Introduction & Welcome by TPAC Chair

Bill Barber
Chair, Trademark Public Advisory Committee
Opening Remarks

Laura Peter
Deputy Under Secretary and Deputy Director
Operational news and updates

Commissioner for Trademarks
Mary Boney Denison
November 1, 2019

Images used in this presentation are for educational purposes only.
New application filing projections

- FY 2016: 530,270 classes filed
- FY 2017: 594,107 classes filed
- FY 2018: 638,847 classes filed
- FY 2019: 673,233 classes filed (5.4% increase from FY 2018)
Trademarks organization staffing

- 944 Trademarks employees (7% of USPTO)
- 627 examining attorneys (67% of Trademarks)
- 83% of examining attorneys telework
- FY 2018: hired 61 new examining attorneys
- FY 2019: hired 83 new examining attorneys
- FY 2020: planning to hire 40-50 new examining attorneys
## Trademarks performance: Pendency

<table>
<thead>
<tr>
<th>FY 2019 Trademarks performance measures</th>
<th>FY 2019 targets</th>
<th>FY 2019 September results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First action pendency</strong></td>
<td>2.5 – 3.5</td>
<td>2.6</td>
</tr>
<tr>
<td>First action pendency from date of filing to the first office action in months</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Disposal pendency</strong></td>
<td>12.0</td>
<td>9.3</td>
</tr>
<tr>
<td>Disposal pendency from date of filing to issuance of a notice of allowance, registration, or abandonment – <em>excluding</em> suspended and <em>inter partes</em> proceedings.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Trademarks performance: Quality

<table>
<thead>
<tr>
<th>FY 2019 Trademarks performance measures</th>
<th>FY 2019 targets</th>
<th>FY 2019 September results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First action compliance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-process review evaluation of the statutory bases for which the USPTO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>raises issues and/or refuses marks for registration based on the first</td>
<td></td>
<td></td>
</tr>
<tr>
<td>office action</td>
<td>95.5%</td>
<td>96.4%</td>
</tr>
<tr>
<td><strong>Final action compliance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-process review evaluation of the statutory bases for which the USPTO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>raises issues and/or refuses marks for registration based on the examining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>attorney’s approval or denial of the application</td>
<td>97.0%</td>
<td>97.4%</td>
</tr>
<tr>
<td><strong>Exceptional office action</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Measure indicating the comprehensive quality of the first office action</td>
<td></td>
<td></td>
</tr>
<tr>
<td>search, evidence, writing, and decision making</td>
<td>46.0%</td>
<td>54.5%</td>
</tr>
</tbody>
</table>
Law and policy
Rulemaking: U.S. counsel requirement

• Requires foreign-domiciled trademark applicants, registrants, and parties before the Trademark Trial and Appeal Board to be represented by a U.S.-licensed attorney to file trademark documents with the USPTO
  – Made effective August 3
  – Examination Guide 4-19 issued in September
Rulemaking: U.S. counsel requirement

• Benefits of new rule
  – Ensure effective use of available mechanisms to enforce foreign applicant and registrant compliance with statutory and regulatory requirements
  – Increase confidence that registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims
  – Aid our efforts to improve accuracy of the U.S. trademark register

• Impact on U.S.- licensed attorneys
  – Will be required to enter bar membership information and confirm active member in good standing
  – Owner address required (can be hidden)
  – Beware of foreign solicitations – persons located internationally offering to pay to use your bar information to circumvent the rule
Rulemaking: Mandatory electronic filing

• Implementation scheduled for December 21
• Mandatory use of TEAS for all trademark filings with the USPTO except in cases of:
  – International agreements requiring acceptance of paper submissions from certain countries
  – Specimens for scent, flavor, or other non-traditional marks
  – Postal service interruptions or emergencies
• Petition process for requesting acceptance of paper submissions under limited circumstances
Initiatives
Improper behavior

- Submitting fake or altered specimens
- Submitting false claims of use in U.S. commerce
- Using unauthorized practitioners
- Making unauthorized address changes
- Misleading solicitations
- Trying to circumvent U.S. counsel rule
- Forged Signatures
Addressing improper behavior

