UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, July 30, 2021
PARTICIPANTS:

TPAC Members:

CHRISTOPHER KELLY, Chair
SUSAN NATLAND, Vice Chair
STEPHANIE BALD
DAVID J. CHO
TRACY L. DEUTMEYER
JOMARIE B. FREDERICKS
JENNIFER L. KOVALCIK
TRICIA MCDERMOTT THOMPKINS
KELLY WALTON

Union Members:

JAY BESCH, NTEU 245
PEDRO FERNANDEZ, NTEU 245
HAROLD ROSS, NTEU 243

USPTO:

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for
Intellectual Property and Director of the
USPTO

KIMBERLY ALTON, Acting Director, Office of
Governmental Affairs

CHRISTINE COOPER, Chief of Staff, Office of the
Commissioner for Trademarks, USPTO
PARTICIPANTS (CONT'D):

AMY COTTON, Deputy Commissioner for Trademark Examination Policy

MARY CRITHARIS, Chief Policy Officer and Director for International Affairs, USPTO

GREG DODSON, Deputy Commissioner for Trademark Administration, USPTO

KAREN FERRITER, Deputy Chief Policy Officer and Director for International Affairs, USPTO

DAVID GOODER, Commissioner for Trademarks, USPTO

JAMIE HOLCOMBE, Chief Information Officer, USPTO

ANASTASIA JOHNSON, Executive Assistant, Office of the Commissioner for Trademarks, USPTO

SEAN MILDREW, Deputy Chief Financial Officer, USPTO

MICHELLE PICARD, Senior Advisor for Financial Management, Office of the Chief Financial Officer, USPTO

GERARD ROGERS, Chief Administrative Trademark Judge, Trademark Trial and Appeal Board, USPTO

COKE STEWART, Performing the Functions and Duties of the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO

MARK THURMON, Deputy Chief Administrative Trademark Trademark Trial and Appeal Board, USPTO

OSMAN TURAN, Acting Trademark Product Line Manager, USPTO
PARTICIPANTS (CONT'D):

DAN VAVONESE, Deputy Director for Trademark Operations, Office of the Commissioner for Trademarks, USPTO

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CHAIRMAN KELLY: Hello, and welcome to the 3rd quarter Public Meeting of the Trademark Public Advisory Committee. My name is Chris Kelly and I am a partner at Wiley Rein in Washington, D.C., and I have the privilege of serving as this year's TPAC Chair.

Before we begin today, I would like to introduce my fellow TPAC members, beginning with this year's Vice Chair, Susan Natland. Susan is a partner with the Knobbe Martens firm in its Irvine, California office.

Next is Stephanie Bald, a partner with the Kelly IP firm in Washington, D.C.; Kelly Walton, Senior Counsel at Electronic Arts in Austin, Texas; Jennifer Kovalcik, Vice President in Technology & Intellectual Property Counsel at Community Health Systems in Franklin, Tennessee; Tricia Thompkins, General Counsel at Shoe Show in Charlotte, North Carolina; David Cho, Assistant Vice President and Senior Legal Counsel for
Trademarks and Copyright at AT&T in Dallas, Texas; Tracy Deutmeyer, a shareholder at the Fredrikson & Byron firm in Des Moines, Iowa; and Jomarie Fredericks, Deputy General Counsel and Chief Intellectual Property and Brand Counsel and Director of Intellectual Property at Rotary International in Evanston, Illinois.

I would also like to recognize the Union representatives with us today. From NTEU, Jay Besch, and from POPA, Pedro Fernandez. But, again, welcome to everyone. Thank you for participating.

Our first speaker today is Drew Hirshfeld. Drew is the acting -- Drew, I know this is not your precise title -- but Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the USPTO. Drew, we are very happy to welcome you back to TPAC and we appreciate your support. And, with that, I will turn it over to you.

MR. HIRSHFELD: Sounds good. Thank you, Chris. And, it's funny. I don't think anybody,
including myself, gets my title right. I think it's the longest title you could have, although actually Coke Stewart's title is the longest, because she has the same as mine with Deputy added into it.

So, in any case, welcome, everyone, to our third meeting of the year. I'm happy to be here with all of you. I look forward to the day we're back in person and having these meetings in person. But, for now, these remote meetings will do us well. I also know we got a late start today. We did have some trouble getting people connected in, which is one of those problems you have sometimes with remote, large meetings. So, our apologies, and thank you to all of you who have joined in.

Again, it's my pleasure to be with all of you. I wanted to welcome all of the TPAC members and all of the Union members. I won't repeat what Chris mentioned for names there, but, welcome to everyone. To all the members of the public who are joining here, welcome to you as
well. We appreciate your interest in the TPAC and the American Trademark system.

I want to mention a couple recent events that we've had. Let me start with an event earlier this week, just on Tuesday. Hopefully, you all know about this event, but I'd like to mention it anyway. But, we had a wonderful celebration of the 75th anniversary of the Lanham Act of 1946.

We were honored to have the Secretary of Commerce, Gina Raimondo, join us as well as Senators Grassley and Coons, Congressman Ted Deutch, and numerous individuals and companies from the private sector. There were a few wonderful sessions about people from companies sharing how trademarks have impacted and helped form and create their businesses, and so, a wonderful event.

And, there was a great documentary on Fritz Lanham. So, I believe we're putting that on our website, if we haven't done so already. So, if anybody wasn't able to catch that live, I
recommend that you do get the opportunity to see that. It was quite a great event.

I also wanted to mention that earlier this month we had a visit to the USPTO by Deputy Secretary Don Graves. And, I think I have mentioned this previously to TPAC, but Secretary Raimondo had previously visited, so this was a visit by Don Graves. And, he started to make -- as he is transitioning into commerce -- wanted to meet all the agencies, and the USPTO is his first stop, and we welcomed him.

I will share with all of you that one of the things we did with his visit, in addition to meeting the senior leadership team, giving him a tour, and giving him some background on what we do, is we actually had him sit down and have both a trademark examiner and a patent examiner walk him through the tools in what their job is.

And, when we were planning this, I will tell you all that I asked him: Do you want this kind of level? Because, we'd love to give it to you if you're interested. And, he was very
excited about it and really wanted to see the tools that people were using. So, I was quite pleased with that visit. I think we were able to really show him what we do at the USPTO.

And, I will tell you that, very clearly, both Secretary Raimondo and Deputy Secretary Graves are very well aware of what we do at USPTO, they're aware of the value of intellectual property, and, so, they are big supporters of both patents and trademarks and, in general, the USPTO.

So, wonderful visits by them. I will tell you that Don Graves's ancestors actually held patents, and, so, he has a special tie, and that was a lot of the discussion that we had as well.

So, I chose to highlight some topics. I know you're going to hear more about these later on in this meeting, but I wanted to highlight some key topics that we had because of their importance. And, let me start with filings. And, the filings for the year continue to be unprecedented. They are very high, as you're going to hear, coming up.
So, right now, where we speak, trademark application filings are up 54 percent fiscal year to date as compared to last year. That is quite a remarkable number. It shocks me every time I say it or every time I hear it from people. It's really quite amazing to see this increase.

In the last couple months, there have been lesser increases but still increases nonetheless. And, what's interesting is, it is when the Trademarks team and Dave Gooder reports to me that the last couple months have been less. If you looked at the last couple months in a vacuum, we'd still think that's really high. And, really, there are still big upticks in filings, but, compared to the previous months, there are slightly less upticks. So, we are seeing a big trend.

U.S. filings continue to be strong overall. They account for 59 percent of our total filings. Filings from foreign brand owners also continue to grow, with China having the largest portion of international filings. They are
currently at approximately 25 percent of our total filings.

I also wanted to mention backlog in automation. Obviously, with the increase in filings, we have an increase to the backlog. That, of course, has to affect our pendency, and we're taking a lot of steps to make sure we keep pendencies low. And, I know Dave Gooder and his team are working on bringing in more examiners, examining attorneys, and being able to move the backlog as best as we can and to keep it down.

We're also looking at developing and testing, deploying new automation systems and artificial technologies to increase efficiency. So, we're addressing this in a number of ways, and I believe that, while we will see increases to the pendencies, they will level off and we will be able to start returning them to the lower numbers as we move forward.

Also, with the increased filings, we've unfortunately continued to see some concerning filings. There is certainly an uptick in
fraudulent filings. We're seeing people also attempting to circumvent the U.S. counsel rule that was implemented in 2019. What we have done is we've created a special task for on improper activities, and that's become a very important part of our register protection initiative.

We're fortunate, I will tell you, to have Dave Gooder in his role. So, thank you, Dave. Dave is well aware of protecting the register and what needs to be done there and really has made this a big focus and continued the efforts of previous commissioners but really has made this a great focus, and, so, our special task force will continue to develop strategies to address any suspicious filings and the scams.

They're investigating all kinds of allegations of fraudulent activities to determine and understand any of the misconduct and what next steps we can do. By way of an example, you may have seen that we've recently issued a Show Cause order for about 14,000 applications, which all started from a single filer in China, so, more
information I'm sure that Dave and his team will share with all of you.

I also wanted to mention the Trademark Modernization Act, of course. The public comment period for our recent request for comments ended last week on July 19th. We received 30 submissions and we're now going through those submissions and considering what our next steps should be. Again, I know you'll hear more about this as we continue on.

Finally, I just want to say a note about our employees. And, I will tell you that you all know that my day job, so to speak, is commissioner for patents, and then in January I've had the pleasure of performing the functions of the Under Secretary and Director.

And, I will just tell you, across the agency, I couldn't be more proud of the employees and the way they have handled the last year and a half plus that we've had our working -- our complete working world changed. And, many people who were not remote were remote. Trips to the
office are different. Meetings are now all remote, of course. Meetings with members of the public are done remote, et cetera. Hearings are done remote. So, I couldn't be more proud of the way that the whole entire staff has adapted to what needs to be done so that we can continue to function.

I personally feel that the USPTO has continued to function as best as possible. I think we're, quite frankly, setting the standard of how to be able to perform remote and in this situation. And, so, I just wanted to give a shout-out to all of the employees throughout the entire agency. I'll particularly shout out the Trademark employees, since this is a TPAC meeting. You've all done a great job. So, thank you to all of you.

And, any manager knows that the most important managers for the wellbeing of the line employees are those first-line supervisors, and across the board you've all done a great job keeping your employees engaged and productive.
So, thank you to everyone. I'll wrap up my
remarks there. It's a pleasure to be with all of
you, and I look forward to a great meeting.
Thanks.

CHAIRMAN KELLY: Thank you, Drew, very
much. And, we now go to Commissioner Gooder.

MR. GOODER: Thanks, Chris, and thanks,
Drew, for the kind words. Welcome, everyone, to
today's TPAC meeting. And, for the next session
we're going to talk about the Trademark office,
the Trademarks' Business Unit, as it's known
internally.

And, our agenda for today -- next slide,
please -- covers a number of areas around the
office that are of interest. So, we'll talk a bit
about the Trademark Business Unit and update on
what's happening with our priorities and some of
the things that Drew was talking about.

We'll then move to an update about our
IT systems and developments with the Office of the
Chief Information Officer (OCIO). Then, we'll
have a legislative update, a Policy and
International Affairs update, an update from Judge Rogers at the TTAB, and then, of course, time at the end for public comments and questions. So, without further ado, let's dive in. Next slide, please.

With regard to the Trademark's Business Unit itself, what we're going to talk about it a number of things. First of all, some of our business operations and performance, and then we'll switch gears out of actual trademarks and move to the financial side and talk about it, how things are going for the year, et cetera.

Then, we'll switch gears and focus on our four key priorities this year -- combating the surge in applications, the Trademark -- implementing the Trademark Modernization Act, our efforts with regard to register protection, and then about IT modernization, which is by no means least, even though it comes forth on the agenda.

