UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Monday, June 5, 2023
PARTICIPANTS:

TPAC Members:

DAVID CHO, Chair
ADRAEA BROWN, Vice Chair
JAY HOFFMAN, CFO
RODRICK J. ENNS
DONNA GRIFFITHS
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Union Members:

JAY BESCH, NTEU 245
CATHY FAINT, POPA
HAROLD ROSS, NTEU 243

USPTO:

DAVE GOODER, Commissioner for Trademarks
KATHI VIDAL, Undersecretary of Commerce for Intellectual Property and Director of USPTO
JAY HOFFMAN, Chief Financial Officer
PARTICIPANTS (CONT'D):

Also Present:

ERIK M. PELTON
CAROLINE FOX
ALLISON STRICKLAND RICKETTS
TED DAVIS
KEN REIL

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MR. CHO: Hello, welcome everyone. My name is David Cho. I am the Chair of the Trademark Public Advisory Committee, none as TPAC. We welcome you to convening this hybrid public hearing as set forth in the April 27 Federal Register Notice. The site is 88FR25623. I'm here to just start off this meeting, and I want to go over briefly the agenda and logistic points. The logistics part of what we will be going through. After my opening remarks and a brief overview, we will have a video message from Director Kathi Vidal, she cannot be present in person, but she's left us this message. After her, we'll hear a presentation of the proposals from Commissioner Gooder. He will yield part of his time then to Jay Hoffman, the CFO for USPTO, who will continue to give you an overview of the fee proposals. Afterwards, we will then hear from 6 total witnesses, one will be remote and the other 5 will be in person. I will introduce each of the
speakers and also go over briefly their time allotted to them. For the rest of the people present here virtually, you will all be in listening mode during the hearing. The public may ask, and we may answer only clarifying questions about the proposal. Formal questions should be submitted through the regulations.gov website. The fee setting and the dressing section of the USPTO website, just reminds you, gives detailed instructions on how to submit comments.

So, let me briefly talk about the fee setting process and the timeline involved. Speaking about only the fee setting, it is in itself, a multi-stage process that takes about 2 years to complete, including 2 opportunities for public engagement. So, we are in that portion right now -- of the beginning part of the fee setting, and today's hearing is one of the first opportunities for public engagement and serves as the initial public review of the fee proposals. Written comments on proposed trademark fees will be accepted until June 12, 2023. So, that's next
week. Following the public hearing and the conclusion of the comment period, TPAC will make a report with comments, advice, and recommendations related to the proposed fees. This report will be made available sometime in July this year. Once the USPTO receives the report, it will analyze, consider all comments, advice, and recommendations before setting or adjusting those proposed fees. The USPTO will then publish any proposed fee changes in the federal register through a notice of proposed rule making, commonly referred to as NPRM. The NPRM will include the rationale and purpose for the proposal, including possible expectations or benefits. Now, assuming the current pace continues, the NPRM should publish in the federal register around February to March of next year. Once published, the public will have a second opportunity to engage the USPTO and provide written comments, on the proposal. The USPTO will then analyze and consider all those comments before issuing a final rule in September to October of next year. Congress will then have
45-60 days to consider the final rule before its planned implementation November 2024. So, I'm just giving you -- just a verbal summary and timeline that has already been published and that you can access. I wanted to make sure to provide that to you according to federal statute, TPAC is now engaged in convening this hearing for purposes of evaluating key proposals. That being said, let me then transition to a message from Director Vidal.

DIRECTOR VIDAL: Good afternoon and welcome to today's hearing on setting new fees for our trademark business line. I'm Kathi Vidal, Undersecretary of Congress for Intellectual Property, and Director of the USPTO. Thank you so much to the members of our trademark public advisory committee, and to all of our attendees, both in person and online for joining us today. This hearing is part of our commitment to fiscal responsibility and our ability to provide the highest quality, most reliable, and accurate trademarks registered by any IP office in the
world. The American Intellectual Properties system plays a pivotal role in entrepreneurship and the perpetual renewal of our nation's economy. IP ownership spurs the creation of new businesses, new jobs, and new opportunities, and it improves the welfare of our citizens and our communities. The USPTO is committed to helping every entrepreneur protect and benefit from their intellectual property. As the stewards of America's Innovation System, the USPTO is committed to the financial strength of our organization that will allow us to serve all of our customers. Thanks to congress and the American Invents Act, the USPTO has fee setting authority through 2026. The USPTO does not take fee setting authority and Congresses faith in us lightly. We have been good stewards of that authority. In fact, on April 17, the AGA notified me that the USPTO will receive its twenty-first consecutive certificate of excellence, in accountability reporting, CEAR Award, at the organization's annual awards dinner on Wednesday,
May 31. Where we have identified spending that
does not provide the return we believe the country
deserves, we have cut costs. This includes
releasing approximately one million square feet of
office space in or around our Northern Virginia
campus. The decision was a result of a multi-year
study. This will save the office forty million
dollars each year going forward, but we must keep
up with inflation. We must keep up with updating
our legacy IT systems, and exploring IT solutions
to provide higher quality IP and a better customer
experience. With initiatives that will improve
the robustness and reliability of the trademarks
we register. With technologies that enhance
examination efficiencies, so we can continue our
efforts to stabilize and reduce pendency. With
measures that will curb fraud and abuse. We must
continue to attract the best work force in the
country, and provide them with the resources they
need to perform their jobs to the best of their
ability. To preserve a sustainable financial
model, we are surgically targeting fee
adjustments, to labor intensive services, so that our revenues are enough to cover our total costs. I'm confident that the proposed fee schedule, will promote greater use of the trademark system by more people, and it will allow us to better serve our hundreds of thousands of stakeholders well into the future. Finally, I would note that the USPTO reviews our fees on at least a biannual basis, and proposes adjustments as needed. The last adjustment to fees took place in early fiscal year 2021. This current proposal would not take effect until fiscal year 2025. In a few moments, you will hear a detailed outline of our proposal. Our hearing today is the first opportunity to share your feedback on the proposal. This will be a comprehensive process and we look forward to your perspectives, and your comments, as we move through each step. I value your thoughts and ideas. Our office is committed to serving you and all of America's entrepreneurs and businesses with honor, with the utmost of respect, and with integrity. Thank you again for your time and
participation. We look forward to your input.

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

MR. GOODER: Thanks David. Welcome everyone to today's hearing for the setting of future fees for trademark services. This is, and you've heard the first public step, in engaging the trademark community, as we work toward changes that are planned to take place in the Fall of 2024. The hearing -- this hearing is a regular feature of our normal fee setting process which has typically taken place on a three year rolling cycle. Our process is collaborative, and we look forward to your comments from trademark owners, from practitioners and the trademark community at large. You know, after all, everyone who buys and sells products and services in the US, and that is pretty much everyone, benefits from a strong US trademark system. From 50,000 feet the proposals we are discussing today support a number of key efforts. On the financial side, in order to
maintain the financial health and sustainability, we must aid -- better align our fees with the actual cost of the service rendered, and ensure that our aggregate costs are recovered, so as to ensure our financial stability. Sounds Simple, but it's not always that easy. With regard to trademarks themselves, these proposals are designed to improve the quality of the services we provide to trademark owners and practitioners. To do this, and to ensure that the USPTO is prepared for the future, we must incentivize the highest quality applications which help us reduce pendency and protect the integrity of the trademark register. I'm a big believer in knowing why things happen or the way they are going to happen. So, let's now take a brief look at each of these areas so you can understand the why of the particular fees.

