

**TRADEMARK PUBLIC ADVISORY COMMITTEE
ANNUAL REPORT 2014**



**UNITED STATES PATENT AND
TRADEMARK OFFICE**

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Trademark Public Advisory Committee

Fiscal Year 2014 Annual Report

I. Introduction.

This is the fifteenth annual report of the Trademark Public Advisory Committee (“TPAC”). This report reviews the trademark operations of the United States Patent and Trademark Office (“USPTO”) for the fiscal year (FY) ending September 30, 2014. TPAC’s mission, which is specified in enabling legislation, 35 U.S.C. § 5(b)(1) and (d)(1), is “to represent the interests of diverse users” of the USPTO and to “review the policies, goals, performance, budget, and user fees” of the USPTO with respect to trademarks.

Pursuant to 35 U.S.C. § 5(d)(2), this report is submitted within 60 days following the end of the federal FY and is transmitted to the President, the Secretary of Commerce and the Committees on the Judiciary of the Senate and the House of Representatives. This report is submitted for publication in the Official Gazette of the USPTO. The report will be available to the public on the USPTO website, www.uspto.gov.

Members of TPAC. As of the end of FY2014, the following individuals were members of TPAC:

- Jody Haller Drake, Partner, Sughrue Mion, LLC, Washington, D.C. (term ends December 6, 2014)
- Ray Thomas, Jr., Owner, Law Office of Ray Thomas, Jr. PLLC, Washington, DC (term ends December 6, 2014)
- Linda McLeod, Partner, Kelly IP, New York, New York (term ends December 6, 2014)
- Kathryn Barrett Park (Vice Chair), Chief Global Executive Brand Counsel, General Electric Corporation, Fairfield, Connecticut (term ends December 6, 2015)
- Dee Ann Weldon-Wilson, Trademark Counsel, Exxon Mobil Corporation, Irving, Texas (term ends December 6, 2015)
- Maury M. Tepper, III (Chair), Member, Tepper & Eyster, PLLC, Raleigh, North Carolina (term ends December 6, 2015)
- Anne H. Chasser, Strategic Advisor, Wolfe, Sadler, Breen, Morasch & Colby, LLC, Cincinnati, Ohio (term ends December 6, 2016)
- Deborah Hampton, Intellectual Property Manager, New York, New York (term ends December 6, 2016)
- William G. Barber, Member, Pirkey Barber, PLLC, Austin, Texas (term ends December 6, 2016)

In addition to the above voting Members, the following people are non-voting TPAC members representing the membership of USPTO unions:

- Harold Ross of the National Treasury Employees Union (“NTEU”) Chapter 243.
- Howard Friedman of NTEU Chapter 245.
- Tamara Kyle of the Patent Office Professional Association.

Report Highlights.

In keeping with recent years, Trademark Operations continued to meet and to exceed performance goals during FY 2014. TPAC commends the dedicated leadership of Commissioner for Trademarks, Deborah Cohn and her leadership team, as well as the hard work of numerous Examining Attorneys, Interlocutory Attorneys, Law Instrument Examiners and others in Trademark Operations. TPAC in particular wishes to thank Commissioner Cohn, who will retire at the end of calendar year 2014, for her long and highly successful career as a public servant and for her exemplary leadership of Trademark Operations. Commissioner Cohn has made significant contributions to the success of Trademark Operations, and her leadership will be missed.

TPAC is pleased to note that the Trademark Trial and Appeal Board (“TTAB”) continues the positive trends reflected in last year’s Annual Report and is now on track to maintain pendency of cases at levels reflected in its performance goals. Chief Judge Gerard Rodgers, with continuing cooperation and assistance from Group Director Meryl Hershkowitz from Trademark Operations, has implemented organizational changes that have improved efficiency and output.

The Office of the Chief Information Officer is continuing its progress on the design of a new, integrated IT system for Trademarks, known as Trademarks Next Generation (“TMNG”), and TPAC is pleased to see the introduction of new systems that are being used internally for examination of trademark applications. During FY 2015, we look forward to the introduction of more external-facing systems that will benefit those who file trademark applications and who utilized the USPTO’s databases. TPAC notes, however, that the development of TMNG continues to take significantly longer and to cost significantly more than originally anticipated, and we remain watchful of the significant investment of User Fees to develop these systems. TPAC is pleased that OCIO continues to seek input and recommendations from Trademark Operations, and this cooperative approach helps to guide the development process.

TPAC has noted the growth of certain programs, including the IP Attaché Program. While these programs are generally well-received and can benefit trademark owners, TPAC looks forward to developing better communication with stakeholders, to help to guide the utilization of this resource, and to better tracking of the activities of IP Attachés, to help to manage the investment of Trademark User Fees.

The Office of Chief Financial Officer (“OCFO”) continues to provide excellent information and to support and assist Trademark Operations and other USPTO divisions in the monitoring and allocation of Trademark User Fees. TPAC appreciates the thorough and responsive approach of OCFO and its significant contributions to successful management of Trademark Operations.

I. Discussion of Specific Issues.

A. Trademark Operations Performance:

Results for FY 2014 demonstrated a continued, extremely high level of performance by the USPTO’s Trademark Organization, with great transparency. Quality, pendency, filing, and registration data are updated quarterly throughout the year and available on the [Trademark Dashboard](#) on the USPTO website.

1. Performance Statistics.

- a. Increase in Applications. Trademark application filings continued an upward trend, increasing by nearly 5 percent compared to a year ago. This follows the record set last fiscal year when applications increased 4.5 percent. New applications are on target to increase this fiscal year to 455,017 classes.
- b. Balanced Disposals. The Office continued to maintain very high productivity levels, as it has for the past several years. There were 909,604 total Balanced Disposals, slightly less than the Trademark Operations goal of 913,000. A Balanced Disposal means one of three actions has occurred (i) a first Office Action has issued, (ii) the application has been approved for publication after examination or (iii) the application has been abandoned.
- c. Total Office Disposals. Total Office Disposals, which mean the number of applications that either resulted in registration or abandonment were 429,869 for FY 2014, up 6 percent from FY 2013.
- d. Average First Action Pendency in Target Range. Average First Action Pendency was 3 months in FY 2014, falling squarely within the Trademark Operations target range of 2.5 to 3.5 months. In fact, First Action Pendency remained within this target range at all times during FY 2014. First Action Pendency is the time between the filing of a trademark application and the substantive review of that application by the USPTO (which usually results in either an Office Action or a Notice of Publication). The range that Trademark Operations has set for its target represents a balance between maintaining an appropriate inventory of work for the Examining Attorney corps and the desire to provide a reliably fast response to trademark applicants. TPAC supports this range, and applauds Trademark Operations for consistently working within the range over the last several years.