So, next slide, please.

Okay. With regard to staffing at the Trademark office, we're now slightly over 1,000
employees. We're up 58 people from last July at this time and which is largely examiners, but not entirely. As you see, about 48 of them were examiners, et cetera. And, everybody is teleworking and everybody has the option to do it.

So, when the pandemic hit last year, the Trademark side of the agency was already about 70 percent working remotely. So, the shift wasn't that difficult, and I echo what Drew was saying. I commend our folks for literally pivoting on a dime for those who weren't already teleworking, to be able to just, literally, almost seamlessly, just keep moving.

Obviously, we've all learned very different ways of working this year, and then we're all looking at what is hybrid and what does hybrid mean in the next phase of things. So, we'll talk more about that, certainly, at the October meeting. With regard to meetings, I'm pretty sure this is the sixth virtual meeting since the pandemic started, maybe the fifth, but I think it's the sixth.
And, while we would have loved to have done this one in person, it's just -- the situation in Alexandria and with federal government buildings, et cetera, just didn't really allow it. We're really hoping that we will move into this hybrid world of TPAC meetings in October at the last meeting of the year. Next slide, please.

So, the story that Drew was alluding to and the one that you've heard a lot about this year, it's been written (Inaudible), it's just application filing levels. And, if you look at -- look back a year, Fiscal 2020, we ended up the year with about 738,000 classes.

Now, here's a distinction you need to keep in mind as you look at statistics. And, this is something I didn't appreciate as a private practitioner. We tended to think outside the agency in terms of how many applications are you dealing with. Inside the agency, we look at the number of classes actually filed. And, the reason is because that actually drives the workload more
than the number of applications.

So, when you see the number, be sure and identify in your mind -- are we talking about classes or applications? In this case, looking back last year, like I said, almost 740,000 applications. This year alone we're at 785, and we're projecting to come in somewhere around 940,000 applications. So, that percentage is shifting daily as the fiscal year goes along, and right now we're at about 44 percent over last year on a classes basis. It's significant. I know we've all overused the term unprecedented, but, it certainly is. Next slide, please.

Okay. So, if that's what's happening on a macro basis, it's interesting to look at it by the month. And, essentially, you see the months in red at the left were kind of the start of last fiscal year into the -- right into the pandemic. And, then, you notice that by June things started turning around and they kept going and going and going.

And, obviously, there was a huge spike
in September and mostly in December which leaned right up against the fee increase. So, it was pretty understandable. Not to that size would we have predicted it. And, literally, every month since then, as Drew was saying, has been back up and climbing. And, even a small month, like June of this year, as opposed to -- June of last year was moving, so, it's really amazing. Next slide.

What's interesting also is what's happening in the world with all these filings. So, the top line, blue line, is the U.S. The next line down, yellowish gold, is 25 percent, then the bottom line, green one, is European Union, and the purple line right above it is the rest of the world. And, a couple (Inaudible) you can see, obviously, the spike in January which was significantly impacted by Chinese filings. Same with the end of the fiscal year.

But, also, you've noticed that as we've moved into June and July, filings are tapering off, and that's actually a welcome change while we're still up significantly. It does allow us to
catch our breath a bit more and eat away at the backlog. Dan Vavonese is going to talk to you a bit more in detail a bit about what's happening with that and what we're doing. But, it's a welcome change. Next slide.

Interestingly, talking about pendency, here's what's essentially happened with that massive backlog in an inventory that we have. The lower two lines are first-action pendency. And, as you can see, we're just shy of 6 months right now. And, our target for the year has been four and a half. We knew it would be higher, but, at the time we were setting targets, nobody anticipated December being as big as it was.

The good news in this, actually, is that it is starting to flatten out and we think it will -- we're projecting that it will stay right around 6 months as we eat away at it. With regard to disposal pendency, that actually is some good news in the sense that it's still under our usual target of 12 months. Next slide, please.

One of the shining spots here is our
quality numbers have stayed steady if not climbed
a bit, and, given what everybody's had to deal
with this year with examiners and support staff
and everybody have dealt with, to see these
numbers stay strong, I think, is just a real
testament to how professional everyone is.
And, we all know how difficult it's been
to be working from home, schooling from home,
taking care of family from home, and I want to
thank literally all the Trademark staff,
everybody, for being able to keep these kind of
numbers up. Next slide, please.

MR. GOODER: Okay. So, a lot of people
ask: What caused the surge and who is causing the
surge? We're going to take a little bit of a dive
into that right here, because I think it's
important for people to understand that it's very
easy to poke at one thing or another and say, aha,
that's what caused it or that's the problem, et
cetera. As with most things, it's not an easy
answer. So, next slide.
Let's start by looking at what the
numbers are, and that'll be of help. So, if you look at all Trademark filings across the board -- and this chart only goes back 5 years -- but, focusing on the right-hand side, 76 percent of all are filings, and that's 33 percent are owned by one-time filers, single. They own one. And, the next biggest group, 43 percent, are small filers, ones that own less than 10 filings. So, we're largely talking about individuals and small business, SMEs, essentially. That's really significant when you think about the kinds of business activity going on in the U.S. and it affects us. Next slide.

When you look at the surge itself, what's interesting is, starting on the left side of this chart, on the type of applicants, again, with the surge it's consistent. The percentages are slightly different, but we're still looking at 75 percent being small and solo filers. So, the trend continued.

What is interesting is, by far and away the majority of the filings are based on actual
use. They are strongly of the business type that
are individuals or other kinds of businesses, sole
proprietorships, et cetera. And, then finally, if
you look at countries on the right, you will see
that, of the surge itself, the vast majority of it
is from China and the U.S. It's important to note
that it's bull. It's not just one country or the
other. Next slide, please.

Now, what causes a surge has been the
subject of lots of conversation, in the media, in
our meetings and conversations, as I talked to
brand owners and lawyers around the country. But,
we've really identified five things, and I don't
think any one of them is the biggest contributor,
but they are all significant.

The first one is the growth of online
sales, and especially cross-border sales. Look at
any online platforms, sales numbers in the
pandemic, especially look at Amazon or others, and
their numbers are just significantly up. Well,
that caused a lot of sellers to shift gears to
pivot to other product lines, et cetera. For
instance, one of the biggest growth areas in terms of filings was pet products. We obviously love pets and we had more time to focus on them during the pandemic, so, online and e-commerce, certainly a big driver.

Two different kinds of government stimulus was going on. One, which was most directly government -- the stimulus checks that we all know about in this country -- and I'll talk about that -- I'll come back to that in a second. The other type, which was certainly a factor in the Chinese filings, was filing subsidies at the provincial and local level, notably in Guangdong province, which is just above Hong Kong in the south. It's one of the major manufacturing hubs in China, especially Shenzhen, but other provinces as well.

These are not central government stimulus. These were -- or subsidies -- these were by province. They are changing over time. The central government -- you'll hear more about this, I think, in the OPIA, Policy International
Affairs section, so, I won't go into it here.

That is changing. That being a factor is likely declining.

Obviously, the fee increase had an impact. We've also seen a lot of activity amongst Chinese and U.S. law firms, lawyers, filing mills marketing directly to Chinese trademark owners or potential trademark owners, offering low-cost services, some of which were less than reputable.

And, there's a lot of marketing type that, I think, drove some of this, because, when you look at the substance of some of it, you realize that actually we're selling something that wasn't as needed, but if you come from a country -- a part of the world where you file based on -- your trademark rights are based on who files first as opposed to what's being actually used, you realize why that's an easy message to sell.

Lastly, and this is the area, I think, that's been underappreciated and is getting a lot more media attention now, is just the flat out growth in business formation and development
entrepreneurialism in the last 15 months. You see
the number there, 6.7 million new businesses
started since March 2020. That, as I understand,
is an absolute record.

But, what was going on this year, this
time around, was very different. So, usually,
when we've seen an economic downturn, you've seen
people get laid off, et cetera, and then
everybody's trying to find another job, et cetera.
Well, this time was a little different. New jobs
just weren't so easy to find right away, and, so,
a lot of people had time on their hands, and this
time they had some money because of the stimulus.

And, the theory that I've heard
economists talk about is, those two factors made a
big difference. And, a lot of people who said
I've been thinking about doing X for a long time.
Now's the time. It's never going to get -- I
should try it now. I've got the downtime. I've
got some funds. I'm going to do it.

And, if you look at the numbers of
individuals who filed for the first time, that's
pretty consistent with this. So, this is an area, I think, that's exciting -- lots of very well-known, big companies started during difficult economic times. And, I think this is a way that will be quite positive for a long time. Next slide, please.

All right. One additional thing that arose at the last meeting that I wanted to update you on -- and you'll hear a bit more about this -- but, it was raised in the last meeting that a lot of trademark owners were having difficulty obtaining timely copies of certified trademark registration certificates. They might have had a priority deadline overseas. They might have had a litigation deadline imposed on them. And, because of the pandemic, they weren't able to get these certified and/or legalized copies fast enough.

This is a three-legged stool. You've got the USPTO's part of this where you actually obtained the certified copy, you had the State Department which deals with the legalization of that document, and then you have the foreign
government. It might be the court or the IP office that is imposing a deadline that we're just at complete odds with the actual turnaround time. OPIA will update you on the State Department, the foreign side, but I can say that from the USPTO's side, for trademarks, the delay in getting an expedited copy of your registration typically is now down to practically zero. It's literally 1-day turnaround. And, I commend that whole team for really, really picking it up and getting things back on track quickly after it was raised at the last meeting by a number of trademark owners. Next slide.

All right. Now, at this point we're going to switch gears out of trademarks and switch over to money and budgets and revenue and expenses and all that good stuff. And, for that, I'll turn the mic over to Jay Hoffman who is our Chief Financial Officer. Jay?

MR. HOFFMAN: Great. Thanks, Dave. And, I think you'll find that a lot of the financial information we're going to cover here
tracks very closely with the business story that
Dave just told. So, this syncs up nicely. Let's
go ahead and go to the next slide.

So, I've got a fairly brief agenda for
you today and limited materials. We're going to
go through our financial position and status for
FY 2021. We'll share some information with you on
kind of what comes next in terms of our budget
formulation for FY 2022 and FY 2023. So, go ahead
and head to the next slide, please.

So, our financial outlook is largely
unchanged from what we presented to you last
quarter. If we look at the table here, fee
collections at the beginning of the year were
estimated about $444 million. That has
subsequently been adjusted upward and is now at
about $465 million. And, the current revenue rate
is actually tracking higher than that upward
adjustment. We are tracking revenues of about
$480 million. And, I'll show you a slide on that
in just a moment.

We started the year with about $122
A million of cash on hand. That was our operating reserve. And, we added an additional $16 million of that from prior year revenue that was reprogrammed to us. So, our total available resources for the year were 604 million.

Our spending this year is only projected to be about $424 million, which is less than what we're collecting. The collections level is probably going to be closer to 480 million. So, consequently, we will be adding funds to the operating reserve this year, which is a good thing. So, the operating reserve is projected to end the year at $180 million or perhaps a little bit more, which is well above the minimum operating reserve level of 75 million. Next slide, please.

This slide here, you know, we have a number of different fees that we charge for the trademark business, and what this chart does is it disaggregates that information. So, you can see what is driving some of our revenue overages that I described at the prior slide.
So, as I mentioned a moment ago, our estimate for the year was about $465 million in aggregate trademark revenues. We're tracking it at about $14 million over that, and the vast majority of that is from application filings, as you can see from this chart. So, we're about 5.3 percent over where we expected to be and nearly $14 million ahead of plan on application filings alone. And, that tracks with exactly the story that Dave Gooder was just describing on the business side.

