

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Monday, June 5, 2023

1 PARTICIPANTS:

2 TPAC Members:

3 DAVID CHO, Chair

4 ADRAEA BROWN, Vice Chair

5 JAY HOFFMAN, CFO

6 RODRICK J. ENNS

7 DONNA GRIFFITHS

8 GERALD ROGERS

9 AMY COTTON

10 DAN VAVONESE

11 GREG DODSON

12 BRIAN ROBERTS

13 MICHELLE PICARD

14 Union Members:

15 JAY BESCH, NTEU 245

16 CATHY FAINT, POPA

17 HAROLD ROSS, NTEU 243

18 USPTO:

19 DAVE GOODER, Commissioner for Trademarks

20 KATHI VIDAL, Undersecretary of Commerce for  
Intellectual Property and Director of USPTO

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JAY HOFFMAN, Chief Financial Officer

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1 PARTICIPANTS (CONT'D):

2 Also Present:

3 ERIK M. PELTON

4 CAROLINE FOX

5 ALLISON STRICKLAND RICKETTS

6 TED DAVIS

7 KEN REIL

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1 P R O C E E D I N G S

2 (1:01 p.m.)

3 MR. CHO: Hello, welcome everyone. My  
4 name is David Cho. I am the Chair of the  
5 Trademark Public Advisory Committee, none as TPAC.  
6 We welcome you to convening this hybrid public  
7 hearing as set forth in the April 27 Federal  
8 Register Notice. The site is 88FR25623. I'm here  
9 to just start off this meeting, and I want to go  
10 over briefly the agenda and logistic points. The  
11 logistics part of what we will be going through.  
12 After my opening remarks and a brief overview, we  
13 will have a video message from Director Kathi  
14 Vidal, she cannot be present in person, but she's  
15 left us this message. After her, we'll hear a  
16 presentation of the proposals from Commissioner  
17 Gooder. He will yield part of his time then to  
18 Jay Hoffman, the CFO for USPTO, who will continue  
19 to give you an overview of the fee proposals.  
20 Afterwards, we will then hear from 6 total  
21 witnesses, one will be remote and the other 5 will  
22 be in person. I will introduce each of the

1 speakers and also go over briefly their time  
2 allotted to them. For the rest of the people  
3 present here virtually, you will all be in  
4 listening mode during the hearing. The public may  
5 ask, and we may answer only clarifying questions  
6 about the proposal. Formal questions should be  
7 submitted through the regulations.gov website.  
8 The fee setting and the dressing section of the  
9 USPTO website, just reminds you, gives detailed  
10 instructions on how to submit comments.

11           So, let me briefly talk about the fee  
12 setting process and the timeline involved.  
13 Speaking about only the fee setting, it is in  
14 itself, a multi-stage process that takes about 2  
15 years to complete, including 2 opportunities for  
16 public engagement. So, we are in that portion  
17 right now -- of the beginning part of the fee  
18 setting, and today's hearing is one of the first  
19 opportunities for public engagement and serves as  
20 the initial public review of the fee proposals.  
21 Written comments on proposed trademark fees will  
22 be accepted until June 12, 2023. So, that's next

1 week. Following the public hearing and the  
2 conclusion of the comment period, TPAC will make a  
3 report with comments, advice, and recommendations  
4 related to the proposed fees. This report will be  
5 made available sometime in July this year. Once  
6 the USPTO receives the report, it will analyze,  
7 consider all comments, advice, and recommendations  
8 before setting or adjusting those proposed fees.  
9 The USPTO will then publish any proposed fee  
10 changes in the federal register through a notice  
11 of proposed rule making, commonly referred to as  
12 NPRM. The NPRM will include the rationale and  
13 purpose for the proposal, including possible  
14 expectations or benefits. Now, assuming the  
15 current pace continues, the NPRM should publish in  
16 the federal register around February to March of  
17 next year. Once published, the public will have a  
18 second opportunity to engage the USPTO and provide  
19 written comments, on the proposal. The USPTO will  
20 then analyze and consider all those comments  
21 before issuing a final rule in September to  
22 October of next year. Congress will then have

1 45-60 days to consider the final rule before its  
2 planned implementation November 2024. So, I'm  
3 just giving you -- just a verbal summary and  
4 timeline that has already been published and that  
5 you can access. I wanted to make sure to provide  
6 that to you according to federal statute, TPAC is  
7 now engaged in convening this hearing for purposes  
8 of evaluating key proposals. That being said, let  
9 me then transition to a message from Director  
10 Vidal.

11 DIRECTOR VIDAL: Good afternoon and  
12 welcome to today's hearing on setting new fees for  
13 our trademark business line. I'm Kathi Vidal,  
14 Undersecretary of Congress for Intellectual  
15 Property, and Director of the USPTO. Thank you so  
16 much to the members of our trademark public  
17 advisory committee, and to all of our attendees,  
18 both in person and online for joining us today.  
19 This hearing is part of our commitment to fiscal  
20 responsibility and our ability to provide the  
21 highest quality, most reliable, and accurate  
22 trademarks registered by any IP office in the

1 world. The American Intellectual Properties  
2 system plays a pivotal role in entrepreneurship  
3 and the perpetual renewal of our nation's economy.  
4 IP ownership spurs the creation of new businesses,  
5 new jobs, and new opportunities, and it improves  
6 the welfare of our citizens and our communities.  
7 The USPTO is committed to helping every  
8 entrepreneur protect and benefit from their  
9 intellectual property. As the stewards of  
10 America's Innovation System, the USPTO is  
11 committed to the financial strength of our  
12 organization that will allow us to serve all of  
13 our customers. Thanks to congress and the  
14 American Invents Act, the USPTO has fee setting  
15 authority through 2026. The USPTO does not take  
16 fee setting authority and Congresses faith in us  
17 lightly. We have been good stewards of that  
18 authority. In fact, on April 17, the AGA notified  
19 me that the USPTO will receive it's twenty-first  
20 consecutive certificate of excellence, in  
21 accountability reporting, CEAR Award, at the  
22 organization's annual awards dinner on Wednesday,

1        May 31. Where we have identified spending that  
2        does not provide the return we believe the country  
3        deserves, we have cut costs. This includes  
4        releasing approximately one million square feet of  
5        office space in or around our Northern Virginia  
6        campus. The decision was a result of a multi-year  
7        study. This will save the office forty million  
8        dollars each year going forward, but we must keep  
9        up with inflation. We must keep up with updating  
10       our legacy IT systems, and exploring IT solutions  
11       to provide higher quality IP and a better customer  
12       experience. With initiatives that will improve  
13       the robustness and reliability of the trademarks  
14       we register. With technologies that enhance  
15       examination efficiencies, so we can continue our  
16       efforts to stabilize and reduce pendency. With  
17       measures that will curb fraud and abuse. We must  
18       continue to attract the best work force in the  
19       country, and provide them with the resources they  
20       need to perform their jobs to the best of their  
21       ability. To preserve a sustainable financial  
22       model, we are surgically targeting fee

1 adjustments, to labor intensive services, so that  
2 our revenues are enough to cover our total costs.  
3 I'm confident that the proposed fee schedule, will  
4 promote greater use of the trademark system by  
5 more people, and It will allow us to better serve  
6 our hundreds of thousands of stakeholders well  
7 into the future. Finally, I would note that the  
8 USPTO reviews our fees on at least a biannual  
9 basis, and proposes adjustments as needed. The  
10 last adjustment to fees took place in early fiscal  
11 year 2021. This current proposal would not take  
12 effect until fiscal year 2025. In a few moments,  
13 you will hear a detailed outline of our proposal.  
14 Our hearing today is the first opportunity to  
15 share your feedback on the proposal. This will be  
16 a comprehensive process and we look forward to  
17 your perspectives, and your comments, as we move  
18 through each step. I value your thoughts and  
19 ideas. Our office is committed to serving you and  
20 all of America's entrepreneurs and businesses with  
21 honor, with the utmost of respect, and with  
22 integrity. Thank you again for your time and

1 participation. We look forward to your input.

2 MR. CHO: We thank Director Vidal's  
3 comments, and at this stage I'll hand it over to  
4 Commissioner Gooder.

5 MR. GOODER: Thanks David. Welcome  
6 everyone to today's hearing for the setting of  
7 future fees for trademark services. This is, and  
8 you've heard the first public step, in engaging  
9 the trademark community, as we work toward changes  
10 that are planned to take place in the Fall of  
11 2024. The hearing -- this hearing is a regular  
12 feature of our normal fee setting process which  
13 has typically taken place on a three year rolling  
14 cycle. Our process is collaborative, and we look  
15 forward to your comments from trademark owners,  
16 from practitioners and the trademark community at  
17 large. You know, after all, everyone who buys and  
18 sells products and services in the US, and that is  
19 pretty much everyone, benefits from a strong US  
20 trademark system. From 50,000 feet the proposals  
21 we are discussing today support a number of key  
22 efforts. On the financial side, in order to

1 maintain the financial health and sustainability,  
2 we must aid -- better align our fees with the  
3 actual cost of the service rendered, and ensure  
4 that our aggregate costs are recovered, so as to  
5 ensure our financial stability. Sounds Simple,  
6 but it's not always that easy. With regard to  
7 trademarks themselves, these proposals are  
8 designed to improve the quality of the services we  
9 provide to trademark owners and practitioners. To  
10 do this, and to ensure that the USPTO is prepared  
11 for the future, we must incentivize the highest  
12 quality applications which help us reduce pendency  
13 and protect the integrity of the trademark  
14 register. I'm a big believer in knowing why  
15 things happen or the way they are going to happen.  
16 So, let's now take a brief look at each of these  
17 areas so you can understand the why of the  
18 particular fees.

