SCARDINO: Good; how are you?

CHAIRMAN FARMER: Welcome. Please tell
us what's going on in money land.

MR. SCARDINO: Good morning. Thank you
for having me. This is my first TPAC meeting.

Today is three months on the job for me at the
USPTO. And I had the pleasure of meeting with
James and Elizabeth yesterday and the Budget
Committee. And I'm trying to figure out if
there's any correlation between my first meeting
here and Lynne's last and Elizabeth's last. We
have a lot going on in the financial world for the USPTO right now. As you all know, we're living under a continuing resolution, as is the rest of the government. And I don't know if our slides are going to go up there.

But for fiscal 2010, it was also a challenging year. As you'll recall, the USPTO got a supplemental appropriation, $129 million, late in the year. Most of the money was not spent because of the timing that we got it, so we carried over a good amount of money, totally $222, almost $223 million. The way that splits out, it's $100 million for trademarks and roughly $123 million for patents.

However, we have this terminology we call diversion of funds or funds availability is what we're trying to change it to. Fifty-three million dollars we collected that was not available for USPTO to spend. So instead of needed a supplemental for 129 million, we really needed a supplemental for closer to $180 million. So we're working towards eliminating
that problem in '11, and certainly in fiscal 2012; '11 may be a little bit of a heavy lift, and I'll try to explain why. This continuing resolution expires December 3rd, and there's a variety of things being considered right now, either a two week CR extension, a three month CR extension, or a full year of CR. Under each of scenarios, and I guess the fourth option would be an omnibus bill, where they wrap all the unfinished bills together, pass it as an appropriations bill.

The democratic leadership in the Senate would like an omnibus bill passed. The new leadership in the House we're hearing would not like to see the omnibus passed, they would prefer reduced spending, either an '08 level, a '10 level, something. The administration is still pushing for an omnibus, because that's the President's budget.

So we're kind of in flux, we'll know a lot more in the next ten days, next week is going to be critical in terms of if it goes for a two week CR, we think we'll have a better chance of an
eventual omnibus, and if they just punt down the field three months, things could get pretty grim.

Here at the USPTO, the difference between a full year CR and the President's budget request is almost $400 million, which is 20 percent of our funding, so just imagine. That's on supposedly the discretionary side, in other words, you know, that's what we'd have to try to control, and when you've got salaries eating away at 60 to 70 percent of your budget, that's really not controllable. Folks are on board, we have to continue to pay them. So we'd have to cut back on all the fun things like overtime, more hiring, PCT, and IT. As Mr. Owens will speak next to, it would be a devastating situation if we had to live at the fiscal 2010 levels and not have the ability to continue with our IT development.

So I don't want to be doom and gloom, I'm just trying to give you the picture of where we are, because we'll know a lot more in ten days, but we just don't know anything right now.

We're working with the administration,
we're working with Congress to, you know, get a surcharge authority, 15 percent, which could bring in for the rest of the year probably a little more than $200 million, and we're also trying to get what we call full access to our fees so we no longer have this diversion or unavailable funds.

I don't think that's going to be something we can accomplish in '11 directly. So indirectly, what we're trying to get is a larger buffer. So if they set us at a certain level, we'd have authority to collect end use fees above that amount, to the tune of $100 million in the President's budget request. So there's kind of a lot going on in '11, but unfortunately that ties our hands a little bit on '12. We're trying to build a '12 budget. We've got serious deadlines that really don't move. The President's budget has to be submitted to Congress by February 7th. To get to that point, we have to submit things to the Office of Management and Budget by the middle of December.

So TPAC will have the opportunity to
review our budget in December, we just can't tell you when yet, because now OMB pass back is scheduled for the week of December 6th, it was supposed to be next week. So that gives us less time to even work with whatever they pass back to us. So it's a fun process, it's just getting more fun.

I don't know if our slides are ever going to go up there, but I've pretty much talked about everything I wanted to talk about, and you're welcome to please ask any questions.

CHAIRMAN FARMER: Thanks for showing up. I'm John Farmer, by the way, it's nice to meet you. I will get that straightened out in the future. Elizabeth Pearce and James Conley are our money folks, and so, first, if there are any comments or stuff from them before I say anything, I will defer to them. Anything?

MS. DENISON: Elizabeth, just one thing. The slides are in the book, so anyone who got the book can look at them.

MS. PEARCE: I would just add, because
we didn't really introduce Tony, would you give us a little bit about your background? I don't think people realize how imminently qualified you are to be dealing with all this budget stuff.

MR. SCARDINO: That's fair. I joined the government 20 years ago as a Budget Analyst with the FBI. I spent most of my career in the budget field; a couple different times left the government to be a consultant or work for a non-profit. But I spent the last four years as the Budget Director for the Department of Housing and Urban Development, and I was also the Acting Deputy CFO and the Acting CFO for my last year there.

So as Elizabeth mentions, I've got a little bit of experience working budget issues. It doesn't mean it makes it any easier, it just means that you've seen some things before. But we are working hard to get the best funding for the PTO going forward.

MS. PEARCE: Well, the one thing I believe we can't emphasize too much to Congress is
that we are one of the rare government agencies
that is self-funding. I mean it's funded by the
user community. It's not a matter of tax dollars,
it's not a matter of things needing to come out of
the general budget, and if that can be
consistently emphasized to them to buy us some
more leverage, that certainly would be a huge
advantage.

I think you've done a great job, given
difficult circumstances, not only to keep the
trademark office's head above water, but
comfortably so, but that doesn't, of course, mean
that you can predict what's going to be coming
next. Is there anything that TPAC can do, any
kind of support that you feel like you need which
would make a difference going forward?

MR. SCARDINO: That's always a
challenging question. Certainly any
communications expressing our needs would be
welcome to anyone that could be influential. It
really is a matter of education. I mean I was
joking of sorts this morning with Director Kappos
and others that it seems like I still talk to folks that - it's like with a fresh set of ears, they haven't heard the word "different". We don't cost, we're no budget authority, we don't cost the tax payer a dime, so the more people we can continue to educate on that is helpful.

MS. PEARCE: I might add I think we are the poster child for the incoming Republican congressional people, too. Aren't we exactly what everybody should approve of, which is a user funded system? So, you know, it doesn't help, of course, between now and the end of December, but, you know, you go whichever way the wind blows, right.

CHAIRMAN FARMER: I'm not sure how many folks in Capital Hill are listening in, but just in case, I'll point out that in the last TPAC annual report, we reiterated for I think it was like the 118th time that we fully, fully support and pray for and wait for and hope for the end to fee diversion just because it doesn't make sense that the fees that people pay to have the PTO do
stuffs don't go to the PTO for them to do stuff,
it's simply illogical.