The other area where we are seeing an increase over plan was our maintaining exclusive rights. That's tracking at about 4.4 percent above our plan levels, and that equates to about $4 million. There are some other categories where we're a little bit behind. The Intent to Use fees are about 4 percent behind plan. Trademark Trial and Appeal Board fees are about 11 percent below plan. But, in the aggregate these are fairly small. These are only $1- to $2 million off the overall revenue plan, so, not particularly
material. Let's go to the next slide, please.

So, this chart here is the FY 2021 revenue compared to the FY 2020 revenue change. We do it in a percent change. I've showed you this chart before. And, the way we look at this, just to acclimate you to the chart, is that the yellow line is the 40-day moving average percent change year over year, and the green line is the 10-day moving average change year over year.

So, our fee collections have been consistently coming in in that 25 to 50 percent above last year's collections, again, tracking with that story that Dave Gooder was just describing about how this year has really been a big year for Trademarks. My standard caveat, of course, is that last year was an unusually low year at the outset of the pandemics for Trademark. So, you are comparing a very high year with a very low year, so you can take it with a grain of salt.

You'll notice here the last handful of months that the overall trends have been volatile within a fairly consistent range and that the
year-over-year gap has started to narrow. We're seeing kind of a downward trend in this change year over year. So, all of that's a good thing. I think that the revenue pattern is starting to settle in to something that's a little more predictable, and I think the next slide actually does a good job of showing that. So, let's go the next slide.

So, what this slide shows is it depicts the end-of-year aggregate revenue projections for the Trademarks business line, and what we do is each day we calculate the end-of-year projection of revenue based off the trends that we have experienced so far this fiscal year.

So, just to acclimate you to this, so the Y axis is in millions of dollars, the X axis is in months. The blue line that you see here is our end-of-year projection that we are calculating every day that I just described. The purple line, the horizontal purple line is the current fee estimate. That's 466 million for the year. And, the green horizontal line is where we started the
year. We thought we were going to track at about
$445 million.

So, a few interesting things about this
revenue slide, number one, you saw a big
acceleration right before the fee increase -- I
think people trying to take advantage of the lower
fees in the January timeframe -- and then it
started to taper off after that, after the fee
increase went into effect.

But, what's kind of interesting is, once
you got to March, for the most part the aggregate
revenue projection sort of leveled off. It's got
a sort of flat to slightly upward trend to it.
And, generally, that's a good thing. So, things
have tightened up with respect to our plan.

As I had presented on the previous
slide, we're tracking at about $480 million on a
daily revenue rate. So, that's about $15 million
above the revised plan, or about 3 percent. Let's
go to the next slide. Actually, Dave already
briefed this. Let's skip this one. Let's go to
the next slide.
So, FY 2021 status of our operating reserve balance. This is our cash on hand to deal with volatile situations, like what we experienced last year at the outset of the pandemic, and other unexpected needs. We're in very good shape. So, what this chart shows is the Trademark operating reserve balance, again, expressed as a 25-day moving average. That's the area that you see.

There's two horizontal lines on this chart. The horizontal line at the top is the optimal operating reserve balance. That equates to 6 months of operations, 6 months of cash on hand, if you will, and that's about $218 million, give or take. There's a second horizontal line that runs across the lower part of the chart, and that's the minimum operating reserve balance, which is about $75 million, and that equates to 3 months of operating requirement.

So, as you can see here, we are significantly above the minimum operating reserve right now for Trademarks at $180 million. That's about where we expect to end the year. We're
approaching the optimal balance. We're not there yet. But, overall, we're in a very sound financial position in the Trademarks business line. Next slide, please.

Some next steps on the budget -- so, the FY 2022 budget. Earlier this year back in May, the House and Senate Commerce, Justice, and Science subcommittees on appropriations had hearings with our Department of Commerce Secretary. Both of those hearings were largely focused on other bureaus and issues within the Department of Commerce. There wasn't a lot of substance with regard to the U.S. Patent and Trademark Office.

The appropriation request is $3.994 billion in the FY 2022 budget, and that's set at the projected spending requirements level. We anticipate that fee collections will be above the spending requirement and are expected to come in at $4.058 billion. This is a change from the way things were done in the prior year.

Overall, we're still waiting to see what
the House and the Senate decide. The House has
done the markup of their bill, and they did
recommend an appropriation of the agency at the
3.994 billion level. We're still waiting on the
Senate to go through their markup process. Just
as a reminder, in a perfect world, we would
receive an appropriation that authorizes us to
spend fees prior to October 1st.

Traditionally, we end up on a continuing
resolution for some short duration while
appropriations get worked out. I don't have a
crystal ball. I don't know what this year will
bring. But, the final appropriations bills are
still working their way through Congress and are
largely outside of our control at this time. Next
slide, please.

Lastly, the next steps on the budget for
the following year. The FY 2023 budget is
something that we are actively formulating inside
the agency. We're finalizing our fee estimates
and requirements for the FY 2023 budget, and we
plan to submit that to OMB approximately September
That's what the current schedule provides for.

We'll be sending an internal-use copy of that document to the Trademark Public Advisory Committee in the third week of August for your review. For those of you who are watching at home and are avid readers of the USPTO budget, the document does not become a public document until early February of next year in 2022, and we'll release it to the public at that time.

So, I think that takes me to our last slide. So, I will turn it back over to Dave Gooder and his team. Thank you for your attention.

MR. GOODER: Thanks, Jay. Any questions for the TPAC on Jay's presentation? (No response.) All right. Hearing none then, let's move right along. Next slide, please. Okay. So, this may look familiar to many of you. For this fiscal year, these are our top priorities, without a doubt. And, we're focusing an enormous amount of effort.
Today, we're going to move around that outer circle and update you in each of those areas. And, the first area we're going to talk about is the top ball, which is what we're doing to attack this surge of applications. And, for that I'm going to turn it over to Dan Vavonese who's our Deputy Commissioner for Trademark Operations. Dan?

MR. VAVONESE: Good afternoon. Quick audio check. Good?

MR. GOODER: Yes, you're good.

MR. VAVONESE: Okay. Thanks. So, you can proceed to the next slide. So, you know, Commissioner Gooder talked about where -- some of the causes for the surge and the numbers. I'm going to talk more specifically about how that's impacting our processing and then what we're doing about it. So, we can go to the next slide.

So, the first thing I want to talk about is our unexamined application inventory. What this is is the number of application classes that are waiting, basically, in the queue to be
examined by examining attorneys, and this means from the actual date it's received. So, normally they wouldn't be examined right away anyway, but, this is -- this looks at the total inventory we have of unexamined applications.

And, as you can see from this chart, we have generally been above the 150- to 175,000 application classes in our inventory, and that's been a healthy number for us. It's supported our work for us, and it's also allowed us to stay within that 3-month pendency, which, you know, our customers have been accustomed to for the last 15-plus years.

Over the last year and a half, due to the surge, this inventory has continued to go up. And, just for some numbers, when we talk about 45 percent increase just this fiscal year alone, that equates currently to about 230,000 additional classes than what we had at this time last year. And, that's on top of a 9-1/2 percent increase last fiscal year as well. So, just the numbers alone, you can kind of see where those numbers are
and how that's built up our inventory and how that's built up as a result our first-action pendency.

So, we are doing everything we can to get through these applications. I want to just emphasize, again, that our examining attorneys are putting out a ton of work and at a very high quality, as you saw by our quality metrics. Our supervisors who are supporting them are working extremely hard every day to get through the classes. It's just a ton of work that we're trying to get through, and I'm going to talk about some of the things we're trying to do about this in a few minutes.

The other thing, regarding the first-action pendency, is that at the end of -- in December alone we had 110,000 application classes filed, which is just incredible. So, towards the end of June we were getting through the end of December, which, again, built up our first-action pendency even a little more.

We are through the end of December now.
We are in January. I think we're about the
second, third week of January right now. And,
because the filings were a little lower in January
and February, that's why we're hoping that we're
going to be able to get through those months a
little quicker, and hopefully our pendency will be
leveling off instead of the continued rise that
you saw in the previous chart. So, that's
something that we're going to be working on. Next
slide.

So, I want to talk about a couple other
areas. I already talked about the first-action
pendency. For new applications that are filed, I
know there continues to be some confusion on this
that I just want to clarify. When you file a new
application, your data is uploaded to our system
within 1 week.

There is one exception where, if the
international classification is not included in
the application and that's specifically for TEAS
regular applications, because it would have to be
in a TEAS Plus application and in a Madrid
application. If the international class is not there, the data cannot be uploaded to the system until our pre-examination unit does their quality check. So, we put a reminder on our website and I want to remind everybody again to please include the international class, because it does help us at least get your data into the system right away.

The other items here which you see in the processing timeframes that we publish -- the entering any office supply data, such as design codes and pseudo marks, that is taking approximately 80 days. That's the timeframe for when our pre-examination unit does our quality checks as well as entering any design codes or pseudo marks where applicable. So, that's another clarification regarding pre-examinations.

Also processing of responses to office actions. This is something huge that we really want to highlight. Early in the calendar year, again because the surge impacted all areas, it didn't just impact new applications, it impacted responses, it impacted maintenance filing,
everywhere. We were taking approximately close to
90 days to get responses to office actions entered
and returned to the examining attorneys.

We're happy to announce that we are back
on goal, we are back at 14 days, which is our
goal, that within two weeks of when you file your
response, the response will be entered and sent to
the examining attorney for review. This is a huge
accomplishment and I want to thank our examination
coordinate who's worked extremely hard to get this
back on goal. Next slide.

So now I'm going to talk about what
actions that we've been taking. First on
reorganizing workloads among our staff, especially
in our advanced court unit and in our
pre-examination units we have been cross-training
and we have been redistributing work where
necessary to attack the largest surges and, you
know, our focus is going to be also on helping
with that pre-examination backlog, getting
additional help in that area as well.

In the law offices and with the
examination of the applications we're had 47 new examining attorneys in April. They are through their training period we are very happy to say, and they are now working on applications. So that's going to be a big help to us.

Upcoming hiring plans. We are in the process of interviewing, about the third interviewing for examining attorneys for next fiscal year. We have a regular hiring plan for the next several years to hire additional examining attorneys and that's going to be a big boost for us to handle the additional surges and the continued increases that we are projecting that are going to be coming. We're also looking at where we can bring on additional resources to help in all areas with trademark.

IT and processing improvements. I want to stress this here. We're not just trying to hire our way out of this, you know, we can't do that. We have to continue to look at IT improvements and business process improvements as well.
On the IT side we are looking at several automation efforts, both for the robotic process automation and with artificial intelligence that fits in our service areas, again especially in advance of court and in pre-examination. One example is with design codes using artificial intelligence that suggests design codes to help our employees more quickly process the new applications.

And that's really the goal here is to provide additional tools to our employees so that they can more quickly and efficiently process the work as it comes in.

And then short term and long term processing improvements, you know, we'll be looking at more tools that we can provide to our examining attorneys, to all our employees to work through and again more efficiently handle the work as it is coming in short term. And then long term looking at our entire business process. Where can we find areas that we can streamline our process, you know, the opportunity we have here with the
longer first action pendency, we do want to get that timeframe down but it does give us time now to actually look at our process and where we can streamline and build efficiencies in before the application even gets to the examining attorney.

On our external sites, I've talked about this before, we want to continue to be updating notices on our websites so that our customers know what to expect. You'll know what your timeframes are whether it's a maintenance filing or a new application or a response, here's the timeframe. And then continue to explain what we're doing to try to solve the issues.

And if we go to the next slide I just wanted to quickly highlight our dashboard again. We put this up about three months ago. We update this on a monthly basis. These are our current timeframes in our various areas of the office so that you can go and check these on our website and see where we are in these various areas.