- e. Average Total Pendency. The average time between the filing of a trademark application and final disposition of that application, whether by registration, abandonment or issuance of a Notice of Allowance continued to remain at historically low levels. For FY 2014, Average Total Pendency was at an all-time low of 9.8 months, if suspended or *inter partes* cases are excluded, and 11.3 months if all cases are included. (An application is suspended in cases where the outcome of another matter must be determined before further action on the application can be taken. This can occur if there is a previously-filed application still under examination. An *inter partes* case is where there is an opposition or cancellation proceeding before the TTAB.) These results are due in part to the progress made from greater acceptance of electronic filing and in particular use of TEAS Plus applications, which now make up 39 percent of new filings and more than 33 percent of new classes. Electronic filing and communications, which promotes more efficient and cost effective processing, now comprises 80.7 percent of all applications processed to disposal.
- f. Overall. Trademark Operations substantially met or exceeded ALL of its quantitative performance goals for FY 2014, continuing the trend that has been consistent under the leadership of Commissioner Cohn throughout her tenure. TPAC congratulates Commissioner Cohn on yet another stellar performance in FY 2014; her leadership has been exemplary. TPAC also commends the dedicated staff throughout Trademark Operations for these outstanding results, which are of huge benefit to the public served by the USPTO.

2. Quality and Training.

Although Trademark Operations has consistently performed at a very high level, the emphasis on qualitative, in addition to quantitative measures has continued under Commissioner Cohn's leadership, as she has raised the bar by constantly seeking to improve the qualitative review of applications, so that the Trademark Register accurately reflects the substantive rights of trademark owners. Thus, Trademark Operations has made great progress towards setting and achieving high quality standards. All quality targets are being met, evidence that specialized training, online tools, and enhanced communication efforts are proving effective. The USPTO has worked with members of the IP community through user groups to conduct reviews of Office Actions in order to validate and define evaluation metrics for quality review standards.

- a. Compliance Rate. Examination quality is measured by evaluating random samples of applications at two different points during the examination process. This measurement is known as the compliance rate, or the percentage of actions or decisions that have been determined to have been made correctly, with no deficiencies or errors. The first point of review looks at Initial Office Actions that reject applications for registration or raise other issues regarding formalities that require correction to the application. The second point of review takes place at "final disposition" of an application,

either by a final refusal to register or a decision to approve\ the application for publication. The goal at both points is to determine whether the Examining Attorney’s decisions and written Office Actions comport with bases of refusal under the Lanham Act. The goal for FY 2014 was 95.5 percent compliance for first Office Actions and 97 percent for final disposition. For FY 2014, Trademark Operations surpassed both goals, achieving a First Office Action compliance rate of 95.8 percent, and a final disposition compliance rate of 97.2 percent.

- b. Exceptional Office Action. The “Exceptional Office Action” is a standard with four distinct criteria: the appropriateness of the likelihood of confusion search, the quality of the evidence provided, the clarity of the writing, and the quality of the decision making. In FY 2014, Trademark Operations far exceeded its goal of 28%, with 43 percent of all first Office Actions meeting the criteria for the Exceptional Office Action.
- c. Examination Guides. Examination Guides provide a useful means of directing Examining Attorneys how to deal consistently with developing areas or with areas that have proven problematic or difficult. During FY 2014, Trademark Operations issued several important Examination Guides.
 - i. gTLD Examination Guide: Examination Guide 1-14, entitled “Applications for Marks Comprising gTLDs for Domain-Name Registry Operator and Registrar Services” was published earlier this year. The guide concerns applications for marks comprising generic top-level domain names (gTLDs) for domain name registry operator and registrar services. In light of the ICANN initiative designed to introduce new gTLDs, some of which may have significance as source identifiers, the guide sets forth conditions under which such marks may be registered.
 - ii. Geographic Certification Mark Examination Guide: Examination Guide 2-14, entitled “Geographic Certification Marks” was recently published. The guide describes the application requirements for geographic certification marks, explains the analysis for determining whether a mark functions to certify regional origin, discusses the relevant considerations for Section 2(d) likelihood-of-confusion determinations involving geographic certification marks, and provides examples illustrating some of the concepts covered.
- d. Training
 - i. Best Practices Presentation: Examining Attorneys received a presentation on the best practices of the best performing examining attorneys in the Office. The objective as to communicate and share tips

and work habits of these Examining Attorneys to other Examining Attorneys.

- ii. **Right of Publicity Presentation:** An attorney from the NFL Players' Association gave presentation at the USPTO in April on the right of publicity. CLE credit was given to attendees.
- iii. **Identification Crafting Bootcamp Training:** Examining Attorneys completed training with a focus on constructing acceptable identifications.
- iv. **Trademark Attorney Training Day:** On May 29th, Trademark Operations held a day of legal and examination training, including a number of CLE classes. The event served the dual purpose of promoting employee engagement as many people who work remotely came to the office to attend the sessions and reconnect with colleagues. The event was considered a huge success by the large number of attorneys that attended.
- v. **INTA Industry Day:** On July 29th, representatives from "Big Data" technology firms came to the USPTO to discuss the nature of their industry and specific issues affecting trademark examination. CLE credit was provided for attendees.

3. Initiatives Completed in FY2014

- a. **TMEP Updates:** The USPTO issued updates to the Trademark Manual of Examination Procedure (TMEP) in October, 2013 and April, 2014.
- b. **Enhanced Official Gazette (eOG):** The new eOG was launched in September, 2013. The USPTO based the initial design on input from external users and is in the process of incorporating new and enhanced features for both internal and external users that are now possible in an all-electronic format. New search features and publication of multimedia (sensory) marks are the most prominent changes so far.
- c. **Electronic Suggestion Tool:** This communication tool for comments on TMEP and examination guides allows both internal and external customers to provide commentary using this tool and view comments made by others. The USPTO encourages submission of comments in this manner and has taken them into consideration for all examination guides issued in 2014 as well as revisions to the TMEP.

4. Ongoing Initiatives

- a. Pilot Program to Review Post-Registration Specimens: The USPTO continued to address issues related to potential inaccuracies in the identifications of goods and services on the register. For the past two years it has conducted a limited pilot program where additional specimens were requested in connection with Section 8 and Section 71 Affidavits of Continued Use. The Office has published a report based on a high percentage of cases reviewed and completed, and is following up with discussions with stakeholders about future actions. TPAC stresses the importance of an accurate use-based register, and the Committee looks forward to continuing to work with Trademark Operations to identify measures to improve the accuracy and integrity of the Register.
- b. ID Manual Enhancements: Trademark Operations continued to work with user groups (INTA, IPO) to update and improve entries in the Identifications and Classifications Manual. User groups are currently focusing on three areas: Social Media, Finance, and Computer Terminology. IT enhancements, including an ID Checker feature and better explanatory notes for entries are in the works.
- c. Fee Reduction: The USPTO has issued a Notice of Proposed Rule Making (NPRM) that would offer lower-cost fee options for filing electronic applications and renewals of registrations. The fee reduction is possible due to efficiencies that have reduced the cost of providing some services. The proposed reduction maintains an Operating Reserve sufficient to manage operations and address long term investments.