On the financial aspects, the proposed fee structure allows us to recoup our costs by the AIA, as Director Vidal was talking about, and that speaks in terms of ensuring that our aggregate
revenue covers our aggregate costs. But, many of
our fees are more than 10 years old and quite
honestly, they no longer match the cost that it
takes for us to provide these particular services.
In fact, many don't even come close to doing so.
Jay Hoffman, our CFO, seated to my right here,
will delve into the specifics in more detail
shortly. One of the areas that has contributed
greatly to our increased costs, are the efforts we
must now take to protect the integrity of the
trademark register. Active members of the
trademark community have seen many forms of scams
aimed not only at trademark owners, but at the
USPTO itself. The sophistication of these scams
continues to increase month after month, and
without increased resources we cannot expand our
efforts to proactively fight them. Many brand
owners can sympathize with this situation, but
counterfeiting is impacting their business, more
than it ever did. Consequently, they need to
devote more and more resources to protecting their
brand. The trademark register is in exactly the
same position. Our trademark registration system serves businesses and individual entrepreneurs in many different communities, including many that would be considered underserved. In fact, roughly 25 percent of all applicants choose to go through the process without the assistance of counsel. What's more, 76 percent of all trademark filings are owned by either individuals or businesses who own less than 10 filings. So, very much small business and individuals. To encourage broader participation in the trademark registration system, our fee setting strategy has historically subsidized the application phase of the process, relying on maintenance and intent to use fees to make up the difference over time. Recent trends, however, are undermining that traditional balance, so while we could have eliminated the subsidy entirely, we didn't do so for the simple reason that we want to continue to be able to encourage filing and subsidize below cost applications. This entails and helps make trademark filing more accessible and affordable. One of the
trends we are watching is this, many of the
applications filed during the pandemic surge of
applications that was filed that we've all been
laboring under, were from foreign nationals,
seeking registrations to allow them access to
online marketplace brand registry programs. Given
that many of these trademark owners, are focused
on short-term sales, as opposed to being brand
builders for long-term. We believe that there's a
risk that a higher than normal proportion of these
registrations are unlikely to renew at a rate that
will cover the examination costs as they have in
the past. And, finally, our fee proposal helps
the trademark side of the agency recover the
aggregate costs necessary to pay its share of the
cost of the overall mission and strategic goals of
the USPTO. On the operations side, as our
inventory of unexamined applications mushroomed
during the pandemic, a number of issues became
clear to us. Most notably, we know that the
higher the quality of the applications coming into
our office, the faster we can process it.
According to our fee structure, that we are proposing, benefits applicants that submit higher quality applications. For example, when we receive applications with missing information or excessively long descriptions of goods and services, it takes more time and work to examine them. If an applicant wants to submit a freeform description of goods and services, this takes us more time to review, and so an additional fee applies to account for some of those added costs. This suggests the same way that TEAS standard application form works today. What is new, though, is that there will now be a charge if the applicant's free form ID, exceeds a set limit. We set that limit so that 90 percent of the current freeform IDs, do not incur the new charge. Why did we do this, well unfortunately this has become necessary because in the trademark -- many in the trademark community are submitting identifications of goods and services that run into the thousands of characters. In fact, one application in particular filed by an attorney, contained an
identification of goods that ran to more than 4
pages long, and it took a very experienced
examiner, more than 5 times the usual amount of
time it takes to examine that application, and
that kind of application isn't unusual.
Consequently, while an applicant can still submit
a lengthy idea, they simply must pay their fair
share for the cost of handling one that exceeds
the limit and that they can't inflict that excess
burden on the larger pool of trademark applicants
who help us achieve the goal of higher quality
applications.

To further aid the process of submitting
more complete applications, and being able to so
more efficiently, we will be launching later this
year a new e-filing platform. The new system --
the new interface is based on extensive feedback
from our users as well as our own research in the
trademark filing systems from other countries.
The new fee structure interfaces with the new
e-file system, so that the applicant basically
builds their application from the ground up and as
they do so, e-file will tell them exactly what's impacting the fees that they would pay, if they make certain choices. So, they can see in real time how they can save money. The proposal fee structure allows us to accelerate efforts to decrease pendency. Indeed, for the last couple of years, our pendency has been higher than usual. I don't need to tell anybody who is in the room or listening in about that. We know that that situation has strained all of you, as it has strained us as well in our resources. Reducing pendency requires us to invest in tools and examination capacity to mentor with the incoming volume. The proposed fee structure provides important funding to finance work that is intended to reduce pendency, while still maintaining consistently high quality. These are things that include hiring more examining attorneys, developing additional tools to help our examiners and support staff to do their work, more efficiently and improving process efficiencies. A few minutes ago, I mentioned the increasing
challenges we face, protecting our valuable trademark register. Our fee structure allows us to increase our capacity, to more proactively protect the register, especially as threats are now more than ever, coming from outside our own borders. But, to be sure, we haven't been sitting around for additional -- we haven't been waiting around for additional funds, excuse me, to address the problem in fact, we've already hired now a Director of Trademark Protection to lead the work in this area, we've implemented new tools to challenge issue registrations for false claims of use, and issued sanctions in thousands of cases where the parties have violated either PTO rules or the rules of practice. But, as every brand owner is acutely aware, infringing on trademark abuse is a growing problem and there's much more work that we must do. We are in the process of increasing our capacity to review suspicious filings, sanction bad actors, shut off USPTO.gov accounts when necessary, and challenge registrations for non-use. The fee structure
we’ve proposed would not only allow us to continue this work that we’re doing currently, but also to take an increasingly proactive approach to protecting the register.

The proposal we put forth is intended to meet the needs of the trademark community. We want to hear from you, we want to know what you think, what we can do to improve it, change it, etc. As I said, at the start of my remarks, today's hearing is a just the first opportunity to do -- for you to offer feedback on the proposal, but it won't be the last. We'll analyze your suggestions and ideas, and then prepare a notice of proposed rulemaking, which is the next step that you all will see. Then, there will be another opportunity to make additional comments. I want to thank you coming today, and thank you for being engaged in this process. The trademark registration is the cornerstone of the US Trademark ecosystem, and we look forward to hearing your feedback so we can ensure that our system is as valuable to future generations as it
is to those today. At this point, I'll turn the microphone over to Jay Hoffman, our CFO.

        MR. HOFFMAN: Great. Thank you, Commissioner Gooder for kicking us off with that great overview of the work you and your team are doing for our trademark community. I am Jay Hoffman, I'm the USPTO Chief Financial Officer. The USPTO recently completely a comprehensive contract fee review and concluded that we must adjust fees to increase aggregate revenue to recover aggregate costs. I'd like to thank the many people, who diligently and thoughtfully formulated the proposals I'm about to go through. Members of our trademark business unit, as well as, members of my team and the office of the CFO, some are here with us today, and some are watching virtually. I speak for them when I say we appreciate your time and your feedback. Both will help us shape a proposal that hopefully will ultimately benefits American businesses and entrepreneurs. Before I talk through each of the proposals, I'd like to note that several documents
explaining our proposed fee adjustment, are
available on the fee setting and adjusting section
of the USPTO website. These materials provide
more background on our fee setting methodology,
along with a detailed list of current and proposed
fees, including corresponding unit costs, for each
of the proposals that I'll talk about today. So,
thank you in advance for your time, and we look
forward to hearing your comments, as we continue
the fee setting process. Next slide, please.