And the way we phrased it in our report is that we said we would also like to see the PTO have a question setting authority, but we believe that should go hand in hand with keeping your money, because enabling you all to take more money from users simply to give it over to the Treasury doesn't really solve whatever it is that you all are trying to solve. And so we are fully there for you to say that, we've said it in the annual report, and if there's anyone you would like me or anyone else to go say it to, just point me in the right direction, because I'm not shy about that.

And also, just to clarify one thing, I know the answer, you know the answer, but for the folks listening at home, when you spoke earlier of a possible surcharge, that's just a patent surcharge, you all are not looking at a trademark surcharge.

MR. SCARDINO: Correct, I'm sorry,
you're right. It's a surcharge on some of our
patent fees.

CHAIRMAN FARMER: Right.

MR. SCARDINO: Which we estimate will bring in a little more than $200 million the rest of this fiscal year.

CHAIRMAN FARMER: Keep nettling. We appreciate it.

MS. PEARCE: And one quick question, because John always brings this up and I want to make sure it's said, we have - the trademark office has been concerned in the past about the financial stability of the patent office and how that might potentially effect us. It seems to me that the patent office is on much firmer footing at this point; can you confirm that, Tony?

MR. SCARDINO: Yes; you know, granted I wasn't here last year at this time, but I understand that. The way it works, you know, you submit a budget as part of the President's budget in February, and every September Congress asks us for an update, and last year our update reduced the President's budget request level, and Congress
kind of took that and ran with it, which set the PTO back quite a ways in terms of funding needs versus availability.

This year, thankfully, our estimates are only higher, so it could only really go the other way, in other words, supports the President's budget level or higher, and the President's budget level would be sufficient for all of our needs this year.

CHAIRMAN FARMER: Anything else, any other questions from TPAC for Tony on money issues? Anything from folks in the audience? Welcome, and we look forward to working with you. Thanks for your service.

MR. SCARDINO: Thanks for having me.

CHAIRMAN FARMER: Excellent. I think I see Dana Colarulli, if I'm pronouncing it correctly, back there, and I think you've come to give us a little bit of a legislative update, and so thanks for coming to visit with us.

MR. COLARULLI: Sure, I'm happy to, and I'm happy to come and address this group. I've
done a similar legislative update for the PPAC recently, so I think it makes a lot of sense. I don't know if my slides are also going to go up, but I could also just, you know, talk very quickly about the legislative challenges that we're currently facing, the biggest one of which is funding.

And Tony and I have been working very closely together since he started to ensure that we're making the best case, that we're being very consistent about our fee projections. Certainly that's been something that the agency has been asked about in the past, so we've tried to make sure that we're being – giving good information, giving responsive information, and being consistent.

So very quickly I'll run through my slides. In terms of challenges, and I like to always look at these as challenges and opportunities, you know, we have a number of operational challenges that we've been addressing over the last year. A number of them are on the
patent side, but organizationally, you know, we're trying to ensure that the entire organization is working efficiently. I always say, on this last bullet, the outdated IT infrastructure, like most small businesses, the government is also guilty of this, the first thing you put off are IT investments, and PTO is guilty of doing that for some time when budgets got tight.

We now are faced with an outdated IT infrastructure which John Owens is doing his best to address. But this is a big part of our plea to Congress on behalf of the administration that we need the funds to run the agency.

So recovering from funding cuts as a result of the recession, two points on our patent backlog and our patent production capacity, you know, both of those go to why we're requesting a 15 percent increase on the patent side of the shop to support efforts there and our IT infrastructure.

Legislative challenges certainly, as I said, PTO funding is a big one. Substantive
patent reform legislation has been one of the big focuses of my office. Telework, we had a big success on this last week, that's been a focus, as well, enabling us to be a little bit more flexible, further develop our program, which we always call an award winning program within the federal government, and in many ways, what the legislation that was passed last week does is bring other agencies up to the level that PTO is. But importantly, it gives us flexibility on the bi-week requirement. And then I'll personally touch on some other important IT legislation, a couple things on the trademark side. Go to the next slide.

So I always show two slides when I'm giving presentations, and it's almost my own personal score card. The first is, you know, signed into law. Right now this has special significance because we're at the end of a Congress, we're looking forward to the 112th Congress and what we might propose, and I'd be interested to hear conversations on possible
legislation that maybe this group has discussed.

I know among those are potential restructuring of appointments here, so I'd be interested to hear more about that.

But one of our early successes was the trademark technical corrections bill that essentially enabled parity between Madrid and non-Madrid filings. That was a big part of that bill, among other changes, and very quickly, the Congress picked it up, said this is important, this is time sensitive, and let's get that done, so we were able to encourage them to do that. The next big success was supplemental appropriations for the office, $129 million, to help Tony manage the finances a little bit better. I think among the federal government, that's really helped us to continue at the level that we've been operating without really realizing a lot of cuts, so we're happy to get that, and then the Telework Enhancement Act last week.

There's another one that's even so minor, I hesitate to mention it, there's a
Copyright Corrections Act that some folks in this room might also be interested in that made a number of minor changes. It also made a minor change to the Trademark Bully Study that the PTO is currently engaged and putting together, which many of you in this room know about. Go to the next slide.

So then, you know, as the 111th Congress ends, what's pending, certainly patent reform legislation still, and that will continue to be a priority for the next Congress. For this group, probably the most significant thing in the bill is the ability for PTO to set its own fees, and that's an office-wide effect. That is tied up in substantive legislation right now, that's the most likely vehicle that will move forward that will include that. Again, that will be the beginning of the 112th Congress effort. The House had moved forward with looking at PTO funding a bit more holistically and maybe more long term, and had put one option up on the table. That has seen a couple of different variations as the staff on the
House Judiciary. I've talked to House Appropriation staff and had a number of conversations with our stakeholders about the way we want to move here. Again, that may be something that is moved forward, a long term fix to our current funding problems in the 112th Congress.

Four easy pieces, these are the other technical bills in addition to the trademark legislation that we had proposed to Congress the beginning of this year that we're looking to move forward, and they're self-explanatory, implementing legislation for two treaties and technical directions for the level of pay for certain things, one which I know Gerry is very concerned about, payment for what we're paying our administrative law judges.

PTO has also been active in participating in discussions on other intellectual property policy issues, including in the copyright area. So we don't just do patents and trademarks, we also do copyrights. Performance Rights Act is
a bill that fits in that category. There's a lot of discussion up on the Hill right now on online piracy, and federal legislation that could be introduced to curb online piracy, and particularly targeting that web sites that are set up for that purpose, we're engaging in that discussion on the so called Leahy Rogue web sites bill, again, another issue teed up for the 112th Congress. So our list for the 112th Congress is growing here. Last, but not least, there's been a number of proposals on IP attaches and we're following those. Next slide.