• Proof of use audit program
  – The USPTO began a pilot program in 2012 and made it permanent in 2017, giving the USPTO the authority to cancel audited registrations with unsubstantiated use claims or to delete unsupported goods and services

• Excluded unauthorized foreign practitioners
  – The commissioner has excluded specific foreign practitioners from appearing before the USPTO

• Proof of actual use in examination
  – Updated examination guidance to require examiners to refuse mocked-up and fake specimens and to use the 37 CFR §2.61(b) request for information authority to request evidence of use in commerce
Addressing improper behavior

• Improved readability of declaration
  – The declaration was reformatted to make it more readable and to make the signer acknowledge the required statements by checking a box next to each one, thereby increasing the likelihood that the signer will read the declaration and appreciate the significance of swearing to use for each and every good or service listed

• Expedited cancellation pilot for non-use or abandonment claims
  – Implemented TTAB pilot program for cases raising non-use or abandonment claims to identify the types of procedures needed to accelerate disposition of those claims; considering whether to make permanent

• Issued U.S. counsel final rulemaking
  – Requires foreign-domiciled trademark applicants, registrants and parties before the Trademark Trial and Appeal Board to be represented by a U.S.-licensed attorney to file trademark documents with the USPTO. Made effective August 3. Examination Guide 4-19 issued in September
Addressing improper behavior

• Specimen database
  – Developing specimen database to enable examining attorneys to see highly similar specimens used by multiple applicants. Expected by the second quarter of FY 2020

• Login
  – To prevent unauthorized changes, USPTO will be implementing a login system requirement for all filings in three phases. First phase rolled out on October 26
Addressing improper behavior

• Suspicious addresses
  – Some foreign-domiciled applicants are providing U.S. addresses to establish U.S. domicile and circumvent the requirement for U.S. counsel. The addresses are typically associated with “mail drops” or are virtual office mailing addresses; others are simply residential mailing addresses used by numerous parties
  – We are developing processes for identifying these addresses so that we may flag relevant applications and other submissions before they are assigned for examination

• Improperly signed submissions
  – We have identified applications that include the name, information, and signatures of U.S. attorneys who did not sign or otherwise consent to be designated in applications
  – We have also identified what appear to be fictitious attorney names in some records
  – If an attorney’s information and/or signature has been misused, we work with the attorney to correct the record. Improper signatures and attorney designations will be handled through the examination process or, when appropriate, through the issuance of show-cause orders to the relevant parties
Special task force

• Developed in response to the significant increase in unauthorized and improper activities in connection with trademark filings

• Goals include:
  – Developing and implementing policies, procedures, and technology solutions to effectively address fake/altered specimens, false claims, unauthorized TEAS submissions, and other efforts to circumvent the rules of practice in trademark cases

• Continue to monitor and analyze suspicious specimen filing activities
Unauthorized changes

- Unauthorized parties have filed forms through TEAS making changes to trademark records
- This affects a very small number of total applications and registrations
- The USPTO intercepts the vast majority of unauthorized changes
- We created a webpage where customers can get information on steps to take if impacted (search “unauthorized changes” on www.uspto.gov)
- MyUSPTO login was required for TEAS forms starting on October 26
Action plan

• Short-term solutions
  – Assigned full-time staff to monitor this issue and contact affected customers
  – Created a webpage (search “unauthorized changes” on www.uspto.gov)

• Long-term solutions
  – TEAS log in with authentication and authorization (customized COTS product)
    • Phase 1 Mandatory Login implemented on October 26
Phase 1: fall 2019

• Use an existing uspto.gov account or sign up for a new one at my.uspto.gov

• Log in through my.uspto.gov or click on the TEAS form you want to use and you will be prompted to log in

• Once logged in, file as usual through TEAS

• Mandatory login implemented on October 26
Phase 1: fall 2019

- MyUSPTO has four ways to provide two-step authentication:
  - Email
    - A six-digit code will be sent to the primary email address associated with your uspto.gov account by default. If the code is not used within 20 minutes, it will no longer be active and a new code will need to be requested
  - Authentication app
    - A six-digit code will be generated by an authenticator app
    - In order to be used, the application will need to be installed and configured on your device
  - Phone call
    - A six-digit code will be generated and a phone call made to the verified number on your account. You must verify and enable the number through your account page
  - Text message
    - Text messaging became an option on October 26
Phase 2: Q2 FY 2020