Under the proposal, trademark application filing fees and renewal fees would be reduced by 15 to 25% depending on how the application is filed. The USPTO proposes to reduce the fee for an application filed using the regular TEAS application form by \$50 to \$275 per class if the applicant authorizes e-mail communication and agrees to file all responses and other documents electronically during the prosecution of the application. This option will be known as a TEAS Reduced Fee (“TEAS RF”) application. The USPTO also proposes to reduce by \$50 the fee for a TEAS Plus application to \$225 per class and reduce by \$100 the fee for TEAS renewal of a registration to \$300 per class.

The proposed fee reductions will reduce processing costs and promote efficiency for the USPTO and for its customers. Lower fees benefit new and existing businesses, providing lower costs for those seeking and maintaining federal registrations to protect their investment.

The proposal will also further a USPTO strategic objective to increase the end-to-end electronic processing of trademark applications by offering additional electronic application processing options and promoting online filing, electronic file management, and workflow. Implementation is

scheduled for January 2015 following completion of the rulemaking process and changes to TEAS forms.

TPAC applauds Trademark Operations on both realizing increased efficiencies for the trademark community through the strategic development and implementation of electronic processing and on providing trademark owners with cost-saving alternatives for filing trademark applications and renewing trademark registrations.

d. RFC on Changing Goods/Services to Reflect New Technology:

Some stakeholders have requested that they be allowed to change identifications of goods and services at the Post Registration stage due to evolution in technology that has affected products and services through the years. The USPTO issued a Request for Comments to solicit more public input on this subject and held a roundtable discussion at the USPTO on April 11th. Next steps will include a proposal by the USPTO, which will be published for public review and comment.

e. Nice Agreement:

The USPTO posted its proposals for changes to the 10th edition, 2015 version of the Nice Agreement. Proposals were developed based on inconsistencies noticed in the Alphabetical List, questions raised by Trademark Operations and the public on proper classification of new items and services, and clarifications to Class Headings and Explanatory Notes to provide more guidance and justification for classification practice. Proposals may be viewed on WIPO's NIVILO e-Forum found at <http://web2.wipo.int/nef/>. The comment period for proposals ended December 31, 2013. The staff of ID/Class will be drafting and posting comments on the proposals of other members.

5. Outreach Initiatives.

a. Expansion of Law School Clinic Certification Pilot Program

The USPTO's Office of Enrollment and Discipline launched the Law School Clinic Certification Pilot Program in 2008. The program expanded in 2010 and further expanded in 2012. On July 30th, the USPTO announced further expansion of the program for Fall 2014. The latest expansion resulted in 15 law schools being added to the trademark-track of the program. Currently, a total of 45 law schools participate in the program, 39 of which practice trademark law.

The Student-Attorneys are permitted, under the supervision of a duly certified Faculty Supervisor, to assist clients on a *pro bono* basis with intellectual property matters before the USPTO. To date, over: i) 1,400

Student-Attorneys have participated in the program; and ii) 650 applications were reportedly filed through the trademark-track of the program.

The program provides the extraordinary opportunity for Student-Attorneys to gain invaluable real-world experience in intellectual property during law school. Furthermore, the program makes quality legal representation affordable for individual entrepreneurs and small business owners desiring to protect their intellectual property rights. Accordingly, TPAC continues to be very pleased with this well-organized and purposeful program.

- b. 2014 National Trademark Expo: The USPTO held the 2014 Trademark Expo on the Alexandria campus October 17th and 18th. This widely attended event drew thousands of public visitors. In addition to displays and exhibits hosted by businesses with well-known marks, a number of educational forums were presented on trademark law, protecting trademarks and filing for trademark registration.

6. International Matters

a. Intellectual Property (IP) Attaché Program

By way of background, the U.S. IP Attaché program was formally instituted in 2006 as a result of: i) the Japan IP Attaché to Switzerland (1992); ii) the successes of the first two U.S. IP Attachés to Switzerland (1993) and China (2003); and iii) the funding that Congress allocated to international outreach efforts (2005).

IP Attachés are subject matter experts serving as diplomats in foreign countries/regions. They are supported in their efforts by teams in the USPTO's Office of Policy and External Affairs. To date, IPR Attachés have been assigned to the following countries: Brazil, China, Egypt, India, Mexico, Russia, Switzerland and Thailand. They are primarily responsible for promoting U.S. IP policies (e.g., taking actions necessary to strengthen the protection and enforcement of intellectual property rights of U.S. businesses abroad).

In order to better understand this fairly new program: i) representatives of the Office of Policy and External Affairs (i.e., Shira Perlmutter, Chief Policy Officer and Dom Keating, Director of IPR Attaché Program) gave presentations during TPAC's public meetings of October 12, 2012 and October 16, 2014; and ii) members of TPAC's International Subcommittee will meet with the IPR Attachés, in December, 2014, while they are at the USPTO for their annual consultations.

TPAC's review of the USPTO budget over the past few years raised the issue of Trademark's investment in the program. TPAC will continue to closely monitor the program to ensure that Trademark's investment is proportionate to the percentage of time the IPR Attachés and their support are dedicating to trademark-related matters

b. Madrid Protocol Updates

On October 16, 2013, Tunisia acceded to the Madrid Protocol. The USPTO will continue its efforts to provide technical assistance to new members.

In collaboration with the World Intellectual Property Organization (WIPO), on October 23, 2013 the USPTO conducted a seminar at its Global Intellectual Property Academy. Ray Thomas, Jr. participated in the seminar on behalf of TPAC. The advanced seminar provided participants with useful "Tips for Filing International Applications and Maintaining International Registrations". The agenda included: i) Overview of the Madrid System; ii) WIPO Online Resources; iii) Preparing and Filing an International Application; iv) Role of USPTO's Madrid Processing Unit and Review of International Application; v) Role of WIPO's International Bureau and Review of International Application; vi) Changes to International Registration; and vii) Miscellaneous Issues: Section 71 Declaration, Subsequent Designations and Additional WIPO Resources.

c. TM5 (The Five Trademark Offices)

TM5 is the abbreviation for The Five Trademark Offices: 1) USPTO; 2) Japan Patent Office (JPO); 3) Office of Harmonization for the Internal Markets (OHIM); 4) Korean Intellectual Property Office (KIPO); and 5) State Administration for Industry and Commerce (SAIC) of the People's Republic of China. TM5 references the cooperative effort between the above-mentioned governmental organizations ("Partners") to promote the harmonization of trademarks between their countries.