So two highlights briefly it might make sense to spend some time on, and I might, John, to the extent you want to have more discussion, I can even stop here because I think you've addressed a lot of the funding things I was going to address. But let me highlight these two. One is the Trademark Technical Corrections bill which I mentioned was passed earlier this year, in March. It included a provision that required the Department of Commerce to do a study on litigation
tactics in the trademark space.

It was slightly amended by the corrections bill that passed the Senate last week, and is on its way to the President now, simply to make it clear that corporations, by enforcing their trademark rights, are not, by default, engaging in litigation context. I think for the IP world, that's a very important statement. It doesn't change really, from our perspective, the scope of the study that we're conducting.

But anyway, a congressionally directed study, we'll complete it by March 17th. Whenever folks ask me about the study, I always tell them we're going to have a green cover on the front to celebrate St. Patrick's Day. That's the anniversary of the Technical Corrections Act.

The second highlight legislatively I wanted to do for this crowd is the telework legislation. And as I think a number of folks in this room appreciate, this was a bill that had been talked about on the Hill for quite a long time. A lot of effort was put into making sure
that this legislation moves forward. There were a lot of hurdles that – a lot of bumps in the road in getting legislation that would, at a minimum, address PTO's needs to have the flexibility to expand its program.

And the bill that was passed last week we think allows us to do that. We're taking immediate steps to implement that flexibility, the first step of which is to create an oversight committee to determine how we can appropriately waive the – essentially result in waiving the bi-weekly requirement, requiring folks that are outside the 50 mile radius of the PTO to not be forced to come back to the office twice every pay period, twice every bi-week.

The rest of the legislation I think it makes sense to spend maybe a couple sentences on. As I said, I think it's fair to say brings the rest of the government up to a level that PTO is at, and actually encourages some consistency across federal agencies to encourage looking at telework programs.
There's a particular requirement within 180 days of enactment of the bill for every federal agency to identify eligible teleworkers. So there's some additional requirements on PTO to act maybe a little differently. But it does address a lot of the things that we think we've already addressed, having a central — a coordinator for telework programs, incorporating telework into our continuation of operations plans, among other things.

The bill also sets up a test program which is available to other agencies in the federal government to test out flexibilities and travel regulations. PTO would otherwise be eligible for that, however, a third part of the bill, the third category I'll describe, is a PTO specific section, and that's what provides us immediate relief and requires this oversight committee for us to take advantage of, again, the flexibilities in the law. So we think this is a logical next step in the development of our telework program, which the trademark side has
really embraced as a business model, and the
patent side is doing, as well. I give the
trademark side a bit more credit for a longer
program and really finding ways to incorporate
telework into its operations.

I think it's fair to say that the PTO
has had a lot of support. I was in multiple
meetings on the Hill as this legislation was
discussed, along with my staff, and many of you
know Judy Grundy on my staff who really has been
an undying advocate for this, where PTO was raised
as the model for the rest of the federal
government, and we're really proud that we were
able to be raised up as an example that way. All
of that culminated in this bill.

You know, we've heard, even right after
the passage of the bill, some members of Congress
say they'd like to revisit some of the provisions
of the telework bill. We'll keep a close eye on
that, but we think that the bill as it is hit the
right balance and allows us to move further.

So with that, John, I can end. Actually,
if you could go two more slides very quickly and it'll summarize something that Tony had talked about; one more, you know, essentially that the continuing resolution ends December 3rd, you know, these are three options.

Tony might add a third option in there, which would be a two week, an even more limited continuing resolution. OMB has asked us to essentially game out these two options, a two week and a three month option.

It's unclear what will happen next week, it's the most pivotal week for Capital Hill in determining how we move forward. And I think Tony provided some good insight onto what the best options for PTO would be and our conversations within the administration to ensure that we can continue to operate at the level we've been operating. With that, I'll stop, and I'm happy to talk about other legislative items that folks are interested in.

CHAIRMAN FARMER: Before I get in my TPAC reorg course, any questions, comments from
others on other legislative things, Howard?

MR. FRIEDMAN: Well, I would want to

comment on one of the legislative matters that
Dana already touched on, which is telework. I
just want to say how gratifying it is that the
bill was passed, how gratified we are to you and
to your office for aiding in the passage. And I
assume you would concur, though you don't
necessarily have to agree on the record, but I
think one of the best things about the bill being
passed is, I know I was very concerned about how
Judy was going to react if the bill wasn't passed,
and in that light, as you paid homage to her, we
really appreciate all the good work that Judy
Grundy did and all the help she delivered.

I will say that, as far as

gratification, it's very gratifying when you send
a message out to the bargaining unit on, as Dana
has referred to, a long road, that you start
getting emails back immediately with people
commenting that they're yelling and they can't
stop yelling. And while five days have gone by,
and I assume by this time that particular member has stopped yelling, but perhaps not, I think it is emblematic of the reaction of our bargaining unit and how strongly they feel and how gratified they are by passage of the bill.

As Dana has referred already to the particular impact, it makes what is the best program in the federal government, telework-wise, even better. We look forward to working with the office to rolling it out.

MR. COLARULLI: Thanks, Howard. And I think, you know, you've helped my office to continue, and as I said, Judy's an undying advocate. I think this is a really good example where management unit has worked together to get this goal. And NTEU, both locally and nationally, put a lot of effort to help make sure that this legislation moves forward, so we appreciate it.

CHAIRMAN FARMER: Just so I can understand what's going on before I - save a few minutes for the TTAB, excuse me, the TPAC reorg stuff, I gather that there may be some desire from
some quarters in the new Congress to change aspects of the telework bill, if I heard that correctly, and I'm just totally unknowledgeable. What are the issues there? What are some of the things that folks are thinking they might want to tweak, and how would that change the bill that's just been passed by the Congress?

MR. COLARULLI: You know, with a new - it's unclear whether these are things that will be on the top of their agenda or not. With a new Congress, you know, there's always a change in priorities. In particular on this bill, some of the members of the House Government Oversight Committee were concerned about the telework bill. One of the hurdles that we made reference to earlier in this process was the bill failing to pass the House floor earlier this year based on a Congressional Budget Office score that said that this bill actually would cost the government money. You know, what was incomplete about that debate was the amount of savings that telework programs lend to the federal government.
So there are some in Congress who I think are slow to adopt telework as a business model and quick to look at telework as an option for federal workers just to stay at home, and that's certainly not the case here at PTO.