• Current and new uspto.gov account holders will verify their identity
• Identity proofing prevents “impostor” accounts
Phase 3: summer 2020

- Customers will be able to create roles and delegate authority to other accounts
  - Attorneys may authorize multiple staff accounts to access and edit filings
  - Customers may restrict any unauthorized users from making changes to an application or registration
Specimen protest pilot program

- Streamlined process for public to report improper specimens
- Email submissions should include either:
  - Objective evidence of third-party use of images identical to the specimen of record
  - Registration or serial numbers showing identical specimens bearing different marks
- Effective immediately, to align with new Exam Guide 3-19 on examining digitally created or altered and mockup specimens, protests will be granted when any specimen of record raises concerns about actual use in commerce.
- Additional submission guidelines and details on the process are on our website under “Recent postings”
- Send submissions to TMSpecimenProtest@uspto.gov
Decluttering initiative: proof-of-use audit program

- Permanent program launched November 1, 2017
- The program improves the integrity of the trademark register
  - Allows us to cancel audited registrations with unsubstantiated use claims or remove unsupported goods and services from others
- Your registration may be audited if you meet both requirements:
  - You filed a Section 8 or 71 declaration of use
  - Your registration includes at least one class with four or more goods or services, or at least two classes with two or more goods or services.
- If audited, we will require submission of proof of use for additional goods/services in registration to ensure that register accurately reflects marks that are in use in the United States for all goods/services identified in registrations
- [uspto.gov/trademarks-maintaining-trademark-registration/post-registration-audit-program](uspto.gov/trademarks-maintaining-trademark-registration/post-registration-audit-program)
Proof-of-use audit program results so far
November 2017 – October 1, 2019

• 7,613 first actions issued by examiners on project
• 3,723 responses received
• 48.6 percent of registrations with response deleted at least some goods or services
• 62 percent of registrations either filed a response deleting goods or services, or were cancelled
• 79 percent of respondents represented by an attorney
• 21 percent of respondents pro se
Misleading solicitations

- **Collaboration: Working with stakeholders to find solutions**
  - Informal interagency working group on combatting fraudulent solicitations
  - 2017 roundtable with TPAC and numerous bar groups and government agencies
  - TM5 project co-led by the European Union Intellectual Property Office (EUIPO) and the USPTO

- **Education: Warning applicants and registrants at key stages**
  - Warnings on application filing receipts, office action cover emails, and paper notices mailed with each trademark registrations
  - Examples of notices and video explanation on our webpage “Caution: Misleading notices”

- **Prosecution: Working with Department of Justice (DOJ) on criminal prosecutions**
  - 2017: Two men pled guilty to stealing $1.66 million from U.S. trademark applicants and registrants; third man was convicted
  - 2018: We sent two attorneys to work with DOJ and USPIS on criminal investigations and possible prosecutions
  - 2019: We extended the USPTO’s attorneys’ work with DOJ/USPIS for another year
Efforts to enhance customer experience

• Bringing the customer to the center of all we do
  – Asked customers to sign up to provide feedback as we make CX improvements. Will continually build this customer list to gather perspectives across all customer segments
  – Incorporated customer experience briefings into new employee onboarding

• Measure and track customer metrics, engagement, and insights
  – Established the first-ever persistent, long-term survey to measure customer sentiment on application prosecution of office actions
  – Built partnership between customer experience and business intelligence teams to leverage both operational data and customer data sets. This will enrich the data we have and help us see measurable results of our customer experience efforts over time
Efforts to enhance customer experience

- Make every customer touchpoint consistent, clear, and intuitive
  - Added two website communication strategists and two plain language writers this year. With their specialized expertise, we are providing information that is easy to find, understand, and use.
  - Operated a plain language working group whose membership includes writers and attorneys. Conducted business unit-wide training, developed policy, and are incorporating plain language principles into all of our customer-facing communications. This year, offered in-person plain language training to the entire workforce.