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

SPEAKER: Over here - sorry, here we go.
MR. HOFFMAN: All right, all right. I'd
like to set the stage for the fee proposal with
our agenda. So, first I'll provide some context
by reviewing our current financial outlook. Then,
I'll discuss our fee setting objectives and
benefits and from there, move to the detailed fee
proposals. These proposals are targeted to
applications, intent to use filings, letters of
protest, maintenance filings, petitions to the director and petitions to revive an application. As both Director Vidal and Commissioner Gooder mentioned in their introductions, these fee adjustments, including those to labor intensive services, will ensure the USPTO's position to deliver the products and experiences our customers expect and deserve. Next slide. It worked, all right, I'll begin by discussing factors that are significantly impacting our financial outlook, including uncertain demand and the way applicants and registrants are using our services. So, let's start here with the chart on the left-hand side up the page, it provides a summary review of our trademark operating reserve. It also conveys our operating reserve guard rails. Minimum balances are represented by the solid gray line and the optimal balances by the solid blue lines. The optimal balance is set as the optimal number of months of operating expenses, currently set at 7 months. So, as you can see by the slope of the blue line, the optimal balance grows to keep pace
with the cost of rising operations.

The dotted green line represents the operating reserve forecast included in our FY 2024 President's budget, that was released in March of 2023. In the operating reserve is the result of a simple cumulative math calculation over time. So, it starts with the beginning balance, we add to it during years when revenue exceeds costs, and we subtract from it during years when costs exceed revenue. So, this chart is a representation of our financial position, considering certain assumptions at that point in time. Now, prior to the most recent budget and when we last set fees, we forecasted that fee collections would outpace our operating costs. Consequently, we anticipated sufficient fee collections to offset aggregate trademark costs, and retain some incremental collections above those aggregate costs to add to the operating reserve. Our goal was to build the reserve to optimal levels to improve our financial sustainability. Now, as I'll discuss on the next two slides, demand filing behaviors and trademark
costs structures have all materially changed over
the past few years and under the current fee
schedule, aggregate costs will exceed aggregate
fee collections through FY 2027, requiring the
agency to rely on the operating reserve to finance
a portion of trademark operations. Consequently,
the operating reserve balance is declining rather
than increasing and changes to the fee schedule
are necessary to ensure that we recover our
aggregate costs.

Now, there is no cause for concern as we
work through the fee adjustment process and rely
on the operating reserve to finance a portion of
the trademark operations, this bridge financing is
one of the intended purposes of the operating
reserve. So, now I will explain why we are
forecasting this financial outlook, specifically
fees are not recovering costs for two principal
reasons. First, as we outlined in the FY 2024
President's budget, inflationary pressures are
increasing our costs. In fact, relative to the FY
2023 President's budget delivered in March of
2022, we estimate that trademarks costs will increase by $162 million dollars through fiscal year 2027, due to higher than expected inflation and personnel and contractor costs. So, let's focus specifically on personnel costs for just a moment. Trademark examining attorneys are at the heart of everything that we do to deliver the mission, and are continuously hiring to reduce the number of applications awaiting examination. Salaries and benefits comprise over 70 percent of all trademark related costs, and we project that personnel costs will rise by $115 million dollars cumulatively over the 5 year budget horizon. Now, here's why. Recently, greater than anticipated inflation resulted in higher employee raises than we previously budgeted in our baseline assumptions. I should note that the inflationary pay increases effected all US government agencies, not just the USPTO.

Second, trademark demand and applicant filing activities have changed and Dave discussed some of this in his remarks, so next slide. So,
during the past few years trademark demand surged to historic highs. This chart shows that the last time we saw a similar surge in demand, was during the dot.com boom and bust around 2000, more than 20 years ago. Now, keep in mind, that over than three quarters of the trademark costs go to application examination. Therefore, we experience -- when we experience a surge in demand, there's an even greater surge in costs. This isn't intuitive, so bear with me when I explain why. So, we set application filing fees below our examination costs in order to maintain low barriers to entry into the trademark registration system. Our revenue forecasting assumptions estimate a certain percentage of fees from filing, maintenance, intent to use, or ITU, and other fees. Maintenance and ITU extension fees subsidize our losses in each application fee, as I'll show on the next slide, this recent application surge occurred without a corresponding rise in maintenance and ITU filings. We've been observing new trends in the mix of new filers and
their preferences are upsetting the traditional balance of the fee structure. The maintenance rate for Pro Se registrants is about half that of non-Pro Se registrants. Also, foreign filers prefer to file used space applications with less than 10 percent coming from ITU's, as compared to about 50 percent of domestic filers. During the pandemic, there was a shift in renewal filers, and an increase in people starting new businesses. With this shift, we saw shifts in Pro Se applications and filing from foreign entities. These applicants were not paying ITU extension fees. To put a finer point on it, we didn't receive enough renewal and ITU fees to subsidize the application losses associated with this once in a generation surge in demand. This environment brought our aggregate revenue and aggregate costs, out of balance resulting in us relying on us relying on the operating reserve, more than originally planned.

Now, let's go back to the line on the chart here where you can see that demand, softened
quickly right there before the yellow part of the line, and as it stands currently, we are forecasting a return to historic filing trends. We are also watching economic trends closely and the trademark business is particularly sensitive to economic changes in the short term. Now, on the previous slide, I discussed how costs are currently outpacing fees, apart from inflationary pressures, some of these increased personnel costs were necessary despite demand softening, somewhat abruptly, we continue to hire examining attorneys to increase capacity and address the persistently high inventory of unexamined applications. We'll continue to adjust hiring levels up or down, commensurate with demand and inventory levels each year. It is also important to remember, that some of the hiring replaces routine attrition of about 5 percent annually. In addition, processing times will improve as these new examiners gain experience. At the same time, we're being strategic with our spending moving forward, adjusting for moderating demand and focusing on
the improvements that Commissioner Gooder
discussed. Next slide. All right, let's take a
look at these changing demand patterns. So, I'll
use this slide to explain the fee structure and
balance, that I talked about just a moment ago.

So, these two bars show the proportion of fee
collections, or the fee structure balance in two
points in time, FY 2019 and FY 2021. The bar for
FY 2019 prior to the pandemic, the bar for 2021 at
the height of the pandemic in the application
surge. Our current fee structure is designed and
balanced to accommodate proportions in the FY 2019
bar on the left. When applications surge, we
found that application filing fees accounted for
59 percent of our fee collections, instead of 55
percent, we anticipated when we last set fees.
Conversely, ITU and renewal fees declined, as
percentages of total fees, and didn't reflect
historical rates. Now on the previous slide, I
discussed why our data suggests that the climate
ITU extension fees. Regarding renewal fees we've
found that three quarters of filers are
individuals in small businesses, many of whom may not remain in business to renew and maintain their marks. So, likewise as I mentioned earlier, many of the applications filed during the surge were from foreign nationals seeing registrations to use in brand registries. These filers are unlikely to renew at a rate that would recover examination costs. Consequently, these trends have shifted renewal patterns. We believe that these demand changes are systemic and require rebalancing of the fee structure going forward.