So I think it's more of an education model - education challenge that we'll continue to fight. I imagine the specific proposal they might start with are some of the amendments that were offered on the House floor when the bill passed the House, and that were stripped by the Senate before the bill came back to the House one final time for signature, and that's issues about doing union work while teleworking, among others.

So we'll watch those, we think those types of efforts are neither necessary or wise, but I think it goes to illustrate I think the challenge that we'll continue to fight to make the case that telework really is a business strategy and not just a fun thing to do.

CHAIRMAN FARMER: Thanks. I'm going to carve out a couple minutes here just to talk about
TPAC reorg. And I realize this is not of the level of importance of let's say getting the money issues right, and so we're not saying it should rocket ahead of those things, but I would draw attention to the leadership here at the PTO, that for the second year in a row in the TPAC annual report, we have called for a reorganization of TPAC, and while PPAC wasn't able to work it into this year's report because they had had a lot of other heavy lifting, I know that we have their support on this.

And I hope that the leadership of the PTO will study what we've put in there. We've made the case that various changes need to be made, and I won't go through all of them, but the two biggest ones are that we get TPAC terms aligned with the current flow of TPAC, which is we read an annual report right after the end of the fiscal year, it's due roughly at the beginning of November, and that's kind of the start of a brand new TPAC year, you know, around the beginning of December/beginning of January, and we'd really
like to get it so that all TPAC members in the
future flow into TPAC at that time, because that's
really the best time for a transition. Really
once we get the annual report behind us, that's
when we really dig in on our non-annual report
issues and push those pretty hard until let's say
August, then we're back in the annual report soup
and we set everything aside. And when you have to
change horses in the middle of that swing, from
roughly mid December until late August, it just
disrupts things, and that will happen again this
next year, because that will finish up my term as
TPAC Chair in June, and that's going to be smack
dab in the middle of the year, and it's probably
going to, you know, effect things a little bit.

Also, one thing we called for in there
was to perhaps change it to a system where the
TPAC Chair comes out of TPAC after having proven
themselves on the committee and serves for only a
year.

I don't think it's healthy to have one
person be the chair for three years, I think you
need fresh blood more frequently, and also, I just think it's too much of a job to do for three consecutive years if you've got another job that you've got to get done also. And so we really encourage the leadership of the PTO to take a look at that. The other thing that we threw into the annual report is that one thing that was issue this past year is that we receive some guidance that we need to make absolutely certain that we on TPAC don't work more than 60 days a year, because that's - we can't trace all the law, but we're told that's the law, and we're adhering to it.

And what we asked for in the annual report, and this is the first time, this was not in the report last year, is that we just be given some flexibility there so that we can amass hours during the week and push them into a single day provided it doesn't exceed a certain number of hours, and we asked for that just out of recognition, the fact that, you know, unlike some other contractors, except when we come here, we don't typically come in, punch the clock in the
morning, work all day, go home after a full day, it's often an hour here, an hour there, and that's driven by the fact that most of us - we all have other jobs to do, and we have to interface with folks at the PTO in the outside, and they can't always do things at exactly the time we would like to do it, and so it's just a work flexibility thing. And that would enable us to be more effective, because we try hard to serve the office and to work with them, and if we have to constantly put things on ice because we're out of time, then we can't uphold our end of the bargain. I kind of wonder if maybe these four easy pieces could become five easy pieces and that may be a place where these could be slid in, because I think they are non-controversial, and that would enable us to serve better. Again, if you even look at the annual report, you'll see that we not only laid out the case for this, but we were even so bold as to put in draft language to show what an amended TPAC
statute would look like if these two concepts were folded in, and so that may just be something to look at. And I'm going to personally try to follow up with the leadership in the administration to see if we can have some support on that.

And so, again, it's not as big a deal as the money issues, the most important thing is to get the funding fixed, but if we can get some support in that, we'd appreciate it. Anything else from legislative stuff? Anything from our visitors here today on legislative stuff? We seem to have attracted more folks as we've gone along, it's the reverse of most TPAC meetings. Dana, thank you for your time and for your service. We're going to take a five minute break, then we'll come back and visit with the CIO, John Owens.

(Recess)

CHAIRMAN FARMER: Let's go ahead and get started. If everyone can please take their seats. All right, we're back. John, thanks for coming,
and the floor is yours. Before John gets started, just so that folks know, our technology folks are Tim Lockhart and Bob Anderson and Howard Friedman, so they'll be primarily leading this session.

MR. OWENS: So good afternoon. Let's get right into it. Go to the second slide, please. So after we did our studies and talked to - worked with trademarks and CIO to talk about the Trademark Next Generation independent platform, the core infrastructure for that current system, we did receive two reports that we paid for, and we needed a little more clarity, and at trademark's recommendation, we acquired the services of William Ulrich, who is a well known author and professional in leading legacy system to modernize - through modernization.

He has been doing an assessment of the systems. CIO and trademarks has been working with him, and his report will be given to both of us shortly in the coming month of December. So we are looking for to this, though this has not stopped, as some might think, the progress all
There were mention last time of four work request forms. A work request form, for those that don't know, are a very basic form, two - three pages long at a very high level that describes large ideas.

And what we did was, we pruned out of those four documents a couple of projects of which we'll talk about some today that have already gone through a project life cycle, including development, and soon beta, into final deployment, as well as looking at the core infrastructure that will facilitate separation of your systems from other systems here at the USPTO, which is one of the primary goals, as agreed to by both trademarks and CIO. So Mr. Ulrich is helping us put the final touches on that plan and his experience is certainly welcome.

So the progress last quarter, to continue, can you flip slides, please? Thank you.

As a first step to establishing that Trademark Next Generation core infrastructure, we built a
virtualized environment. What does that mean?

It's a bunch of computers that can randomly run virtualized pieces of software, so one computer can do more than one thing at any one time. This allows you to scale up and scale down. It also allows you to be redundant, which means if one part of the system fails, another will be available to take its place.

Virtualization technology has been used in industry for well over 15 years, so this is one of the more modern types of environments that we are bringing here. PTO has used it in the past for our work at home program, and now we are adopting it as a core foundation to our infrastructure.

A common piece of infrastructure, when you talk about a service oriented design or building instead of independent AIS's, but services, and you're going to see the demonstration of what a service is like today, is what's known as an enterprise service bus.

And I know I'm a little heavy on the
acronyms today, but what we're talking about is the technical aspects of building a foundational infrastructure on which to grow next generation. This is innately technical. It is not something that you will all see. It is not something that most of you will even want to touch or comprehend.

But what it is important to note is, before you build the building, you have to dig the basement, you have to put in the foundation, and this is the less glorious aspects of the software development world that we are talking about here.

