

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, February 12, 2016

PARTICIPANTS:

TPAC Members:

DEE ANN WELDON-WILSON, Chair

WILLIAM BARBER, Vice Chair

ANNE CHASSER

JODY DRAKE

LISA DUNNER

DEBORAH HAMPTON

JONATHAN HUDIS

TIMOTHY LOCKHART

MEI-LAN STARK

USPTO:

MARY DENISON, Commissioner for Trademarks

GERARD ROGERS, Chief Administrative Trademark
Judge

RAJ DOLAS, Portfolio Manager for Trademark
Next Gen

DANA COLARULLI, Director, Office of
Governmental Affairs

AMY COTTON, Senior Counsel, Office of Policy
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PARTICIPANTS (CONT'D):

FRANK MURPHY, Deputy Chief, Financial Officer

SHARON MARSH, Deputy Commissioner for
Trademark Examination

JOHN OWENS, II, Chief Information Officer

ANTHONY SCARDINO, Chief Financial Officer

Union Members:

HOWARD FRIEDMAN, NTEU 245

TAMARA KYLE, POPA

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P R O C E E D I N G S

(9:04 a.m.)

CHAIRMAN WELDON-WILSON: Hi,
everybody. We'll be getting started in just a
minute if you don't mind starting to settle in
please. Thank you.

(Pause)

CHAIRMAN WELDON-WILSON: Hello. If
everybody would take their seats, we can begin the
meeting.

Good morning. I'm Dee Ann
Weldon-Wilson, and I'm thrilled to have you here
today. We're very pleased to be here. The TPAC
members have come from all over, including nearby
here. So, if you could just bear with me a minute
I'd love to introduce everyone to you so that you
have an opportunity to know a little bit more
about them.

I'm going to start over here at this end
with Jody Drake.

Hello, Jody. Jody's a partner at
Sughrue, and she is on the board of directors for
AIPLA, and she is a former trademark examining
attorney and senior attorney here at the USPTO.

And this is her second term on TPAC.

If I say anything incorrect, feel free to correct me as we go along.

Next to her is Anne Chasser. She's from the Cincinnati, Ohio, area; and she is a strategic advisor at -- I have to peek, sorry -- Wolfe, Sadler, Breen, Morasch & Colby, and she was previously Commissioner for Trademarks here at the USPTO, a past president of INTA, an author -- a published author -- of Brand Rewired, and an associate VP for Intellectual Property at the University of Cincinnati.

Next to her is Howard Friedman, who is the representative of NTEU 245 here at the Trademark Office, and he's been serving with TPAC for time now.

And then next to him we have Tim Lockhart. This is his second nonconsecutive term on TPAC. He's a member of Wilcox Savage, where he leads the IP group in Norfolk, Virginia. He's also a board member of the IP section of the Virginia State Bar, former commander of the Naval Reserve Intelligence Area 15, and a retired captain of the U.S. Navy Reserve.

Next to him we have Jonathan Hudis, who is a partner at Quarles & Brady, and he is right here in Washington, D.C. But we appreciate your traveling across in the cold to get here today.

MR. HUDIS: Thank you so much, Dee Ann.

CHAIRMAN WELDON-WILSON: This is his first term on TPAC. And in addition to serving here, he's also Domain Name panelist at WIPO, and he also was previously on AIPLA's board of directors and a vice-chair of the ABA's IP section.

Next to him is Deborah Hampton. She is serving her second term here on TPAC, and sad to say I think it's your last year here on TPAC so we're going to make this a terrific year. And she's an intellectual property manager at the Chemours Company in Wilmington, Delaware, and she is a past member of INTA's board of directors and has been in the field for many years. I don't mind saying 30, because it's on her bio.

(Laughter) Otherwise I don't tell people. Over 30 years. Over here to my right we have a brand new member of TPAC. This is her first meeting. Mei-Lan Stark is a senior vice president of

intellectual property for Fox Entertainment Group. She is also a past president of INTA, and she flew the furthest I believe. She came in from Beverly Hills, which sounds a little bit warmer than it is here today.

Then over here we have our other new member, Lisa Dunner, and Lisa is a founder and managing partner at Dunner Law here in Washington, D.C., and she is also the immediate past chair of the ABA Section for IP law, and she's had a variety of experiences in terms of her work background, so she brings a lot of different views to our lovely meeting here.

And then last but certainly not least, we have Bill Barber -- oh, not quite last.

Okay, right here we have Bill Barber. I didn't see you, sorry. We have Bill Barber. He is a founder and partner of Pirkey Barber in Austin, Texas, and he is also on his first term at TPAC, and he is a past president of AIPLA, and this is his first meeting serving as vice-chair of TPAC. We appreciate that.

I certainly did not mean to miss you down there. Tamara Kyle is down here, and she is

our POPA representative. She's attended several of our meetings in the past, so we're glad to have you back.

So, that is our TPAC group. I'm Dee Ann Weldon- Wilson. I'm with Exxon Mobil Corporation, and this is my first meeting as Chair. So, I appreciate everyone's help as we get through the day here.