- Work together to amplify impact on customer experience efforts
  - Drove a customer-centric culture beyond our business unit and across the USPTO. We provided customer experience briefings to OCIO and OCFO at all hands meetings.
  - Established a strong relationship with the Patents customer experience office as it stood up this year. Collaborated to ensure that overlapping areas of customer experience infrastructure are aligned.
Redesigned TM landing page
My.USPTO.gov

- **Trademark docket**
  - Share collections in dockets with other MyUSPTO users

- **Trademark form finder widget**
  - Widget identifies forms using plain language rather than current form names
  - Includes a search box to search the form names

- **Next widget: Trademark Electronic Application System (TEAS) plus short form**
  - Initial scope: intent-to-use (ITU) word marks, TEAS plus fee basis
  - Status: Testing ongoing using production data; release to the public Q1 FY 2020
USPTO TM Status App

- Available on Apple App Store and Google Play
- Search application and registration numbers
- Notifications of selected status changes
- Reflects updated status changes within minutes
- Share, bookmark, or create notebooks for saving information
- No account necessary

Apple Google
International
• Comprised of the 5 largest trademark offices:
  – China National Intellectual Property Administration (CNIPA)
  – European Union Intellectual Property Office (EUIPO)
  – Japan Patent Office (JPO)
  – Korean Intellectual Property Office (KIPO)
  – USPTO
• Focuses on exchange of information and collaboration and harmonization projects regarding trademark matters to benefit users

• Projects include, among others:
  – Combatting bad faith filings
  – Common status descriptors
  – ID list
  – Non-traditional marks
  – Image searching
  – Anti-counterfeiting
  – Misleading (fraudulent) solicitations
IP attachés around the world
Feedback

• We want to hear from you!
• Email TMFeedback@uspto.gov for general suggestions
• Other Trademarks contact information can be found on our website at:
  – uspto.gov/trademark/contact-trademarks/other-trademark-contact-information
Thank you!

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Office of Policy and International Affairs update

Shira Perlmutter
November 1, 2019
Updates

- Presidential memorandum on combatting trafficking in counterfeit and pirated goods
  - Interagency Report submitted to White House on October 30
  - 89 comments received in response to Federal Register Notice
- Developments in China on bad faith applications
  - New trademark law, Nov. 1, 2019
  - New final measures, Dec. 1, 2019
- World Intellectual Property Organization (WIPO)
  - Standing Committee on Trademarks, Industrial Designs and Geographical Indications (SCT)
Trademark Public Advisory Committee Quarterly Meeting
Legislative/Governmental Affairs Update
Branden Ritchie
Kim Alton
Office of Government Affairs and Oversight
October 31, 2019
The 116th Congress

• USPTO-related hearings
  o Senate Judiciary Committee’s Subcommittee on Intellectual Property, “Promoting the Useful Arts: How can Congress prevent the issuance of poor quality patents?” (October 30, 2019)
Legislative activity
116th Congress

Hot issues in Congress related to trademarks
• Trademark filings with inaccurate / fraudulent use claims
  • Roundtable on October 22, 2019
  • Draft legislation
• Irreparable harm
• Anti-counterfeiting efforts by the U.S. government
• Trademark Licensing Protection Act of 2019 (S. 2439/H.R. 4164) (Franchisor / franchisee relationship)
• FLAG Act
• Brunetti update

USPTO is aggressively monitoring these efforts
Legislative activity
116th Congress

Federal Budget FY2020: Operating under a Continuing Resolution (CR) until November 21 for FY2020 (P.L. 116-37)

- Appropriations bills provide $3.45 billion for the Patent and Trademark Office (H.R. 3055/S. 2584)
- CR currently provides FY2019 levels

USPTO’s legislative priorities
- Trademark legislative package
- Continuity of service issues
- IP attachés
THANK YOU

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Branden.Ritchie@USPTO.GOV
USPTO budget update