The enterprise service bus was delivered, as well, it is in test, it is in our development environment, as well as a virtualized infrastructure, what is also commonly called nowadays coined the cloud or a private cloud here at the USPTO that can run concurrently 100 different development environments.

So what this is is, we have prepared our internal environment for rapid development using the agile methodology I talked about earlier last time we were here in a virtualized, very modern
way, with one of the core components for a service oriented architecture, and we have worked very closely with Gary Cannon and the rest of the trademark's team on putting this up, demos are going on now, and you are getting this information at the speed that we're delivering it and working with trademarks, which is almost in real time.

Let's continue, let's talk about one of the products that came out of those four work request forms that were mentioned last time. TDR is the repository that you all pulled data from today. And we wanted to move that onto a new platform. We are in real time looking at a public beta in January. You're going to see a demo of it today. It is web 2.0 based, it is our first delivery in a cloud environment.

The user interface, the front end, is housed in the Google cloud today, that's what you're going to see. The back end is housed in our virtual environment here. It provides a series of services that separate and protect our core back end infrastructure from any undue
influence or abuse by the outside, so we remain
protected, but now the two can grow independently.

The back end can grow, the features and
functionality, independent of the user interface
changes. It also allows trademarks to take
control over the verbiage of what's on the web
site, which they could not do before. All changes
on the TDR site today had to go through CIO, which
added extra time and effort that really wasn't
needed. This puts the power back into the hands
of trademarks, much like we did the web site a
year ago.

So with that, I'm going to ask you to
switch, Mr. Wolf, if you would. And Mr. Wolf, so
you know, is a federal employee, he is one of the
developers that I have brought on board, he has
been dedicated to work on trademark's development
efforts, and he is working with a team of
contractors to do this, but he is the technical
lead for the development and architecture for the
service that exists here on campus, where the
contractors have been concentrating on the
development of the user interface and the Google cloud. Go ahead.

MR. WOLF: I apologize for speaking from the back, but that's where the computer is, so that's where I'm going to be showing TDR from.

MR. OWENS: Is that on? No.

CHAIRMAN FARMER: If we get his volume up a little bit, that'll help.

MR. OWENS: And we don't want the universal laptop, we want the laptop in the back of the room, please. Experiencing small technical difficulty, please stand by.

MR. WOLF: TDR stands for Trademark Document Retrieval. All the documents pertaining to trademark cases can be viewed through this system. One of the obvious things that you might notice is, we've made the look and feel consistent with the USPTO web site to make it seem less like you're going into a separate AIS and more just going to the PTO for information. Another thing is that it's adopted web 2.0 capability, so instead of having separate pages for your results
and for your search fields consolidated on one page, additionally usability features like sorting on the document lists gives the user a little more power into what they want to look at.

So here's an example of a document. You can scroll through the pages. Unlike the present TDR, you can jump to any particular page that you'd like. This file used to be a TIF image, it required a PDF plug-in in order to view it, but now we've had a service convert that to JPEG so that no plug-in is needed.

Of course, since PDF's are useful, we still offer PDF access to this documentation. So here is a PDF rendition of this document.

Another feature is the ability for trademarks to go in and make changes to text that appears on the web page without having to go through the OCO first. This requires a log-in, which is necessary in order to protect, you know, obviously other people from going in and making changes to the web site.

As you see here, now an edit button has
appeared. I can click it, and let's say we want to be ambitious and move up our deployment to December, 2010, now it's December, 2010. The FAQ's can also be modified this way, as well. So if there's a question that happens to be asked frequently, they can just go in and add the question through the same interface and it appears immediately in the FAQ list.

So having that power, as you just saw, it happens immediately, there's no need to go through the OCO in order to get these changed deployed, they can be done immediately.

MR. OWENS: Can you show them the inline help?

MR. WOLF: A lot of text appeared on the first TDR. This text has been moved to these overlays, so if they need to see the text, they can click on the help icon and they can read it there. For the people that don't care to see it, it's out of the way, so they can focus on seeing the documents at hand.

Now, another new feature is the download
original. What that means is, there are files in the Trademark's Document Repositories that make up all these documents. They're not in PDF natively. This system will convert those documents to PDF, but in the case where you actually want to get to the original documents as they are in the document repository, you can download the original. And this happens to be a zip file of all these documents. So you have TIF's, XML documents, JPEG's, things like that. Of course, if you do want the PDF, then you can get the PDF of these documents, as well.

And behind the scenes, this is going to a web service. This web service is exposed to more than just this client, and it's intended to be used by people that, you know, if they don't want to use this cloud UI, they can essentially make their own client and get to their data. So here's the URL to this particular PDF. I can go to the service, I can get to the HTML, I can get to the underlying XML data, as well. So there's more power available through the service than
there is through the client.

You can also query for data across multiple cases through the service and I'll show you an example of that. So I'm going to get a zip file of Case 7651587877975812.

MR. OWENS: Can you deliver it as a PDF, please, so they can see that?

MR. WOLF: Sure; it's just a change in the URL. Now, because this is going to be a fairly large PDF, for the sake of time, I can say - well, let me only include the APP documents of these two cases, and then you get a PDF of just those particular documents.

MR. OWENS: The power that Joe is showing you is that the new design based on the web 2.0 technologies and the infrastructure that we have deployed allows us to separate the back end from the front end, which would allow a third party vendor to produce a much better user interface above and beyond what we have done without involving us at all.

It also shows that we have progressed
much further in the back end than we have the
front end at the moment. We can develop
interfaces to download multiple related cases and
join them all into one PDF, or deliver all
documents into a single PDF, which some of our
folks that have spoken to us in trademarks have
requested.

Joe, if you can, now, as part of TRD 2,
we're pretty much replicating the current
functionality, as requested, on the current - in
the new environment, but we're also independently
working on new functionality for TDR 2.1 as part
of our agile method. Joe, can you show them the
quick demo of the video file?

MR. WOLF: Sure.

MS. PEARCE: In the meantime, John, I
have one quick question. Does this TDR retrieval
include assignment information, as well as the
prosecution history?

MR. OWENS: That's a good question. I
don't know if it's available on TDR today.

MS. PEARCE: It is a separate database,
so that's why it would be great if it were also included.

MR. WOLF: As of right now, the only information is from the document repository database.

MR. OWENS: It's a different database today.

MR. WOLF: There are intentions for the future to include other information from other databases into the service, that's not scheduled for this current release, but the intention is that because of the separation between the client and the service, we can start adding that information into the service without disrupting the client, and then when the client decides how they wanted to split information, they can make a change to the client so that the public can see, as well.