This is updated monthly so again, it takes us about a week or two after the following
month to get the new numbers up there, and we will continue to strive to make sure that we've giving you timely information so that you know where we are. And again, I just want to continue to thank all of our employees within the law offices and within our service areas, and just across the board and our supervisors, in continuing to work through this.

Please rest assured that we thank you for your patience with us on all this, and again rest assured that we are doing everything we can to work through these surges and make sure of the timely and quality processing of your applications and all of your filing.

So that was quick but that's where we are on our pendency and our backlog.

MR. GOODER: Sounds good. Thanks, Dan. Any questions from TPAC for Dan? All right. Moving on. Our next speaker is Amy Cotton, who is our Deputy Commissioner for Trademark Policy. And she's going to talk in two different areas. The first one is an update about the Trademark
Modernization Act. So, Amy, over to you.

MS. COTTON: Thanks Dave. Next slide.

So we issued a Notice of Proposed Rulemaking on implementing regulations for the Trademark Modernization Act and a few other initiatives. We received 30 comments, they were due by July 19th, the comment period was 60 days. And this is the spread of the comments that we received, the type of folks who were filing comments. So we are currently reviewing those comments and putting together an idea of what they both like and what they don't like and how we might move forward with the final rule. Next slide.

So if you recall in the Notice of Proposed Rulemaking we had three provisions that were related to the TMA, letters of protest, flexible response periods, and nonuse cancellations. But we also had two other provisions, attorney recognition and court orders, that were ancillary to the TMA and things that we wanted to get public comment on as part of this package.
But today I really just want to focus on Number 2 and 3 because that's where the bulk of our comments came from in the Notice of Proposal making comment period. Next slide.

So if you recall on the flexible response period, the proposal offered three options for folks to consider. The first one was a three-month response period extendible once to a full six months. The second one is a two-phase examination model where the original two-month response period for a formality review that would of course be extendable to the full six months. And then following a three-month response period for substantive examination, extendable to the full six months. So this is bifurcated examination where formality phase is first and then a substantive phase is second. The third option that we presented was the patent model. That one consists of a two-month response period that's extendible month by month up to the full six months with incrementally increasing fees.

So that was three different options that
we presented for public comment. So what did we hear? Next slide, please.

We kind of heard everything. From the commenters, 23 of them actually focused on the flexible response period with comments. Some of them supported Option 1, the three-month response period. Some supported a combination of Options 1 and 3 so that there would be a three-month response period rather than two and then extendable month by month to the full six months but the application would not abandon until six months.

Some supported no change whatsoever, wanted to keep the six month response period. They were noting that for Madrid applicants where in the proposed rule we said Madrid applications needed the full six months for purposes of complying with the formalities and the procedures at the International Bureau at the World Intellectual Property Organization. So that needed to change, that the six-month response period needed to stay unchanged for the Madrid
applicants. But folks thought that was unfair that if the Madrid applicants got six months, then they would be at an advantage that other domestic applicants weren't getting. But of course the domestic applicants don't have to go through the World Intellectual Property Organization procedures. So I understand the comments for that one but they indicated that they do not want any change.

Then we heard quite a few saying we don't want to change, but if you're going to make a change we support Option 1, the three-month initial response period.

And then finally we also heard that we should just delay implementation all together and ask for more public comment on this issue. So as you can see, the comments spanned the gamut. Next slide.

So we actually received comments on the attorney recognition provisions that are notable. If you recall we had four different rules that were implicated with attorney recognition. We had
Rule 2.17(g) where recognition for representation would continue until revocation or withdrawal. As you know, right now recognition for representation for an attorney ends at registration, abandonment, or change of ownership, so this rule proposed to change that to continue until the attorney withdrew or the applicant or registrant revoked the power of attorney.

We also proposed Rules 2.17(b) and 2.19(d). Those were addressing the issue of a fraudulent designation of a representation agreement. That would not be effective, we would not consider that to be effective if it was fraudulent, so no withdrawal or revocation would be required in those instances.

We proposed a 2.19(b) trying to clarify when an attorney must withdraw and when they're permitted to withdraw to make it very clear that there are different situations that are involved with that.

And then we also proposed a 2.61(c) where we were deleting a provision that has been
superseded by the Rules of Professional Conduct.
Next slide.

We got 12 comments that address the attorney regulation provisions. Some supported certain of those provisions, some supported only some of those provisions and not others, and some opposed all the provisions. So certainly we got the impression that there were those who desired more information about the need for in particular 2.17(g). We had said in our MPRM that we wanted to proceed with this rule to provide for recognition to continue on until revocation or withdrawal. We wanted that to comply with our current practice where we're already sort of operating in that sort of mode. And we wanted it because we thought we needed it for world base access controls with regard to our third phase of login. There were those who wanted more information about that need for world base access control purposes in order to assess the need for rule changes.

And certainly we also heard concerns
about removing the attorney docketing information
from the data base. Apparently it is a manual
process to put all that back in if we were to
remove it during our transition phase, and so
there were those that wanted to keep that. So
we’re currently looking at all the different
comments that came in and assessing which way to
go on this particular set of provisions. Next
slide.

With regard to nonuse cancellation,
there were several discrete issues that are worth
mentioning with regard to a 30-day letter. So
this is a 30-day letter that we currently use in
examination when an applicant provides a good
faith response but it's missing some formality,
some requirement it is missing, some data element
or whatever. It's not that the submission is
deficient in its evidence, it's actually that
there is a data element missing that needs to be
added.

So we proposed that we have a 30-day
letter period availability for a petition that has
a missing part to it. There were some who supported the 30-day letter, there were some who say that 30 days to perfect the incomplete petition is too long, and there are some who oppose. We can tell that there might be a certain amount of misunderstanding of what the 30-day letter is. It goes out to formalities, it does not go as to the sufficiency of the evidence presented in the petition. So we're looking at that right now. Next slide.

We got calls for allowing a petitioner to supplement a deficient petition with more evidence. So to the extent that the examiner is making a decision as to whether to institute a proceeding, presumably this particular commenter wanted us to tell the petitioner where their evidence failed and allow them to supplement with more so creating a back and forth on the front end.

We heard a comment about allowing a registrant to submit a response to the petition prior to institution, presumably to challenge the
sufficiency of the evidence that was presented in
the petition. And we also heard a comment that we
should address confidentiality concerns with the
registrants. Next slide.

The real party in interest issue. This
is whether the USPTO should require the petitioner
to identify any real party in interest behind the
petition. Some thought that we should require
that, some thought we should not require it. Some
went with our proposal, which is wait and see if
it's actually abused. And some said we should
retain the discretion to ask for it if we think
that we need it prior to the institution
determination. Next slide.

As to whether we should limit the number
of petitions filed on a registration, certainly
some people thought that there should be a limit,
some people thought there shouldn't be a limit but
we should wait and see. And some said that we
should address patterns of abusive filings by
denying future requests. So that would sort of be
outside of the limitation aspect. So again, we
saw all kinds of comments on this. Next slide.

On the expungement and reexamination response period. Some people said that they would like all of the office action response periods across trademarks to be exactly the same. So if it's six months over here, it should be six months over there. Some people said that there should an extension of time allowed for the registrant to respond. Some people said instead of a two-month response period there should be a three-month response period. Some people said three-months extendable to six. That would be mirroring what we're talking about in the examination context and the post-registration context. And then some people said they wanted a full six months to respond to the first office action and to the final office action. Next slide.

Filing fee. We proposed a $600 filing fee. Some said that was fine, some said it was too high. They gave us options for getting money to refund the petitioner because it was so high. Some people want it to be lower for more recent
registrations, certainly the surging of applications that we've seen, I guess the commenter wanted to target those. And the lower fee for individuals, small businesses, and non-profits. Next slide.

We had proposed, actually we'd asked for comments, we hadn't proposed it yet, but we asked for comments on whether a registrant who fails to respond to an office action should be targeted for later audit. There were some who opposed that, some who supported it, and some that said we should wait and see what should happen there. Next slide.

And of course we will need to publish our final rule in November. It has to be implemented, the final rule, at least as to the nonuse cancellation procedures by December 27th, and we have to have a 30-day publication period after the final rule before implementation. So look for that final rule in November. In the meantime we'll be working on that rule package and putting it together and refining it based on your
comments. So we really appreciate those who give us the very thoughtful input that we got.

And that's all I have on the TMA unless there are any questions. Hearing none I think we move on to the register protection. So can we move on to the slide?

MR. GOODER: Yep, keep going, Amy.

MS. COTTON: Okay. Next side, please.

Roll it. Okay. I've spent a lot of time at our last TPAC session talking about our register protection initiative. And I want to basically let you know I'm inviting you all to the September 16th Webinar that we're offering on register protection initiatives that we will take an hour and a half to go through all the register protection initiatives and answer questions that you have. So in light of that forthcoming event I won't spend a lot of time on this today. I wanted to remind you thought of what we're doing and what we're seeing.

So as you heard from Drew, we are seeing applications featuring indicia of bad faith,
fraud, inaccuracy, false statements, whatever you want to call it, we're seeing it. Certainly this is a, you know, not all of our applications are coming in this way, not by any stretch of the imagination. But we have not previously been built to handle these sorts of statements, inaccuracies that are coming in in applications. And the reason why is our examining attorneys are not investigators. They are not in a position to be able to investigate each and every data element that comes in an application to identify whether it is accurate or not.

Our system was built relying on the declaration of use signed under penalty of perjury. But that doesn't seem to be working in deterring behavior anymore so of course we're taking different actions based on different authority that we have to try to address this and take the burden off of the examining attorneys to do this. Because they really cannot identify schemes in examination. The schemes are what we're seeing. We're seeing waves of applications
that are all filed in the name of different applicants but probably filed by a single filing firm or multiple, you know, a couple of different actors. And they all feature similar data elements. And so examiners are not going to be able to see those waves of applications and so we had to find another way to get at this problem.

So we formed of course a special task force who investigates rule violations. So when we are aware of, you know, particularly suspicious applications we will start picking at it, start pulling the thread and trying to figure out what are the rule violations that are happening in this, why are they happening, are there other applications that are affected by this, and then start proceeding with sanctions.

Now if we find that there is attorney misconduct in these applications as we investigate, we will then refer the case to the Office of Enrollment and Discipline for them to look at that. If there's criminal behavior that implications U.S. Applications we will refer
those issues to law enforcement. Next slide.

So the steps that we're taking again, as I said, we're identifying the schemes. And this is very labor intensive. We're trying to amass the tools that we need, the investigators that we need to try to figure out what data element is common, what suspicious data element is common amongst a series of applications that are implicated in a scheme. And based on that what are, you know, we pull those applications out, put them in a holding docket while we investigate, and start looking at what we can do here.

We are targeting not one off, like I said, we're targeting rule violations that show a wide spread pattern of abuse, a wide spread pattern of indications of evidence of intent to circumvent our rules. They are deliberately trying to get around our rules in order to obtain a registration to which they are not otherwise entitled. So as we target those schemes, we target the pattern of behavior, we are talking to law enforcement, we are talking to OED. In the
meantime we are improving our website content to let folks know what we're seeing, to let folks know what they can do when they see it in their own files and what actions that we're taking so there's no surprises.

But of course all of this takes a lot of labor, a lot of time, a lot of resources, in the midst of a filing surge, if you hadn't noticed. So we're doing our best to ramp up our machinery and really get at these rule violations and these schemes and target them. Next slide, please.

Again I want to point you to our website. We are flagging the news of potential scam companies. These have been flagged to us by our customers. These are not ones that we've identified on our own but where our customers have flagged them, we put those solicitations on our website, we've put their names on our website, and so applicants who are affected by this can go and look to see if the company that they've been dealing with is listed and then take action based on that.
Again we're listing the names of actors and companies that we are investigating or have sanctioned. We are providing a checklist for how to prevent being scammed, what to do if you believe you are a victim, and we have an external email box if you have scams at USPTO for folks to let us know when they get these solicitations, when they get these scam companies' solicitations, that we can post them and if they believe that there's something that we need to know.