Well, I wanted to take just a minute to of course thank Mary Boney-Denison for coming, our Commissioner of Trademarks.

Mary, would you like to say a few words?

COMMISSIONER DENISON: Thank you so much, Dee Ann. Dee Ann has served on TPAC in the past, but she has been promoted. So, this is her first meeting as the new Chair. So, we are absolutely thrilled that she was willing to take this on, because she did a great job as a member of TPAC, and I know she is going to do a wonderful job as the Chair. So, thank you so much to Dee Ann for taking this on.

And we're absolutely delighted with Lisa and Mei-Lan joining the group.

I was on TPAC, as some of you may know,

back in 2008 to 2011 until I joined the Office, and I found it to be an absolutely fascinating experience, and I hope that you will, too. And I know that you will help us, as TPAC always does, do our jobs better. So, thank you for becoming a public servant, because it's really important what you do on this committee. So, thank you for taking the time to join us.

CHAIRMAN WELDON-WILSON: Thank you, Mary. We'll certainly do our best.

The next item on our agenda shows that we have the OCFO update with Tony Scardino, but Tony wasn't able to be here today so we are absolutely thrilled to have Frank Murphy, who's the Deputy Chief Financial Officer.

Thank you for coming today.

MR. MURPHY: Well, good morning, and thank you very much for allowing me to kick-start the TPAC session by setting the stage on how our finances look.

Those of you who have been here in the past know that we often talk about, at any given point in time, we have three budgets that we talk through. Today I'm fortunate to talk about only

two budgets, and I will let you know, though, that we're already in the preliminary stages of planning for the fiscal year '18 budget. So, very soon we'll be getting our internal policies out and doing the grunt work to start that process.

One of the key points looking at this for our fiscal year '16 status -- I want to cover a couple of things, both our fees as well as our spending outlook -- and also talk about the '17 budget -- the President's Budget that was just submitted to the Hill this past Tuesday, and talk a bit about the fee review process that's ongoing.

In terms of our FY16 fees, you can see the trademark fee estimate is \$279.8 million, and that's about 1 percent below the corresponding timeframe that we had last year, fiscal year '15. These are point-in-time estimates and important for us to mention. We have the submission that goes to the Office of Management and Budget, which is the President's budget office, and at that point in time we have the estimates on what our filing rates will be, what our spending will be. And then we update that again before the

President's Budget, which was done of course.

Our spending is on track for fiscal year '16 to have \$333 million in projected spending over a base financial resources of \$385 million, leaving the forecast of \$52 million in that projected carryover, which is also the term we use for the operating reserve.

The President's budget -- fiscal year '17 President's budget -- was just released this past Tuesday, and we will be up -- the USPTO will be up briefing the Appropriations staff next week. We are, of course, part of the Department of Commerce, and the Secretary for Commerce will also be going to brief the larger Department of Commerce budget to the House on February 23rd and to the Senate on March 3rd.

In the President's Budget, we have our fee collection estimate of \$3.32 billion, and that's now based on the most recent analysis we have and includes the full complement of the proposed fee adjustments. And I'll talk to how that will play out in another slide. At the overall budget, it places a priority on the onboard staffing, the production, the operating

requirements -- those fixed costs, those things that we must do -- and includes funding for initiatives that it's going to provide, those that require long-term, stable funding -- for example, patent quality; it's a large initiative for the agency -- as well as IT investments related to those and the cost of maintaining our legacy systems. And the funding requirements also account for maintaining an operating reserve for the agency.

For the Trademark organization specifically, the spending priorities in the budget include funding to hire 63 positions to align the examining capacity with the revised estimates for workload. It also includes an increase in the TTAB staff -- one position -- and it has a decrease in the IT portfolio, \$4.6 million. That's still a continuation of the expansion of the Trademark Next Generation but at a lower rate than we had in prior years.

Looking at the President's Budget in terms of the numbers, you see on the chart here we have the fee collections, what the changes would be to the operating reserve, and the

end-of-year operating reserve both with the fee increase and without the fee increase. And if you look across the bottom line, the end-of-year operating reserve starting fiscal year '17, you can see that it's at \$78 million, \$65 million, \$63 million, going down without a fee increase; and with the fee increase it's \$105 million, \$130 million, \$170 million. The key here is that projection makes an assumption that all of the fees that were proposed would be implemented, and we know that's not the case. But they give you a range of what the impact on those fees would be.

And in terms of the fee review, I mentioned that it's not the case where all of those fees are going to go into effect. In fact, we received comments already from the TPAC. We're working with the stakeholder community, and we know we'll be making some adjustments to those initial fee proposals that will go into the Notice of Proposed Rulemaking, which will be coming out in the spring of 2016, and we'll be analyzing the current trends of what our filing rates are going to be, looking at our spending, and determining what the appropriate mix would be, putting that

into the Notice of Proposed Rulemaking and getting the comments back, and then the effective date for those fee changes would be January of 2017.

I think that brings us to the questions and comments portion if anyone has any -- and I see we have a question. Yes, sir, Jonathan.

MR. HUDIS: Good morning, Frank.

MR. MURPHY: Good morning.