19           On the financial aspects, the proposed  
20 fee structure allows us to recoup our costs by the  
21 AIA, as Director Vidal was talking about, and that  
22 speaks in terms of ensuring that our aggregate

1 revenue covers our aggregate costs. But, many of  
2 our fees are more than 10 years old and quite  
3 honestly, they no longer match the cost that it  
4 takes for us to provide these particular services.  
5 In fact, many don't even come close to doing so.  
6 Jay Hoffman, our CFO, seated to my right here,  
7 will delve into the specifics in more detail  
8 shortly. One of the areas that has contributed  
9 greatly to our increased costs, are the efforts we  
10 must now take to protect the integrity of the  
11 trademark register. Active members of the  
12 trademark community have seen many forms of scams  
13 aimed not only at trademark owners, but at the  
14 USPTO itself. The sophistication of these scams  
15 continues to increase month after month, and  
16 without increased resources we cannot expand our  
17 efforts to proactively fight them. Many brand  
18 owners can sympathize with this situation, but  
19 counterfeiting is impacting their business, more  
20 than it ever did. Consequently, they need to  
21 devote more and more resources to protecting their  
22 brand. The trademark register is in exactly the

1 same position. Our trademark registration system  
2 serves businesses and individual entrepreneurs in  
3 many different communities, including many that  
4 would be considered underserved. In fact, roughly  
5 25 percent of all applicants choose to go through  
6 the process without the assistance of counsel.  
7 What's more, 76 percent of all trademark filings  
8 are owned by either individuals or businesses who  
9 own less than 10 filings. So, very much small  
10 business and individuals. To encourage broader  
11 participation in the trademark registration  
12 system, our fee setting strategy has historically  
13 subsidized the application phase of the process,  
14 relying on maintenance and intent to use fees to  
15 make up the difference over time. Recent trends,  
16 however, are undermining that traditional balance,  
17 so while we could have eliminated the subsidy  
18 entirely, we didn't do so for the simple reason  
19 that we want to continue to be able to encourage  
20 filing and subsidize below cost applications.

21 This entails and helps make trademark  
22 filing more accessible and affordable. One of the

1 trends we are watching is this, many of the  
2 applications filed during the pandemic surge of  
3 applications that was filed that we've all been  
4 laboring under, were from foreign nationals,  
5 seeking registrations to allow them access to  
6 online marketplace brand registry programs. Given  
7 that many of these trademark owners, are focused  
8 on short-term sales, as opposed to being brand  
9 builders for long-term. We believe that there's a  
10 risk that a higher than normal proportion of these  
11 registrations are unlikely to renew at a rate that  
12 will cover the examination costs as they have in  
13 the past. And, finally, our fee proposal helps  
14 the trademark side of the agency recover the  
15 aggregate costs necessary to pay its share of the  
16 cost of the overall mission and strategic goals of  
17 the USPTO. On the operations side, as our  
18 inventory of unexamined applications mushroomed  
19 during the pandemic, a number of issues became  
20 clear to us. Most notably, we know that the  
21 higher the quality of the applications coming into  
22 our office, the faster we can process it.

1 According to our fee structure, that we are  
2 proposing, benefits applicants that submit higher  
3 quality applications. For example, when we  
4 receive applications with missing information or  
5 excessively long descriptions of goods and  
6 services, it takes more time and work to examine  
7 them. If an applicant wants to submit a freeform  
8 description of goods and services, this takes us  
9 more time to review, and so an additional fee  
10 applies to account for some of those added costs.  
11 This suggests the same way that TEAS standard  
12 application form works today. What is new,  
13 though, is that there will now be a charge if the  
14 applicant's free form ID, exceeds a set limit. We  
15 set that limit so that 90 percent of the current  
16 freeform IDs, do not incur the new charge. Why  
17 did we do this, well unfortunately this has become  
18 necessary because in the trademark -- many in the  
19 trademark community are submitting identifications  
20 of goods and services that run into the thousands  
21 of characters. In fact, one application in  
22 particular filed by an attorney, contained an

1 identification of goods that ran to more than 4  
2 pages long, and it took a very experienced  
3 examiner, more than 5 times the usual amount of  
4 time it takes to examine that application, and  
5 that kind of application isn't unusual.  
6 Consequently, while an applicant can still submit  
7 a lengthy idea, they simply must pay their fair  
8 share for the cost of handling one that exceeds  
9 the limit and that they can't inflict that excess  
10 burden on the larger pool of trademark applicants  
11 who help us achieve the goal of higher quality  
12 applications.

13           To further aid the process of submitting  
14 more complete applications, and being able to so  
15 more efficiently, we will be launching later this  
16 year a new e-filing platform. The new system --  
17 the new interface is based on extensive feedback  
18 from our users as well as our own research in the  
19 trademark filing systems from other countries.  
20 The new fee structure interfaces with the new  
21 e-file system, so that the applicant basically  
22 builds their application from the ground up and as

1 they do so, e-file will tell them exactly what's  
2 impacting the fees that they would pay, if they  
3 make certain choices. So, they can see in real  
4 time how they can save money. The proposal fee  
5 structure allows us to accelerate efforts to  
6 decrease pendency. Indeed, for the last couple of  
7 years, our pendency has been higher than usual. I  
8 don't need to tell anybody who is in the room or  
9 listening in about that. We know that that  
10 situation has strained all of you, as it has  
11 strained us as well in our resources. Reducing  
12 pendency requires us to invest in tools and  
13 examination capacity to mentor with the incoming  
14 volume. The proposed fee structure provides  
15 important funding to finance work that is intended  
16 to reduce pendency, while still maintaining  
17 consistently high quality. These are things that  
18 include hiring more examining attorneys,  
19 developing additional tools to help our examiners  
20 and support staff to do their work, more  
21 efficiently and improving process efficiencies. A  
22 few minutes ago, I mentioned the increasing

1 challenges we face, protecting our valuable  
2 trademark register. Our fee structure allows us  
3 to increase our capacity, to more proactively  
4 protect the register, especially as threats are  
5 now more than ever, coming from outside our own  
6 borders. But, to be sure, we haven't been sitting  
7 around for additional -- we haven't been waiting  
8 around for additional funds, excuse me, to address  
9 the problem in fact, we've already hired now a  
10 Director of Trademark Protection to lead the work  
11 in this area, we've implemented new tools to  
12 challenge issue registrations for false claims of  
13 use, and issued sanctions in thousands of cases  
14 where the parties have violated either PTO rules  
15 or the rules of practice. But, as every brand  
16 owner is acutely aware, infringing on trademark  
17 abuse is a growing problem and there's much more  
18 work that we must do. We are in the process of  
19 increasing our capacity to review suspicious  
20 filings, sanction bad actors, shut off USPTO.gov  
21 accounts when necessary, and challenge  
22 registrations for non-use. The fee structure

1 we've proposed would not only allow us to continue  
2 this work that we're doing currently, but also to  
3 take an increasingly proactive approach to  
4 protecting the register.

5           The proposal we put forth is intended to  
6 meet the needs of the trademark community. We  
7 want to hear from you, we want to know what you  
8 think, what we can do to improve it, change it,  
9 etc. As I said, at the start of my remarks,  
10 today's hearing is a just the first opportunity to  
11 do -- for you to offer feedback on the proposal,  
12 but it won't be the last. We'll analyze your  
13 suggestions and ideas, and then prepare a notice  
14 of proposed rulemaking, which is the next step  
15 that you all will see. Then, there will be  
16 another opportunity to make additional comments.  
17 I want to thank you coming today, and thank you  
18 for being engaged in this process. The trademark  
19 registration is the cornerstone of the US  
20 Trademark ecosystem, and we look forward to  
21 hearing your feedback so we can ensure that our  
22 system is as valuable to future generations as it

1 is to those today. At this point, I'll turn the  
2 microphone over to Jay Hoffman, our CFO.

3 MR. HOFFMAN: Great. Thank you,  
4 Commissioner Gooder for kicking us off with that  
5 great overview of the work you and your team are  
6 doing for our trademark community. I am Jay  
7 Hoffman, I'm the USPTO Chief Financial Officer.  
8 The USPTO recently completed a comprehensive  
9 contract fee review and concluded that we must  
10 adjust fees to increase aggregate revenue to  
11 recover aggregate costs. I'd like to thank the  
12 many people, who diligently and thoughtfully  
13 formulated the proposals I'm about to go through.  
14 Members of our trademark business unit, as well  
15 as, members of my team and the office of the CFO,  
16 some are here with us today, and some are watching  
17 virtually. I speak for them when I say we  
18 appreciate your time and your feedback. Both will  
19 help us shape a proposal that hopefully will  
20 ultimately benefits American businesses and  
21 entrepreneurs. Before I talk through each of the  
22 proposals, I'd like to note that several documents

1 explaining our proposed fee adjustment, are  
2 available on the fee setting and adjusting section  
3 of the USPTO website. These materials provide  
4 more background on our fee setting methodology,  
5 along with a detailed list of current and proposed  
6 fees, including corresponding unit costs, for each  
7 of the proposals that I'll talk about today. So,  
8 thank you in advance for your time, and we look  
9 forward to hearing your comments, as we continue  
10 the fee setting process. Next slide, please.