Next slide. So, this leads me to our next topic, our fee setting objectives and benefits. Go ahead and advance, thanks. We have 6 broad objectives for this round of fee settings. Some of which I have already discussed while going over the financial outlook. As you can see, one of our main priorities is to recover aggregate costs to finance the USPTO's mission, strategic goals and priorities. By statute, all trademark operation costs must be offset by the fees that we collect. That objective is not achievable under
the current fee structure. Additionally, our unique status as a fee funded agency also means it is important to maintain our operating reserve at sufficient levels to provide stable financing across a variable business cycle. We also want to improve our processing efficiencies. From which the next two objectives stem. So, as Commissioner Gooder discussed, in some of the business and operational improvements on the horizon, this proposal is framed to enhance application quality, promote operational effectiveness, and deliver value and processing options. It will also appropriately align fees with our aggregate cost of delivering trademark related services, while preserving affordable processing options. At the same time, the fee structure will continue to subsidize below cost application filing fees, with fees for maintenance and ITU extensions. Thus, maintaining our commitment to low barriers of entry, albeit with necessary changes that reflect the new fee balance. Next slide. The fee setting effort will provide us the resources to issue and
maintain trade registrations that protect brands and investment. A significant priority is our promotion of inclusive innovation through active engagement and widespread access to resources and tools. We believe these proposed fee adjustments will optimize trademark application processes and enable efficiencies that protect entrepreneurs and business owners. As Director Vidal and Commissioner Goodard conveyed, these fees will resource initiatives to improve the reliability of the trademarks we issue, and as always, we continue to aim to deliver exceptional customer experiences, during every interaction with our stakeholders. Next slide. All right, so now let's take a look at the detailed fee proposals. I'll go through each of these proposals in detail, but first, I want to reiterate that this information and much more is posted on the fee setting and adjusting section of the USPTO website. Next slide, applications, okay. I'll begin our detailed discussion with proposed fees to implement trademark application filing changes.
This first proposal is two-fold. First, we propose discontinuing the current trademark electronic applications system, or TEAS, standard and plus filing options and associated fees. Second, we proposed replacing those discontinued application filing options, with a single basic application option and a corresponding basic fee. The single basic application filing option, will be akin to the TEAS plus option. Today, applicants file with TEAS plus, use a preapproved drop down selections of goods and services, making their applications more complete and easier to examine. So, Dave was talking about this. These complete and comprehensive applications promote efficiency in examination and help us reduce pendency. Unfortunately, only about half of trademark applicants, use the TEAS plus filing option, and instead they prefer the TEAS standard. So, unlike a TEAS plus application, a TEAS standard application often includes the long, free form description of good and services, including the example Dave mentioned, and these descriptions
require examining attorneys to perform additional work at additional cost to the agency. Next slide. Okay, so under our proposal, we are setting a new single basic application fee with additional premium application surcharges based on certain actions the applicant makes during the filing. Our proposed fee for the basic application, accomplishes two objectives. First, it continues to maintain the fee below costs, at an affordable rate. Second, it better recovers examination costs earlier in the trademark lifecycle. Although higher than the TEAS plus fee, the proposed rate remains below our actual examination cost and is proposed at at the same rate, as the current TEAS standard application. Given that approximately half of our applications are filed using the TEAS standard method, the $350 basic application fee per class is in keeping with our policy to maintain low barriers for entry to under resources and underrepresented brand owners. We are also proposing to increase the paper application fee from $750 to $850 per class, as
paper remains the most expensive application filing method for us to process. However, more than 99 percent of our filers currently submit their applications electronically, so this will impact a very tiny percent. All right, next slide. All right, next slide. All right, now we'll transition to the various premium application surcharges. Those are based on elections during filing. We propose one addition to the basic fee, today the TEAS standard and TEASE plus fees differentiate the cost of processing. Likewise, our proposed surcharges are intended to differentiate the cost of processing a basic, complete, and comprehensive application from applications that require more work by the office achieved by additional fees to cover additional costs. So, we're proposing additional fees to submit an incomplete application, other than those that don't satisfy minimum requirements, to receive a filing date under 37CFR section 2.21. An applicant might also use custom descriptions of goods and services including long
identifications for additional fees. Overall, our goals is to improve processing efficiencies so we can examine applications more quickly, while at the same time, offering traditional options for applicants that prefer more freeform descriptions of goods and services. Next slide. All right, so for example, if you look at the fourth row down on this chart, we propose that applicants who submit an incomplete application, outside of those that fail to satisfy 35CFR 2.21 requirements, they would pay an additional $100 fee. We also propose a $200 fee, for custom goods and services not contained in the trademark ID manual and entered in the freeform box. As a part of this new application fee structure, we are also proposing to discontinue the 3 TEAS standard and TEAS plus related fees, listed in the first 3 rows on this chart. Next, slide. Our final proposal associated with premium applications will be applied if an applicant uses the freeform box for custom id's. We propose a $200 fee for 1,000 characters for freeform identifications exceeding
a newly established cap of 1,000 characters per class. This fee would be applied to each additional block of 1,000 characters per class. So, for example, if an application includes 3,500 characters in the freeform description of goods and services, the applicant would pay an additional $600, calculated as follows. The first 1,000 characters are free, and then there is a $200 charge for characters 1,001 through 2,000, another $200 fee for characters 2001 through 3,000 and a third $200 fee for the remaining 500 characters, for a total of $600. So, we expect these additional character based fees will impact a very small number of applicants. Today, only 9 percent of trademark applications exceed 1,000 characters per class. Thus, more than 90 percent of applicants are unlikely to be effected by these surcharges at all. Next slide. I'm not going to spend a lot of time on this slide because it is pretty straight forward and follows the same structure as the domestic application fees I just discussed. In short, we propose adjusting the
fees from a Madrid applications to a line with the
proposed domestic application fees. Next slide.
Our next proposal concerning IT filings is also
two-fold. So, first we propose increasing fees
for amendments to alleged use or AAU's and
statements of use or SOU's. Second, we propose a
new tiered fee structure for extending the SOU
filing period. So, when an applicant files an ITU
application they'll eventually have to file either
an AAU, or an SOU declaring their trademark is in
use in commerce. The difference between the two
is primarily related to when the declaration is
filed. An AAU is filed before a notice of
allowances issued or before the trademark is
approved for publishing. The SOU is filed after
it's published for opposition and after the notice
of allowance. Next slide. The USPTO established
AAU's and SOU's in 2002. In the intervening 20
plus years, we have never adjusted AAU and SOU
fees, but the cost of increasing these filings has
increased substantially due to inflation and
application complexity. Consequently, the gap
between the fee and the cost of processing it is growing. The $50 to $100 increases in these fees will help us recover costs from ITU processing. Note that the proposed non-paper fees for SOU processing per class, which is how the majority of AAU's and SOU filings are submitted, remains below historical costs of providing these services. Next slide. The second part of our ITU proposal is related to extensions of time for filing an SOU. As I go through this proposal, remember that earlier in this presentation, we were discussing the financial outlook, I explained that this portion of the ITU fees and our fee structure balance, is declining. In FY 2019, the fee structure balance anticipated that 14 percent of fees would come from ITU's and extensions of time, are intended to offset the examination costs earlier in the trademark life cycle. Today, ITU fees represent about 11 percent of our fees. To address this gap and improve our ability to clear new marks, our proposal splits the current 6-month extension structure for filing an SOU, into two
tiers. One fee is for the first, second and third extensions, which we are not proposing to change. Our proposal does increase the fee if an applicant continues filing extensions for a fourth or fifth or final extension. Extensions that reach into a third year after the notice of allowance is issued, effect prior pending applications and users trying to clear new marks in preparation for a new application. Establishing a tiered fee structure benefits applicants who use their trademarks, as opposed to those who incur multiple extension requests, and incur additional fees. We believe this change will bring more clarity to the trademark landscape. Next slide. All right, our next proposal would increase fees for maintenance filing, specifically section 9 renewals, section 8 and section 71 declarations of use, and section 15 declarations of incontestability. Our cost for processing maintenance filings have increased due to a number of factors including inflation, post registration audits, and elevated legal reviews targeting potential fraud and improper filing. In
addition, as I covered in the financial outlook, the percentage of registrants choosing to maintain their trademark and file for maintenance is declining. The cumulative number of Pro Se filers is increasing, but we are finding that these applicants are only half as likely to maintain their registrations, as compared to non-Pro Se filers. Compounding this issue are different maintenance activities among international filers who represent a larger share of applicants as compared to domestic filers. As I mentioned earlier, we are experiencing a lot of change in filing behaviors. Given the changes that we are seeing in the filing environment, we must increase aggregate revenue for maintenance filings, to retain low barriers of entry for new trademark applications. We believe that these fee increases of $50 to $75 dollars, which I am about to review, will help rebalance our fee structure and offset rising costs. Next slide. Okay, we propose increasing fees to renew trademark registrations before they expire at the end of the 10 year
period from the date of registration, commonly referred to as section 9 renewals. For most trademark owners, those who renew electronically, we propose to increase the fee from -0 by $50. So, you'll go from $300 to $350 or a 17 percent increase. Next slide. We are also proposing to increase the fee for filing a section 8 declaration from $325 to $400 per class for filing and paper, and from $225 to $300 per class for filing electronically. Applicants must pay this fee with the declaration to keep the registration active between the fifth and sixth anniversaries of their registrations, and again between the ninth and tenth anniversaries, at each successive 10-year period thereafter. Declarations at each 10-year mark, must be submitted with the renewal fee I had just discussed. We also proposed increasing section 71 declarations filed to maintain protection under the Madrid protocol, by the same amount as domestic registrations. Next slide. Our final maintenance filing proposals, effects declarations of incontestability under
section 15. We are proposing to increase by $50, the section 15 fee applicants must pay, to claim that a registered mark is incontestable, once the mark has been issued in use in commerce for five years. Our proposal increases a section 15 submitted in paper from $300 to $350, and electronic submissions from $200 to $250. Next slide. Our final proposal concerns letters of protests, petitions to the director, and petitions to revive. Optional petitions and letters of protest are a valuable part of the trademark registration process. They are also resource intensive. Letters of protest require lengthy reviews by highly specialized attorneys, and the recent trademark modernization act, mandates that we process letters of protest within 60 days of filing, which diverts resources from other petitions or registered protection initiatives. Next slide. Now it costs the USPTO $312 to process a letter of protest. The current fee of $50 recovers only 16 percent of our operating costs. Therefore, doing the math, we absorb a net
cost of $262 per letter of protest that is ultimately subsided by other fees. Please keep this equation in mind as I come back to it shortly. So, in 2022, we received 4,443 letters of protest of which about 3,000 contained enough relevant information to be forwarded to examiners. Of those, only about 1,000, resulted in issuance of a refusal. In effect, only one quarter of all letters of protest were successful in achieving their goal. Those, 3,000 unsuccessful protests processed at a net cost of $262 each, resulted in a little over three quarters of a million dollars subsidized by unrelated fee collections. To help bring these revenues back into proportion, we've proposed increasing the fee for letters of protest to $250. This figure will recover 80 percent of our processing costs. Our goal is to strike the right balance between letters of protest that add value to the trademark registration process, and those that unnecessarily consume examination resources. We also propose to increase the fee to petitions to the director. We estimate that these
petitions cost about $886 to process, and our
current fee of $250 recovers only about 28 percent
of our cost. Our proposed fee of $400 brings our
cost recovery closer to 45 percent. Next slide.
Our final proposal would increase fees for
petitions to revive an application. Each revival
can extend examination processing and impact new
deserving applications filed, after abandonment.
Our proposed increase from $100 -- from $150 to
$250 will increase -- excuse, me, will encourage
efficient prosecution of applications and post
reapplications maintenance filings, as well as
processing efficiencies for multiple abandonments.
Next slide. Okay, so that concludes our specific
fee proposals. As you've heard a couple of times
already, this public hearing is only the first of
many required steps in the fee setting process.
I'd like to briefly talk about the path forward
and our tentative timeline for those next steps.
Next slide. So, first and foremost, these
proposals are only proposals, they are not final
recommendations. We welcome your analysis,
comments and suggestions. Your feedback is incredibly important to us and helping us shape our formal proposals to work best for the trademark system. As you provide input, please directly associate your comments with the specific proposals under consideration. This step will help ensure that we are connecting your ideas to the correct proposals. The TPAC will integrate these comments into a public, written report indicating the committee's advice and recommendations based on today's oral testimony and written comments received in the next week through regulations.gov. So, we have 6 people here, in person and one joining us virtually who requested time to testify today and provide us their thoughts and ideas. I'm delighted that you have taken the time to review our proposal and I'm eager to hear your impressions and suggestions. Those of you scheduled to testify this afternoon should provide a written copy of your testimony no later than June 12, 2023, for inclusion in the record. Those of you who do not speak today, will
also have an opportunity to provide your comments
today via regulations.gov also by June 12, 2023,
and remember we'll make comments available for
public inspection, so please exclude private
information like addresses and telephone numbers,
and things like that in your written text. Next
slide. So, looking ahead we intend to publish a
notice of proposed rulemaking, our NPRM, in the
federal register early in calendar year 2024.
This notice will incorporate feedback we receive
from the TPAC report, and formally outline our fee
proposals for another round of public comments.
After the 60- day public comment period following
the NPRM, and the time required to develop a final
rule, we anticipate publishing the final rule from
this fee setting efforts early in fiscal year
2025. New fee rates would take effect perhaps
November 2024 or about 17 months from here. There
is some uncertainty in these dates though, a
typical fee setting generally takes about 2 years,
start to finish, so we'll keep the public updated
on the timelines as we move through the process.
Next slide. All right, so I want to thank you all again for joining us today. We look forward to hearing your testimony and receiving your written comments. So, with that, I'll turn it back over to David.