Now we don't want this email box flooded with every time you see something suspicious because we really can't act on every single inquiry that comes in. We have quite a bit of different ways to get this information as we investigate, but certainly that email box is available for those who really need to contact us and let us know about some bad behavior. Next slide.

Lastly I just want to flag, and I believe we might have flagged this at the last meeting, but I just wanted to let you know. Under
the authority of the Commissioner for Trademarks
we have issued final orders for sanctions against
two different actors, one in China and one in
Vietnam. The first individual was operating a
cloning scheme so he was actually cloning well-
known marks. Everything in the application was
the well-known mark owner, all legitimate
information in there except there was one
suspicious email address that tipped off our
examining attorneys. And once we started tracking
the data we found that he had filed 11 of these,
and we were able to terminate those applications.

Likewise we had the Vietnamese
individual, Mr. Ngo, he was filing unauthorized
changes of correspondence, addresses, multiple
registrations to try to hijack them for whatever
purpose, we're not really sure. But we cut him
off, cut off his USPTO.gov account and he can no
longer file any documents with us.

We have a show cause order outstanding
that we are currently evaluating the response,
which we have received, Yusha Zang and the
Shenzhen Huanyec Intellectual Property Company.

There were 14,000 applications implicated in their filing scheme, all featuring rule violations. And we are currently evaluating our next steps.

And just to let you know, the Office of Enrollment and Discipline did come to a settlement agreement with a New York attorney who was found to be in a relationship with a filing firm where he was not reviewing the documents that were filed under his name, and there were multiple rule violations inherent in those applications that were filed.

So that's a little bit of what's going on now, but certainly tune in on September 16th to hear a more detailed review of what we're doing in the register protection space. Any questions on that?

Okay. Dave, back to you.

MR. GOODER: Okay. Thanks. The one thing I will add to what Amy was saying was in terms of the things that we're doing cleaning up this problem generally. One is it's obviously a
high priority for us, but two is we've really kind of adopted a different mindset about all this.
And it's one very, those of you in companies that have had counterfeiting problems will recognize it as being more of a brand protection mindset. It's far more holistic, it's more going at it from a strategic perspective on all fronts, looking wherever we go Amy has found ways to get at some of this that maybe we didn't utilize as much before or thinking. We're staffing up more, it's become this focus of ours and instead of brand protection like you'd seen in a private sector, it's register protection here because the accuracy and integrity of the register is just of prime importance to all of us, to the economy, to businesses, to everybody.

So when you hear us talking about register protection, that's very intentional and will be kind of the way we think about this going forward.

Okay. With that we're going to switch gears and go to -- did someone start to say
something, or are we okay?

MS. NATLAND: Hi, Dave.

MR. GOODER: Hi.

MS. NATLAND: It's Susan. Hey, I have just a quick question for Amy. Really helpful information, and it's basically all the efforts that being made to attack the scams. I'm just wondering if the PTO has considered other type of technology such as maybe an app or the types of things that banks may use to communication with customers. As you know, for example, you know, if the communication isn't on the app, isn't there, the app is not found, it's not authorized, it's probably a scam. Is there anything that we're looking at there? Because I just feel like this problem is just going to get worse in terms of even, you know, imitating the PTO and trying to get fees and, you know, really fraudulent practices.

MS. COTTON: Certainly. I'm not familiar with the software of which you speak, so I'm intrigued and I will certainly go and talk to
my IT expert, Mr. Daudson, and maybe he can add in that. We are certainly looking at any sort of IT tools that will help us. The question is how do you employ them and what do you do with the data that you get, how do you operationalize that. So that's always the struggle that we have. And, you know, we can keep adding these tools and that takes time. In the meantime we've got a problem, so I don't have that kind of time, and that's why I'm throwing manpower at is as much as I can. Certainly we're exploring some automated solutions.

I don't know, Greg, if you want to add anything to that.

MR. DODSON: That's a great idea, Susan. We don't have anything like that in the queue right now but I think that's an awesome idea and we'll take it back. We can have that conversation offline with you and get some ideas and maybe get an example of what you're asking us to look at and we can kind of dig into that for you.

MS. NATLAND: That would be great. And
kind of pay you back with the whole USPTO login,
that type of thing. So.

MR. GOODER: Yeah. Yeah, that's what I
was going to mention is as we enhance the login
security and the ID proof thing, etcetera, a lot
of this will get harder to do. I was speaking
with the reporters today, there is no silver
bullet in this, just like any anti-counterfeiting
program, there isn't one thing that is all of a
sudden going to stop it because it truly is you're
dealing with somebody who doesn't want to be found
out and is trying to move in ways that keeps them
one step ahead of things. So. But, yeah, any
suggestions like that will be well received.

Any other questions? All right. Well
then with that we are going to turn it over to
Greg Dodson, our Deputy Commissioner for Trademark
Administration, which notably includes IT. So,
Greg, it's all yours.

MR. DODSON: Thank you, David. Thank
you everybody, and good afternoon. Trying to get
us back on time as best that I can. But there are
unprecedented times, unprecedented times in IT too. We've got a wonderful working relationship with our CIO, some great opportunities with what we're calling the new ways of working to get things done. And I want to go through a few of those opportunities with you as we go through these slides. So if I could ask for the next slide, please.

Just want to talk about a few things that are of interest to our external audience. First and foremost want to talk about electronic registration certificates. For many of you this has been an ask for quite some time. A lot of our customers love the paper copies, many also just want an electronic version. So we've been working very, very hard, working diligently with our CIO colleagues to try to get this thing in work. And we think we're almost there.

We had some issues with some high availability problems with our Adobe system. We got those worked out just about a week ago, and those have allowed us really to kind of accelerate
the process going forward. So we're really excited about where we are. We're working a communications plan with our communications team to make sure that the word gets out there and the process gets socialized. And we're looking at sometime around the middle of February of the next calendar year, so right in the middle of the second quarter of FY22 delivering at least a BETA version of this electronic registration certificate.

As you know obviously there's some good reasons for doing this. It's more effective and efficient for us to be able to do that. It keeps us from having to maintain an infrastructure of both printers, paper, ink, that kind of stuff, the postage fees back and forth. There will be for those of you who want a paper copy, there will still be an opportunity to do that, but ultimately the primary method by which you will get your registration certificate will be electronic.

Now we're looking at options to be able to do kind of a block chain version of that.
We're looking at trying to make that coincidence with some of the work that's going on with our colleague IP offices across the globe. And hopefully we can get to a place where certified copies of an electronic version will be sufficient to be included into whatever the legal process would be for that going forward. So we're very excited about this and we look forward to our input from our customers as we go forward with this to kind of help us out. Next slide, please.

Many of you have heard, and you've heard today in the presentations so far about our identity proofing process and where we are with that. I wanted to kind of just unpack that just a little bit more for you. We've done some usability testing with a selected group of individuals which are a cross section really of customers on both the trademark and the patent side just so that we could get a flavor for how that is going to work. We were very thankful that a number of our TPAC colleagues volunteered to do Beta testing with us and had a chance to identity
proof themselves with our vendor. We had one
opportunity unplanned, but it worked out for us
very well for one of our TPAC colleagues to go
into what's called a referee session and we were
able to understand a few more things with that
process as well too.

And the next step in our evaluation
begins next month, which is really next week in
August where we're going to take a larger cohort
of individuals and we're going to kind of test
this thing from end to end. And so we're going to
get volunteers from groups like the ABA and INTA
and AIPLA to help us. A real good cross section
of customers to kind of work this system out and
see what we can do. We're going to do that
through the month of August. We're going stand
down in September, go through the process of
weeding through all of the feedback that we've
gotten to date. We're going to work with our
vendor. And then we're looking at some time right
after the launch of the new fiscal year, so
sometime in early to mid-October of 2021 we're
looking at putting that plan into place.

We will socialize that certainly with our customer base out there, everybody will know what's coming. But the vendor that we've chosen is somebody that we're very, very confident with or confident of, and we fully expect that this is going to really make a big difference in the way that we handle the improper activities and even at the far end of the problem, the fraud.

So with that, I'd like to transition into where we are with the systems themselves, if I could get the slide changed over real quick. And this is the last slide for everybody.

So if you've been involved in the IT process for a while and listening to what we've been doing, once the trademark next generation program was stood down and we took a strategic pause to try to figure out where we were going to go with that. We've brought in, as many of you know, a third party consultant to kind of help us work through the process to see what was valuable and what we could continue to work, those things
that we need to discard for any number of reasons. In some cases because we began that program a
decade ago, some of the technology had changed
over and it gave us the opportunity really to
reach into some of the current capabilities and
some new opportunities, so we did that.

And so we took a look at what we were
going to do and we had a really, really nice plan.
And for those of you that were listening about a
year, maybe about four versions of TPAC ago, we
talked about TMX and how that process was going to
work. And we were funded at a very good level,
and then the pandemic hit. And luckily for us
through the leadership of the Commissioner and the
support of Mr. Hoffman, the CFO, who got behind
this effort, and our CIO, Mr. Holcombe, who's
going to be on line here after the break. We were
able to kind of settle on a new program for '22
and '23 that is going to allow us in a lot of
cases to catch up with pretty much the year that
we lost through the pandemic. So we've done a few
things.
And you can see on here that we're trying to accelerate. So many of you know what TRAM is, that's Trademark Records and Management. No, that's not it. I can't remember what the acronym is. I'll put it in the chat. TRAM is the foundational baseline for everything we do. It's not only a database, it's a system of business processes. It's been the way that we've done business for quite some time. We're going to step away from TRAM and go into a new process that's Java Code based and it's going to be a lot more efficient and a lot more effective. A lot of micro services are going to be involved in that.

In fiscal year '22 we're going to add six teams to the TRAM retirement process so that we can accelerate that and get that going. So we're looking very, very forward with that.

From our DNA or our trademark data and analytics perspective we finally retired the last of our legacy reporting systems and we put everything into the enterprise data warehouse, which is just this wonderful process that allows
us really to kind of sort through everything in a lot more of an effective and efficient manner. And we're going to add an additional team to our DNA effort in fiscal year '22 to be able to take us even to a better place with data and analytics.

We are looking from the exam proponent and our lead product owner for trademark exam has briefed a couple of different options over the last couple of weeks to some different cohorts of individuals, and we're looking at launching to an early adopter group of people in the next near term an opportunity to kind of take a look at trademark exam, kind of go through some feedback, really kind of wring the system out and make sure this is what the examining attorneys really need as we make the next step into the future. So we're looking forward to that.

As we just kind of talked about with the identity proofing trademark external, which as many of you know on the external side of the house is TEAS, we're looking at how that whole process is going to work. We're very excited about the
opportunities that we have with trademark external
and we're just kind of building upon that. But as
you can see with the ID proofing, and as Amy said
a little bit ago, we've added a lot of information
on our web pages, and one of those is the scam
awareness opportunities there for our customers.
So we encourage you to look at our external pages
and give us feedback on what we can do.

Last, let's see, we've got Trademark
International, which as many of you know is kind
of our Madrid process. Those folks have
transitioned a lot of the work into the Amazon,
into the Cloud in the Amazon web services. We're
really looking forward to how that's going to work
for us as we go forward. This is a problem that
requires a lot of interaction with our
international colleagues, as Amy mentioned, WYPO
and the International Bureau we have a very
symbiotic relationship with those folks and we
gotta make sure our systems talk to each other.
And so we're in good collaboration with them as we
go forward and we're very excited about that.
And as you can see, micro services are kind of the way we're going with this. And a lead product owner for Trademark International, Mat Kim, is doing a real really good job of tying up that work.