MS. PEARCE: I would just like to put in a vote for having the assignment information added. I think that's something that's crucially important any time you're reviewing a file.
history. So if you guys could prioritize that,
that would be great.

MR. OWENS: I'm sure that trademarks has
heard you, so we take our priority from trademarks
actually. But we also have TDR 2.1 going, and
we'll look at future enhancements as we go along.

Joe is going to show you a big one, which is
actually a lot farther reaching because we have
to, of course, store multimedia files, which we do
not do today. But we wanted to show you that the
services we are producing are extendable beyond
their current capabilities that we have throughout
the rest of the system, which is the display of --
the retrieval and display of a video in store
which is on our test system today.

MR. WOLF: Unfortunately, the volume is
not working, but there is some nice, exciting
music to go along with this wonderful video. And
there are many other wonderful videos in the
trademark database, as well, and they can be
exposed through the web service.

MR. OWENS: So you're going to see a
beta of this in January that will be open to the public. You will see iterations come out over the next year. The deployment, the final deployment, including the first ever USPTO deployment into a clouded environment for trademarks, the very first one ever here, if everything goes well with the beta by April, which is big news --

MR. LOCKHART: And is that going to be the – that's the first implementation of Trademark Next Generation?

MR. OWENS: It is one of the features that was derived out of the four work request forms that were submitted, though a work request form doesn't have enough detail in it to suffice it to say define a product. What we did was, we gleaned several items out of that, those four work request forms, worked with trademarks to define those products, and then we built them, and what you're seeing now is the results of some of that work.

MR. LOCKHART: Well, I understand that, but given that this is the first cloud based
application, we're now moving into TMNG?

MR. OWENS: Yes, this starts it. I don't want to say that it's the end all, be all, there is still a lot more to do, but it is the first step.

MR. LOCKHART: We understand that we understand that, but it's great to see this first step and great to see that you are moving in the cloud.

MR. OWENS: So let's talk a little bit about something that will effect the examiners. You've heard me talk about it before. If I could get the slide moved. You were on the right slide, I just need you to go to the next one. Okay. I would like to notate a small correction to this slide that slipped in at the last minute. Actually, this isn't the correct slide at all, but that's all right.

As much as I'd like to develop a time machine, I can't go back to the second quarter of FY 2010, so those are supposed to be the last two dates there, FY 2011, and it's missing a bullet,
which I'll fill in for you. I guess my slides didn't get updated.

But basically you've all heard about RDMS and the publication of the TMEP. RDMS, as was stated before, is a publication system. It takes XML data and it published it in a variety of formats. XML keeps it native XML, HTML, PDF, whatever we desire. And there is a front end corresponding tool that allows public comment called IdeaScale.

Now, this was just demonstrated to trademarks within the last week. An IdeaScale is used by the White House as the main commenting tool available for the public to comment on various things the administration is doing. And we're working with trademarks to refine that experience, and when they are happy, we will launch it.

But the beta 1 for that launch, for the public comment tool, the internal XML editing with the piece of software that was mentioned earlier called oxygen, that's basically an XML text
editor, as well as the internal search capability
is planned for December.

Our beta 2 plan, which is in the second
quarter of FY 2011, you have to remember, we start
our year in October, so it's the first three
months next year, is internal search and
annotation, so an examiner will be able to use the
search system, as well as annotate and keep their
annotations, their comments in the environment.

But also the bullet that's missing is
that public search capability, will be put up
there. There's two standing issues in the way of
that; one is the results of the beta 1, because if
we find out that the search is inadequate
internally, we were reluctant to release it
externally, though I heard loud and clear
yesterday from the subcommittee that it may still
be desirable; and the second is a licensing issue
with the software, we just have to make sure we've
acquired the right licenses and contractual
agreement.

Last, but not least, the production plan
for somewhere in the fourth quarter of the year
after the beta has been complete. Now, we hope to
get it done earlier, but without feedback from the
beta, and that usually likes to run for two or
three months, we don't quite know yet.

MR. LOCKHART: Now, this won't be the
wiki version, is it a precursor to the wiki?

MR. OWENS: Let's talk about the term
wiki. Not to get all geek on you folks, but wiki
has a particular connotation on it, which is,
someone starts a conversation, and the person can
change the content. So if you ever go to a wiki
site like Wikipedia, and you want to change the
content of the article, you can.

We're not looking at an actual wiki
site, we're looking more at what's known as a
discussion forum, which is, the original post
doesn't get to change, because as much as I think
a lot of people would like to change the rules on
the TMEP, they can't. But what it allows you to
do is comment on that section or subsection, as
well as comment on other people's comments. So if
we're talking about is that tool the IdeaScale

tool that allows the discussion forum to happen
going to be available for beta 2, the answer is,

yes, and we are hoping to include the public

search capability, as well, which we know is very

important for folks to be able to --

CHAIRMAN FARMER: John, a question. I'm
gathering though from the TTAB and from Lynne's
group that they want a wiki. Am I gathering from

you that you don't see that happening?

MR. OWENS: The product that is being

investigated, IdeaScale, is not a wiki, it is a
discussion forum.

CHAIRMAN FARMER: Right, and that's my

concern. It appears that the CIO folks may be
going in the direction that's not what's being

requested from the TTAB and the trademark

operation.

MR. OWENS: Not to toss it over the

fence, but the selection of that tool was done by

the front office.

MR. LOCKHART: Well, I don't know that
they're necessarily incompatible, but I mean I can see some utility to this, but I think the question is, are we also pursuing a wiki version of the TMEP, not that the public could go in and make changes to the TMEP, but they could propose changes, I think that's the idea, right?

CHAIRMAN FARMER: Well, I think the idea is that there would be a parallel version. There's the official one that, of course, the public doesn't change, but there's a parallel one in which the public can suggest changes based upon the discordance they see between those manuals and the law that they're built upon. Lynne, is that correct?

MR. OWENS: That is what a discussion forum does, it allows you to make comments and propose changes on the current TMEP. A wiki would allow you to make the change. This catalogs your requested changes and discussions on a particular topic. That's what my comment was about. I think we are using the terms inappropriately.

MR. LOCKHART: Well, the short answer
is, and I realize that you're driving toward this, and again, I think we all recognize there's utility to this, but the short answer is, you don't have another process ongoing for what we're referring to perhaps loosely as a wiki version of the TMEP? This is what you have under development, and you have nothing else under development right now regarding the TMEP?

MR. OWENS: That is correct.

CHAIRMAN FARMER: If we could jump in, Lynne.

COMMISSIONER BERESFORD: Yes, I think the trademark saw this tool last week for the first - a couple days ago I think, no, I guess it was last week for the first time and have just - at this point don't think it particularly meets what we had in mind. We've been told that it perhaps can be altered in terms of using wiki technically, we've been using it as a short hand to describe what we want.