MR. CHO: Thank you Jay, very much for those detailed remarks and walking us through the proposed fee changes. At this juncture I want to thank the people in advance, and one person and the person the one individual who provide comments to us today. Let me give you some quick logistics, a reminder, 5 minutes would be totally allotted to you. I will introduce you by name, and I will ask you then to either sit at the desk to your left or the podium, and someone over there will try to flash you a warning of about a minute or so. If you forget to glance over to your left, they'll try to come into your view over there - yeah, yank you, no, no, no. Okay. Anyway, thank you for that, so let us hear from our first scheduled person, Erik Pelton, from Erik Pelton and Associates.
MR. PELTON: Erik M. Pelton and Associates, which I founded in 1999 after working as an examiner, has registered more than 4,000 trademarks for clients who are overwhelmingly small businesses. And the firm itself is a small business that owns more than a dozen of its own trademark registrations. I am also the supervisor of the trademark clinic at Howard University School of Law, and an adjunct trademark professor at Georgetown University. My comments today, however, are made solely on behalf of our firm. I did not come here today to suggest that fees should never go up, but rather to advocate that the process and implications of any adjustments be considered through the lens of small businesses, while the IT expenditures and plans are more clarified. I do appreciate the comments earlier in the hearing about the significant number of filers with less than 10 trademark applications. Over 99 percent of employers in the United States are small businesses, and in recent decades small businesses have created more than 60 percent of
new jobs. Small businesses don't have associations, or even house counsel, or the resources to comment on agency proposals, such as this. But, don't let their silence fool you. Small businesses will be the most impacted by the fee increases. For small businesses the investment in trademark clearance and registration is even more important and more valuable. It helps to guard them against the risks and expenses of trademark disputes and litigation. It would thus be desirable to ensure that the fee structure provides an incentive for small businesses to protect trademarks. This would create a more complete register and ensure that all types of entities benefit from our IP infrastructure. Perhaps it would be beneficial to explore different key levels for small and large applicants. The proposed fees are also inconsistent with the USPTO's goal of increasing access for individuals from underserved and disadvantaged communities. USPTO's efforts to narrow the gender gap and to support inventors and
rights holders from minority communities should be applied. But, across the board trademark fee increases could set back those efforts. We understand that the USPTO needs to ensure proper funding and that filing levels have dropped from recent all time highs. But, details on where and how the USPTO trademark operations spends its money, have been largely absent from the proposal materials. To my knowledge, there has been no discussion of other possibilities to ensure a balanced budget while filings are low. Such as cuts to other types of spending, reduced overtime, or a hiring freeze. About 4 years ago, I stood right here testifying on the previous fee proposal, and I referenced some of the planned IT enhancements that are important to help both USPTO employees and users. Such as upgrades to tests, TEAS, and TTAB's (phonetic) systems, and much more. Four years later, many of these improvements, at least public facing ones, are still missing and downtimes and TSDR TEAS and tests are not infrequent. Certainly, there have
been IT improvements, and legacy systems are a huge challenge, but greater transparency regarding expenditures is needed, as well as, the nature and timing of planned improvements. Although I realize there are more chances to comment as the proposal moves forward, the process seems rushed. There were few discussion with stakeholders or in public TPAC meetings prior to proposal's release. The details were released just a few weeks ago, providing limited time for stakeholders to prepare for today and for the written comment deadline in about a week. There is no doubt that ensuring quality examination and maintaining a register with hundreds of millions of datapoints, is a tremendous but valuable undertaking. Know that users appreciate the difficult job faced by the USPTO, and the challenge that COVID brought, followed by filing increases and now decreases. And, know that thousands of trademark practitioners are also invested in the success of the USPTO. Practitioners recognize how important the USPTO's trademark protections are, to both the
public and to our clients, and I offer these
commens in an effort to be constructive. Those
of us who work with small businesses recognize
that they will be unquestionably more burdened by
additional fees, and the increased
unpredictability brought on by the proposed fee
structure changes. Thank you for your time.