The last Annual Meeting was held December 5 - 6, 2013 in Seoul, Korea. At that time, the Partners discussed various projects (e.g., Bad-Faith Trademark Filings, TM5 Website Project). In addition, in FY2014, TM5 members presented a Bad Faith Filing seminar, both in Tokyo, and then in Hong Kong (in conjunction with the International Trademark Association Annual Meeting).

In 2013, KIPO assumed the lead role on the TM5 Website Project. On May 1, 2014, www.tmfive.org was launched. The official

website will be updated regularly to provide information about collaborations between the Partners as well as various resources regarding the Partners' offices (e.g., trademark laws, examination guidelines).

The Partners have designated the JPO to act as the secretariat for the next Annual Meeting.

B. IT and E-Government Issues

1. Trademarks Next Generation (TMNG)

In 2009, the Director of the USPTO instructed the Office of the Chief Information Officer (OCIO) to separate the trademark information-technology infrastructure from all other USPTO IT infrastructure and implement an integrated IT system for end-to-end electronic processing of trademark applications and trademark registration maintenance. Trademarks Next Generation (TMNG) is intended to replace the patchwork of legacy applications and databases that operate on relatively old software.

TMNG is intended to provide trademark owners and practitioners, as well as Examining Attorneys, with the tools needed for end-to-end electronic trademark processing, and to accommodate the dynamic information needs of trademark owners. During FY 2011 through FY 2014, the TMNG focus has been on internal examination capabilities.

OCIO has focused on several internal and external-facing projects under TMNG. Although the scope of TMNG has broadened significantly since its inception, and the transition from existing legacy systems to a new, integrated system is now projected to continue until at least FY 2017, OCIO's work on TMNG is progressing. OCIO continues its communication and cooperation with Trademarks, allowing both OCIO and Trademarks to agree upon business priorities and to update an agreed-upon action item list, grouped by tiers of relative importance. The priority items have been segregated by fiscal year and, as is typical with any project of this magnitude, priorities have at times shifted within the tier structure according to current need, budget and other factors at the USPTO.

During FY 2014, OCIO made significant progress on several key projects.

- TMNG- Internal
- Content Management System
- Trademark Reporting and DataMart

- Trademark Records Management (TRM) – Data Synchronization and Migration
- TMNG Infrastructure Services and Disaster Recovery Plans
- Separation and Virtualization
- Trademark ID Manual
- Trademark Electronic Official Gazette

a. TMNG Internal

The focus of this project is to provide Examining Attorneys with the tools needed during the examination phase. OCIO has made progress on providing updated capabilities to Trademark Examiners, including capabilities related to “First Action Approval for Publication” and a web-based user interface of X-Search. Usability testing with Examining Attorneys and Managing Attorneys has been completed, and the development of in-house Case Management System capabilities is on track.

b. Content Management System

The TMNG Content Management System (CMS) is intended to improve an internal architectural system used by Examining Attorneys to give them the ability to accurately review, display and store all content related to a trademark application or registration file, including status and historical information. The plan is for TCMS to be used for all internal and external-facing TMNG components. Despite performance issues with the product selected in FY 2013, OCIO managed to develop a TCMS that provides the capability to accurately store and retrieve specific types of content in one location. The current focus is on the remaining capabilities that examiners need, as well as the content management capabilities needed for the Trademark Official Gazette.

TPAC recognizes these accomplishments and encourages OCIO to continue making this project a priority.

c. Trademark Reporting and DataMart Program

The goal of the Trademark Reporting and DataMart project is to separate report generation capabilities from the examination systems and to provide a simple user interface for generating reports. OCIO has successfully deployed releases with refinements to Employee Productivity and Form Paragraphs and

internal reporting tools, completed the requirement analysis for registration processing and dashboard reporting, enhanced existing reports based on user feedback, and has initiated “brown bag” sessions for Trademarks users to continue to support user acceptance.

TPAC supports the effort to provide a simple user interface for generating reports.

d. Trademark Records Management (TRM) - Data Synchronization and Migration

Progress continues on the TRM project, including installation of tools that help diagnose application discrepancies and eliminate potential manual errors. Synchronization has been developed for assigning a case and approval for publication. OCIO successfully completed synchronization testing between TMNG and the legacy mainframe. In addition, in a test run, 80 percent of the records required for examiner capabilities were migrated.

e. TMNG Infrastructure Services and Disaster Recovery Plans

FAST1 and X-Search, two programs utilized extensively by Trademark Examining Attorneys, were deployed in a production verification testing environment. OCIO documented modifications required for TMNG Technical Stack for legacy integration: form paragraphs from FAST 1, X-Search integration with TMNG, and impact analysis is being conducted to assess Trademark legacy components required in TMNG.

f. Separation and Virtualization

The goal of the Separation project was to mitigate system dependency risks by putting existing Trademark legacy applications and systems into an environment separate from Patent and other business systems. The OCIO has made progress on the separation over the last couple of years, and the last application to be separated, the Madrid application, was put in production in the spring.

TPAC commends OCIO on the completion of the TM NG Separation program and project.

Virtualization of the IT infrastructure for Trademarks is intended to increase the agility and scalability of the systems, improve management of the systems, decrease power consumption, and reduce maintenance costs. This report focuses on two aspects of this project: Trademark Content Management System, discussed above, and Madrid Stabilization.

g. ID Manual

The current and historical goods and services class identifications were loaded in the ID Manual and the following features were demonstrated: simple and enhanced search, record editing, and data retrieval. Given the significant investment to date in TMNG, TPAC welcomes the initiation of development projects that will be visible to external users.

h. Trademark Electronic Official Gazette (eOG)

Multiple releases were deployed for features and enhancements to the (eOG), including downloadable ZIP file and full XML version of each TMOG issue, an “Employee Sign In” link, internal review capabilities, a “My List”, and resources tabs. The Appeals interface and improved record functionalities for identifying duplicate queries within the same issue were both completed in FY 2014.

2. Trademark Legacy Improvements and Progress

Continued progress was made on improvements to the Trademark legacy systems. In connection with TEAS and TEASi Forms, OCIO expanded sound and motion mark capabilities to other forms, developed internal capabilities to improve and streamline the upkeep of TEAS and TEASi Forms, and deployed text changes to the Legal Declaration to 55 TEAS Forms. Activity has begun on Phase 2 with focus on implementing certification mark rule changes, making enhancements to improve data accuracy, and implementing reduced fee options (TEAS RF).

OCIO has categorized a project to stabilize the Madrid Processing system into three major areas: 1) improve ability to add new countries as they become members of the Madrid Protocol; 2) implement processing system for transformations that can be incorporated into Trademark docketing systems and 3) convert incoming paper international applications to XML format.

OCIO completed Phase 1 development in FY2014 and Phase 2 activities, which were initiated earlier this year, are currently in the

planning phase. These activities will focus on improving the workflow and user interface, and repairing defects in application functionality. The work on Phase 2 will carry over into FY2015.