MR. HUDIS: If you could turn back to the slide number 15, which talks about the President's fiscal year 2017 budget, spending priorities for the Trademark organization.

MR. MURPHY: Yes, sir.

MR. HUDIS: Right, okay. So, my first question is: One of your earlier slides talked about the reserve. How are we doing with the reserve, and what trends do you see?

MR. MURPHY: A very good question, because the operating reserve concept is not something that's intuitive to most folks. Let me take a minute just to describe the overarching policies associated with the operating reserve and then specifically how we are doing.

The operating reserve -- if you look at this as the result of all of the decisions and assumptions we make associated with what our filing rates will be, what our spending priorities will be, when you look at building the budget, the first thing you're looking at is what's the incoming workload and the associated funding that will be associated with that. That's where your filing rate assumptions will come into play. And then you take a look at the spending requirements associated with that. You take the difference between the two, that's your carryover or your operating reserve.

This past year, we established -- and I believe we briefed in previous TPACs -- the concept of the Financial Advisory Board, the FAB. The FAB was established to do a number of things, one of which, though, was to look at the requirements portion of that spending, the spending plan, as well as to validate the assumptions associated with the revenue side of the house. And part of that looked at, for the agency, for both the Patents line of business as well as the Trademarks line of business, what

would be the minimum level that we would want to have at any given time in the operating reserve; and for the Trademarks line of business we established a minimum level of \$55 million.

That becomes important, because where we look at the minimum, we say if our requirements, if our spending is now going to exceed our ability to maintain that floor, then we need to go through and prioritize where our expenditures are going to be. And that's what we did this past year.

So, that's partly what you see in the '17 budget, that we've stretched out some of the IT investments, because when you look at the entire budget -- certainly we looked at our travel, we looked at our training, we looked at what I'm going to call the administrative support things and we've made reductions there, but that's not moving the needle as much as we need, and that's where the IT investments, the large chunk of our budget is, so, we moved the timing of the investments in IT further along the continuum to allow us to maintain that minimum operating reserve.

The specific question, where are we standing? In the fiscal year '16 OMB submission, which was earlier than the President's Budget, we had come in slightly under that \$55 million minimum level. We had planned to hit \$52 million. Those numbers have been updated in the President's budget.

The timing of this -- even though it's the President's Budget for '17, we're updating the assumptions that were part of the '16 budget, and that now shows that we'll exceed the minimum level, keeping in mind that the optimal level is a four-month operating reserve of approximately \$105 million. So, we're not quite at the optimal, and when we do attain the optimal level and if it's a continuing thing where we see for years going forward that we're going to be at that level or above, if it's above that level that's when we look back again to see do we need to adjust the fees downward, because if you're exceeding the four-month optimal level, there's not a need for us to continue to generate that associated level of revenue.

I know that was a very lengthy answer

to a small question, but I wanted to make sure you understood the context for the operating reserve.

MR. HUDIS: Actually, that was a very educational response, Frank, which we appreciate.

So, then that -- my question was a precursor to a discussion of the slide that's up now, which is slide 15. And then you mentioned Trademarks Next Generation, which is where most of the IT spend is going. So, the left bullet point on that slide says you're decreasing the IT spend of 4.6 million, which reflects a continued expansion of Trademarks Next Generation but at a lower rate.

So, Trademarks Next Generation was announced, I believe, in fiscal year 2010. We are now starting to see some of the Next Generation rollout for the internal, which is the examining corps. We've had some modest rollouts on pieces of the external, which is what the customer base sees, but a large chunk of it still is yet to be rolled out in fiscal years '17 and '18.

So, TPAC has been concerned with: In

view of especially the reserve being slightly under the floor, are we going to have enough money to take us through the final implementation, including the rollout of what's necessary to update the Trademark Trial and Appeal Board and still maintain that floor? Bottom line: Is the money going to run out?

MR. MURPHY: Another excellent question. Short answer is: No. Through a combination of things, the FAB being one portion of this -- the Financial Advisory Board -- looking at the requirements.

But also the CIO has a number of internal mechanisms, but I won't steal John's thunder because I know he's going to be briefing later and he'll talk to some of the specifics. He has a detailed plan laid out for what the investments will be, what the requirements will be -- and the total requirements, the total budget, will support the Trademark Next Generation.

The operating reserve, again, is at the tail end of that, and when you look at what was the incoming revenue, what were the planned

expenditures, the delta being the operating reserve, we plan to be above the minimum level by the end of this year based upon the updated numbers that are in the President's budget. And we see that continuing, noting that, again, that estimate will change based upon the feedback we had with the fee structure and what we'll be putting into the Notice of Proposed Rulemaking.

But there would be nothing that would give me any pause in terms that we would change the fee structure such that we would not hit the operating reserve targets. That is the goal -- is to get to the four months. Part of that getting to the four months is inclusive of putting the investments where we need for IT -- in this case, Trademarks Next Gen.

CHAIRMAN WELDON-WILSON: All right, thank you so much for that very thorough explanation and summary. We appreciate it, and we know we'll hear more from John on this later.

MR. MURPHY: Correct, okay.