And then finally, working with the lead product owner for the TTAB, which is one of the judges over there, really, really smart and capable technical individual on Chief Judge Roger's team, working with us to kind of transition those things like ESTTA and TTAB this over into the new process. And this time we're going to get it right and make sure that TTAB's systems are completely and totally aligned with what the trademark business unit is doing. And the only systems that we're going to separate out are those that have to be separated out because of the particularities of the judicial process that Chief Judge Rogers and his team do.

So with that, I think I got us sort of kind of caught back up. I'm available for any questions if anybody has any right now. All
right. Well hearing none, Dave, I will hand the
microphone back to you.

MR. GOODER: Sounds good. Thanks, Greg.

And, Chris Kelly, the Chair of our meeting here,
that's the conclusion of the trademark's business
unit schedule. We're scheduled to take a 10
minute break at this point, and we are I think
about 12, 13 minutes behind schedule, which isn't
too bad. So shall we do that? You want to
reconvene, you want to take seven minute, eight
minutes, 10 minutes, what would you like? You're
the boss.

MR. KELLY: Let's take the full 10 since
we're only 13 behind.

MR. GOODER: Sounds good. So we'll see
everybody back here at 45 after.

MR. KELLY: Thanks, Dave.

MR. GOODER: Thank you.

(Recess)

MR. KELLY: Shall we proceed?

MR. GOODER: Yeah, let's do.

MR. KELLY: All right then. Well
welcome back everyone. We will continue with our program. And next up we will hear an update from the USPTO's Chief Information Officer, Jamie Holcombe, and Os Turan, the Acting Trademarks Product Line Manager. Gentlemen, if you want to take it away. Welcome.

MR. HOLCOMBE: Thank you very much. I would like to say aloha. Yes, I'm in my aloha attire because it is Friday, and I just wanted to extend that aloha to everyone here.

I'll get off the stage really early, but you'll hear me say this over and over again. My three priorities for the USPTO. One, cybersecurity; two, resiliency; and three, moving to the Cloud. Os, take over.

MR. TURAN: Thank you, Jamie, and good afternoon everyone. I'd like to start off with some additional IT highlights since our last TPAC meeting. If we could advance to, let's see the next slide, please. There we go.

The first update there that you see is the ongoing OCIO Data Center move. As you know,
we're currently on track for August 1st to move from the Boyers facility to the new data center in Manassas. And to clarify, the data center move was broken down into two phases. We had a facility in Boyers that we're moving over to Manassas, and we'll also be moving the Alexandria Production Data Center to Manassas. And that's part of Phase 2. And those plans are close to being finalized.

One potential concern has been the challenge with longer than normal shipping windows for equipment deliveries to the new data center due to the global pandemic. However, the team has been able to effectively plan around those constrains in order to stay on schedule.

The next item there involves our efforts to support the Trademark Modernization Act, as you heard from Greg Dodson. The teams continue to make good progress on developing all the IT system changes that are needed. And we're still confident we'll make the mandated deadline at the end of December.
In fact, a couple of teams may finish well ahead of schedule. And we plan to share their available capacity with other teams to ensure we don't have any unforeseen resource bottlenecks.

The third bullet there speaks to our continued drive towards developing loosely coupled architectures based on micro services. For example we've recently implemented some new micro services for getting trademark data over to MyUSPTO users so that they can populate their dashboards. So these new services basically allow us to remove the dependency from MyUSPTO to the on premise TRAM database. And it gets us another big step closer to the Cloud.

And speaking of the Cloud, Trademark Exam and Content Management Services products both completed their Cloud readiness and migration planning, and other trademark products have also already begun their own Cloud migrations and are making progress along those lines.

Finally, the teams have been making
great progress with building out some of the infrastructure improvements to support agile delivery of software into production. I'd like to illustrate what that really means in the next slide. Next, please.

So here we see on screen is a relatively simple dashboard that provides visibility on two important types of infrastructure improvements that benefit agile delivery. These are DevSecOps Pipelines and Blue/Green Environments. And I'll explain more what those are.

DevSecOps Pipelines simply put, are automated software delivery workflows where you can check in completed software code at the start of the pipeline and then various components within that pipeline conduct a slew of automated tests and software checks, including cybersecurity scanning, to ensure that the code is truly ready to deploy into production. And if the code fails any of those test everything comes to a half and the developer's got to fix that. And then of course if they pass all tests the code can go
straight into production.

So with this kind of automation the benefit is very clear in that DevSecOps Pipeline simply mean much faster deployments of software into production where we can measure that in terms of minutes instead of hours or sometimes days.

Now the other element here is a Blue/Green Environment. These are, in simple terms, essentially two identical production environments running in parallel. They are largely mirror copies of each other. This allows us to deploy new code into one of the environments without having to bring the whole production environment down. So users can continue to do their work as we deploy new patches, enhancements, and so on. And of course this equates to greatly increased availability of the system.

So just to explain the dashboard and the left a little further, you can see here various numbers within the pie charts. Those numbers indicate the status of whether a particular component within those products that you see
listed there have either established a DevSecOps Pipeline or a Blue/Green Environment or if they're still in progress.

One note just for your awareness is that in the case of one product in particular, Trademark Exam, there's four components where it just does not make practical sense to have a Blue/Green Environment. There would be no benefit being secondary systems, and therefore it's not included in the tally.

But as you can see, overall that the total number of components that have been completed shows that we've come a long way and made some excellent progress.

So to wrap up these two infrastructure improvements, they are key to deploying software into production faster and greatly increasing system availability.

And that is all I have for the IT update, so unless there are any other questions, I'll hand the mic back over to Dave.

MR. KELLY: Thanks, Os, this is Chris.
Any questions from TPAC members for either Jamie or Os?

MR. CHOO: Maybe just one minor question, Os, on the chart that we're seeing right now. There's a legend for green and yellow for complete and in progress. I notice there's gray, there's no indication for that. Can you clarify?

MR. TURAN: It looks like some sort of formatting error of sorts. So I can tell you that for the Trademark International, Trademark TTAB, those should be all yellow, they're all in progress. So apologizes for the conversion to the PDF. So like Content Management Services, they're done, that should be all green. And Trademark Exam, that the 14, sorry I just saw a text there. I believe they are also all done, there won't be any further components. Those four components, it's not necessary to get up to the 18 total components that they have. So I just realized that as we got to the slide. So sorry about that.

MR. KELLY: Okay. Anyone else?

MS. KOVALCIK: Yeah, this is Jen.
MR. KELLY: Hi, Jen.

MS. KOVALCIK: First I want to say good job. I see that he's been working so hard and made so much progress this year. Obviously last year was quite a challenge from IT with the budgetary concerns and COVID and everything.

So when we're projecting completion of Blue/Green for September/October, it sounds like from a user experience what they will see really is increased availability. So as one perhaps that failed or had some type of deployment going on for a new upload, they would not see any impact if they're operating in the other system. Is that fair for what you are referring to be?

MR. TURAN: It would. From the direct visibility yes, the users would most likely perceive the system availability. Indirectly, and this would be really hard to quality or quantify for an end user, is the improved internal efficiencies that we've had with deploying codes faster whereas it could have been days sometimes just to get code through all of these hoops and
hurdles, you know, under the old ways of working.

But with the improvements there, you know, that's
where I would say they wouldn't readily perceive
it. Hopefully the larger picture is they'll see
an overall improvement in IT delivery. So.

MS. KOVALCIK: And then also I just
wanted to add I went through the beta for the ID
per thing and it was pretty straightforward and
fairly easy to use. So I think as people get to
experience that that they will see that that's
pretty user friendly as well. I know we did
provide some feedback on maybe some wording and
try to make that more clear and user friendly. So
thank you guys for all your work on that as well.

MR. TURAN: Great. Thank you very much
for the feedback.

MR. KELLY: Okay. Jamie and Os, thank
you again, we appreciate it. Before moving on to
our legislative update I just want to remind
listeners that if they have any questions at all
about any of what you're hearing today, please
reach out to us at TPAC@USPTO.gov.
So, moving on, we have with us Kimberley Alton, Acting Director of the Office of Governmental Affairs, with a legislative update.

MS. ALTON: Great. Thanks so much for the welcome and good afternoon everyone. Can we advance to the next slide, please? Perfect.

Just a couple of quick updates for the quarterly meeting from the Government Affairs Shop. First, the SHOP SAFE Act. You all will remember this is the bill that would impose trademark liability on E-commerce platforms that fail to put in place sort of best practices to address counterfeit goods that are sold on their platforms.

A house judiciary committee is really leading this effort. They held a hearing back in May. They've also held over the course of the spring and summer three staff-led roundtables with stakeholders just to get feedback on the bill and really try to see if there could be a consensus that's reached in terms of how to go about putting in place this sort of framework.
The USPTO has joined these roundtables, we have been available to congressional offices to provide technical assistance and background. We work very closely with the enforcement team within the Office of Policy and International Affairs on providing depth subject matter expertise to the Hill staffers. But it sounds as if just from the monitoring that we've been doing of these roundtables, the conversations, the discussions are progressing. Certainly the brand owners and the E-commerce platforms are trying to find sort of that middle ground and reach a consensus. So I think certainly the hope and the expectation is that the House will be able to advance this bill hopefully by the end of the year. But we will be happy to keep you posted, and we will be monitoring that legislation.

The second item I just want to flag for you all very quickly is the U.S. Competition and Innovation Act. That bill, formerly known as the Endless Frontier Act, is a bill that was approved back in June in the Senate. Hugh bipartisan bill
that would make just a major investment in the
Federal resources that are directed to scientific
innovation, so a lot of money directed to SNF,
other agencies within commerce, to really do more
to ensure that the U.S. remains competitive and a
real world leader in innovation. Can we go to the
next slide, please?

So you'll see again a mention of the
SHOP SAFE Act. Also our fiscal year '22
appropriation that is making its way through
Congress now. We've been talking to our
counterparts on the Appropriations Committee as
well as the Authorizing Committee. I think our
CFO has probably given an update on that. And
next slide.

I think that's it, just those two quick
updates. So I open the floor for any questions.

MR. KELLY: Any questions for Kim from
TPAC members? Okay. Kim, thank you again very
much for being here, we appreciate the update.

MS. ALTON: Absolutely. Thank you.

MR. KELLY: Okay. Next a policy and
international update from Deputy Chief Policy Officer and Director for International Affairs, Mary Critharis. Mary, welcome.

MS. CRITHARIS: Good afternoon everyone, just want to make sure you can hear me.

MR. KELLY: Yes. Loud and clear.

MS. CRITHARIS: Okay. Thank you. It's a pleasure to be here, and I think as my inaugural meeting and presentation so I really look forward to working with the TPAC members on all these international trademark issues. Let's go to the next slide, please.

Okay. So first I'd like to announce that we now have a new senior level attorney since Amy Cotton has moved on to bigger and better things. But Nancy Omelko will be the lead for the international focus for our senior level attorney. Nancy has been with the Agency for a very long time, she has a tremendous amount of knowledge and expertise. She has been with the Office of Policy and International Affairs since 2005, and she also served as an attaché in Geneva.
We also had a posting for a senior level attorney that has more of a domestic focus, and we are still finishing up the process there so we hope to be able to announce our domestic senior level attorney at our next meeting.

Some quick updates on our attachés. We recently hired David Kellis to lead the Mercosur region. He also comes to us from private practice where he has a significant amount of IP experience.

Next we also have Juli Schwartz. She was formerly with our Office of the United States Trade Representative. She was Assistant General Counsel at USTR, and she will be serving as attaché in China in our Shanghai office. She is not on the ground yet but we hope she'll be departing in early to mid-August.

And last but not least I think you're familiar with Helene Liwinski. She is on our Trademark Team but she will be going over to Geneva to be our attaché for the USTR at the World Trade Organization. She also has not left yet but
she is currently on detail to USTR. So those are some of our quick updates from personnel perspective. Next slide, please.