TPAC applauds OCIO's focus on Madrid stabilization. The average cost of processing Madrid Protocol applications is significantly higher per application than traditional trademark applications, and completion of this project will allow trademark owners to benefit from reduced processing costs and faster processing time. This project is particularly important now that the system handles many more filings than previously required. The international expansion of trademarks and trademark protection has moved the priority of Madrid stabilization to the top tier.

The Legacy Content Management Migration (LCMM) project is also progressing. OCIO deployed TEAS and TEASi into production, deployed the capability to capture application or registration snapshots, and consolidated repositories into the Trademark Electronic Search System (TESS).

TPAC embraces the idea that improvement must be made to the legacy systems while continuing to work on TMNG.

3. Business Priorities and Wish List

Trademark Operations continues to gather input from managers, employees, the unions that represent them, and from external users of trademark systems on their "wish lists" for TMNG functionality and has incorporated the wish lists into its business priorities. The business priorities are reviewed quarterly based on the latest information and insight from across the organization and from customer groups. TPAC encourages the representative constituents to continue to discuss such matters as TMNG progresses towards final conclusion and implementation.

TPAC is encouraged by the continued communications and cooperation between Trademark Operations and OCIO. TPAC is mindful that projects are progressing but that progress has been slower than originally anticipated on a number of projects and that much work remains. TPAC encourages Trademarks and OCIO to continue to focus on the completion and implementation of TMNG, as this system currently represents a significant investment by trademark customers, who look forward to beginning to see the benefits of that investment as TMNG systems come on line. TPAC acknowledges the hard work and partnership of OCIO staff, under the leadership of John Owens (Chief Information Officer) and Rajeev Dolas (TMNG Portfolio Manager). These members of OCIO met

with the IT Subcommittee of TPAC throughout the year to discuss how best to implement TMNG and to keep us current on progress. TPAC is grateful for their patience, accessibility and assistance.

C. Budget and Funding Issues.

1. Effect of the 2013 Sequester

In March 2013 the USPTO was subject to a Sequester that resulted in an across-the-board spending cut of all discretionary federal budgets. Although the USPTO is completely funded by user fees, it was not exempt from across-the-board spending cuts. The USPTO was able to make adjustments in FY 2013 spending to stay within the spending caps set by the Sequester. The USPTO was initially held to reduced spending authority into FY 2014, due to the lapse in spending authority that resulted in a government shutdown for most federal agencies. The USPTO was able to keep the agency operational by limiting spending and by accessing funding from previously authorized reserves. The decrease in spending primarily impacted shared enterprise IT projects and Patent hiring.

Congress subsequently passed a 2-year budget resolution that set limits within the spending caps for FY 2014 and 2015. As a result, the USPTO received its full FY 2014 appropriation with the passage of its spending bill in January. The USPTO has moved forward on its spending plan to advance enterprise-wide IT projects and hiring.

The America Invents Act (AIA) (P.L. 112-29) established the Patent and Trademark Fee Reserve Fund for fees that are collected above the appropriation amount. The fund is maintained in the United States Treasury. The Consolidated Act. 2014 (P.L. 113-76) provides USPTO with \$3.024B in spending authority during FY 2014. Any fees collected in excess of that authority are deposited in the Patent and Trademark Fee Reserve Fund and available to the USPTO through Congressional reprogramming. The USPTO expects FY 2014 fee collections to exceed its appropriation authority for the first time since the AIA was implemented.

Although TPAC is pleased that the 2-year budget resolution for FY 2014 and 2015 should allow the USPTO to receive appropriations at a level that permits the continuation of necessary operations and the progress of important office-wide initiatives, particularly IT projects, TPAC remains concerned that these measures still do not provide an adequate long-term solution to enable USPTO to engage in appropriate planning and to invest

user fees in long-term or multi-year projects. TPAC continues to support amendments that would allow the USPTO full access to user-generated fee income.

2. Trademark Registration/ Renewal Fees

In May 2014, the USPTO proposed in the Federal Register (Vol.79/No. 90) a reduction in certain trademark fees authorized by AIA that would reduce trademark collection fees and promote efficiency through increased use of electronic filing and processing. TPAC anticipates that a fee reduction will be implemented in January, 2015. The reduction is as follows:

- Reduce by \$50.00 the fee for applications filed using the regular TEAS application, if applicant authorizes email communication (a change from \$325 to \$275 per class),
- Reduce by \$50.00 fee for TEAS Plus (a change from \$275 to \$225 per class), and
- Reduce by \$100 the fee for filing a TEAS Renewal of Registration (a change from \$400 to \$300 per class).

It is noted that the application fee of \$375 per class for paper filing will not change.

The TPAC applauds the Trademark Office for its efficiency and its ability to pass savings on to its customers. After careful consultation with Trademarks, TPAC is comfortable that this proposed reduction in fees will not adversely impact the operation of Trademarks or the continuation of any essential projects and, further, that the Trademarks Operation Reserve will remain at acceptable levels, based on the best available projections.

3. USPTO Use of Activity-Based Information System Accounting

Under the Leahy-Smith America Invents Act (AIA) a “fence” was established for both patent and trademark fees, to clearly distinguish spending of user fees between the two operations. There are only two sources of revenue to support the USPTO: 1) Patent user fees and 2) Trademark user fees. While patent examination and trademark examination are clearly separate operations, the USPTO operates as an enterprise with shared services for many of its administrative functions, including: Office of the Chief Information Officer, Office of Chief Financial Officer, Office of Policy and International Affairs, Office of General Counsel and Office of the Director. Funding for these shared operations must therefore be appropriately allocated between Patent and Trademark user fees, to ensure that user fees derived from each side of the

“fence” are only invested for an appropriate allocable share of these services.

Activity Based Information Accounting (ABI) has proven to be a highly effective tool in Trademarks and in the Trademark Trial and Appeal Board (TTAB), supporting better decisions in management and providing significantly improved metrics. In the 2013 Annual Report, TPAC recommended that the Office of the Chief Financial Officer extend and expand the ABI model in areas of shared support services, to better ensure that the fences in both patents and trademarks are respected. TPAC believes that the use of ABI in these shared services areas will also facilitate better monitoring of tasks and activities throughout the USPTO. In addition, use of the ABI system will provide transparency and further support of the fences around both Patent and Trademark user fees.

4. Office of the Chief Information Officer

In 2013 and 2014 certain enterprise-wide IT projects were delayed due to the Sequester. After Congress passed a two-year budget, all IT projects moved “full speed ahead,” according to the Chief Financial Officer. Funds were available through 2014 to continue the projects. It appears, however, that funds may be needed in 2015 from the operating reserve to support projects in the out years. TPAC is concerned about the need to reduce the Trademark Operating Reserve, particularly for projects that are ongoing and that should have been planned for in normal budget projections and planning. TPAC strongly encourages OCIO to work to limit the impact of investment in these projects on the Operating Reserve and to work to provide better advance notice of funding needs that can readily be anticipated.