CHAIRMAN WELDON-WILSON: So, thank you, thank you. Are there any other questions for Frank? Well, thank you very much. We

appreciate your time today and appreciate all the information and all that background work we know you're busy doing. Thank you.

MR. MURPHY: You're welcome, Dee Ann, thank you much.

CHAIRMAN WELDON-WILSON: Well, next up on our agenda is Dana Colarulli, and we're really looking forward to an update on what's going on on the Hill and what may or may not be going on on the Hill. Thank you.

MR. COLARULLI: Absolutely, and I think that's a very apt opening for most of the comments that I make.

So, good morning, everyone. So, first, I've changed my own trademark style. I usually don't have facial hair. I'm trying something new. Please bear with me. (Laughter) I'd like to make that announcement in the beginning.

In addition, we've had a very busy week in at least my shop, so let me start going through and talking to you about what's going on on the Hill, as to what may or may not happen.

When I talked to the Public Advisory

Committee last week, I started off saying it is a political year; it's a presidential campaign year. So, the only predictions I can make about what may or may not happen -- the only thing I know about those predictions is that they may change tomorrow. Generally, it's very difficult to move legislation in a presidential campaign year. I think it's no different this year.

There are certainly a number of opportunities here in the next few months -- this month, certainly April and June -- where committees are looking to fill slots for hearings. They've already done a few.

We were up on the Hill testifying yesterday. Mary did an excellent job representing the agency, and I'll talk through that. But I expect to see additional hearings on a number of issues that are important to us. Again, I think moving legislation may be more difficult. There are some opportunities to move some things that are important to the agency. I'm hoping -- and the lame duck after the presidential election, but that's some months from now.

So, let me start with the hearing that was held yesterday that we testified on the Havana Club mark. Two panels -- we were there with the (inaudible) state talking about the action that we took in January. Our testimony is posted upon the PTO Website I think very clear, very straightforward in terms of our part, talking about the operations, talking about why we acted. Mary delivered those very well and took some very difficult questions unrelated to trademark law, I think, that (inaudible) by the embargo in Cuba. But I think our testimony was received very, very well.

Most of you are aware of the basic facts. I included a slide here. I won't talk too much more about this, but I'm happy to answer any questions at the end of my slide deck on this.

In addition to responding to questions about the Havana Club, a few different topics that we continue looking forward to this second session of the 114th Congress: Patent reform issues addressing abusive litigation tactics in the patent context; continuing to monitor, continuing to support reasonable and balanced

solutions to trying to address abusive litigation; but also recognizing a lot of things that happened over the last couple of years to affect the landscape on the patent side. So, I think it's still an ongoing discussion, unclear whether anything will move certainly, as I said, these next few months. And I think as we're watching this we are again seeing some positive outcomes in court cases. We're hoping to see the impact of rules that the Federal Judicial Conference adopted in December affecting some of these issues. And (inaudible) is continuing to do what it can in implementing the provisions of the American Invents Act. So, on the patent side of the house, still a very active time, both legislatively and nonlegislatively, to address a number of issues.

Copyright Office policy and office modernization discussions: We saw an uptick at the end of last year on a lot of these issues. Last month, the USPTO issued its long-awaited white paper on a number of policy issues so that we were contributing to the discussion of copyright issues. I expect that we will have

continued discussions about how to make sure that the Copyright Office has what it needs to run its operations, in particular have support for IT investments and maybe in a similar way that PTO's legislative language provides for some autonomy so that it can actually invest in its systems. I think that will continue to be active discussion over the next few years. There may be some additional discussion over the next couple of months.

Last on this list, trade secrets enforcement legislation. I apologize for the bulleted items here on this slide, but if you see the four lines from the bottom, "Trade secrets enforcement legislation," the Senate Judiciary acted last month on trade secrets legislation to create federal civil right of action, which hadn't existed before in this country.

Generally supported legislation:
Generally in line with what the administration has also encouraged Congress to consider. So, I think both the House and the Senate have parallel bills. We'll see if the Senate is able to move forward here this Congress. The administration

hasn't supported this particular language yet but, as I said, I think generally noncontroversial and generally a good change to the system. So, we'd encourage continuing conversations there.

Two more items that we're watching or engaging in: Oversight activity related to PTO operations and workforce management. Now, there are a number of issues there. Every year we certainly, from our authorizers -- particularly the judiciary committees, the appropriations committees -- get asked a number of questions about how operations are working throughout the PTO. Delivery of the FY17 budget prompts many of those questions, so we'll be up on the Hill next week talking through our budget requirements. I anticipate additional follow-up questions on how's your telework program working? How's your workforce management generally? And we're ready to answer those questions.

We're also starting to think about TEAPP and telework. The authorization for the TEAPP program expires at the end of 2017, so we're looking and starting to engage the Hill to talk

about what should we do there? Should we extend -- should we take other actions? This is a critical part of our telework program, because I know all of you appreciate that the trademark operations has been the leader in PTO's telework, so we want to continue that. So, we'll keep working through that.

Howard.