I think there's a disconnect in actually figuring out what trademarks wants here but this
tool is a fine tool and as seen, it doesn't do
what we want it to do, so that's an issue. I also
have a question. All this beta, is that actually
for the TMEP or is that for the MPEP?

MR. OWENS: No, it's both actually.

COMMISSIONER BERESFORD: In talking to
folks within trademarks, I'm not sure that was the
time schedule that we understood, but that's fine.
Thank you for clarifying.

MR. OWENS: No problem. Any other
questions before I go on? So let's talk a little
bit about the deployment, where I was getting to
before, sorry I missed a slide, of the universal
laptop. And I don't know if the camera over there
is on, but if we can show the image to everyone
out there of what the new laptop looks like.

Basically, again, this is the Intel I7
quad core eight gig of RAM, fully modern laptop.
We have planned the first beta to start in
December. There are 100 users across the agency
divided up between all of the business units. And
then we have two additional betas that will add
200 people at a time, one in January and one in February.

Currently, the bulk of the software is working. There is one trademark or two small trademark applications that are not quite out of internal testing yet, but they will be coming along shortly, as well as a couple of patent applications, but they're moving right along.

The purpose of the beta is to test out the environment and find the issues with the software in its conversion, as well as the usability of the product itself. Once we receive all of the data, we plan on starting to roll out to the business units in March, and we hope to complete deployment within a 12 month window.

MR. LOCKHART: John, you might want to talk a little bit about - I know you're trying to get the image of it up on the screen, but while they're doing that, you might want to talk a little bit about the related - well, I'll tell you what, your next slide is on VOIP, so on the bandwidth thing, maybe you'll wait until you get
there, but at some point we'd like to hear about
the bandwidth.

MR. OWENS: I was just going to show you
the laptop here real quick, if we can switch to
the camera on the side. Well, why don't we
continue to the next slide then since—okay. Too
late, almost there. If you can adjust that a
little bit.

It is a Windows laptop. We purchased
them. The trademark software, though, you can't
see the desktop, is on the desktop. I think
there's a small issue right now with getting trade
ups, as well as Madrid through testing, but that
is continuing. So we are very, very, very close.

If you pan out to the right, please, the
rest of the desktop system is there. There's two
extra monitors. The docking station is behind the
laptop, you can't see it. There's a high
resolution HD camera, of course, speakers, so
that, as part of this effort, we are investigating
a new software suite of tools for video
collaboration, a separate keyboard and a separate
mouse. If you pan to the left, show them the telephone. This is the new handset, it will be available, of course, and it will replace everyone's phone in the office. It will also be available to the business units that choose to provide them at home.

It is a Cisco voiceover IP phone, which we talked about earlier in the last meeting, which brings us to the bandwidth question. I didn't cover it in the presentation explicitly, but going from 300 megabits per second to three gigabits per second is ongoing.

That effort is through the networks contract provided by GSA. In support of all agencies, it is an OMB mandate that every one of the federal government move to that managed internet protocol connectivity through that contract by the end of next year. And we are working with GSA, our orders are already in for the three gigabits per second.

That will cover all of the new bandwidth necessary for the roll out of the collaboration.
tools and the software for the laptop system, et cetera. And, of course, the plan, depending on funding, of course, is still to expand that to six gigabits the following year, which is more than many ISP's have. So we are definitely playing in a different ballpark.

The phone itself, the infrastructure is rolling out in October, so right now - and it started in October, it's rolling out now, and the employee equipment rollout is scheduled at the same time, this is for the phone, that the laptop is rolling out, because we didn't want to impact our customers, our examiners in particular, more than once.

So they will very much on the same day get a new laptop, new docking station, they will more than likely keep the monitors they have, they may need a new printer or scanner depending on compatibility, they'll get a new camera, new keyboard, new mouse, there's a copy of options for carry bags, we have three options for carrying bags, and, of course, the new phone, and a video
collaboration tool, starting in March, a completely new set up, all modern. Okay, I'm happy to take some questions.

CHAIRMAN FARMER: Thanks, John. I do have one question. I thought with the VOIP issue, there was not only an issue with the equipment that the end users are using, but there was an overall PTO bandwidth issue; am I mistaken about that?

MR. OWENS: No, that's why I brought up, as Tim brought up, the answer to the bandwidth problem, which is, it's not on any of the slides, I talked about it just a second ago, we are ordering that bandwidth, that bandwidth is ordered, so --

CHAIRMAN FARMER: And I apologize if I zoned out, when do you expect the new bandwidth to be in place?

MR. OWENS: In time for the rollout of the laptop, sir, in a schedule. So not an issue.

CHAIRMAN FARMER: Thank you. Mary.

MS. DENISON: I'm not sure I understood
this, so I apologize if I'm confused. The TDR, when it shifts into the cloud, you I think responded to Elizabeth that it would not have the assignment database. Will the old TDR – that currently has a link, so will that be gone, because if so, that will be a worse system for the user than what we have now.

MR. LOCKHART: Are you referring to the link that, you know, when you go into TESS, than you switch to TARR, there's a link to the assignment database.

MS. DENISON: Right.

MR. LOCKHART: That's not going away.

MR. OWENS: No, that should not be going away.

MS. DENISON: Okay, I just wanted to make sure, okay.

MR. OWENS: What we want to do is, we want to hide in the future, we want to hide the various databases behind a single - a series of services, and those services would make the exposure of the data seamless to one interface.
So even though it's coming from multiple places on our side, through a series of services, we can obfuscate that and provide you one clean interface. So the request of adding the assignments data is certainly doable, you wouldn't notice. Suddenly you would get the data, or you'd get the option to retrieve the data.

But we're doing evolutionary work right now, but we're going to start doing iterative work very soon as part of the agile method, we're doing 2.0, TDR 2.0 now, we're already planning and working on 2.1, we're also planning 2.2, and that's the way it goes, right.

MS. DENISON: So is TASS going cloud also? I was confused I think, because you now go into TASS and you can do TDR or you can do the assignment database, because that's how people generally look at things if they're --

MR. LOCKHART: But you have to hit the link, it's not in the same database.

MS. DENISON: Right, but that still will be available and TESS won't be on the cloud, it's
just the TDR that'll be on the cloud?

MR. OWENS: TDR was first, yes.

MS. DENISON: TESS will eventually be on the cloud?

MR. OWENS: We hope to build the whole new system in a clouded environment.

MR. LOCKHART: Because I think the ultimate goal, and somebody correct me if I'm misspeaking, but the ultimate goal is that somebody in the trademark community would be able to go to one database and you get everything that's now in TESS, TARR, TDR, and assignments, one place.