As discussed below, TPAC is also concerned that the investment of Trademark user fees on certain IT projects, such as TMNG, has continued for years beyond initial projections and has expanded well beyond original budget forecasts. Although IT systems are crucial to the effective operation of our trademark system, greater oversight, planning and transparency is necessary, to enable users of the trademark system to better understand and evaluate the investment of their user fees in these systems.

5. Office of Policy and International Affairs

TPAC continues to monitor use of Trademark user fees in support of the trademark community, we have become increasingly concerned about the allocation and investment of Trademark user fees to support projects that are not directly supervised or controlled by Trademarks. The Office of Policy and International Affairs proportionately is one of the fasting-

growing organizations within the USPTO, and Trademark user fees represent a significant percentage of the funding for this operation, well in excess of the proportionate size of Trademarks within the Office. TPAC is concerned with the continuing expansion of the Office of Policy and International Affairs, especially the IP Attaché Program. Although this program appears to provide some value to the IP community, TPAC has been unable, after repeated attempts, to identify the specific trademark issues that are being addressed by IP Attachés or to identify any principled method – such as the ABI Model discussed above – for allocating Trademark user fees and Patent user fees to support this Office.

In light of these concerns, TPAC has met with OPIA leadership, and TPAC is pleased to learn that OPIA will continue to increase its outreach efforts, to make the trademark community aware of the availability of this resource. OPIA will also work to adopt ABI accounting methods and to explore other ways to more accurately account for its trademark-related activities. TPAC looks forward to building on this base and to continuing to work with OPIA on these issues.

D. Trademark Trial and Appeal Board

1. Precedential Decisions

The TTAB has continued to issue a number of precedential decisions, with a total of 45 precedents in FY 2014. The issuance of precedential decisions gives trademark owners guidance on substantive trademark issues arising in both appeal and trial cases, as well as clarification of evidentiary and procedural issues that may arise in TTAB cases. During FY 2014, the TTAB issued precedential decisions addressing a number of issues, including: scandalous marks, disparaging marks, dilution, specimen issues, abandonment, void *ab initio* claims, procedural and discovery issues in *inter partes* cases, as well as likelihood of confusion, descriptiveness, genericness, and others.

TPAC notes that the increased number of precedential decisions addressing procedural and discovery issues in *inter partes* cases, in particular, was a positive development because it provides further guidance and clarification on practice and procedures before the Board. TPAC also encourages the TTAB to make precedential decisions readily available to the public by posting clear and separate links to such decisions on its website promptly after the decisions are issued.

2. Performance Statistics

In FY 2014, the TTAB continued its hard work to increase productivity where necessary, and to maintain a low inventory of both cases awaiting

final decision and cases awaiting decision on contested motions. This year, as detailed below, TPAC was pleased to note that the TTAB met key performance goals and metrics. Because the TTAB is the tribunal of choice for many trademark owners or applicants, it is important that the TTAB continue to offer efficient and expedited decisions in order to maintain its reputation as the place to go to resolve trademark disputes.

3. Oppositions and Cancellation Proceedings

In FY 2014, there was a slight 4.4% increase in the number of oppositions filed, from 5,278 in FY 2013 to 5,509 in FY 2014. Cancellations increased a more noteworthy 13.8%, with 1,722 filed, compared to 1,513 filed in FY 2013. This continues a trend of an increase in trial case filings from FY 2010, when the overall economy started to improve following the 2008 down turn.

4. Pendency and Inventory Goals

In FY 2013, the TTAB set and disclosed goals for pendency and began to measure its performance against those goals, giving both the agency and the public valuable guidance for monitoring the TTAB's performance and time-frames for tracking cases and decisions. For appeal and trial cases in need of final decisions on the merits in FY 2014, the TTAB goal was to decide the cases within a 10-12 week range, as measured from the dates the respective cases became ready-for-final decision (RFD). This is an average time frame for all issued non-precedential final decisions in both *ex parte* appeals and *inter partes* trial cases, with each case captured in the average measured from, as appropriate, the oral hearing date or the submission on brief date, until the decision is issued. The TTAB also set a goal to issue non-precedential decisions on contested motions between 8-9 weeks on average from the RFD date (*i.e.*, the date the motion is fully briefed), and a goal for the age of the oldest contested motion ready for decision to be no more than 12 weeks. The TTAB also set inventory goals for cases awaiting final decisions and awaiting decisions on contested motions. For finals, the target inventory range was set at 115-135 cases; and for contested motions, the target inventory range was set at 130-160 cases with contested motions awaiting a decision. The TTAB met or bettered both of these goals.

TPAC applauds the TTAB for setting objective performance goals and for tracking its progress against those goals. These performance measures assist both the Board and the public in monitoring overall workflow and progress on an ongoing basis.

5. Final Decision and Overall Average Pendency

The TTAB achieved a reduction in the average pendency of issued final decisions (excluding precedential decisions) from RFD date to 9.2 weeks in FY 2014, down from the FY 2012 levels that peaked at 24 weeks, and even lower than the TTAB's above-referenced target of 10-12 weeks. This 9.2 week average represents a 48% reduction from the FY 2013 average pendency of 17.7 weeks. TPAC recognizes that these overall reduced pendency averages for final decisions reflect the TTAB's hard work and continued focus on productivity and output from the Administrative Trademark Judges (ATJ). The Board's ATJs, under the leadership of Chief Judge Gerard Rogers, issued 676 final decisions in FY 2013, which helped clear backlogs and keep the TTAB on track to meet pendency goals for final decisions in FY 2014, as the Board shifted its focus from backlog reduction to inventory maintenance.

In FY 2014, the TTAB also tracked average pendency of non-precedential final decisions separately by type of case, with *ex parte* appeals decided within an average of 9.3 weeks from RFD and *inter partes* trial cases decided within an average of 9.1 weeks from RFD. TPAC was pleased that the TTAB has provided such detailed data on cases ready-for-decision because it gives the agency and the public a clearer measure to track such decisions.

At the request of TPAC, the TTAB is also now tracking average pendency of precedential final decisions, again measured from RFD to the date of the decision.

For all precedential final decisions issued in FY 2014, the average pendency in *ex parte* appeals was 28.5 weeks, and in trial (*inter partes*) cases was 42.6 weeks. While both of these measures are higher than those for non-precedential decisions, the number of precedents is relatively small when compared to the number of non-precedential decisions; and therefore even a few cases that take longer to complete can skew the averages. Nonetheless, the Board will pay increased attention to process improvements that will extract time savings from the process of preparing and issuing these precedential decisions.

As of the end of FY 2014, the TTAB has 81 appeal cases and 24 trial cases in its inventory of 105 cases ready for decision.