MR. FRIEDMAN: Even -- well, come on, you know, only because we have a few new members, if you could just spend a minute or two describing what TEAPP is, I think that would be helpful.

MR. COLARULLI: Sure. In 2010 Congress passed legislation to allow PTO to have some additional flexibility in one particular area, and that was to address the issue of requiring employees to come back twice a bi-week. So, what the legislation did under a pilot program with the GSA -- the General Services Administration -- is they provided us some flexibility to travel regulations that a federal agency is required to abide by. It allowed us to not have that requirement and allow the agency to deploy employees in a bit more robust way than we

had done beyond the 50-mile radius. So, that flexibility has allowed us to grow certainly the number of teleworkers the PTO has had. It also allowed us to test the flexibilities of how often we might need to bring back employees for training here at headquarters. I think since that legislation was passed, we have done a number of other structural changes, particular on the patent side with opening the regional offices. So, we're continuing to look at what makes the most sense for the PTO.

As I said, this authority continues through the end of 2017. But, very quickly, I think internally we've had a number of conversations. Very quickly, we want to start building our champions up on Capitol Hill again, who are very supportive of our telework program, and go back to them and say here's what we've done with the flexibility you've provided to us.

The challenge here, as Howard and I have discussed, is that many of those members who had supported telework flexibility back in 2010 have now left Congress. So, we have a bit of a challenge to certainly find new champions, and we

have a burden to show why this is cost effective, why telework is a good business model for PTO. So, that's the flexibility of the legislation he'd given us and certainly a view into the conversation we're having internally about reauthorization.

MR. HUDIS: Dana, is there anything we can do to help you?

MR. COLARULLI: I think there may be as we get closer. I think right now the burden is on us to tell Congress how we've used this flexibility, how it works into the rest of our telework program, that it is one part. We have other programs. So, as we start doing that, I think certainly having knowledgeable people talking about the culture at the PTO and how this works I think is very, very helpful. So, certainly as we have this conversation, you're weighing in I think would be helpful.

Last, completely unrelated to intellectual property issues, but I thought an interesting slide for all of you to consider. I started my remarks here. It is a presidential election year. I picked, just as a snapshot, the

activity in February. It does seem -- last night was another event that does seem as a debate, every single night. I hope all of you are listening to every single word. But as it ramps up, members of Congress' attention does tend to move towards the presidential elections. We've got the conventions also coming up this summer.

Just to give you a perspective, there's about 66 or so congressional workdays from today that Congress has to really get a lot of work done. As I said, I think a lot of that will be filled with hearings on important issues. But 66 days is not a lot of time. So, with that I leave you. I'm happy to answer any questions, but that's the perspective of politics as it meets the substantive issues that we like to follow.

CHAIRMAN WELDON-WILSON: Are there any questions? Well, thank you. I always look forward to your update, bringing us up to day on what is and is not going on on the Hill and what we expect to see in the next year. So, we really appreciate that. Thank you for your time out today.

MR. COLARULLI: Happy to be here.

CHAIRMAN WELDON-WILSON: Well, our next speaker I think most of us are very familiar with. It's our lovely Commissioner for Trademarks, Mary Denison. Mary and her group do a phenomenal job for the Trademark Office, and I think we'll see some of that when she tells us some of the statistics.

So, can we just turn this over to you, Mary?

COMMISSIONER DENISON: Thank you, Dee Ann. Well, I'm going to start off with a topic that many people are interested in, and I'm just going to discuss it briefly, and then John Owens will discuss it in greater detail, and that is the power outage that we experienced on December 22nd.

At approximately 7 p.m. on December 22nd we had a major power failure at the Alexandria campus, and it impacted all USPTO computer systems. The equipment that feeds the power to us is managed by our landlord, L Core, and all examining systems were offline and inaccessible. But thanks to a lot of hard work by our employees and our contractors over the

holidays, we were back up and running by Monday, December 28th.

So, I'm really very grateful to all of our employees who sacrificed their holiday to get us back up and running on what was kind of a miracle to get us back up that quickly.

And as I said, John's going to talk about this more, but I want to make it clear that this was a power issue; it was not an IT issue. It caused IT problems, but now we've replaced all the damaged equipment, and we should not have this problem again.

So, I very much appreciate the public's patience as we worked through this, and John will go into more depth on this when he speaks later.

So, I wanted to turn next to another significant event. We had a major snowstorm in Washington where we had 24 to 30 inches of snow really crippling the D.C. area. Even though the Office was closed for about two and a half days, the majority of Trademark employees could and did work at home, and at peak times of the USPTO, 77 percent of the workforce was teleworking. Not everyone is telework-eligible, but with regard to

Trademarks itself, the Trademark examining attorneys accomplished over 90 percent of the work that they do on recent comparable days despite the weather, and despite the fact that only 84 percent of examining attorneys are eligible to telework. So, this really, I think, is something that speaks very highly about our telework program.

And I wanted to also talk a little bit about TEAPP that Dana was talking a few minutes ago. TEAPP is very valuable to us, and we do hope that Congress will extend it or renew (inaudible) something, keep it going.