Sean Mildrew
November 1, 2019
Agenda

• FY 2019 summary
• FY 2020 status
• FY 2021 budget
• Fee setting
FY 2019 summary

- USPTO collected $343.9M in Trademark fees in FY 2019
- Fee collections are $4.1M in excess of the FY 2019 spending authority. The fees have been deposited in the Patent and Trademark Fee Reserve Fund (PTFRF)

<table>
<thead>
<tr>
<th></th>
<th>Trademarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total USPTO Fee Collections</td>
<td>$345,219,285</td>
</tr>
<tr>
<td>Actual Fee Collections</td>
<td>$343,901,439</td>
</tr>
<tr>
<td>Adjustment to Revenue (Year-End Timing Differences)</td>
<td>1,317,846</td>
</tr>
<tr>
<td>Appropriated Fee Level (Spending Authority)</td>
<td>$341,150,475</td>
</tr>
<tr>
<td>Resources in Excess of Current Spending Authority (PTFRF)</td>
<td>$4,068,810</td>
</tr>
</tbody>
</table>
FY 2019 summary, cont.

- Based on the appropriated fee level, FY 2019 ended the year with a $126.6M Trademark operating reserve level

<table>
<thead>
<tr>
<th>Trademarks</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriated Fee Level (Spending Authority)</td>
<td>$341,150,475</td>
</tr>
<tr>
<td>Actual Prior Year Operating Reserve</td>
<td>135,295,784</td>
</tr>
<tr>
<td>Actual Other Income</td>
<td>4,829,924</td>
</tr>
<tr>
<td>OIG Transfer</td>
<td>-149,104</td>
</tr>
<tr>
<td><strong>Total End-of-Year Available Income</strong></td>
<td>481,127,079</td>
</tr>
<tr>
<td><strong>Total End-of-Year Spending</strong></td>
<td>354,517,994</td>
</tr>
<tr>
<td><strong>EOY Operating Reserve</strong></td>
<td>126,609,085</td>
</tr>
<tr>
<td><strong>Resources in Excess of Current Spending Authority (PTFRF)</strong></td>
<td>4,068,810</td>
</tr>
<tr>
<td><strong>EOY Operating Reserve including funds deposited in the PTFRF</strong></td>
<td>$130,677,895</td>
</tr>
</tbody>
</table>
FY 2019 summary: fees

- Trademark fee collections were:
  - 0.8% above the FY 2019 appropriated level of $341.1M
  - 1.0%, or $3.3M, above the FY 2019 planned collection amount of $340.6M
  - 4.5% greater than total collections in FY 2018

<table>
<thead>
<tr>
<th>FY 2019 Trademark fee levels (dollars in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appropriated Level (October 2018)</strong></td>
</tr>
<tr>
<td>$341,150</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Trademarks collections (dollars in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2017</strong></td>
</tr>
<tr>
<td>$305,033</td>
</tr>
</tbody>
</table>
FY 2020 status

• The current Continuing Resolution (CR) is through November 21, 2019
  – The USPTO is held to an adjusted spending level calculated off of $3.37B (plus carryover and other income)
FY 2021 budget

• USPTO submitted its FY 2021 OMB Budget on September 9, 2019

• The FY 2021 President’s Budget will be released and available to the public in February 2020
  – TPAC will receive a draft copy of the budget to review in advance of the submission
Fee setting

- The comment period on the proposed Trademark fee proposals closed on September 30, 2019.
- USPTO will begin the process of drafting a notice of proposed rulemaking (NPRM) to set and adjust trademark-related fees with the benefit of the TPAC Fee Setting Report.
- The Agency expects to have the NPRM published in the Federal Register for public comments in spring 2020.
Thank you!