11 Let's see the next slide is coming up --  
12 I envision the slide that says agenda --  
13 (laughter) there it goes.

14 SPEAKER: Over here - sorry, here we go.

15 MR. HOFFMAN: All right, all right. I'd  
16 like to set the stage for the fee proposal with  
17 our agenda. So, first I'll provide some context  
18 by reviewing our current financial outlook. Then,  
19 I'll discuss our fee setting objectives and  
20 benefits and from there, move to the detailed fee  
21 proposals. These proposals are targeted to  
22 applications, intent to use filings, letters of

1 protest, maintenance filings, petitions to the  
2 director and petitions to revive an application.  
3 As both Director Vidal and Commissioner Gooder  
4 mentioned in their introductions, these fee  
5 adjustments, including those to labor intensive  
6 services, will ensure the USPTO's position to  
7 deliver the products and experiences our customers  
8 expect and deserve. Next slide. It worked, all  
9 right, I'll begin by discussing factors that are  
10 significantly impacting our financial outlook,  
11 including uncertain demand and the way applicants  
12 and registrants are using our services. So, let's  
13 start here with the chart on the left-hand side up  
14 the page, it provides a summary review of our  
15 trademark operating reserve. It also conveys our  
16 operating reserve guard rails. Minimum balances  
17 are represented by the solid gray line and the  
18 optimal balances by the solid blue lines. The  
19 optimal balance is set as the optimal number of  
20 months of operating expenses, currently set at 7  
21 months. So, as you can see by the slope of the  
22 blue line, the optimal balance grows to keep pace

1 with the cost of rising operations.

2           The dotted green line represents the  
3 operating reserve forecast included in our FY 2024  
4 President's budget, that was released in March of  
5 2023. In the operating reserve is the result of a  
6 simple cumulative math calculation over time. So,  
7 it starts with the beginning balance, we add to it  
8 during years when revenue exceeds costs, and we  
9 subtract from it during years when costs exceed  
10 revenue. So, this chart is a representation of  
11 our financial position, considering certain  
12 assumptions at that point in time. Now, prior to  
13 the most recent budget and when we last set fees,  
14 we forecasted that fee collections would outpace  
15 our operating costs. Consequently, we anticipated  
16 sufficient fee collections to offset aggregate  
17 trademark costs, and retain some incremental  
18 collections above those aggregate costs to add to  
19 the operating reserve. Our goal was to build the  
20 reserve to optimal levels to improve our financial  
21 sustainability. Now, as I'll discuss on the next  
22 two slides, demand filing behaviors and trademark

1 costs structures have all materially changed over  
2 the past few years and under the current fee  
3 schedule, aggregate costs will exceed aggregate  
4 fee collections through FY 2027, requiring the  
5 agency to rely on the operating reserve to finance  
6 a portion of trademark operations. Consequently,  
7 the operating reserve balance is declining rather  
8 than increasing and changes to the fee schedule  
9 are necessary to ensure that we recover our  
10 aggregate costs.

11 Now, there is no cause for concern as we  
12 work through the fee adjustment process and rely  
13 on the operating reserve to finance a portion of  
14 the trademark operations, this bridge financing is  
15 one of the intended purposes of the operating  
16 reserve. So, now I will explain why we are  
17 forecasting this financial outlook, specifically  
18 fees are not recovering costs for two principal  
19 reasons. First, as we outlined in the FY 2024  
20 President's budget, inflationary pressures are  
21 increasing our costs. In fact, relative to the FY  
22 2023 President's budget delivered in March of

1       2022, we estimate that trademarks costs will  
2       increase by \$162 million dollars through fiscal  
3       year 2027, due to higher than expected inflation  
4       and personnel and contractor costs. So, let's  
5       focus specifically on personnel costs for just a  
6       moment. Trademark examining attorneys are at the  
7       heart of everything that we do to deliver the  
8       mission, and are continuously hiring to reduce the  
9       number of applications awaiting examination.  
10      Salaries and benefits comprise over 70 percent of  
11      all trademark related costs, and we project that  
12      personnel costs will rise by \$115 million dollars  
13      cumulatively over the 5 year budget horizon. Now,  
14      here's why. Recently, greater than anticipated  
15      inflation resulted in higher employee raises than  
16      we previously budgeted in our baseline  
17      assumptions. I should note that the inflationary  
18      pay increases effected all US government agencies,  
19      not just the USPTO.

20                   Second, trademark demand and applicant  
21      filing activities have changed and Dave discussed  
22      some of this in his remarks, so next slide. So,

1 during the past few years trademark demand surged  
2 to historic highs. This chart shows that the last  
3 time we saw a similar surge in demand, was during  
4 the dot.com boom and bust around 2000, more than  
5 20 years ago. Now, keep in mind, that over than  
6 three quarters of the trademark costs go to  
7 application examination. Therefore, we experience  
8 -- when we experience a surge in demand, there's  
9 an even greater surge in costs. This isn't  
10 intuitive, so bear with me when I explain why.  
11 So, we set application filing fees below our  
12 examination costs in order to maintain low  
13 barriers to entry into the trademark registration  
14 system. Our revenue forecasting assumptions  
15 estimate a certain percentage of fees from filing,  
16 maintenance, intent to use, or ITU, and other  
17 fees. Maintenance and ITU extension fees  
18 subsidize our losses in each application fee, as  
19 I'll show on the next slide, this recent  
20 application surge occurred without a corresponding  
21 rise in maintenance and ITU filings. We've been  
22 observing new trends in the mix of new filers and

1 their preferences are upsetting the traditional  
2 balance of the fee structure. The maintenance  
3 rate for Pro Se registrants is about half that of  
4 non-Pro Se registrants. Also, foreign filers  
5 prefer to file used space applications with less  
6 than 10 percent coming from ITU's, as compared to  
7 about 50 percent of domestic filers. During the  
8 pandemic, there was a shift in renewal filers, and  
9 an increase in people starting new businesses.  
10 With this shift, we saw shifts in Pro Se  
11 applications and filing from foreign entities.  
12 These applicants were not paying ITU extension  
13 fees. To put a finer point on it, we didn't  
14 receive enough renewal and ITU fees to subsidize  
15 the application losses associated with this once  
16 in a generation surge in demand. This environment  
17 brought our aggregate revenue and aggregate costs,  
18 out of balance resulting in us relying on us  
19 relying on the operating reserve, more than  
20 originally planned.

21 Now, let's go back to the line on the  
22 chart here where you can see that demand, softened

1 quickly right there before the yellow part of the  
2 line, and as it stands currently, we are  
3 forecasting a return to historic filing trends.  
4 We are also watching economic trends closely and  
5 the trademark business is particularly sensitive  
6 to economic changes in the short term. Now, on  
7 the previous slide, I discussed how costs are  
8 currently outpacing fees, apart from inflationary  
9 pressures, some of these increased personnel costs  
10 were necessary despite demand softening, somewhat  
11 abruptly, we continue to hire examining attorneys  
12 to increase capacity and address the persistently  
13 high inventory of unexamined applications. We'll  
14 continue to adjust hiring levels up or down,  
15 commensurate with demand and inventory levels each  
16 year. It is also important to remember, that some  
17 of the hiring replaces routine attrition of about  
18 5 percent annually. In addition, processing times  
19 will improve as these new examiners gain  
20 experience. At the same time, we're being  
21 strategic with our spending moving forward,  
22 adjusting for moderating demand and focusing on

1 the improvements that Commissioner Gooder  
2 discussed. Next slide. All right, let's take a  
3 look at these changing demand patterns. So, I'll  
4 use this slide to explain the fee structure and  
5 balance, that I talked about just a moment ago.  
6 So, these two bars show the proportion of fee  
7 collections, or the fee structure balance in two  
8 points in time, FY 2019 and FY 2021. The bar for  
9 FY 2019 prior to the pandemic, the bar for 2021 at  
10 the height of the pandemic in the application  
11 surge. Our current fee structure is designed and  
12 balanced to accommodate proportions in the FY 2019  
13 bar on the left. When applications surge, we  
14 found that application filing fees accounted for  
15 59 percent of our fee collections, instead of 55  
16 percent, we anticipated when we last set fees.  
17 Conversely, ITU and renewal fees declined, as  
18 percentages of total fees, and didn't reflect  
19 historical rates. Now on the previous slide, I  
20 discussed why our data suggests that the climate  
21 ITU extension fees. Regarding renewal fees we've  
22 found that three quarters of filers are

1 individuals in small businesses, many of whom may  
2 not remain in business to renew and maintain their  
3 marks. So, likewise as I mentioned earlier, many  
4 of the applications filed during the surge were  
5 from foreign nationals seeing registrations to use  
6 in brand registries. These filers are unlikely to  
7 renew at a rate that would recover examination  
8 costs. Consequently, these trends have shifted  
9 renewal patterns. We believe that these demand  
10 changes are systemic and require rebalancing of  
11 the fee structure going forward.