So one of the things I'd like to update you on is some ICANN updates, you know, work related to access of disclosure of who is domain registration was really a main focus of the recent ICANN meeting. In addition there was also focus on improving procedures in future realms of new generic top level domain names. At this point though there is no timeline for when this will be set.

There's also discussion on protection for intergovernmental organizations in the generic TLDs. The working group addressing this matter will be issuing a preliminary report for public comment in August of this year. Also significance to trademark owners, a review of the Uniform Domain Name Resolution Policy will begin this fall and obviously we hope to share those updates with you as well.

The next ICANN meeting will be held in
October of this year. Next slide, please.

I'm now turning to some updates at WIPO.

We participated in a few WIPO related events related to Madrid. There was a virtual seminar for advanced trademark users, there were over 40 participants across the globe who participated in this advanced trademark examination seminar. We also participated in a questionnaire for Madrid member states. There were over 178 questions, and we gave comprehensive answers on U.S. practice and procedure for use by Madrid users. Hopefully this questionnaire and the results will be published, and I think a more useful utility for our stakeholders is really not what we scan with respect to our practice but seeing their responses from the other jurisdictions will hopefully help stakeholders, you know, navigate the Madrid system in those regions.

And there was also a WIPO released its annual report of statistics on filings throughout Madrid covering the calendar year of 2020. The report findings included that the United States
was Number One both as an office of origin and also as a designated office. So we see most filings are coming to the United States and through the United States. So those are some of our recent updates at WIPO. Next slide, please.

Turning to our office to office cooperation. Earlier this week we participated in an IT expert meeting of the TM5 to discuss tech issues and the registration process. Some key topics that were discussed at this meeting are new and emerging technologies and the use of AI to examine identification of goods and services, application of latest technologies to trademark workflows, including block chain, AI, and machine learning as well as telework initiatives to maintain examination quality while also working remotely.

The next working level meeting will take place in September. And just a reminder, the annual TM5 meeting is scheduled for November 3rd to 5th. China will be hosting this year's TM5 meeting. It's still not clear whether this will
be in person or virtual meeting, so we will keep you posted on those developments. Next slide, please.

So we heard earlier that Commissioner Gooder gave an update about the time it takes to process the certified copies with the office, so fortunately there's been much progress on that front. So I'm here to give you a little bit of an update on the process with respect to legalization requirements with the Department of State. We appreciate that you raised this with us at the last meeting so we have had several meetings with our colleagues at the State Department. And unfortunately, this is a problem that is not unique to the IP area, it's across the spectrum.

Also with respect to any kind of legal or business related matters the bureau responsible for, you know, processing these legalization certification attestation requirements is extremely backed up due to COVID. They just haven't had the staff on site to be able to kind of process them in a timely fashion. We tried to
find out from them whether they had any updates as
to when they'll be able to, you know, catch up.
Unfortunately, we were not able to obtain that
information. They did say however that there
might be a potential avenue for particular
instance if an applicant is having a particular
problem, that they might be able to address that
issue more expeditiously. So we will definitely
get back to you on more information on who to
contact if you're really having a particular
problem in a particular region. So, like I said,
stay tuned for that information.

But I also wanted to let you know that
in spite of the fact that we are not really able
to, you know, control what happens in our State
Department, we have been reaching out to some of
our colleagues, working with our attachés to see
if there's anything we can do to help mitigate
some of these problems. Perhaps they can waive
some of the deadlines or if we just send a
certified copy they can hold off until they
receive a, you know, an appropriately certified
copy, a legalized copy from our State Department. So we are working with certain jurisdictions. We have already reached out to the Libya, China, Egypt, Ethiopia, Panama, Saudi Arabia, and Thailand on how to see if we can find any kind of resolution or relief on this particular issue.

However, on that front I'd like to ask perhaps, and we can do this, you know, after the meeting as well, if there are any other jurisdictions that there are delays in obtaining attestations or legalizations that are challenging, please bring that to our attention. We'd also like some more information on the circumstances under which those legalizations are most frequently required. For example is this for filing documents, is this for establishing use, are these court documents. I think that's very helpful to us because that can help us address some of the potential remedies, if it's just more of a filing document that's something maybe we could address. Obviously court documents may be a
little more challenging. And the types of, you
know, legalization that's required in a particular
region.

So I think, you know, if we can maintain
the channels of communication that we can try to
work whatever angle we can with our foreign
counterparts and also working with our State
Department. Next slide, please.

A few highlights, you know, OPIA has
been doing a lot of training throughout the year.
We've really hit maximum capacity at a lot of
these events because they're virtual. The added
benefit is we can have enhanced participation. So
I just wanted to highlight some recent training.
We had a very good program with India on
geographical indications. We also hosted a very
successful Webinar on GIs with the African
Regional Intellectual Property Organization. And
we also held an advanced trademark examination
workshop with Mercosur, particularly examiners
from Argentina, Paraguay and Uruguay participated
in that advanced workshop. Next slide.
And finally I just wanted to give you an update on some of our enforcement initiatives. I know Kim touched upon some of them in her legislative update. But as many of you know, there was a report to the President on combatting trafficking and counterfeit and pirated goods. In response to that report the USPTO took the lead on developing two reports in response to this. We had Federal Register Notice to develop a national private/public anti-counterfeiting campaign. And we also had a Federal Register Notice assessing contributor trademark infringement liability on E-commerce platforms. We have completed a review of the submissions in response to these Federal Register Notice for comments, and we are hoping to publish a summary of the comments in response to these notices. We're hopeful that these comments will aid policymakers as well as the interagency and ongoing discussions on how to address the issue of online liability E-commerce platforms.

So that is our update. But more than happy to answer any questions.
MR. KELLY: Any questions for Mary?

MS. BALD: This is Stephanie Bald. Can you all hear me?

MR. KELLY: Yes.

MS. BALD: Mary, thank you so much, that was a really helpful update. I just wanted to clarify on the legalization issue. I think what you said is so important in terms of getting the PTO information about what sections are problematic, the type of document that is being required that is problematic, and also the types of legalization. And I think TPAC would be happy to kind of organize any comments we get from the public with that very detailed information. So I was going to ask Chris Kelly if he could repeat the TPAC email box because to the extent the public it's probably not the right forum to talk about it today in this meeting, but if you want to send those, you know, specific details in, we can put that together and get it to OPIA for appropriate action. Chris?

MR. KELLY: Yes, ma'am, happy to. I was
about to plug it again anyway. It's TPAC@USPTO.gov.

MS. BALD: Thank you.

MR. KELLY: Any other questions, comments for Mary? Well, Mary, thank you very much, great presentation for your first time at TPAC. We look forward to having you back.

MS. CRITHARIS: Thank you.

MR. KELLY: So next up we have the Trademark Trial and Appeal Board update with Chief Judge Rogers. Judge Rogers, welcome.

JUDGE ROGERS: Thank you again. Sound check.

MR. KELLY: Loud and clear.

JUDGE ROGERS: Great. Thank you. Next slide, please. Just to provide a little bit of context and perhaps some contrast with the trademark surge we have heard so much about, I will remind you that we were seeing increasing new cases at the Board already even before the trademark surge. And we certainly expect that in the future we may see the results of the trademark
surge lapping the shores of trademark trial.

But these were the kinds of increases
that we were seeing even before the trademark
surge. We've had a little bit of a lull in '20
and '21 as the next couple of slides will show,
which is helpful because then when the surge does
materialize at TTAB we will hopefully be in a
position to deal with it. Next slide, please.

So the moderating filings in FY20 I
think, as Dave Gooder showed us earlier, initially
application filings went down but then went up
again and contributed and started this very
significant surge. For us, the filings that went
down in the second half of the year resulted in
FY20 being a slight increase in appeals. And
that's kind of steady from year to year. But we
saw a decrease in oppositions and the rate of
increase in petitions for cancellation went down
in '20. Next slide, please.

On '21 to date the same pattern is
manifesting itself where appeals continue to go up
a little bit but oppositions are down. Petitions
to cancel are finally down for the first time in a number of years. But that's again from some very high levels that we had seen in previous years. And the other thing that is worth noting here is that earlier in the year I was predicting more significant declines by year end than we seem to be predicting at this point in time. In other words things seem to be leveling off. And that may be an early indication that some of the trademark work that has been bedeviling the examining operation is finally reaching the TTAB. But we'll have to monitor that for the rest of this fiscal year and the beginning of the next fiscal year to see. Next slide, please.

So when we did have all those trial cases coming in from fiscal '17 to '19, they certainly impacted our ability to keep pace with contested motions in trial cases. We had a lot of trail cases that were working their way through our pipeline for the last couple of years. However, the bottom bullet on this slide will show you the good news now. And that is after a couple
of years of really working hard at it and bringing on board a number of interlocutory attorneys, we've finally reduced the tenancy time to resolution of contested motions. And we finished last year on fiscal '20 above our goal of no more than 12 weeks on average to resolution of contested motions. We were slightly above that at 12.4 weeks, but we are well below it now at 9.7 weeks. So if we do see an increase in trial cases we should be able to keep pace with the motions.

Next slide, please.

And on the other end of the pipeline for TTAB are the cases that are maturing through ready for decision and need to be addressed by a panel of judges. We have seen that increase significantly during this surge of trial cases that we saw for a few years earlier. However, the number of cases maturing to ready for decision stabilized some in fiscal '20, and the percentage of all cases maturing to ready for decision that were trial cases reduced. And we've also seen a slight reduction in fiscal '21. Next slide,
please.

So the bottom line for us in terms of our pendency measures is that we have met all of our goals. Pendency on motions, time to issuance of decisions, and ex-parte appeals and time to issuance of decisions in trial cases are all well below our goals for the year. Now keep in mind these figures are averages, and some of you may experience longer wait time. I think that sounds like a message we all get on a phone queue. Some of you may experience longer wait times. But that's certainly true with TTAB as well. You will certainly have cases that will go faster than these averages, but you will also have cases that might take a little bit longer. We use the averages because we want to make sure that attorneys can counsel their clients about the kind of lion's share of cases and how they are processed, and not the outliers on either end of the scale. Next slide, please.

I wanted to discuss the fee changes that took effect at TTAB back in January just for a
moment. Next slide.

As you will recall, we had some
increases, per class increases for new
proceedings. And the one I will note on the top
of the slide is the Petition to Cancel. We also
put in that fee package the provision that we
would refund this increase in cancellation cases
asserting abandonment or nonuse if the cases went
by way of default and there were no filings made.
So that in essence Petitions to Cancel based on
abandonment or nonuse and resulting in default
judgments would not see an increase. And that's
consistent with our desire to help purge the
register of lots that are not in use. Next slide,
please.

We also had some new fees that we put in
place in January. Some were intended to basically
recover more costs for heavier users of Board
resources, such as the appeal brief fee and the
request for oral hearing fee. Many parties file
notices of appeal but they never file briefs and
don't require decisions on the merits. And there
are very few parties that request most of our oral hearings. So those are heavier users and we thought to shift some of the costs to those parties using those resources.

The second is for an extension of time to file an appeal brief. It is basically an attempt to prevent parties from filing too many extensions and keeping appeals pending too long.

Next slide.

So what have we learned since these fees went into effect? Well we're just beginning to process some of those refunds in those cancellation cases that involved abandonment or nonuse claims and default judgments. We did have a situation come up where one petitioner moved for default judgement, and then the question was well, do they still get the refund. Because we said that the trigger was we get a default judgement and there's no other filings other than the petition. Well in this case the petitioner filed a motion for default judgement but we thought to be fair they should not be deprived of their
refund because we still got the default judgement and that's good for all of us. So yes you will get your refund. But don't file a motion for default judgement, you don't need to. What you really should do is contact the Board and note that an answer hasn't been filed. And then we can issue the order to show cause to the defendant.