Sean Mildrew

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<table>
<thead>
<tr>
<th>TYPE OF FILING</th>
<th>FY 2018 EOY results</th>
<th>FY 2019 actual, target or projected</th>
<th>FY 2019 EOY results</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notices of Appeal</td>
<td>3,223</td>
<td>3,333</td>
<td>+3.4%</td>
<td></td>
</tr>
<tr>
<td>Extensions of Time to Oppose</td>
<td>19,208</td>
<td>20,502</td>
<td>+6.7%</td>
<td></td>
</tr>
<tr>
<td>Notices of Opposition</td>
<td>6,496</td>
<td>6,955</td>
<td>+7.1%</td>
<td></td>
</tr>
<tr>
<td>Petitions to Cancel</td>
<td>2,253</td>
<td>2,426</td>
<td>+7.7%</td>
<td></td>
</tr>
</tbody>
</table>
## Trends in new filings

<table>
<thead>
<tr>
<th>Type of filing</th>
<th>FY16 (% +/- FY15)</th>
<th>FY17 (% +/- FY16)</th>
<th>FY18 (% +/- FY17)</th>
<th>By Quarters in FY19</th>
<th>FY19 (% +/- FY18)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appeals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3,121 (+4.3%)</td>
<td>3,158 (+1.2%)</td>
<td>3,223 (+2%)</td>
<td>866; 747; 871; 849</td>
<td>3,333 (+3.4%)</td>
</tr>
<tr>
<td><strong>Extensions of time to oppose</strong></td>
<td>19,055 (+11.2%)</td>
<td>18,490 (-3%)</td>
<td>19,208 (+3.9%)</td>
<td>4,672; 4,673; 5,564; 5,593</td>
<td>20,502 (+6.7%)</td>
</tr>
<tr>
<td><strong>Oppositions</strong></td>
<td>5,881 (+11.2%)</td>
<td>6,156 (+4.7%)</td>
<td>6,496 (+5.5%)</td>
<td>1,599; 1,632; 1,780; 1,944</td>
<td>6,955 (+7.1%)</td>
</tr>
<tr>
<td><strong>Cancellations</strong></td>
<td>1,848 (+4.8%)</td>
<td>2,101 (+13.7%)</td>
<td>2,253 (+7.2%)</td>
<td>565; 599; 609; 653</td>
<td>2,426 (+7.7%)</td>
</tr>
</tbody>
</table>
Cumulative 3 year increases

- Ex Parte Appeals: Up 6.8%
- Extensions to Oppose: Up 7.6%
- Oppositions: Up 18.3%
- Petitions to Cancel: Up 31.3%
Trends – cases ready for decision

<table>
<thead>
<tr>
<th>Final decisions on merits appeals and trial cases</th>
<th>FY16 (% +/- FY15)</th>
<th>FY17 (% +/- FY16)</th>
<th>FY18 (% +/- FY17)</th>
<th>By Quarters in FY19</th>
<th>FY19 (% +/- FY18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maturing to RFD (ready for decision) (appeals/trials)</td>
<td>687 (+11.3%) (529/158)</td>
<td>679 (-1.2%) (517/162)</td>
<td>650 (-4.3%) (473/177)</td>
<td>191; 185; 201; 167 (128/63); (126/59); (132/69); (128/39)</td>
<td>744 (+14.5%) (514/230) (8.7%/29.9%)</td>
</tr>
<tr>
<td>Awaiting decision at end of period (appeals/trials)</td>
<td>83 (-25.9%) (56/27)</td>
<td>93 (+12%) (65/28)</td>
<td>130 (+39.8%) (74/56)</td>
<td>197; 213; 267; 206 (131/66); (129/84); (158/109); (123/83)</td>
<td>206 (+58.5%) (123/83)</td>
</tr>
</tbody>
</table>
A trial case heavy docket

- Appeals maturing to RFD Up 8.7%
- Trials maturing to RFD Up 29.9%
- Appeals decided Up 1.6%
- Trials decided Up 41%
- Inventory split (123/83) 40.3 trials%
## FY 2019 TTAB Performance Measures