The average "end to end" or "commencement to completion" pendency of trial cases (*i.e.*, *inter partes* cases) was reduced 12.8% to 165.2 weeks in FY 2014, down from 189.5 weeks in FY 2013. The median pendency of trial cases was reduced 13.9% to 142 weeks in FY 2014, compared to the FY 2013 median of 165 weeks. These FY 2014 reductions follow similar reductions in FY 2013.

For *ex parte* appeals in FY 2014, the average “end to end” processing time was 43.8 weeks, a decrease of 12% from FY 2013 processing time of 49.8 weeks. TPAC is pleased that average *ex parte* appeal pendency levels have been reduced back to FY 2009 and 2010 levels, when average pendency for an *ex parte* appeal was 44 and 45.5 weeks, respectively. Median pendency for appeals in FY 2014 was reduced 18.2% to 36 weeks down from 44 weeks in FY 2013.

6. Contested Motions

Under the leadership of Managing Attorney Kenneth Solomon, in FY 2014, the TTAB reduced the time to issue non-precedential decisions on contested motions by 32.3%, from 13.3 weeks in FY 2013 to 9 weeks in FY 2014, falling within the above referenced target of 8-9 weeks. The age of the oldest contested motion ready for decision at the end of FY 2014 was 11.9 weeks, compared to 15.4 weeks at the end of FY 2013, and better than the 12 week target for the age of the oldest contested motion. The TTAB also met its inventory target, with 135 cases awaiting a decision on one or more contested motions at the end of FY 2014. Although the FY 2014 inventory of contested motions awaiting decision reflects a slight increase of 3.8 % from the year-end inventory of 130 in FY 2013, the TTAB is closely monitoring inventory status and meeting targets. TPAC is confident that the TTAB will continue to make strides in its handling of contested motions, and in its management of the inventory of such motions to remain within stated goals.

TPAC is heartened by the overall positive performance of the TTAB in FY 2014. The TTAB has met most goals, and skillfully managed case inventories and decisions issued under the leadership of Chief Judge Rogers, and the valuable contributions from the ATJs, Interlocutory Attorneys, Paralegals, and staff. In addition, Meryl Hershkowitz, Group Director from Trademark Operations, has continued to assist Chief Judge Rogers in improving the efficiency of the TTAB. Group Director Hershkowitz provided critical guidance and leadership, and the teamwork exhibited by her and Chief Judge Rogers has led to many significant accomplishments from FY 2013 to FY 2014. TPAC commends Commissioner Cohn for providing leadership to the process and for allowing Ms. Hershkowitz to continue assisting the TTAB in FY 2014. Further, for the supervisor of the Interlocutory Attorneys, Kenneth Solomon, contributed significantly to the overall success of the TTAB’s performance.

7. Active *Inter Parties* Cases Pending Under “Old Rules”

In November 2007, the TTAB instituted a major rules change that impacted cases filed from that point on. For the last several years, the

TTAB has been working to move all the "old rules" cases to final decision. The Board has made significant progress in that regard in FY 2014, as only 14 such cases are proceeding through litigation at the Board, with three of these in the process of being scheduled for final oral argument and one being the subject of a request for reconsideration after final. There are 50 cases commenced prior to November 2007 that are not under the Board's sole control, because they are suspended for another proceeding, have been remanded to a Trademark Examining Attorney, or have been decided and are in the appeal period or on appeal.

With the 14 cases that are "on track", the TTAB has issued interlocutory orders to set schedules for completing discovery. In many cases, TTAB Interlocutory Attorneys and/or ATJs have utilized telephone conferences to discuss the status of "old rules" cases, including detailed updates on settlement discussions, if any.

While TPAC recognizes that there are some cases over which the TTAB has no ability to control the scheduling, such as those suspended because of a Federal court matter, our Committee commends the TTAB for its active management of the remaining "old rules" cases. TPAC, like the TTAB, looks forward to the day when the Board will no longer have to operate under two different sets of rules.

8. TTAB Leadership and Staffing

In FY 2014, the TTAB hired Susan M. Richey for the position of Deputy Chief Administrative Trademark Judge. The post of Deputy Chief ATJ is a new position at the TTAB that will be critical for management and leadership at the Board. Deputy Chief Judge Richey will be responsible for backing up Chief Judge Rogers on all management issues for the Board.

As the position is new to the Board Chief Judge Rogers and Deputy Chief Judge Richey will be analyzing Board operations during FY 2015 and determining how best to structure the management and administrative staff and tasks at the Board.

In addition, Kenneth Solomon, Managing Attorney for the Interlocutory Attorneys, has proven to be an important manager within the TTAB's operation, and he will continue to work with the Interlocutory Attorneys to manage the inventory of contested motions.

Cheryl Butler, Senior Attorney and Trademark Trial and Appeal Board Manual of Procedure (TBMP) Editor for the TTAB, has also played a key role at the TTAB. She was responsible for the updating and release of the fourth edition of the TBMP, which was published on schedule and she contributed in many other ways to improve TTAB processes and

transparency. Most recently, the TBMP has been successfully entered into the RDMS system through which the TMPEP and MPEP are edited and released to the public. The TBMP will be available in this form by November 2014.

Karen Smith was recently hired to support Chief Judge Rogers and the administrative operations of the TTAB efficiently and effectively. She has extensive experience in the agency, and will provide valuable support to the TTAB, focusing on human resources, budget, IT and other issues.

The TTAB currently has 21 ATJs, 12 Interlocutory Attorneys, 11 paralegals, and 17 other staff members, apart from the senior managers referenced above. In FY 2014, the TTAB hired 3 new paralegals to assist with its uncontested motion inventory. Cheryl Goodman was appointed to the position of ATJ on October 1, 2014, filling a vacancy that had occurred earlier in the year due to a retirement. Ms. Goodman had served as an Interlocutory Attorney, and prior to that as an Examining Attorney in the USPTO Operations. In addition, the TTAB plans to hire another attorney to replace Ms. Goodman, which will return the attorney total to 13, and may add attorneys or judges during FY 2015 depending on workload requirements. TPAC supports the TTAB's efforts to increase staffing to continue to efficiently and expeditiously manage increases in new filings and case load.

As TPAC noted in 2013, the TTAB had a work project with Examining Attorneys from the Trademark Operations, engaging selected attorneys to assist ATJs for approximately four months on cases with medium or large records. Some of these attorneys worked on multiple cases consolidated for a single decision, while others worked on multiple, unrelated cases. Some of these cases presented legal issues that required research and briefing. In addition, some of the cases involved evidentiary objections and disputes that required review by the detailee and supervising ATJ. This program has proven to be valuable both to the TTAB and to the Examining Attorneys, who gain additional valuable experience. TPAC commends the leadership and cooperation of Commissioner Cohn and Chief Judge Rogers in developing and supporting this program. In FY 2014, the Board returned to its traditional detail for examining attorneys, having them work with Board interlocutory attorneys on motion practice in trial cases. In the future, the Board may, as necessary, alternate the "large record work project" with the traditional "interlocutory detail."