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

MS. FRASER: Thank you Chairman Cho and
good afternoon. I'm the Chair of Dykema Gossett
Trademark Practice in Washington, DC, and also a
member of IPO. IPO will also submit written
comments. IPO represents companies and individuals
in all industries who own and are interested in IP
rights. IPO's membership includes over 125
companies, spans over 30 countries, and includes
individuals who are involved through their
companies or as an inventor, author, law firm or
attorney member. IPO advocates for effective and
affordable IP rights. IPO appreciates the opportunity to testify on the proposed fees, and we look forward to continuing the dialogue with the office about the effective fees on filing behavior. IPO supports the offices' goal of adjusting fees to finance the cost of maintaining a reliable trademark system. IPO supports the strategic goals of setting the fees, to promote efficiency, reduce pendency, align fees with service costs, and finance strategic initiatives. In general, we are concerned about the proposed fees where a nexus does not appear between the increase and the costs for policy goals. IPO also encourages the PTO to carefully consider whether the proposed fees might have adverse consequences including discouraging public participations, and assuring the accuracy of the register, and imposing undue burdens in certain industries. Many of the new fees, amount to practice changes will increase the complexity of the process and make budgeting difficult. IPO has no comments on the proposed fees for applications, statements of
use, renewals and section 15 declarations. For fees for custom descriptions of goods and services not in the manual, IPO is concerned because the manual is incomplete. This will burden brand owners that create new products, or manufacture existing products not yet in the manual. The TMEP acknowledges no listing in the manual could be complete. For the proposal to charge more for descriptions of 100 character, excuse me, 1,000 characters, we have similar concerns. It appears the character fee will penalize good faith brand owners and is an arbitrary limit. Many legitimate registrations go over this limit including house marks and those who use the manual. IPO recommends the PTO study overly long IDs to better understand when they are inappropriate and consider more targeted ways to address the issue. The office also proposed a fee of $100 per class for applications filed with insufficient information, yet has not explained what is insufficient. It is hard to predict what all examining attorney's might request during
examination. Also, the office has not provided
details for specific types of information that
increase costs. A tiered fee structure is also
proposed for extensions of time to file a
statement of use with higher fees for the fourth
and fifth extensions to encourage timely ITU
decisions. However, use decisions can be beyond
applicant's control, and there are many examples
to delay use, such as FDA approval or COVID.
Imposing higher fees for using ITU extensions
provided under the Lanham Act, seems to amount to
a penalty. Because extensions have the same costs
and are profitable, the current fees are
sufficient. The office proposed an increase for
an amendment to allege use to greater than that
for statement of use. These fees have
historically been the same. Discouraging the
filing of an early AAU, through a higher fee seems
contrary to the policy to move applications to
registration more quickly. These fees should
remain the same. For section 8 fees, the office
is proposing a significant increase because
maintenance filings are down, and the office wants
to maintain this income. The office provides no
explanation on how higher fees would encourage
registrants to maintain registrations. Owners
renewing registration would bear an unfair share
of the office's expenses and renewals could
decline. IPO opposes this increase. Under the
statutory letter of protest process, the public
assists the office in maintaining an accurate
trademark registry. This fee was set recently,
and the proposed 400 percent increase could
discourage parties from participating in a
process, which also makes examination more
efficient. The TMA requires a comptroller general
study on the efficacy of such letters, on improper
filings. The study is underway, and the office
should wait for the study to allow for review and
comment before further modifying these fees. The
IPO also opposes increased petition fees. Many
petitions are filed to correct office errors, and
it would be unfair to raise fees for parties who
have already been adversely affected. Petitions
are also filed to expedite registration to
direct to address counterfeits or infringement. An issue
important to the PTO. To conclude, while IPO
understands the need for and generally supports
some fee adjustments, some increases are
burdensome or could have other unintended
consequences. IPO encourages the PTO to examine
other possible changes to reduce the need to raise
fees and to improve examination efficiency. Thank
you.