<table>
<thead>
<tr>
<th>FY 2019 TTAB performance measures</th>
<th>FY 2018 EOY results</th>
<th>FY 2019 Actual, Target or Projected</th>
<th>FY 2019 EOY results</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PENDENCY – Contested motions</strong></td>
<td>9.4 weeks</td>
<td>(targets)</td>
<td>11.5 weeks</td>
<td>above target</td>
</tr>
</tbody>
</table>
| (1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period  
(2) Age of single oldest contested motion ready for decision at end of reporting period | 11.9 weeks         | 8-9 weeks (avg.)                  | 20.1 weeks         | above goal |
<p>| <strong>INVENTORY – Contested motions ready for decision</strong> | 165 | Cases with motions 150-190 (target) | 242 | above target range |
| The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period |  |  |  |  |</p>
<table>
<thead>
<tr>
<th>FY 2019 TTAB performance measures</th>
<th>FY 2018 EOY results</th>
<th>FY 2019 actual, target or projected</th>
<th>FY 2019 EOY results</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PENDENCY – Final decisions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(cancellations, oppositions, ex parte appeals)</td>
<td>Measured from ready for decision date until mailing for final decisions, excluding precedents, in appeals and trial cases during reporting period</td>
<td>8.6 weeks</td>
<td>10-12 weeks (target)</td>
<td>13.4 weeks above target range</td>
</tr>
<tr>
<td><strong>INVENTORY – Cases ready for final decision</strong></td>
<td>Ex parte appeals 74</td>
<td>Total case inventory 130-170 (target)</td>
<td>Ex parte appeals 123</td>
<td>above target range</td>
</tr>
<tr>
<td></td>
<td>Oppositions 33</td>
<td></td>
<td>Oppositions 57</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cancellations 21</td>
<td></td>
<td>Cancellations 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Concurrent Use 2</td>
<td></td>
<td>Concurrent Use 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total: 130</td>
<td></td>
<td>Total: 206</td>
<td></td>
</tr>
</tbody>
</table>
# Trends – Time to decision

<table>
<thead>
<tr>
<th>Final decisions on merits appeals and trial cases</th>
<th>FY16 (% +/- FY15)</th>
<th>FY17 (% +/- FY16)</th>
<th>FY18 (% +/- FY17)</th>
<th>FY19 (% +/- FY18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Pendency of Appeals, RFD to mailing (excluding precedents, possible precedents)</td>
<td>8.8 weeks (-5.4%)</td>
<td>7.0 weeks (-20.5%)</td>
<td>8.3 weeks (+18.6%)</td>
<td>12.7 weeks (+53%)</td>
</tr>
<tr>
<td>Average Pendency of Trials, RFD to mailing (excluding precedents, possible precedents)</td>
<td>10.8 weeks (-3.6%)</td>
<td>10.4 weeks (-3.7%)</td>
<td>9.5 weeks (-8.7%)</td>
<td>15.3 weeks (+61%)</td>
</tr>
<tr>
<td>FY 2019 TTAB performance measures</td>
<td>FY 2018 EOY results</td>
<td>FY 2019 actual, target or projected</td>
<td>FY 2019 EOY results</td>
<td>Variance</td>
</tr>
<tr>
<td>----------------------------------</td>
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</tr>
<tr>
<td><strong>TOTAL PENDENCY</strong>&lt;br&gt;Average total pendency, commencement to completion, excluding precedents</td>
<td>35.8 weeks</td>
<td>40.5 weeks</td>
<td>+13.1%</td>
<td></td>
</tr>
<tr>
<td>Appeals&lt;br&gt;(441 decided FY18; 448 in FY19 - flat)</td>
<td>140.3 weeks</td>
<td>160.6 weeks</td>
<td>+14.5%</td>
<td></td>
</tr>
<tr>
<td>Trial cases&lt;br&gt;(144 decided FY18; 203 in FY19 +41%)</td>
<td>106.3 weeks</td>
<td>126.2 weeks</td>
<td>+18.7%</td>
<td></td>
</tr>
<tr>
<td>ACR trial cases&lt;br&gt;(19 decided FY18; 27 decided in FY19)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2019 TTAB staffing</td>
<td>FY 2018 EOY results</td>
<td>FY 2019 actual, target or projected</td>
<td>As of October 1, 2019</td>
<td>Variance</td>
</tr>
<tr>
<td>------------------------</td>
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</tr>
<tr>
<td><strong>JUDGES and ATTORNEYS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Trademark Judges</td>
<td>22</td>
<td>(actuals) 24</td>
<td>23</td>
<td>Increases planned</td>
</tr>
<tr>
<td>Interlocutory Attorneys</td>
<td>17/1</td>
<td>14/2</td>
<td>14/1</td>
<td></td>
</tr>
</tbody>
</table>
Help is on the Way