In addition, in FY 2013 and FY 2014 the Board utilized law students as summer externs to work on large record cases in both contested and uncontested matters, and on various other research projects.

It is clear that the use of detailees and summer externs helped the TTAB manage caseloads more efficiently. TPAC supports the TTAB as it

continues to consider future details, work projects, and law student programs to help the ATJs and Interlocutory Attorneys with cases. Such programs are also valuable exposure and experience for the Examining Attorneys.

9. Trademark Trial and Appeal Board Manual of Procedure (TBMP)

In June 2014, just one year after the revised Third Edition had been published, the TTAB published the Fourth Edition of the TBMP. This updated version of the TBMP incorporates amendments to the Trademark Act, the Trademark Rules of Practice, and the Federal Rules, and relevant case law. The content additions and revisions reflect practice updates between March 1, 2013 and February 28, 2014. TPAC has consistently encouraged the TTAB to revise and update the TBMP on at least an annual basis, and the TTAB has now done so for the past several years. Keeping the TBMP up to date through consecutive annual revisions is critical for both the TTAB and those who practice before it.

Further, in FY 2013, the TTAB launched the IdeaScale® tool for the TBMP, to allow users to provide comments and input. Most recently, the TTAB launched IdeaScale® for Chapter 400 of the TBMP, covering discovery.

TPAC commends Cheryl Butler, Senior Attorney and Trademark Trial and Appeal Board Manual of Procedure (TBMP) Editor, for her outstanding work on these important TTAB resources.

i. Accelerated Case Resolution (ACR)

The TTAB continued in FY 2014 to advocate that parties adopt ACR, and those cases in which ACR was agreed to by parties showed that ACR does significantly improve the speed at which a matter is resolved, and therefore may reduce costs associated with the proceeding. Because ACR can be adopted by the parties at any time during the pendency of a case, the statistics on ACR do not always reflect the great efficiencies of ACR cases, as some parties only agree to a form of ACR after significant investment of time and resources in discovery and motion practice. It is clear, however, that even when parties stipulate to ACR-type procedures later in a proceeding, they still realize significant time-saving benefits.

In FY 2013, for example, the average end-to-end pendency for an ACR case was 114.2 weeks, about 40% lower overall than a case employing standard discovery and trial methods. Similarly, in FY 2014, average ACR commencement to completion pendency was 136.3 weeks, about 17.5% lower overall compared to the traditional trial schedule cases.

The TTAB has also committed to accelerate issuing final decisions in ACR cases. For example, if parties agree to use the bench trial or cross-

motions for summary judgment model for ACR and the Board approves the trial of the case by ACR, the Board generally will render a final decision within 50 days following completion of the briefing (compared to the overall 10-12 week target for pendency of non-precedential final decisions). See TBMP 702.04(a).

The TTAB web site provides detailed information and representative case listings concerning ACR, which is regularly updated. The web site also includes “plug and play” options, including one set suggested by American Intellectual Property Law Association (AIPLA), and another set of possible approaches proposed by the TTAB. The parties to a TTAB proceeding may opt to follow the “plug and play” options, or agree to pursue other ACR-type procedures by filing a stipulation with TTAB approval. The TTAB also actively seeks public suggestions on ACR with its dedicated mailbox for ACR: ACRsuggestions@uspto.gov.

For example, in some cases, the parties have stipulated that the briefs and evidence filed in conjunction with a summary judgment motion can be used as the trial record and briefs, thereby presenting the case for final decision on the merits without the need for traditional trial and briefing. This approach requires the parties to expressly stipulate that the Board can resolve any issues of material fact not stipulated to by the parties or which may have been overlooked or unforeseen by the parties. Another common approach to ACR involves the parties agreeing upon alternatives to traditional discovery, trial and briefing. Indeed, a key benefit of ACR is that it is very flexible and the parties can design an approach that meets the needs of their case.

A major hurdle that precludes the adoption of ACR more broadly has been a lack of awareness on the part of practitioners. To that end, the TTAB has been very active over the last few years promoting ACR with information on the TTAB web site, through presentations at major IP events, and through articles, webinars, and other speeches.

Although the TTAB has consistently promoted ACR, parties still seem reluctant to opt for this flexible and time-saving procedure. In FY 2012 and FY 2013, there were only 9 cases each year in which the litigants opted for ACR. In FY 2014, however, there were 21 cases decided on the merits following use of some form of ACR, representing an increase of 133% over the previous high of 9 such cases. Significantly, approximately one of every six trial cases decided on the merits during FY 2014 involved some form of ACR.

TPAC hopes that parties to TTAB proceedings will increasingly take advantage of this valuable method to more quickly and efficiently resolve disputed trademark issues. TPAC encourages intellectual property associations, Continuing Legal Education (CLE) providers and others to

assist in making practitioners more aware of the availability of ACR options in proceedings before the TTAB and in discussing the significant benefits available through the use of ACR.

As noted in previous reports, on November 28, 2012, Chief Judge Rogers convened a TTAB Roundtable to obtain user feedback on the use of Accelerated Case Resolution in TTAB *Inter Partes* Proceedings. TPAC was represented at the Roundtable by Kathryn Barrett Park, and TPAC Member Linda McLeod also participated in her capacity as a representative of AIPLA. Moderating the discussion were Chief Judge Rogers and Administrative Trademark Judge Peter Cataldo. In FY 2014, the TTAB received additional comments regarding ACR from the ABA IP Section.

Both the TTAB and the public have had over two years to consider, discuss, and use ACR in TTAB cases. TPAC encourages the TTAB to now consider appropriate action in FY 2015, such as proposed rule-making, to memorialize the ACR procedures as the preferred and most efficient schedule for cases before the tribunal.

ii. TTAB Dashboard

In FY 2013, the TTAB introduced a new TTAB Dashboard, to provide users with easy-to-understand visuals showing important TTAB statistics, which is now part of the USPTO Data Visualization Center. The TTAB dashboards are available to the public and open for public use and comment at TTABdashboards@uspto.gov.

The dashboards report on a quarterly basis statistics on:

- Pendency of final decisions and contested motions
- The volume and types of new filings
- The number of different proceedings pending
- Pending appeals maturing to Ready-for-Decision (“RFD”)
- Pending appeals in inventory
- The age of pending appeals
- Pending oppositions and cancellations maturing to RFD
- Pending oppositions and cancellations in inventory
- The age of pending trial cases

- Trial case contested motions(by type) that are ready for decision
- Trial case contested motions (by type) in inventory and the age of pending motions (by type)

TPAC is very encouraged by the continued development and use of the TTAB dashboards, which will show trends and timelines for action at the TTAB.