It saves us quite a bit of money, and it saves us money in two primary ways. One is that in fiscal year '15 alone, the USPTO (inaudible) securing 38.2 million in additional office space. That's a lot of money for one year. And that was due to our hoteling telework programs. In addition, with regard to the TEAPP program specifically, because the examining attorney's salary is based on the locality pay of their official duty station, sometimes people move to places that are less expensive, and so we

actually save 2 percent of total salary and benefit costs in a year. So, that's a nice added benefit as well.

But we will be asking TPAC and the public in general and the Bar Associations to support us in continuing our telework programs and also to assist us in continuing the Telework Enhancement Act pilot program. So, you'll be hearing more from us on that.

Let's see. So, next stop is our slide on our pendency. As you can see, we try to issue first Office Actions between 21/2 and 31/2 months, and we are right on target. At the end of January we're at 3.1 months. So, I'm very pleased about that. Overall disposal pendency, we're at 10 months, so again that's really a great number, and these numbers, you know, exceed our targets.

We also follow quality. And, by the way, quarterly we update these on our dashboard on the Website, so any time -- these are January numbers, but you can see December numbers up on our Website, and you will see March numbers as soon as we get them.

Quality: Our first-action compliance and our final- action compliance are above where they're supposed to be, so I'm delighted about that. And the Exceptional Office Action, which is a higher standard because it measures not just whether we got it right, it looks at the search, the evidence, the writing, and the decision-making. And there again we're exceeding our goals. So, I'm delighted about that.

I think when I first got here, our goal for the Exceptional Office Action was something like 15 percent. So, we have been steadily moving up in that, and I am very proud of our examiners for doing so well.

And what is particularly impressive about us meeting our goals is the fact that our applications are going through the roof. We are at record levels. As of January 31st we had an 11.5 percent increase compared to the same period last year. So, that's significant. We've been able to maintain our quality, maintain our pendency, maintain our Exceptional Office Action goals in spite of the fact that the filings are

coming in fast and furious. Now, we had 12.6 percent on December 31st. Now the overall is a little bit lower. It's down to 11.5, and we're predicting it will slow down a bit more, so our crack forecasting team is still saying we'll be about 7 percent up this year. But still it's a very significant number. So, we should be over 500,000 fee classes this fiscal year.

Now, as those of you who have listened to TPAC before know, I'm very interested in this slide on e-Government. We are at 99.7 percent electronically about applications, but once people get the serial number electronically some people opt out of participating in the electronic system. They either don't authorize email or they file paper with us. That costs us a lot of money.

So, we have been doing what we can to try to get this number up. Last year at this time, we were at 80.7 percent, and as of January I'm pleased to report that we're now up to 83.8 percent. So, we have managed to push that number up 3 percent in the last year, and I am really delighted with that.

Now, part of that is a result of our introducing TEAS RF, which is TEAS Reduced Fee, last January. And so if you look at the slide, what you can see is that regular TEAS fell off and is now well under 10 percent. It's about 5 percent, I believe. And look at the red line. That's regular TEAS. And then if you look at the purple line, you can see when we introduced TEAS RF, and it's now up to around 50 percent of our filings. And the difference is that if you sign up with TEAS RF, you get a reduced fee, but you have to agree to be a hundred percent electronic with us. So we said, when we introduced that, that we didn't know whether it was going to work as an incentive. But it clearly has, because we've pushed that up 3 percent in the past year. So, I am very pleased with that result.

Trademark staffing: Fiscal year '15 we hired 43 new examining attorneys and, as I mentioned, filings just keep going up. So, we have to keep hiring; otherwise, we can't meet our goals.

And so in November we hired another 20 lawyers, and we have 20 more starting -- I believe

it's February 22nd, and then we will have -- or maybe it's 22 starting on February 22nd. I think that's right. And then maybe 18 starting in May. Anyway, a total of 60 for this fiscal year, which I believe is a record in terms of us hiring examining attorneys.

And what we're going to be doing with them is, in the fall -- well, last May, we started an experiment. We started a training office. And that meant that all the new people were put together in one law office rather than putting one or two into each of the existing law offices, and that went really well, so we did it again in November.

The people that are being hired in February are going to be end-fills, though. They are not going to be in a training office, because we don't want to involuntarily transfer people between offices, and we have people who retire. Hardly anyone just quits to go to work at a law firm. But people do retire, and they do get promoted or go to other parts of the agency.

So, we have openings in the existing law offices, and we will be using the February hires

to go into the existing law offices. And then the May group will be another training office.

Customer service: Most of you know that I was a customer of the Office for many years, so I'm very interested in enhancing the customer experience. And I've mentioned this at previous TPACs, and I'm pleased to let you know that the agency, as a whole, has hired Deloitte Consulting to help us identify ways to improve customer service. So, Deloitte has a crack team working on it right now, and they're looking at all points where the customer is in contact with the Office, and they are helping us to formulate a strategy on how we can do even better. So, we are looking forward to having further conversations with them, and TPAC will be hearing from them, and some other members of the public may be hearing from them to get feedback in an honest way -- because we want to really know what you think and look forward to serving the public better in the future.