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

MS. FOX: Good afternoon. Thank you for
having me, I’m very new here so I really
appreciate it. This morning for 5 minutes with
you all, I left my 6-month-old, braved I-95 by
car, train, considered a break neck scooter ride,
pumped on the metro, pumped in your bathroom, and
I did this all to be here for 5 minutes. Five
minutes to try and convince you, who you may have
already made up your mind, that the fee increases
that are proposed, are practically speaking, contrary to the goals of the organization that you represent. The self-stated goal of the USPTO is to provide IP protection for US inventors and entrepreneurs and we've talked about them a lot today already. The strength and vitality of the US Economy depends on it, the website says. Now by increasing application fees, by 40 percent, up actually by 55.6 percent since 2020, the USPTO is actually doing the opposite. The small businesses, the boot strapped entrepreneurs, the garage scientist, the start up creators, they can't afford that 55 percent increase, in an already overinflated economy. Yet, they are the ones that are going to ultimately be disadvantage by such drastic heights. In addition, those on the cutting edge in innovation and technology, will now be charged more because their innovative product or service is not part of the preexisting classes of the goods and services laid out in the manuals. As we discussed earlier, that's not always up to date. Lest we forget, well meaning
innovators who file their intent to use applications, during development, manufacture, or production of a service, which is often a timeline of multiple years instead of just 24 months, are to be penalized financially with higher fees later in the process for doing exactly what we are advising them to do. Securing their rights and their brands and their trademark, before they go to production, before they go to market. So, they don't have to rip products off shelves, relabel products, because there is a trademark issue. Now, I'm in the trenches and I don't know if you've ever helped a budding entrepreneur pull products off shelves because of a trademark issue, but it's extremely heartbreaking. These increases, illustrative of increases across the board, that we've discussed today, clearly paint the picture that these hikes are actually at odds with the USPTO's mission of promoting innovation. Big businesses can afford the hundreds, thousands, of additional fees, but small businesses, the innovators, and the entrepreneurs that we've
talked about a lot today, the other creators that are driving our technology and, therefore, our economy, they can't. And, while I'm sure these fee increases, have been thought out and they are coming through the well-meaning attempt to combat this churn of trademark applications and the ever-increasing examination process, the real work results is a disproportionate disadvantage to the small inventors and brands and creators, and all other small businesses, that can't spare these thousands of extra dollars across the span of their trademarks life. Perhaps a better option could be to propose similar micro entity fees, like the patent side's done. Another option might be to instead offer some sort of expedite fees for the large businesses who are chomping at the bit to get their applications reviewed and pushed through the process. I ask today that you just reconsider some of these proposed fees with an eye towards, small IP, the small businesses that we keep discussing today. I want to thank you for sharing this 5 minutes of your time, and thank you
for the service that you do to our innovation ecosystem.

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

MS. STRICKLAND-RICKETTS: Good afternoon, hello. I did not leave a 6-month-old at home to come, but I did leave my notes on my desk. So, fortunately, I had a copy on my iPad, but I'll be a little bit conversational than perhaps if I was fully prepared. I'm Allison Ricketts, I'm an attorney with Fross, Zelnick, Lehrman. As you can see, I've handled a couple of thousand applications, I'm not quite sure how many -- my firm has handled tens of thousands of applications, and it's about some perspective I'm bringing, although, I'm not speaking, you know, formally on behalf of the -- any group. So, there is a proposal to charge an extra $200 per class if applicants do not make use of the preapproved drop-down selections of goods and services. So, there are 2 problems with requiring good and
services to be selected from the preapproved drop-down list. There is the manual entry problem, and there is the substantive content problem. The TEAS system only knows if someone is using goods from the ID manual, if the user selects each item, from the drop-down list. Now there was a mention earlier of improvements in the e-filing that are coming forward, that is great to hear, I'll look forward to it. At this point, though, even if an applicant completes the free form text with only phrases that are in the ID manual, the system doesn't recognize this, and I assume the examiners don't have that ready clue, that the ID manual -- that all the phrases comply with the ID manual. You know how long it takes to use the preapproved drop-down list to select goods and services one at a time, for even a fairly short list of goods and services. Suffice to say, it is very slow. As opposed to copy/pasting the desired ID into the form, which like I said, can be comprised of all approved terms. So, the proposal to charge an extra $200 for not using the
preapproved drop-down list or using more than
1,000 characters in the free form description,
penalizes applicants who opt not to use the hunt
and peck method of picking goods off the list.
What would be great, would be if the user could
input the complete list of what they want to cover
and an artificial intelligence, computer program
would spit out a version of that list, using only
approved phrases from the ID manual, and the TEAS
system would recognize that the free form list was
created with all approved forms from terms from
the manual. There actually is a vendor, called
sortify.tm, that does just that -- except for the
part about TEAS recognizing that the terms are
from the approved list. But, the technology is
out there. So, I would encourage the office to
explore and adopt tools that would make choosing
items from the approved list a win-win for both
the office and its users. Then, there's the
substantive content problem, which has been
addressed. The manual is always incomplete
because new technology is still developed every
day, shoehorning people into using the ID manual, it seems to be the opposite of fostering an innovation mindset. If they have an innovative project, they should be able to describe the innovative nature of their different services, without being penalized because they are at the forefront of the technology. Okay, and then applications with ID descriptions that are excessively long require additional work during examination, usually it seems like those long ID's are a mix of approved terms and nonapproved terms. Again, for the same reason above, I don't know if its possible to distinguish between which ones are approved and which ones are not approved in the current computer environment, so I assume that the count is going to be just all term, all characters in there, and it is not going to only count 1,000 that are not in the ID manual. But, that would be a question that I would to like to replay to later on. Also, will that fee for the extra 1,000 characters be assessed only at the time of filing or will is also be assessed if the application is
amended during prosecution to add those characters. Does it include punctuation spaces -- another question. Okay, one of the objectives is to better align fees with costs and provide services and bullet point 5 says to improve trademark application pendency. I do not understand the proposal to increase the cost for filing an amendment to alleged use to $200, when the unit cost for that is $118, but to increase the cost of filing a statement of use to $150, for which the unit cost is $241. They are virtually the same filing, just done at different times, and if a goal is to encourage people, to convert their applications to a used spaces earlier in the process, so as to improve pendency, which apparently that is a goal, because that's the ITU extensions that are coming up, it seems like you would prefer to incentive the amendment to alleged use, which is the one that you file earlier, rather than the one filed after the notice of allowance issues. US citizens file a disproportionately higher percentage of ITU
applications since they are not eligible for
registration under section 44 and 66, which allows
non-US citizens to obtain registration within the
need to approve use. ITU applicants, meanwhile,
must pay a fee to keep their applications pending,
for the entirety of the 3 year period that they
have -- they are granted by the statute, to make
use in order to obtain registration. Now the
office proposes to increase the fee to file the
statement of use, as well as, the fee to keep the
application pending for the final year of the 3
year period, even though the per unit cost to
process these extensions was $17 in FY 2022. The
justification is that it impacts those trying to
clear new --

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

MS. RICKETTS: Okay, thank you.