12           Next slide. So, this leads me to our  
13 next topic, our fee setting objectives and  
14 benefits. Go ahead and advance, thanks. We have  
15 6 broad objectives for this round of fee settings.  
16 Some of which I have already discussed while going  
17 over the financial outlook. As you can see, one  
18 of our main priorities is to recover aggregate  
19 costs to finance the USPTO's mission, strategic  
20 goals and priorities. By statute, all trademark  
21 operation costs must be offset by the fees that we  
22 collect. That objective is not achievable under

1 the current fee structure. Additionally, our  
2 unique status as a fee funded agency also means it  
3 is important to maintain our operating reserve at  
4 sufficient levels to provide stable financing  
5 across a variable business cycle. We also want to  
6 improve our processing efficiencies. From which  
7 the next two objectives stem. So, as Commissioner  
8 Gooder discussed, in some of the business and  
9 operational improvements on the horizon, this  
10 proposal is framed to enhance application quality,  
11 promote operational effectiveness, and deliver  
12 value and processing options. It will also  
13 appropriately align fees with our aggregate cost  
14 of delivering trademark related services, while  
15 preserving affordable processing options. At the  
16 same time, the fee structure will continue to  
17 subsidize below cost application filing fees, with  
18 fees for maintenance and ITU extensions. Thus,  
19 maintaining our commitment to low barriers of  
20 entry, albeit with necessary changes that reflect  
21 the new fee balance. Next slide. The fee setting  
22 effort will provide us the resources to issue and

1 maintain trade registrations that protect brands  
2 and investment. A significant priority is our  
3 promotion of inclusive innovation through active  
4 engagement and widespread access to resources and  
5 tools. We believe these proposed fee adjustments  
6 will optimize trademark application processes and  
7 enable efficiencies that protect entrepreneurs and  
8 business owners. As Director Vidal and  
9 Commissioner Goodard conveyed, these fees will  
10 resource initiatives to improve the reliability of  
11 the trademarks we issue, and as always, we  
12 continue to aim to deliver exceptional customer  
13 experiences, during every interaction with our  
14 stakeholders. Next slide. All right, so now  
15 let's take a look at the detailed fee proposals.  
16 I'll go through each of these proposals in detail,  
17 but first, I want to reiterate that this  
18 information and much more is posted on the fee  
19 setting and adjusting section of the USPTO  
20 website. Next slide, applications, okay. I'll  
21 begin our detailed discussion with proposed fees  
22 to implement trademark application filing changes.

1 This first proposal is two-fold. First, we  
2 propose discontinuing the current trademark  
3 electronic applications system, or TEAS, standard  
4 and plus filing options and associated fees.  
5 Second, we proposed replacing those discontinued  
6 application filing options, with a single basic  
7 application option and a corresponding basic fee.  
8 The single basic application filing option, will  
9 be akin to the TEAS plus option. Today,  
10 applicants file with TEAS plus, use a preapproved  
11 drop down selections of goods and services, making  
12 their applications more complete and easier to  
13 examine. So, Dave was talking about this. These  
14 complete and comprehensive applications promote  
15 efficiency in examination and help us reduce  
16 pendency. Unfortunately, only about half of  
17 trademark applicants, use the TEAS plus filing  
18 option, and instead they prefer the TEAS standard.  
19 So, unlike a TEAS plus application, a TEAS  
20 standard application often includes the long, free  
21 form description of good and services, including  
22 the example Dave mentioned, and these descriptions

1       require examining attorneys to perform additional  
2       work at additional cost to the agency. Next  
3       slide. Okay, so under our proposal, we are  
4       setting a new single basic application fee with  
5       additional premium application surcharges based on  
6       certain actions the applicant makes during the  
7       filing. Our proposed fee for the basic  
8       application, accomplishes two objectives. First,  
9       it continues to maintain the fee below costs, at  
10      an affordable rate. Second, it better recovers  
11      examination costs earlier in the trademark  
12      lifecycle. Although higher than the TEAS plus  
13      fee, the proposed rate remains below our actual  
14      examination cost and is proposed at at the same  
15      rate, as the current TEAS standard application.  
16      Given that approximately half of our applications  
17      are filed using the TEAS standard method, the \$350  
18      basic application fee per class is in keeping with  
19      our policy to maintain low barriers for entry to  
20      under resources and underrepresented brand owners.  
21      We are also proposing to increase the paper  
22      application fee from \$750 to \$850 per class, as

1 paper remains the most expensive application  
2 filing method for us to process. However, more  
3 than 99 percent of our filers currently submit  
4 their applications electronically, so this will  
5 impact a very tiny percent. All right, next  
6 slide. All right, next slide. All right, now  
7 we'll transition to the various premium  
8 application surcharges. Those are based on  
9 elections during filing. We propose one addition  
10 to the basic fee, today the TEAS standard and  
11 TEASE plus fees differentiate the cost of  
12 processing. Likewise, our proposed surcharges are  
13 intended to differentiate the cost of processing a  
14 basic, complete, and comprehensive application  
15 from applications that require more work by the  
16 office achieved by additional fees to cover  
17 additional costs. So, we're proposing additional  
18 fees to submit an incomplete application, other  
19 than those that don't satisfy minimum  
20 requirements, to receive a filing date under 37CFR  
21 section 2.21. An applicant might also use custom  
22 descriptions of goods and services including long

1 identifications for additional fees. Overall, our  
2 goals is to improve processing efficiencies so we  
3 can examine applications more quickly, while at  
4 the same time, offering traditional options for  
5 applicants that prefer more freeform descriptions  
6 of goods and services. Next slide. All right, so  
7 for example, if you look at the fourth row down on  
8 this chart, we propose that applicants who submit  
9 an incomplete application, outside of those that  
10 fail to satisfy 35CFR 2.21 requirements, they  
11 would pay an additional \$100 fee. We also propose  
12 a \$200 fee, for custom goods and services not  
13 contained in the trademark ID manual and entered  
14 in the freeform box. As a part of this new  
15 application fee structure, we are also proposing  
16 to discontinue the 3 TEAS standard and TEAS plus  
17 related fees, listed in the first 3 rows on this  
18 chart. Next, slide. Our final proposal  
19 associated with premium applications will be  
20 applied if an applicant uses the freeform box for  
21 custom id's. We propose a \$200 fee for 1,000  
22 characters for freeform identifications exceeding

1 a newly established cap of 1,000 characters per  
2 class. This fee would be applied to each  
3 additional block of 1,000 characters per class.  
4 So, for example, if an application includes 3,500  
5 characters in the freeform description of goods  
6 and services, the applicant would pay an  
7 additional \$600, calculated as follows. The first  
8 1,000 characters are free, and then there is a  
9 \$200 charge for characters 1,001 through 2,000,  
10 another \$200 fee for characters 2001 through 3,000  
11 and a third \$200 fee for the remaining 500  
12 characters, for a total of \$600. So, we expect  
13 these additional character based fees will impact  
14 a very small number of applicants. Today, only 9  
15 percent of trademark applications exceed 1,000  
16 characters per class. Thus, more than 90 percent  
17 of applicants are unlikely to be effected by these  
18 surcharges at all. Next slide. I'm not going to  
19 spend a lot of time on this slide because it is  
20 pretty straight forward and follows the same  
21 structure as the domestic application fees I just  
22 discussed. In short, we propose adjusting the

1 fees from a Madrid applications to a line with the  
2 proposed domestic application fees. Next slide.  
3 Our next proposal concerning IT filings is also  
4 two-fold. So, first we propose increasing fees  
5 for amendments to alleged use or AAU's and  
6 statements of use or SOU's. Second, we propose a  
7 new tiered fee structure for extending the SOU  
8 filing period. So, when an applicant files an ITU  
9 application they'll eventually have to file either  
10 an AAU, or an SOU declaring their trademark is in  
11 use in commerce. The difference between the two  
12 is primarily related to when the declaration is  
13 filed. An AAU is filed before a notice of  
14 allowances issued or before the trademark is  
15 approved for publishing. The SOU is filed after  
16 it's published for opposition and after the notice  
17 of allowance. Next slide. The USPTO established  
18 AAU's and SOU's in 2002. In the intervening 20  
19 plus years, we have never adjusted AAU and SOU  
20 fees, but the cost of increasing these filings has  
21 increased substantially due to inflation and  
22 application complexity. Consequently, the gap

1 between the fee and the cost of processing it is  
2 growing. The \$50 to \$100 increases in these fees  
3 will help us recover costs from ITU processing.  
4 Note that the proposed non-paper fees for SOU  
5 processing per class, which is how the majority of  
6 AAU's and SOU filings are submitted, remains below  
7 historical costs of providing these services.  
8 Next slide. The second part of our ITU proposal  
9 is related to extensions of time for filing an  
10 SOU. As I go through this proposal, remember that  
11 earlier in this presentation, we were discussing  
12 the financial outlook, I explained that this  
13 portion of the ITU fees and our fee structure  
14 balance, is declining. In FY 2019, the fee  
15 structure balance anticipated that 14 percent of  
16 fees would come from ITU's and extensions of time,  
17 are intended to offset the examination costs  
18 earlier in the trademark life cycle. Today, ITU  
19 fees represent about 11 percent of our fees. To  
20 address this gap and improve our ability to clear  
21 new marks, our proposal splits the current 6-month  
22 extension structure for filing an SOU, into two

1 tiers. One fee is for the first, second and third  
2 extensions, which we are not proposing to change.  
3 Our proposal does increase the fee if an applicant  
4 continues filing extensions for a fourth or fifth  
5 or final extension. Extensions that reach into a  
6 third year after the notice of allowance is  
7 issued, effect prior pending applications and  
8 users trying to clear new marks in preparation for  
9 a new application. Establishing a tiered fee  
10 structure benefits applicants who use their  
11 trademarks, as opposed to those who incur multiple  
12 extension requests, and incur additional fees. We  
13 believe this change will bring more clarity to the  
14 trademark landscape. Next slide. All right, our  
15 next proposal would increase fees for maintenance  
16 filing, specifically section 9 renewals, section 8  
17 and section 71 declarations of use, and section 15  
18 declarations of incontestability. Our cost for  
19 processing maintenance filings have increased due  
20 to a number of factors including inflation, post  
21 registration audits, and elevated legal reviews  
22 targeting potential fraud and improper filing. In