We have a fee proposal, as you know. We had a public hearing -- well, TPAC held a public hearing in November, and we got a lot of feedback.

I cannot give you the details of what changes we are making, but I can say that we have heard you, we listened to the comments that we received, and we are making changes. And so right now we are working on the proposed rulemaking, and we expect it to be issued in the spring, probably in April, and people will have an opportunity to comment. There will be a 60-day comment period, so we will look forward to seeing what you think of our new proposal. Hopefully, we've addressed your concerns.

Trademarks Next Generation: We've had a few comments during the financial discussion about that. We continue to update and modernize our systems. We have some rollouts going out this weekend to our staff, and we are also expanding our testing.

Our biggest project right now that's going on is updating -- replacing FAST, which is the way that the examining attorneys issue Office Actions. We call it FAST One-- First Action System for Trademarks is what FAST means. And so we will be making progress with that. We have been testing it with some law office managing

attorneys. We have expanded the group to include many more, and NTEU 245 has a group of testers who, I believe -- Howard, am I right? -- are starting next week to test more. So, we will be trying to get all the kinks out of the system before we roll it out on a larger scale to the examining corps.

But this is a major complex system, and we are, I hope, near the end of that process, and that will be a huge deal. The outside will not see that, but for us it will be a major step forward. So, we're very pleased about the progress we've made on that.

And John Owens will give you some more updates later on that.

You may recall that on September 1st, the USPTO started a pilot to allow, under limited circumstances, amendments to identifications of goods and services in trademark registrations that would otherwise be beyond the scope of the current ID. Amendments are being permitted upon petition to the Director when it's deemed necessary because evolving technology has changed the manner or medium by which the underlying content or subject matter of the

identified products are offered for sale or provided to consumers. And we got a lot of feedback before we started the pilot. We had a roundtable back in the spring of 2014 on it, and we posted a specific proposal and got some comments, and so to date -- this started September 1st -- we've actually received 32 petitions. And if you take a look at this link on our Website, you will see that 11 currently appear on the Website for comment.

And this is an example of what it looks like. So, it's got the registration number; it's got the mark; it's got the owner name; it has the text that has been impacted and then the proposed amendment. So, we have been working through these very carefully. This is sort of a limited pilot for us. We want to make sure it goes well. And so you should see more activity coming up in the next few weeks on this.

Another pilot that we conducted several years ago was the post-registration pilot. We conducted that to assess the accuracy and integrity of the trademark register. We concluded that, and what it did was -- we

required, at random, additional specimens to be provided in connection with §8 or §71 affidavits of continued use for 500 cases. The results were quite disturbing. In more than half the cases, the trademarks that had been selected for the pilot -- the owner was unable to verify actual use of certain goods that we had queried, despite having previously sworn that they were using it on all these goods.

So, we issued a report on the results. It's up on our Website. And we held a roundtable to discuss the results. Whenever my deputies and I go out and talk, we ask people for suggestions about improvements. Discussions continue internally. We are moving forward with the things that can move most quickly. So, the first things you can expect to see are some rulemakings that will permit us to continue random audits, and we will also be increasing the solemnity of the §§8 and 71 affidavits. So, expect to see a Notice of Proposed Rulemaking coming out on that in the spring.

We are still considering other options, including the possibility of a truncated,

expedited expungement proceeding. And we have had a crackerjack team working on that, and they have thought of all sorts of different angles that you might not think would be an issue. But it's complicated, and so I am getting a presentation on that soon, and hopefully we can move forward. But we wanted to go ahead and do something, which is why the easy lift for us is the random audits and increasing the solemnity of the declaration. So, we will -- you'll be hearing more on this.

MR. HUDIS: Mary?

COMMISSIONER DENISON: Yes.

MR. HUDIS: Just one quick question. To do the quick and dirty expungement proceeding, that would need a change in the statute?

COMMISSIONER DENISON: Likely.

Whoops (something dropped). Any other questions?

Okay. Thank you, Lisa. Let me move on to the TM5. As you likely know, the TM5 consists of the five largest trademark offices in the world. Japan, Korea, the EU, China, and the U.S. are the members of the TM5. And the focus is the exchange of information, collaboration,

harmonization with the goal being trying to improve the situation worldwide for our users. We were the hosts in December. We had everybody come here, and the meeting went quite well. One of the things that I think is of great interest to people is that we are -- the U.S. is in charge of the ID List project. And what the ID List is -- is that we are trying to get agreement among the members as to common terms that can be used everywhere. And if you look at our ID manual, you will see a "T" after terms that have been agreed upon by all members of the TM5. So, if you're filing internationally, I suggest that you take a look at that before making your foreign filings, because it may help you.

In addition to the five members, though, we have been asking other countries to participate as well. So right now, Canada, Philippines, Singapore, Mexico, Russian Federation, Colombia, and Chile have all signed on. It is a heavy lift to sign on, because you have to agree to 90 percent of what's already been agreed upon by the partners, and right now that's 16,000 terms. So, that takes quite a bit of work.