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

MR. DAVIS: Thank you Chairman Cho and
members of the committee. Good afternoon, my name is Ted Davis, I'm with the law firm Kilpatrick, Townsend and Stockton, and also an adjunct professor at the Emory University School of Law. I appear today thought, not on behalf of either one of those entities, or on behalf of my firm's clients, but instead on behalf on the American Intellectual Property Law Association, on the board of which I sit. My comments reflect AIPLA's reactions to the fee proposal. As in the past, AIPLA believes that the USPTO should recover in the aggregate, 100 percent of the cost necessary for the offices' operations, it also recognizes the need for the office to make periodic adjustments to its fees to compensate for inflation. It, therefore, finds some of the proposed increases reasonable and appropriate. We do have some concerns, however, about some aspects of the proposal as there is some significant increase and the new fees for certain aspects of the trademark application process. We believe the office should thoroughly analyze and justify any
significantly increased fee or new fee, by showing that the fees are necessary and calculated to recover the actual costs associated with each targeted practice. We acknowledge that the office has been combatting the rise of fraudulent trademark applications, as evidenced by its participation in the drafting of the trademark modernization act and has an internal goal to reduce trademark examination pendency. In many cases, however, the proposed fee changes indicate the offices intent to target those issues, by shifting the burden the effort of time, effort and expense on the public through substantial fee increases, or new fees, and in particular we have some specific comments on the proposals. First, the TEAS in the Madrid application process would be completely altered to condense THE TEAS plus and TEAS standard application into a basic application, and institute new additional fees for all applications. These additional fees will significantly alter the initial cost of filing trademark applications, for example, the fees for
an application meeting current TEAS standard requirements, could increase in cost from $350 to over $850, a $500 dollar difference. For applications using custom identification language instead of language taken from the approved USPTO ID manual, the office has proposed a new fee for $200. As you've already heard though, the ID manual is not comprehensive for many goods and services. The current process for adding things to it can be unwieldy and time consuming. In addition, Madrid applicants currently cannot pick goods and services off of the ID manual that would designate in the US for extensions of protection. While we support the offices intent to streamline the application process, this fee appears to be overly restrictive, and to target companies that produce a less common goods, inventors of new technologies, and foreign filers. For applications where the identification language exceeds 1,000 characters, the office has, of course, proposed a new fee of $200 for each additional 1,000 characters. It is unclear from
the proposal, whether the character limits include spaces and punctuation. In any case, it is more than reasonable in certain cases, for an identification in one class to extend, 1,000 characters. We understand the office wishes to reduce or otherwise subsidize the burden of an examining attorney considering a long identification, nevertheless, this fee should not apply to applications compliant with the ID manual, since the time reviewing would naturally be reduced. Furthermore, without additional data supporting the 1,000 character number, the character limit should be increased to at least 3,000 character, excluding spaces. For applicants providing insufficient information, the office has proposed a new fee of $100. But, the office also has not provided any substantive information on what information a sufficient application must include. Which is a situation that opens the door to arbitrary and capricious applications of the standard. We, therefore, request the office to provide explicit guidance on what information is
necessary for application sufficiency on the notice of proposed rule making. For ITU applications, the proposal would increase fees 100 percent for AAU's and 50 percent for SOU's. But the cost to process and examine an AAU or SOU should remain -- should already be factored into the cost of the basic application, simply because an ITU filing merely moves the time and effort spent reviewing a specimen of use to a later time, rather than the time of filing. And, then finally, with respect to letters of protest, the increased fee has increased from the recently set $50 to $250, which is a significant 400 percent increase in costs. We are concerned that that increase does not take into account the value of the information that is submitted under cover of letters of protest, that can be used to support refusals to register by examiners and, therefore, we are concerned that the office is not considered the economic benefit to it of receipt of that information. Thank you very much because of the time limitations, preclude more extensive comments
on this on these subjects, we will be following this up with a written submission and we thank you for your consideration.

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

Mr. Reil: Thank you, good morning committee members and attendees. My name is Ken Reil, and I'm the founder of the Trademark Watch Dawgs Group on Facebook. I represent the group of over 33,000 small business members focused on fighting frivolous trademark applications in various merchandise industries since 2018. Just to be clear, we as a group, dispute any fee for the letter of protest in its entirely. Letters of protest are not a cost center. In retrospect, they are a cost reduction to examiners time evaluating applications by providing them with the appropriate information needed. The work was done for them. I want to first thank, Lisa Ramsey (phonetic), Professor of Law, University of San
Diego, for helping with these comments. The USPTO should not increase the fee for filing letters of protest in the amount higher than $50 because these letters help the government determine whether registering certain trademarks or trade dress, will stifle fair competition, and chill expression protected by the first amendment. Often, letters of protest provide valuable information, to the USPTO, about the preexisting meaning or decorative value of certain words, names, symbols, or devices claimed as a mark or trade dress for goods or services. Trademark examining attorneys may not be aware that this phrase, image, shape, color, or other product feature included in a trademark application is valuable in a certain industry or community. The evidence provided by private parties in letter of protest, help the government evaluate whether this language or design is subject matter that is generic, descriptive or functional for that product, or it is merely informational, expressive or ornamental matter that falls in function --
fails to function as a source identifying mark in this context. At a minimum, the USPTO should not increase the fee for letters of protest that provide information about whether a protest trademark or trade dress, is generic, descriptive, or functional or fails to function as a mark. These type of grounds for refusal of a trademark registration, protect competitions and consumer but ensuring that subject matter remains in the public domain, freely available for use by others, in connection with the advertising and the sales of these products. Unless other law, such as copyright or patent law, bans this type of use, ideally the USPTO should be dropping the $50 fee for letters of protest all together. If the USPTO does decide to increase the fee for some or all letters of protest, it should not be increased from $50 to $250, as this is a $200 or a 400 percent change. A fee higher than $50 will be too expensive for most individuals and small businesses, who are often providing a useful public service when they submit these types of
letters. It is clear after the Supreme Court Case, Tami and Brunetti, that the government must consider whether trademark registration laws, chill truthful, and non-misleading expression protected by the first amendment. Increasing the fees for filing letters of protest will likely discourage most private parties from submitting evidence about the inherent value, nature of words, names, symbols or devices claimed as marks or trade drafts, and may result in more speech harmful and anti-competitive trademark registrations for subject matter that should not qualify as a trademark. In closing, respectfully, Commissioner Gooder, the letter of protest helps your organization lower costs and protect the very register you spoke of today regarding applications. We find it highly ironic that your organization wants to make them unreachable for many small businesses, with fees for filers and ultimately negating much information that could show applications rejected. I ask you today, what dollar value, did the stated 25 percent of
successful filings for letters of protest save the American business market? Stop looking at the administration costs and recognize the value to the system. Alternatively, provide Google search as a tool to your examiners. Then, you wouldn't need a letter of protest. We invite all committee and attendees to join our Facebook group, and participate in the ongoing discussion. I thank you and the committee for your time and consideration. Thank you.

MR. CHO: Thank you, Mr. Riel, for those comments. So, at this stage I want to personally thank again all the individuals who have provided those very valuable comments, remarks, insight on the proposed fee changes, especially for you individuals who made it here. Some of you do not live locally, (laughter) so I appreciate that. I also want to not forget all the work that is required to put something like this up. There were some minor technical difficulties, me included, but as you can see nothing was amiss, and that is a tribute to the professionalism and
the work ethic that many of you know, but I want to publicly acknowledge from PTO. So, I want to thank Commissioner Gooder, his entire team and staff, what they've done. We'll look forward to continuing the dialogue as we prepare our comments taking in everything that was shared, and we will proceed in that fashion. With that, I believe we can close this meeting. Thank you very much.

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

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: September 30, 2025

Notary Public Number 256314