1 addition, as I covered in the financial outlook,  
2 the percentage of registrants choosing to maintain  
3 their trademark and file for maintenance is  
4 declining. The cumulative number of Pro Se filers  
5 is increasing, but we are finding that these  
6 applicants are only half as likely to maintain  
7 their registrations, as compared to non-Pro Se  
8 filers. Compounding this issue are different  
9 maintenance activities among international filers  
10 who represent a larger share of applicants as  
11 compared to domestic filers. As I mentioned  
12 earlier, we are experiencing a lot of change in  
13 filing behaviors. Given the changes that we are  
14 seeing in the filing environment, we must increase  
15 aggregate revenue for maintenance filings, to  
16 retain low barriers of entry for new trademark  
17 applications. We believe that these fee increases  
18 of \$50 to \$75 dollars, which I am about to review,  
19 will help rebalance our fee structure and offset  
20 rising costs. Next slide. Okay, we propose  
21 increasing fees to renew trademark registrations  
22 before they expire at the end of the 10 year

1 period from the date of registration, commonly  
2 referred to as section 9 renewals. For most  
3 trademark owners, those who renew electronically,  
4 we propose to increase the fee from -0 by \$50.  
5 So, you'll go from \$300 to \$350 or a 17 percent  
6 increase. Next slide. We are also proposing to  
7 increase the fee for filing a section 8  
8 declaration from \$325 to \$400 per class for filing  
9 and paper, and from \$225 to \$300 per class for  
10 filing electronically. Applicants must pay this  
11 fee with the declaration to keep the registration  
12 active between the fifth and sixth anniversaries  
13 of their registrations, and again between the  
14 ninth and tenth anniversaries, at each successive  
15 10-year period thereafter. Declarations at each  
16 10-year mark, must be submitted with the renewal  
17 fee I had just discussed. We also proposed  
18 increasing section 71 declarations filed to  
19 maintain protection under the Madrid protocol, by  
20 the same amount as domestic registrations. Next  
21 slide. Our final maintenance filing proposals,  
22 effects declarations of incontestability under

1 section 15. We are proposing to increase by \$50,  
2 the section 15 fee applicants must pay, to claim  
3 that a registered mark is incontestable, once the  
4 mark has been issued in use in commerce for five  
5 years. Our proposal increases a section 15  
6 submitted in paper from \$300 to \$350, and  
7 electronic submissions from \$200 to \$250. Next  
8 slide. Our final proposal concerns letters of  
9 protests, petitions to the director, and petitions  
10 to revive. Optional petitions and letters of  
11 protest are a valuable part of the trademark  
12 registration process. They are also resource  
13 intensive. Letters of protest require lengthy  
14 reviews by highly specialized attorneys, and the  
15 recent trademark modernization act, mandates that  
16 we process letters of protest within 60 days of  
17 filing, which diverts resources from other  
18 petitions or registered protection initiatives.  
19 Next slide. Now it costs the USPTO \$312 to  
20 process a letter of protest. The current fee of  
21 \$50 recovers only 16 percent of our operating  
22 costs. Therefore, doing the math, we absorb a net

1 cost of \$262 per letter of protest that is  
2 ultimately subsidized by other fees. Please keep  
3 this equation in mind as I come back to it  
4 shortly. So, in 2022, we received 4,443 letters  
5 of protest of which about 3,000 contained enough  
6 relevant information to be forwarded to examiners.  
7 Of those, only about 1,000, resulted in issuance  
8 of a refusal. In effect, only one quarter of all  
9 letters of protest were successful in achieving  
10 their goal. Those, 3,000 unsuccessful protests  
11 processed at a net cost of \$262 each, resulted in  
12 a little over three quarters of a million dollars  
13 subsidized by unrelated fee collections. To help  
14 bring these revenues back into proportion, we've  
15 proposed increasing the fee for letters of protest  
16 to \$250. This figure will recover 80 percent of  
17 our processing costs. Our goal is to strike the  
18 right balance between letters of protest that add  
19 value to the trademark registration process, and  
20 those that unnecessarily consume examination  
21 resources. We also propose to increase the fee to  
22 petitions to the director. We estimate that these

1 petitions cost about \$886 to process, and our  
2 current fee of \$250 recovers only about 28 percent  
3 of our cost. Our proposed fee of \$400 brings our  
4 cost recovery closer to 45 percent. Next slide.  
5 Our final proposal would increase fees for  
6 petitions to revive an application. Each revival  
7 can extend examination processing and impact new  
8 deserving applications filed, after abandonment.  
9 Our proposed increase from \$100 -- from \$150 to  
10 \$250 will increase -- excuse, me, will encourage  
11 efficient prosecution of applications and post  
12 reapplications maintenance filings, as well as  
13 processing efficiencies for multiple abandonments.  
14 Next slide. Okay, so that concludes our specific  
15 fee proposals. As you've heard a couple of times  
16 already, this public hearing is only the first of  
17 many required steps in the fee setting process.  
18 I'd like to briefly talk about the path forward  
19 and our tentative timeline for those next steps.  
20 Nest slide. So, first and foremost, these  
21 proposals are only proposals, they are not final  
22 recommendations. We welcome your analysis,

1        comments and suggestions. Your feedback is  
2        incredibly important to us and helping us shape  
3        our formal proposals to work best for the  
4        trademark system. As you provide input, please  
5        directly associate your comments with the specific  
6        proposals under consideration. This step will  
7        help ensure that we are connecting your ideas to  
8        the correct proposals. The TPAC will integrate  
9        these comments into a public, written report  
10       indicating the committee's advice and  
11       recommendations based on today's oral testimony  
12       and written comments received in the next week  
13       through regulations.gov. So, we have 6 people  
14       here, in person and one joining us virtually who  
15       requested time to testify today and provide us  
16       their thoughts and ideas. I'm delighted that you  
17       have taken the time to review our proposal and I'm  
18       eager to hear your impressions and suggestions.  
19       Those of you scheduled to testify this afternoon  
20       should provide a written copy of your testimony no  
21       later than June 12, 2023, for inclusion in the  
22       record. Those of you who do not speak today, will

1 also have an opportunity to provide your comments  
2 today via regulations.gov also by June 12, 2023,  
3 and remember we'll make comments available for  
4 public inspection, so please exclude private  
5 information like addresses and telephone numbers,  
6 and things like that in your written text. Next  
7 slide. So, looking ahead we intend to publish a  
8 notice of proposed rulemaking, our NPRM, in the  
9 federal register early in calendar year 2024.  
10 This notice will incorporate feedback we receive  
11 from the TPAC report, and formally outline our fee  
12 proposals for another round of public comments.  
13 After the 60- day public comment period following  
14 the NPRM, and the time required to develop a final  
15 rule, we anticipate publishing the final rule from  
16 this fee setting efforts early in fiscal year  
17 2025. New fee rates would take effect perhaps  
18 November 2024 or about 17 months from here. There  
19 is some uncertainty in these dates though, a  
20 typical fee setting generally takes about 2 years,  
21 start to finish, so we'll keep the public updated  
22 on the timelines as we move through the process.

1 Next slide. All right, so I want to thank you all  
2 again for joining us today. We look forward to  
3 hearing your testimony and receiving your written  
4 comments. So, with that, I'll turn it back over  
5 to David.

6 MR. CHO: Thank you Jay, very much for  
7 those detailed remarks and walking us through the  
8 proposed fee changes. At this juncture I want to  
9 thank the people in advance, and one person and  
10 the person the one individual who provide comments  
11 to us today. Let me give you some quick  
12 logistics, a reminder, 5 minutes would be totally  
13 allotted to you. I will introduce you by name,  
14 and I will ask you then to either sit at the desk  
15 to your left or the podium, and someone over there  
16 will try to flash you a warning of about a minute  
17 or so. If you forget to glance over to your left,  
18 they'll try to come into your view over there -  
19 yeah, yank you, no, no, no. Okay. Anyway, thank  
20 you for that, so let us hear from our first  
21 scheduled person, Erik Pelton, from Erik Pelton  
22 and Associates.