We also had a situation, at least one party was filing a supplemental brief. And so this was in an ex-parte appeal where the main brief had been filed, and of course there's a new appeal brief fee. Then there was a remand and then later they filed a supplemental brief after the remand work was done. And they used the appeal brief form and then were prompted to pay another fee. We want to make it clear that when there is a remand situation, whether requested by an examining attorney or an applicant, there will be no fee for any supplemental brief that is necessary after the remand. So don't use the same form that you would use to file your main brief, but you can use another form that will allow you
to avoid having to pay a second brief fee when it's not going to be necessary.

So these are just some of the issues that we are kind of dealing with as we're working through making sure that people are not avoiding fees by using ESTA cover sheets that they shouldn't be, and that other people are not being charged fees that they shouldn't be. So we're kind of working out those issues as we go along.

Those of you waiting on refunds in cancellation cases should begin to see them soon if you haven't seen them already. Next slide, please. Another one too.

So just a quick reminder that we do have prioritized review of any fields involving applications for COVID-19 related marks for goods or services. Nobody needs to do anything about that, we will keep track of those applications that got prioritized from new examining operations and when they get to the Board we'll move them along as quickly as we can whether they're an appeal or an opposition. Next slide, please.
TTAB IT, one more slide, please.

We have, as Greg Dodson alluded to earlier, and Os during the CIO presentation, we completed stabilization projects. Most of this is unseen by our customers and stakeholders. This is all put on the back end and the workflow for existing ESTA and TTAB IS, TTABU systems. So the only thing we're really focused on now with legacy systems is the occasional security dispatches that might be necessary. And otherwise we're concentrating our IT work on preparing for the deployment of TMA and being able to take in filings related to the new expungement and nonuse proceedings if registrants decide that they are going to appeal from those decisions. And we are developing the new TTAB Center, which is essentially going to be our future look and replacement for ESTA and TTABU. We are developing these with recognition that there will be a move to the MyUSPTO secure logon, so that would be incorporated into this development work. And we're working on this now and this is just kind of
our future focus for IT. Next slide, please.

The Reading Room. The Reading Room has been out since almost a year now. We hope that most people have had a chance to use it. And this is the replacement for what used to be known as the e-FOIA room for TTAB decisions. Please feel free to provide us any suggestions for improvement of the Reading Room at TTABFeedback@USPTO.gov. We're happy to take any suggestions that you have for improvement. Next slide, please. And one more.

And this is the last of a few slides. I'm not going to run into these, go through these in a lot of detail because there is a lot of detail that we will be discussing with stakeholders. We've discussed with TPAC already and we will begin discussing with other customers and stakeholders in various other forums when TTAB attorneys and judges are asked to speak as part of the programs.

But we have been talking, at least a little bit in previous TPAC meetings, about our
development of a pre-trial conference pilot. We would not ever want to put all trial cases into a required pre-trial conference with a judge and an attorney. But there are cases that we believe have certain attributes or certain indicia, or have experienced certain difficulties during their time at the Board and would benefit from more hands-on case management and guidance by a judge and an attorney.

So we conducted a survey amongst the attorneys and the judges to see what interest there would be internally among the judges and the attorneys for this kind of a pilot project. Next slide, please.

So the first question that we asked all of the attorneys and the judges was whether such a pilot project would be beneficial. And large numbers of our attorneys and judges responded that yes, this would be beneficial. This again is going to be for trial cases that could generate large or unfocused or unwieldy records. We are cognizant of the fact that not every large record
case is necessarily unfocused or unwieldy, and may just be a large record case, and we can handle those. But the cases that are particularly contentious involve a lot more objections and disagreements among the parties before they enter into trial, can create very unfocused and unwieldy records. So we have decided that we will continue to develop the contours of the pilot. Generally speaking an attorney and a judge would participate in the conference when we decide that a case should go through such a conference. We would hold it after the close of discovery but before pre-trial disclosures are due, that's when we can most help the parties through the conference and the preparation for trial. And the parties would have to come to that conference with a plan for trial. Next slide, please.

So the parties would come to that conference and we would be able to discuss claims and defenses and what the parties have learned after going through discovery and figure out what
claims and defenses really should go to trial, and
the order that would result from that conference
would set the boundaries and the parameters for
what claims and defenses we would contemplate at
trial. And we would also be working with the
parties to encourage them to enter into as many
stipulations as possible, whether it is as to
facts that are not in dispute or whether it is as
to the introduction of evidence that would occur
at trial. And we would hope to dispense with as
many objections to evidence that the parties would
be telling us during the conference they intend to
present at trial.

That would not relate to any outcome
determinative, for evidence that would not be
outcome determinative. We have a lot of evidence
that is put in in some cases that is really
unnecessary and duplicative and redundant and
relates to claims that are really not the essence
of the dispute between the parties. So we would
like to focus parties more on what the real
essence of the dispute is through these
conferences. Next slide, please.

Objections again would have to be brought up at the pre-trial conference to the extent that we have heard from the parties what their anticipated offers of evidence would be at trial, and we would be trying to discourage long appendices which are now sometimes attached to briefs, including objections to evidence when much of the evidence may not be outcome determinative anyway and therefore we need not resolve objections regarding a lot of that evidence. Next slide, please. Next slide. I know there's one more slide.

All right. Well if the next slide is not coming up, I will tell you what it says. The next slide says we asked the judges and the attorneys, I will pull it up separately over here, for each of the following indicia please specify how helpful they would be in identifying cases that should be included in the pilot.

One was that there were many claims or defenses that were unwarranted. And how would we
determine that? Well basically because our
interlocutory attorneys are involved in many
discovery conferences with the parties and
certainly have occasion to review the pleadings
when motions come up, contested motions come up.
And it is not unusual for our attorneys to end up
striking various claims and defenses because
they're either unwarranted or they're not properly
pleaded.

Another item that was viewed by many of
our attorneys or judges as potentially indicating
that a case would be a candidate for a pilot would
be parties or counsel who are very unfamiliar with
TTAB practice, and of course that is something
that can manifest itself during the course of the
case when we see how people are practicing and how
well they follow the rules and how familiar they
are with Board practice. And cases that are
particularly contentious and have too many motions
based on the essence of the dispute.

Now we want to make sure that everyone
understands we would not embark on this pilot
without taking a lot of input from TPAC and all of our customers and stakeholders. This would be input that we hope will help us identify the stumbling blocks, the problems that some of you have with adversaries in TTAB trial cases and the kinds of things that you think should be considered red flags for the possible Board intervention in trial cases and therefore the conducting of pre-trial conferences with the parties.

So we recognize that most cases are not going to be candidates for this pilot. We have many cases where parties disagree but they do not engage in a lot of significant motion practice and they simply try the case and wait for the Board to decide it on the merits. And those are fine. However, we have other cases that are very hard fought, result in very, very large records, much of which is not important to the ultimate resolution of the case. And we want and try to figure out these cases as they're working their way through our system and figure out which cases
are likely to be problematic at trial. And if we can intervene and we can assist the parties in getting through a smoother trial it can save time and it can save resources for the parties.

So this is the kind of pilot that we're thinking of deploying and for which we would like as much feedback, and you can provide that at TTABFeedback@USPTO.gov as you hear our attorneys and judges talk about the contours of this pilot as we get out and speak at various programs. So we'd certainly like as much input as possible in the continuing development of this pilot.

So there's a lot of work still to be done on it but I just wanted to put it out there and make sure that everyone was aware that this is something that we're working on and we will be seeking your input on in the future.

I'm sorry I've run over a little bit, Chris, but I think you still have plenty of time for questions. I think you're on mute now, Chris.

MR. KELLY: All right. I'm sorry. Any questions from TPAC members for Judge Rogers?
JUDGE ROGERS: It's good to go as the last speaker on a Friday afternoon. Questions are few at this time of the day.

MR. KELLY: Well then I guess that's it, Judge Rogers, thank you very much. Always very informative.

MS. NATLAND: Judge Rogers?

MR. KELLY: Oh, I'm sorry, Susan, go ahead.

MS. NATLAND: I actually do not have one on the pre-trial conference because it's a lot to absorb and, you know, we're going to take a look at that. But I do have a quick question on the refund on the default/nonuse cancellation. Is that just automatically refunded back on the credit card that we used, or does something have to be done?

JUDGE ROGERS: Yes. We actually, some people may be expecting refunds that they haven't gotten just yet. It doesn't mean you're not going to get it. If you haven't gotten one that you think you should have gotten a while back then
please feel free to contact us at the Board,
contact the paralegal that's working on the case
or our Chief Clerk, Denise Stalgizi, can look into
that too.

We did have some issues that we were
working out with the finance office in terms of
processing these refunds. But the refunds should
be done automatically, you shouldn't have to
request them. But if it's a problem getting one,
feel free to request it and we'll make sure you
get it. And it will go back in the same way that
you paid your fees. So if you used a deposit
account it'll go back to the deposit account. If
you used a credit card it should go back to the
credit card.

MS. NATLAND: Great. Thank you.

MR. KELLY: Any other questions? Okay.

Well thank you again, Judge Rogers, we appreciate
it.

So at this point that concludes the
program. And have we received any questions or
comments from the public?
MR. GOODER: Chris, I haven't seen any come in although Anastasia flagged me that they might. I think she's checking right now at the moment.

MR. KELLY: Okay.

MR. BESCH: Hey, Chris, this is Jay Besch. Can I just clarify a couple things?

MR. KELLY: Certainly.

MR. BESCH: I just wanted to thank the presenters today for all the presentations, very informative stuff, and I always learn a lot about all the different parts of the Agency every time I sit in on TPAC.

I would like to recognize and commend our unit for continuing to be very dedicated to the mission of the Agency in the face of the adversity. Drew touched on it, Dave touched on it, but it really has been quite a year and plus I look forward to the office engaging our employees more as we move forward with all the initiatives and realities that have been set forth today.

Specifically the unprecedented deluge of filings,
the numerous initiatives in IT, the implementation of Trademark Modernization Act addressing fraud and many other things I'm probably missing.

These employees are one of the most important resources we have in addressing these initiatives and realities and I'm really honored and privileged to represent them. Thank you and thank you to the TPAC members.

MR. KELLY: Thank you, Jay. So we do have one question, at least one question. And this is to Mary Critharis regarding ICANN. And the question is, are any of ICANN's sessions publicly assessable like TPAC meetings and other USPTO meetings? Is Mary still on?

MR. GOODER: Yeah, I don't see her on any longer. I don't know if anybody from OPIA can answer that question or not.

MS. CHICOSKI: Dave, I am on.

MR. GOODER: Oh, good.

MS. CHICOSKI: We can certainly make sure we can get that answer from our attendees at TPAC. I know with the virtual format things have
been a little weirder than they normally were.

But I can find that information out and get an answer to that question.

    MR. KELLY: Okay.

    MR. GOODER: Actually the question came not from a TPAC member but from a member of the public. But we can get back to it.

    MR. KELLY: Oh, I'm sorry, I should have made that clear.

    MR. GOODER: That's all right.

    MR. KELLY: Okay. Any other questions from the public or from TPAC? Okay.

Commissioner, any final comments?

    MR. GOODER: Just I want to thank everyone for taking the time to join in today, we had a good attendance online, and appreciate all the work that TPAC does, it's always around being such an excellent resource to all of us.

    And look forward to the next meeting in October. Hopefully at minimum hybrid would be great. And so with that, Chris, thank you for your shepherding the meeting along and I hope
everyone has a good weekend.

MR. KELLY: Absolutely. Thanks so much.

MR. GOODER: Thanks everyone.

(Whereupon, at 3:43 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Yilinase Mqadi, 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