MR. OWENS: Yes, one user interface that would be smart enough to know what services to make the request from, and there may be 30 services behind it, but it would be one interface for you, and delivery would be seamless and uniform. So if you wanted that information, as you saw, you could check different boxes of the information you wanted, and you want to dump it let's say into a file for your records in a PDF,
which you saw demonstrated, if there was other
data types available there, you would just check
those, hit drop it into a PDF or drop it into a
zip file or whatever you desired, and we'd deliver
it to you, and that's the beauty of the system.

We don't have to radically change the
environment, nor do we have to radically change
the back end infrastructure to add those pieces of
functionality for you.

MR. LOCKHART: Or to put it in I guess a
very short way, the idea, if I understand, is to
consolidate all the data and make the delivery of
the data transparent to the user so the user
doesn't have to worry about was it filed as a PDF,
as a JPEG, as a video, just give me the data and
you get it.

MR. OWENS: Yes.

CHAIRMAN FARMER: Bob, do you have any
questions?

MR. ANDERSON: No.

CHAIRMAN FARMER: Are there any others
from any TPAC members? Anyone in the audience?
John, thank you.

MR. OWENS: Thank you, and I hope you have a good afternoon.

MR. LOCKHART: Can we talk about CAPTCHA?

CHAIRMAN FARMER: Sure, go ahead, that's true, I forgot we put it on public record.

MR. OWENS: I'm sorry. The attacks that we were seeing on our site as related to trademarks have dropped. We did work to get ready to put in CAPTCHA when necessary, but because those seem to have subsided, and we are prepared to put in CAPTCHA if necessary, and we didn't want our constituency to have to suffer through using CAPTCHA unless it was necessary to protect the agency, we have decided to put that on hold until the need arises.

CHAIRMAN FARMER: The other thing that Lynne reminded me is that we've talked about assignments a good bit, but I'm not sure if we hit specifically on trying to get away from using fax to communicate assignment instead, and instead, I
thing going to email. Did we hit that, Tim?

MR. LOCKHART: Yes, Gary Cannon addressed that earlier.

COMMISSIONER BERESFORD: I didn't know if this is an OCIO issue, I didn't know whether John had any comments on it.

MR. LOCKHART: Yes, I'm not sure you were in the room.

MR. OWENS: As far as I know, we've been working with Gary, who met with my team and worked it out. There's a couple of questions that need to be answered, one of them I believe is legal, Gary, you can correct me if I'm wrong. And we can prioritize that along with the rest of the list. Again, we take priority from trademarks on what needs to be done and when. But we're working through the issue, as far as I know.

MR. LOCKHART: Yes, I think, and again, you may not have been in the room at the time, but we, the TPAC, would like to hear on that issue is, by the next TPAC meeting, if we could get some clarity about are there any legal issues or
1 practical issues that would preclude providing to
2 the trademark community notice of recordation of
3 assignment by email, and then when would it be
4 possible for the trademark community to actually
5 view the assignment document, you know, the
6 underlying assignment itself, as opposed to the
7 PTO's notice of recordation and the record title
8 regarding the trademark assignment or the
9 trademark application or registration?
10
11 MR. OWENS: I'll be happy to continue
12 supporting Gary in that research and defining that
13 product that he would like to see and those
14 requirements. And, of course, once those are
15 available and prioritized, we'll be happy to work
16 on it.
17
18 CHAIRMAN FARMER: Is there anything else
19 for John? John, thank you.
20
21 MR. OWENS: You all have a good
22 afternoon, thank you.
23
24 CHAIRMAN FARMER: That takes us through
25 that part of our agenda. Now is the public forum
26 and public square time. Did anyone on TPAC,
Howard, have any comments that they wanted to make?

MR. FRIEDMAN: Yes, I'll sort of pile on, but in a good way, to go full circle from the meeting. I just wanted to add in my brief comments regarding folks that are or may be departing. First for Bob, I'm going to assume that you're still going to be around, but if for some reason you're not renominated, obviously we go back a few years when it came to labor management matters, and I really appreciate now being on the same side, really appreciate being on the same side. And for Elizabeth and Jim, you know, on its most basic level, really on its most basic level, you're just two individuals who bring so much as human beings and you're just very likeable, both of you, and there's a number of things I could say that support why you're so likeable and why you're going to be missed so greatly, whether it's the humor, the kindness, and the list goes on and on.

But I just want to pass on how much I
personally am going to miss both of you. And I can only hope that peace and serenity will be created your way, such that when you're sleeping late at night, you don't get woken up thinking about the items on John Farmer's champion list that you neither completed or he's still going to assign to you, and that is actually a lot of peace and serenity in view of that champion list.

Finally, we did a lot of toasting last night, and rightfully so, to Lynne, the outgoing Commissioner. I would add sort of two penultimate thoughts sitting where I do, as I guess the inside member of TPAC. I think as a Commissioner, and particular this Commissioner, Lynne Beresford, it's the kind of a job, the way Lynne did this kind of job, where we see a lot of things, but there's also a lot of things that never get to TPAC and never get to me, and all I can say is, on behalf of myself and on behalf of TPAC, I'm sure, assuming I'm not taking any liberties, thank you. You have to be a filter, and obviously we see a lot of things, but there's also a lot of things we
And that leads to part two, which is, in that job, the job that Lynne had, you have to wear a lot of hats, you have to communicator, you have to be a negotiator, you have to be a politician, you have to be deft, you have to have tremendous business acumen, and these are all skills that Lynne has.

You also have to deal with people above you, people to the side of you, people below you, you actually even at times have to deal with that rogue outfit known as TPAC and NTU 245, but we appreciate no matter what hats you've worn and who you've dealt with, that you've run a great ship, we appreciate all that you've done for the trademark examining attorneys. I, on a very basic personal level, appreciate all that you've done for me. And I only wish you the best as you pile on future memories, future points in bridge, future memories with your children, and future photos with all your travels, the best of luck.

COMMISSIONER BERESFORD: Thank you,
Howard.

CHAIRMAN FARMER: Great words, Howard.

Any other comments, questions, things that members of our visiting audience want to bring up? Well, in that case, we're done, thanks. Would all the TPAC members kind of huddle together, because I think James Conley is going to put us through the picture drill.

COMMISSIONER BERESFORD: We have a photographer coming.

CHAIRMAN FARMER: Right, but he is always our shepherd. Let's do a little brief lunch break. And then after about a 30-minute lunch break, I'm sure we'll all be in the cafeteria, we'll reassemble here for a little quick executive session.

(Whereupon, at 12:44 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

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