1                   MR. PELTON: Erik M. Pelton and  
2 Associates, which I founded in 1999 after working  
3 as an examiner, has registered more than 4,000  
4 trademarks for clients who are overwhelmingly  
5 small businesses. And the firm itself is a small  
6 business that owns more than a dozen of its own  
7 trademark registrations. I am also the supervisor  
8 of the trademark clinic at Howard University  
9 School of Law, and an adjunct trademark professor  
10 at Georgetown University. My comments today,  
11 however, are made solely on behalf of our firm. I  
12 did not come here today to suggest that fees  
13 should never go up, but rather to advocate that  
14 the process and implications of any adjustments be  
15 considered through the lens of small businesses,  
16 while the IT expenditures and plans are more  
17 clarified. I do appreciate the comments earlier  
18 in the hearing about the significant number of  
19 filers with less than 10 trademark applications.  
20 Over 99 percent of employers in the United States  
21 are small businesses, and in recent decades small  
22 businesses have created more than 60 percent of

1 new jobs. Small businesses don't have  
2 associations, or even house counsel, or the  
3 resources to comment on agency proposals, such as  
4 this. But, don't let their silence fool you.  
5 Small businesses will be the most impacted by the  
6 fee increases. For small businesses the  
7 investment in trademark clearance and registration  
8 is even more important and more valuable. It  
9 helps to guard them against the risks and expenses  
10 of trademark disputes and litigation. It would  
11 thus be desirable to ensure that the fee structure  
12 provides an incentive for small businesses to  
13 protect trademarks. This would create a more  
14 complete register and ensure that all types of  
15 entities benefit from our IP infrastructure.  
16 Perhaps it would be beneficial to explore  
17 different key levels for small and large  
18 applicants. The proposed fees are also  
19 inconsistent with the USPTO's goal of increasing  
20 access for individuals from underserved and  
21 disadvantaged communities. USPTO's efforts to  
22 narrow the gender gap and to support inventors and

1 rights holders from minority communities should be  
2 applied. But, across the board trademark fee  
3 increases could set back those efforts. We  
4 understand that the USPTO needs to ensure proper  
5 funding and that filing levels have dropped from  
6 recent all time highs. But, details on where and  
7 how the USPTO trademark operations spends its  
8 money, have been largely absent from the proposal  
9 materials. To my knowledge, there has been no  
10 discussion of other possibilities to ensure a  
11 balanced budget while filings are low. Such as  
12 cuts to other types of spending, reduced overtime,  
13 or a hiring freeze. About 4 years ago, I stood  
14 right here testifying on the previous fee  
15 proposal, and I referenced some of the planned IT  
16 enhancements that are important to help both USPTO  
17 employees and users. Such as upgrades to tests,  
18 TEAS, and TTAB's (phonetic) systems, and much  
19 more. Four years later, many of these  
20 improvements, at least public facing ones, are  
21 still missing and downtimes and TSDR TEAS and  
22 tests are not infrequent. Certainly, there have

1       been IT improvements, and legacy systems are a  
2       huge challenge, but greater transparency regarding  
3       expenditures is needed, as well as, the nature and  
4       timing of planned improvements. Although I  
5       realize there are more chances to comment as the  
6       proposal moves forward, the process seems rushed.  
7       There were few discussion with stakeholders or in  
8       public TPAC meetings prior to proposal's release.  
9       The details were released just a few weeks ago,  
10      providing limited time for stakeholders to prepare  
11      for today and for the written comment deadline in  
12      about a week. There is no doubt that ensuring  
13      quality examination and maintaining a register  
14      with hundreds of millions of datapoints, is a  
15      tremendous but valuable undertaking. Know that  
16      users appreciate the difficult job faced by the  
17      USPTO, and the challenge that COVID brought,  
18      followed by filing increases and now decreases.  
19      And, know that thousands of trademark  
20      practitioners are also invested in the success of  
21      the USPTO. Practitioners recognize how important  
22      the USPTO's trademark protections are, to both the

1 public and to our clients, and I offer these  
2 comments in an effort to be constructive. Those  
3 of us who work with small businesses recognize  
4 that they will be unquestionably more burdened by  
5 additional fees, and the increased  
6 unpredictability brought on by the proposed fee  
7 structure changes. Thank you for your time.

8 MR. CHO: Thank you very much. As Mr.  
9 Pelton steps down, I want to welcome Jennifer  
10 Fraser, speaking on behalf of the Intellectual  
11 Property Owners Association, known as IPO.

12 MS. FRASER: Thank you Chairman Cho and  
13 good afternoon. I'm the Chair of Dykema Gossett  
14 Trademark Practice in Washington, DC, and also a  
15 member of IPO. IPO will also submit written  
16 comments. IPO represents companies and individuals  
17 in all industries who own and are interested in IP  
18 rights. IPO's membership includes over 125  
19 companies, spans over 30 countries, and includes  
20 individuals who are involved through their  
21 companies or as an inventor, author, law firm or  
22 attorney member. IPO advocates for effective and

1 affordable IP rights. IPO appreciates the  
2 opportunity to testify on the proposed fees, and  
3 we look forward to continuing the dialogue with  
4 the office about the effective fees on filing  
5 behavior. IPO supports the offices' goal of  
6 adjusting fees to finance the cost of maintaining  
7 a reliable trademark system. IPO supports the  
8 strategic goals of setting the fees, to promote  
9 efficiency, reduce pendency, align fees with  
10 service costs, and finance strategic initiatives.  
11 In general, we are concerned about the proposed  
12 fees where a nexus does not appear between the  
13 increase and the costs for policy goals. IPO also  
14 encourages the PTO to carefully consider whether  
15 the proposed fees might have adverse consequences  
16 including discouraging public participations, and  
17 assuring the accuracy of the register, and  
18 imposing undue burdens in certain industries.  
19 Many of the new fees, amount to practice changes  
20 will increase the complexity of the process and  
21 make budgeting difficult. IPO has no comments on  
22 the proposed fees for applications, statements of

1 use, renewals and section 15 declarations. For  
2 fees for custom descriptions of goods and services  
3 not in the manual, IPO is concerned because the  
4 manual is incomplete. This will burden brand  
5 owners that create new products, or manufacture  
6 existing products not yet in the manual. The TMEP  
7 acknowledges no listing in the manual could be  
8 complete. For the proposal to charge more for  
9 descriptions of 100 character, excuse me, 1,000  
10 characters, we have similar concerns. It appears  
11 the character fee will penalize good faith brand  
12 owners and is an arbitrary limit. Many legitimate  
13 registrations go over this limit including house  
14 marks and those who use the manual. IPO  
15 recommends the PTO study overly long IDs to better  
16 understand when they are inappropriate and  
17 consider more targeted ways to address the issue.  
18 The office also proposed a fee of \$100 per class  
19 for applications filed with insufficient  
20 information, yet has not explained what is  
21 insufficient. It is hard to predict what all  
22 examining attorney's might request during

1 examination. Also, the office has not provided  
2 details for specific types of information that  
3 increase costs. A tiered fee structure is also  
4 proposed for extensions of time to file a  
5 statement of use with higher fees for the fourth  
6 and fifth extensions to encourage timely ITU  
7 decisions. However, use decisions can be beyond  
8 applicant's control, and there are many examples  
9 to delay use, such as FDA approval or COVID.  
10 Imposing higher fees for using ITU extensions  
11 provided under the Lanham Act, seems to amount to  
12 a penalty. Because extensions have the same costs  
13 and are profitable, the current fees are  
14 sufficient. The office proposed an increase for  
15 an amendment to allege use to greater than that  
16 for statement of use. These fees have  
17 historically been the same. Discouraging the  
18 filing of an early AAU, through a higher fee seems  
19 contrary to the policy to move applications to  
20 registration more quickly. These fees should  
21 remain the same. For section 8 fees, the office  
22 is proposing a significant increase because

1 maintenance filings are down, and the office wants  
2 to maintain this income. The office provides no  
3 explanation on how higher fees would encourage  
4 registrants to maintain registrations. Owners  
5 renewing registration would bear an unfair share  
6 of the office's expenses and renewals could  
7 decline. IPO opposes this increase. Under the  
8 statutory letter of protest process, the public  
9 assists the office in maintaining an accurate  
10 trademark registry. This fee was set recently,  
11 and the proposed 400 percent increase could  
12 discourage parties from participating in a  
13 process, which also makes examination more  
14 efficient. The TMA requires a comptroller general  
15 study on the efficacy of such letters, on improper  
16 filings. The study is underway, and the office  
17 should wait for the study to allow for review and  
18 comment before further modifying these fees. The  
19 IPO also opposes increased petition fees. Many  
20 petitions are filed to correct office errors, and  
21 it would be unfair to raise fees for parties who  
22 have already been adversely affected. Petitions

1 are also filed to expediate registration to  
2 address counterfeits or infringement. An issue  
3 important to the PTO. To conclude, while IPO  
4 understands the need for and generally supports  
5 some fee adjustments, some increases are  
6 burdensome or could have other unintended  
7 consequences. IPO encourages the PTO to examine  
8 other possible changes to reduce the need to raise  
9 fees and to improve examination efficiency. Thank  
10 you.

11 MR. CHO: Thank you Ms. Fraser. As she  
12 steps down, I'd like to bring forth Caroline Fox  
13 for the next testimony.