- Brought on Deputy Chief Judge in June 2019
- Judges to be hired in Q1 and perhaps again in FY2020
- Interlocutory Attorneys to be hired
- Trademark Examining Attorney on work project
- Trademark Examining Attorney IA detail resumed
- P/T law student intern; F/T law student extern
- Investigating law clerks
Possible goals for FY2020

• Two ATJ goals for finals: 10-12 weeks for appeals; 12-15 weeks for trials
• Two Attorney goals for motions: 8-10 weeks for non-dispositive; 10-12 weeks for dispositive
• Age of motions at end of each quarter: no non-dispositive older than 12 weeks; no dispositive older than 15 weeks
Accomplishments

• ATJs issued 11.3% more final decisions in FY2019
• Inventory of cases RFD down 25% from May
• Five new Interlocutory Attorneys for FY2019 ramping up production
• Issued 38 precedential decisions/orders
• Revised TBMP on schedule
Continuing interest in ACR

- Speed can be realized (though it is not a given)
- Imagine efficiencies ... and agree to them!
- Mutual informal exchanges of documents
- Limitations on discovery
- Broader use of Notices of Reliance
- Summary judgment-style trial
- Stipulations re: facts and authenticity of evidence
- Remember your burden(s) of proof
Another Notable Trend

- Default rates are high in cancellation cases and growing
- 44% in all cancellation cases
- 49% when the case includes abandonment or nonuse claim
- 55% for cases with only nonuse claims
- 60% for cases with only abandonment claims
Cancellation pilot program

- Uncontroversial cases result in default or early settlement.
- For cases involving asserted claims of ongoing use, petitioner wants to investigate or question the claimed use via discovery.
- Discovery is almost always desired when primary issue is excusable nonuse/intent to resume use.
- Pilot to continue through Q1 or Q2.
Input - Standard Protective Order

• Comment period closed June 30, 2019
• Comments mixed on in-house access to AEO material and tiers of confidentiality
• No changes on these major issues.
SPO potential changes

• Entering SPO in record/case history
• Access issues; pro se parties
• Address ambiguity in Sections 3, 5 re: disclosure to experts/consultants
• Presumptive protection for documents made available for inspection
Trademark IT update to TPAC

Rob Harris
Trademark portfolio manager
November 1, 2019
Activity since last TPAC

- U.S. Counsel rule changes became effective August 3
- TEAS login capability was implemented October 26
- Number of Trademark Electronic Application System (TEAS) Plus Short Form Beta testers and submissions has increased
- System updates to support Mandatory Electronic Filing (MEF) changes are in progress (effective December 21)
Activity since last TPAC

- Artificial intelligence solutions for specimen search and image search capabilities are being tested
- Stabilization of trademark and TTAB systems continue including improvements to the Trademark Status and Document Retrieval (TSDR) system
- All trademark and TTAB systems were upgraded to be compatible with Win10; new laptops were deployed to all Trademark and TTAB employees
- Started three Trademark Agile Pilot teams focused on refining the team structure and processes to be used for future efforts
Priorities for Future Success

1. Stabilization
   - Reduce risk of future system outages in infrastructure and legacy systems
   - 25 systems and applications initially targeted based on risk and business criticality
   - Systems Integrator (SI) vendor to upgrade 15 systems; in-house teams will upgrade remaining 10

2. Modernization
   - Improve agility, performance, and stability of Patent and Trademark systems
   - Develop and integrate a portfolio of new features to address business needs and increased demand
   - Drive savings and speed to market through data management, automation and artificial intelligence

3. Governance
   - Optimize speed, quality and cost-effectiveness of IT delivery through operating model refinements
   - Launch Agile at a large scale, starting with small pilot teams, eventually spanning across OCIO
   - Redefine Software Development Life Cycle (SDLC), planning and governance, and IT acquisition processes