14 MS. FOX: Good afternoon. Thank you for  
15 having me, I'm very new here so I really  
16 appreciate it. This morning for 5 minutes with  
17 you all, I left my 6-month-old, braved I-95 by  
18 car, train, considered a break neck scooter ride,  
19 pumped on the metro, pumped in your bathroom, and  
20 I did this all to be here for 5 minutes. Five  
21 minutes to try and convince you, who you may have  
22 already made up your mind, that the fee increases

1 that are proposed, are practically speaking,  
2 contrary to the goals of the organization that you  
3 represent. The self-stated goal of the USPTO is  
4 to provide IP protection for US inventors and  
5 entrepreneurs and we've talked about them a lot  
6 today already. The strength and vitality of the  
7 US Economy depends on it, the website says. Now  
8 by increasing application fees, by 40 percent, up  
9 actually by 55.6 percent since 2020, the USPTO is  
10 actually doing the opposite. The small  
11 businesses, the boot strapped entrepreneurs, the  
12 garage scientist, the start up creators, they  
13 can't afford that 55 percent increase, in an  
14 already overinflated economy. Yet, they are the  
15 ones that are going to ultimately be disadvantage  
16 by such drastic heights. In addition, those on  
17 the cutting edge in innovation and technology,  
18 will now be charged more because their innovative  
19 product or service is not part of the preexisting  
20 classes of the goods and services laid out in the  
21 manuals. As we discussed earlier, that's not  
22 always up to date. Lest we forget, well meaning

1 innovators who file their intent to use  
2 applications, during development, manufacture, or  
3 production of a service, which is often a timeline  
4 of multiple years instead of just 24 months, are  
5 to be penalized financially with higher fees later  
6 in the process for doing exactly what we are  
7 advising them to do. Securing their rights and  
8 their brands and their trademark, before they go  
9 to production, before they go to market. So, they  
10 don't have to rip products off shelves, relabel  
11 products, because there is a trademark issue.  
12 Now, I'm in the trenches and I don't know if  
13 you've ever helped a budding entrepreneur pull  
14 products off shelves because of a trademark issue,  
15 but it's extremely heartbreaking. These  
16 increases, illustrative of increases across the  
17 board, that we've discussed today, clearly paint  
18 the picture that these hikes are actually at odds  
19 with the USPTO's mission of promoting innovation.  
20 Big businesses can afford the hundreds, thousands,  
21 of additional fees, but small businesses, the  
22 innovators, and the entrepreneurs that we've

1 talked about a lot today, the other creators that  
2 are driving our technology and, therefore, our  
3 economy, they can't. And, while I'm sure these  
4 fee increases, have been thought out and they are  
5 coming through the well-meaning attempt to combat  
6 this churn of trademark applications and the  
7 ever-increasing examination process, the real work  
8 results is a disproportionate disadvantage to the  
9 small inventors and brands and creators, and all  
10 other small businesses, that can't spare these  
11 thousands of extra dollars across the span of  
12 their trademarks life. Perhaps a better option  
13 could be to propose similar micro entity fees,  
14 like the patent side's done. Another option might  
15 be to instead offer some sort of expedite fees for  
16 the large businesses who are chomping at the bit  
17 to get their applications reviewed and pushed  
18 through the process. I ask today that you just  
19 reconsider some of these proposed fees with an eye  
20 towards, small IP, the small businesses that we  
21 keep discussing today. I want to thank you for  
22 sharing this 5 minutes of your time, and thank you

1 for the service that you do to our innovation  
2 ecosystem.

3 MS. CHO: Thank you, Ms. Fox. At this,  
4 point I would like to bring up Allison  
5 Strickland-Ricketts.

6 MS. STRICKLAND-RICKETTS: Good  
7 afternoon, hello. I did not leave a 6-month-old  
8 at home to come, but I did leave my notes on my  
9 desk. So, fortunately, I had a copy on my iPad,  
10 but I'll be a little bit conversational than  
11 perhaps if I was fully prepared. I'm Allison  
12 Ricketts, I'm an attorney with Fross, Zelnick,  
13 Lehrman. As you can see, I've handled a couple of  
14 thousand applications, I'm not quite sure how  
15 many -- my firm has handled tens of thousands of  
16 applications, and it's about some perspective I'm  
17 bringing, although, I'm not speaking, you know,  
18 formally on behalf of the -- any group. So, there  
19 is a proposal to charge an extra \$200 per class if  
20 applicants do not make use of the preapproved  
21 drop-down selections of goods and services. So,  
22 there are 2 problems with requiring good and

1 services to be selected from the preapproved  
2 drop-down list. There is the manual entry  
3 problem, and there is the substantive content  
4 problem. The TEAS system only knows if someone is  
5 someone is using goods from the ID manual, if the  
6 user selects each item, from the drop-down list.  
7 Now there was a mention earlier of improvements in  
8 the e-filing that are coming forward, that is  
9 great to hear, I'll look forward to it. At this  
10 point, though, even if an applicant completes the  
11 free form text with only phrases that are in the  
12 ID manual, the system doesn't recognize this, and  
13 I assume the examiners don't have that ready clue,  
14 that the ID manual -- that all the phrases comply  
15 with the ID manual. You know how long it takes to  
16 use the preapproved drop-down list to select goods  
17 and services one at a time, for even a fairly  
18 short list of goods and services. Suffice to say,  
19 it is very slow. As opposed to copy/pasting the  
20 desired ID into the form, which like I said, can  
21 be comprised of all approved terms. So, the  
22 proposal to charge an extra \$200 for not using the

1 preapproved drop-down list or using more than  
2 1,000 characters in the free form description,  
3 penalizes applicants who opt not to use the hunt  
4 and peck method of picking goods off the list.  
5 What would be great, would be if the user could  
6 input the complete list of what they want to cover  
7 and an artificial intelligence, computer program  
8 would spit out a version of that list, using only  
9 approved phrases from the ID manual, and the TEAS  
10 system would recognize that the free form list was  
11 created with all approved forms from terms from  
12 the manual. There actually is a vendor, called  
13 sortify.tm, that does just that -- except for the  
14 part about TEAS recognizing that the terms are  
15 from the approved list. But, the technology is  
16 out there. So, I would encourage the office to  
17 explore and adopt tools that would make choosing  
18 items from the approved list a win-win for both  
19 the office and its users. Then, there's the  
20 substantive content problem, which has been  
21 addressed. The manual is always incomplete  
22 because new technology is still developed every

1 day, shoehorning people into using the ID manual,  
2 it seems to be the opposite of fostering an  
3 innovation mindset. If they have an innovative  
4 project, they should be able to describe the  
5 innovative nature of their different services,  
6 without being penalized because they are at the  
7 forefront of the technology. Okay, and then  
8 applications with ID descriptions that are  
9 excessively long require additional work during  
10 examination, usually it seems like those long ID's  
11 are a mix of approved terms and nonapproved terms.  
12 Again, for the same reason above, I don't know if  
13 its possible to distinguish between which ones are  
14 approved and which ones are not approved in the  
15 current computer environment, so I assume that the  
16 count is going to be just all term, all characters  
17 in there, and it is not going to only count 1,000  
18 that are not in the ID manual. But, that would be  
19 a question that I would to like to replay to later  
20 on. Also, will that fee for the extra 1,000  
21 characters be assessed only at the time of filing  
22 or will is also be assessed if the application is

1 amended during prosecution to add those  
2 characters. Does it include punctuation spaces --  
3 another question. Okay, one of the objectives is  
4 to better align fees with costs and provide  
5 services and bullet point 5 says to improve  
6 trademark application pendency. I do not  
7 understand the proposal to increase the cost for  
8 filing an amendment to alleged use to \$200, when  
9 the unit cost for that is \$118, but to increase  
10 the cost of filing a statement of use to \$150, for  
11 which the unit cost is \$241. They are virtually  
12 the same filing, just done at different times, and  
13 if a goal is to encourage people, to convert their  
14 applications to a used spaces earlier in the  
15 process, so as to improve pendency, which  
16 apparently that is a goal, because that's the ITU  
17 extensions that are coming up, it seems like you  
18 would prefer to incentive the amendment to alleged  
19 use, which is the one that you file earlier,  
20 rather than the one filed after the notice of  
21 allowance issues. US citizens file a  
22 disproportionately higher percentage of ITU

1 applications since they are not eligible for  
2 registration under section 44 and 66, which allows  
3 non-US citizens to obtain registration within the  
4 need to approve use. ITU applicants, meanwhile,  
5 must pay a fee to keep their applications pending,  
6 for the entirety of the 3 year period that they  
7 have -- they are granted by the statute, to make  
8 use in order to obtain registration. Now the  
9 office proposes to increase the fee to file the  
10 statement of use, as well as, the fee to keep the  
11 application pending for the final year of the 3  
12 year period, even though the per unit cost to  
13 process these extensions was \$17 in FY 2022. The  
14 justification is that it impacts those trying to  
15 clear new --

16 MR. CHO: Ms. Rickett's -- sorry --

17 MS. RICKETTS: Okay, thank you.

18 MR. CHO: Sorry for the abrupt end,  
19 thank you. (laughter). I'll ask now Ted Davis for  
20 the American Intellectual Property Law Association  
21 to step up.

22 MR. DAVIS: Thank you Chairman Cho and

1 members of the committee. Good afternoon, my name  
2 is Ted Davis, I'm with the law firm Kilpatrick,  
3 Townsend and Stockton, and also an adjunct  
4 professor at the Emory University School of Law. I  
5 appear today thought, not on behalf of either one  
6 of those entities, or on behalf of my firm's  
7 clients, but instead on behalf on the American  
8 Intellectual Property Law Association, on the  
9 board of which I sit. My comments reflect AIPLA's  
10 reactions to the fee proposal. As in the past,  
11 AIPLA believes that the USPTO should recover in  
12 the aggregate, 100 percent of the cost necessary  
13 for the offices' operations, it also recognizes  
14 the need for the office to make periodic  
15 adjustments to its fees to compensate for  
16 inflation. It, therefore, finds some of the  
17 proposed increases reasonable and appropriate. We  
18 do have some concerns, however, about some aspects  
19 of the proposal as there is some significant  
20 increase and the new fees for certain aspects of  
21 the trademark application process. We believe the  
22 office should thoroughly analyze and justify any

1 significantly increased fee or new fee, by showing  
2 that the fees are necessary and calculated to  
3 recover the actual costs associated with each  
4 targeted practice. We acknowledge that the office  
5 has been combatting the rise of fraudulent  
6 trademark applications, as evidenced by its  
7 participation in the drafting of the trademark  
8 modernization act and has an internal goal to  
9 reduce trademark examination pendency. In many  
10 cases, however, the proposed fee changes indicate  
11 the offices intent to target those issues, by  
12 shifting the burden the effort of time, effort and  
13 expense on the public through substantial fee  
14 increases, or new fees, and in particular we have  
15 some specific comments on the proposals. First,  
16 the TEAS in the Madrid application process would  
17 be completely altered to condense THE TEAS plus  
18 and TEAS standard application into a basic  
19 application, and institute new additional fees for  
20 all applications. These additional fees will  
21 significantly alter the initial cost of filing  
22 trademark applications, for example, the fees for

1 an application meeting current TEAS standard  
2 requirements, could increase in cost from \$350 to  
3 over \$850, a \$500 dollar difference. For  
4 applications using custom identification language  
5 instead of language taken from the approved USPTO  
6 ID manual, the office has proposed a new fee for  
7 \$200. As you've already heard though, the ID  
8 manual is not comprehensive for many goods and  
9 services. The current process for adding things  
10 to it can be unwieldly and time consuming. In  
11 addition, Madrid applicants currently cannot pick  
12 goods and services off of the ID manual that would  
13 designate in the US for extensions of protection.  
14 While we support the offices intent to streamline  
15 the application process, this fee appears to be  
16 overly restrictive, and to target companies that  
17 produce a less common goods, inventors of new  
18 technologies, and foreign filers. For  
19 applications where the identification language  
20 exceeds 1,000 characters, the office has, of  
21 course, proposed a new fee of \$200 for each  
22 additional 1,000 characters. It is unclear from

1 the proposal, whether the character limits  
2 includes spaces and punctuation. In any case, it  
3 is more than reasonable in certain cases, for an  
4 identification in one class to extend, 1,000  
5 characters. We understand the office wishes to  
6 reduce or otherwise subsidize the burden of an  
7 examining attorney considering a long  
8 identification, nevertheless, this fee should not  
9 apply to applications compliant with the ID  
10 manual, since the time reviewing would naturally  
11 be reduced. Furthermore, without additional data  
12 supporting the 1,000 character number, the  
13 character limit should be increased to at least  
14 3,000 character, excluding spaces. For applicants  
15 providing insufficient information, the office has  
16 proposed a new fee of \$100. But, the office also  
17 has not provided any substantive information on  
18 what information a sufficient application must  
19 include. Which is a situation that opens the door  
20 to arbitrary and capricious applications of the  
21 standard. We, therefore, request the office to  
22 provide explicit guidance on what information is

1 necessary for application sufficiency on the  
2 notice of proposed rule making. For ITU  
3 applications, the proposal would increase fees 100  
4 percent for AAU's and 50 percent for SOU's. But  
5 the cost to process and examine an AAU or SOU  
6 should remain -- should already be factored into  
7 the cost of the basic application, simply because  
8 an ITU filing merely moves the time and effort  
9 spent reviewing a specimen of use to a later time,  
10 rather than the time of filing. And, then  
11 finally, with respect to letters of protest, the  
12 increased fee has increased from the recently set  
13 \$50 to \$250, which is a significant 400 percent  
14 increase in costs. We are concerned that that  
15 increase does not take into account the value of  
16 the information that is submitted under cover of  
17 letters of protest, that can be used to support  
18 refusals to register by examiners and, therefore,  
19 we are concerned that the office is not considered  
20 the economic benefit to it of receipt of that  
21 information. Thank you very much because of the  
22 time limitations, preclude more extensive comments

1 on this on these subjects, we will be following  
2 this up with a written submission and we thank you  
3 for your consideration.

4 MR. CHO: Thank you Mr. Davis. At this  
5 juncture we will have Mr. Ken Reil, or Reil, sorry  
6 about that -- for Trademark Watch Dawgs joining us  
7 remotely. We are all set up.

8 MR. REIL: Thank you, good morning  
9 committee members and attendees. My name is Ken  
10 Reil, and I'm the founder of the Trademark Watch  
11 Dawgs Group on Facebook. I represent the group of  
12 over 33,000 small business members focused on  
13 fighting frivolous trademark applications in  
14 various merchandise industries since 2018. Just  
15 to be clear, we as a group, dispute any fee for  
16 the letter of protest in its entirety. Letters of  
17 protest are not a cost center. In retrospect,  
18 they are a cost reduction to examiners time  
19 evaluating applications by providing them with the  
20 appropriate information needed. The work was done  
21 for them. I want to first thank, Lisa Ramsey  
22 (phonetic), Professor of Law, University of San

1 Diego, for helping with these comments. The USPTO  
2 should not increase the fee for filing letters of  
3 protest in the amount higher than \$50 because  
4 these letters help the government determine  
5 whether registering certain trademarks or trade  
6 dress, will stifle fair competition, and chill  
7 expression protected by the first amendment.  
8 Often, letters of protest provide valuable  
9 information, to the USPTO, about the preexisting  
10 meaning or decorative value of certain words,  
11 names, symbols, or devices claimed as a mark or  
12 trade dress for goods or services. Trademark  
13 examining attorneys may not be aware that this  
14 phrase, image, shape, color, or other product  
15 feature included in a trademark application is  
16 valuable in a certain industry or community. The  
17 evidence provided by private parties in letter of  
18 protest, help the government evaluate whether this  
19 language or design is subject matter that is  
20 generic, descriptive or functional for that  
21 product, or it is merely informational, expressive  
22 or ornamental matter that falls in function --

1 fails to function as a source identifying mark in  
2 this context. At a minimum, the USPTO should not  
3 increase the fee for letters of protest that  
4 provide information about whether a protest  
5 trademark or trade dress, is generic, descriptive,  
6 or functional or fails to function as a mark.  
7 These type of grounds for refusal of a trademark  
8 registration, protect competitions and consumer  
9 but ensuring that subject matter remains in the  
10 public domain, freely available for use by others,  
11 in connection with the advertising and the sales  
12 of these products. Unless other law, such as  
13 copyright or patent law, bans this type of use,  
14 ideally the USPTO should be dropping the \$50 fee  
15 for letters of protest all together. If the USPTO  
16 does decide to increase the fee for some or all  
17 letters of protest, it should not be increased  
18 from \$50 to \$250, as this is a \$200 or a 400  
19 percent change. A fee higher than \$50 will be too  
20 expensive for most individuals and small  
21 businesses, who are often providing a useful  
22 public service when they submit these types of

1 letters. It is clear after the Supreme Court  
2 Case, Tami and Brunetti, that the government must  
3 consider whether trademark registration laws,  
4 chill truthful, and non-misleading expression  
5 protected by the first amendment. Increasing the  
6 fees for filing letters of protest will likely  
7 discourage most private parties from submitting  
8 evidence about the inherent value, nature of  
9 words, names, symbols or devices claimed as marks  
10 or trade drafts, and may result in more speech  
11 harmful and anti-competitive trademark  
12 registrations for subject matter that should not  
13 qualify as a trademark. In closing, respectfully,  
14 Commissioner Gooder, the letter of protest helps  
15 your organization lower costs and protect the very  
16 register you spoke of today regarding  
17 applications. We find it highly ironic that your  
18 organization wants to make them unreachable for  
19 many small businesses, with fees for filers and  
20 ultimately negating much information that could  
21 show applications rejected. I ask you today, what  
22 dollar value, did the stated 25 percent of

1       successful filings for letters of protest save the  
2       American business market? Stop looking at the  
3       administration costs and recognize the value to  
4       the system. Alternatively, provide Google search  
5       as a tool to your examiners. Then, you wouldn't  
6       need a letter of protest. We invite all committee  
7       and attendees to join our Facebook group, and  
8       participate in the ongoing discussion. I thank  
9       you and the committee for your time and  
10      consideration. Thank you.

11               MR. CHO: Thank you, Mr. Riel, for those  
12      comments. So, at this stage I want to personally  
13      thank again all the individuals who have provided  
14      those very valuable comments, remarks, insight on  
15      the proposed fee changes, especially for you  
16      individuals who made it here. Some of you do not  
17      live locally, (laughter) so I appreciate that. I  
18      also want to not forget all the work that is  
19      required to put something like this up. There  
20      were some minor technical difficulties, me  
21      included, but as you can see nothing was amiss,  
22      and that is a tribute to the professionalism and

1 the work ethic that many of you know, but I want  
2 to publicly acknowledge from PTO. So, I want to  
3 thank Commissioner Gooder, his entire team and  
4 staff, what they've done. We'll look forward to  
5 continuing he dialogue as we prepare our comments  
6 taking in everything that was shared, and we will  
7 proceed in that fashion. With that, I believe we  
8 can close this meeting. Thank you very much.

9 (Whereupon, at 2:26 p.m., the  
10 PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

## 2 COMMONWEALTH OF VIRGINIA

3 I, Thomas Watson, notary public in and  
4 for the Commonwealth of Virginia, do hereby certify  
5 that the forgoing PROCEEDING was duly recorded and  
6 thereafter reduced to print under my direction;  
7 that the witnesses were sworn to tell the truth  
8 under penalty of perjury; that said transcript is a  
9 true record of the testimony given by witnesses;  
10 that I am neither counsel for, related to, nor  
11 employed by any of the parties to the action in  
12 which this proceeding was called; and, furthermore,  
13 that I am not a relative or employee of any  
14 attorney or counsel employed by the parties hereto,  
15 nor financially or otherwise interested in the  
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of  
20 Virginia

21 My Commission Expires: September 30, 2025

22 Notary Public Number 256314