One of the things that happened at the meeting in December was that we agreed to expand the invitations to Morocco; Algeria; United Arab Emirates; Turkey; South Africa; ARIPO, which is the English-speaking African nations; OAPI, which is the French-speaking African nations; and India. So, we are working on those invitations now on behalf of TM5, and we'll be sending those out. And of course it's not within our control whether they accept or not, but we are expanding the reach and hoping that a number of these will take a look at the project and agree to participate, because it would be great for our users the more countries that can be involved.

The ID list is now available online, and it's fully searchable, so please take a look.

Let me say one other thing, too. There are, I believe, 14 projects -- is that right, Sharon? -- I think it's 14 projects for TM5 right now, and another one that people may be interested in is how to minimize bad faith filings. So, we have -- Japan is leading this, and we are heavily involved in it, and we are trying to exchange best practices in order to provide more transparent

information to our users. TM5 published a report summarizing the partner offices best practices, and we have agreed to hold a new seminar. We've held seminars in the past in Tokyo, Beijing, and Hong Kong; and we are having another one on March 1st in Tokyo. So, if anyone has any questions about that, we will be sending a representative to that meeting in March. And there are many more topics, which I don't have time to go into, but if you're interested in learning more about what the TM5 is doing for our U.S. users internationally, take a look at the tmfive.org Website.

Oh, the next meeting, by the way, China is the host for the next TM5 for this year.

So, outreach: I just want to spend a minute talking about outreach. Back in the beginning of 2012, we started a program to reach out to what was not our traditional audience. Our traditional audience had been lawyers and bar groups. So, we decided that we really needed to reach the public. Our pro se filings have been increasing, and a lot of times people don't know what a trademark is until they get a Cease and

Desist letter in the mail. So, we thought, you know, it would really be better if they could pick a good trademark to begin with and not get themselves in trouble. So, we've done quite a bit with that, and we have put sort of trademarks 101 -- what you need to know if you're an entrepreneur and you're just starting -- we've done a video of that, and it's excellent, and we have over 400,000 hits on that on our Website.

So, we send speakers out. We have an outreach team, but of course you can reach more people by putting something like this up on your Website. So, it's hard to hit 400,000 people just with individual speeches here and there around the country. So, we have a lot of things going on.

Craig Morris, just in February -- I think he's going to the toy fair next week. He was at the consumer electronics show in Vegas. He's been to UVA to their business school. He's going to the international housewares show in Chicago. He's been in West Virginia at a law school. So, we are trying to cover as much as we can with our outreach program, and I think in the

last four years Craig has been to all 48 continental states. He hasn't gotten to Alaska and Hawaii. Alaska, he got snowed out. So, we're trying to see if we can get him around the whole country, but he hadn't quite made it. But he's doing a great job.

We are also reaching out to state and local bar associations, and later this month I will be heading to Dallas to our regional office, and that's a program that's going to be done in connection with the Dallas Bar Association.

Speaking of Dallas, we now have offices open and running and fully staffed with heads in Detroit, Denver, Dallas, and San Jose. Trademarks does not have a physical presence there at those offices. But what we do is we have started having Trademark Tuesday, and on Tuesdays once a month Dora Best, who leads our Trademarks Assistance Center, does a video chat, and entrepreneurs can go into the offices, and they can learn about trademarks and ask questions with us. And so we started off with Detroit and with San Jose, and we are working on now setting these up in the other two offices. So, those have been

very well received.

We also -- my deputies and I are going around to the various offices. As I mentioned, I'll be in Dallas February 23rd and then in Detroit I will be there in March. So, we are trying to -- while we don't have employees in the regional offices, we are trying to support them. However, they need our help and we will be in and out of the regional offices from time to time.

So, that is all I have, but I'm happy to answer questions if anyone has any.

MS. DUNNER: I have a quick question. The video chat sessions -- do you have (interruption -- mic cut out) office, or are they Web based? How does that work?

COMMISSIONER DENISON: I think people are actually physically coming into our regional offices. That's my understanding. I have not yet participated in one, but that's my understanding.

CHAIRMAN WELDON-WILSON: Are there any other questions?

Well, Mary, thank you for your thorough report, but obviously you and your team are moving

forward on many, many different initiatives between testimony and phenomenal performance statistics. Everything reflects so nicely on you and your staff, so it's wonderful to hear such a report. And we appreciate your time.

And now we get two for the price of one. We have both Sharon Marsh and Amy Cotton coming to talk with us a little bit about policy and international update, and I appreciate you all both being here today.

MS. MARSH: Thank you, Dee Ann. We thought you might want to hear an update about what's going on at WIPO, so Amy is going to give you a high-level overview of some of the current issues.

MS. COTTON: And we do have slides. Do we have the slides?

Thank you all. It's a pleasure to be here. I wanted to fill you in on what's going on both at the Standing Committee on Trademarks, Industrial Designs and Geographical Locations. The SCT met in November. Also wanted to give you an update of what's going on at the Madrid Working Group. This is a working group that has a mandate

to look at the development of the legal system of Madrid that also met in November.

But starting with the Standing Committee on Trademarks, there's a lot of noise that you're not going to be interested in, but there are two things that you might be interested in at this stage -- and these are theoretical issues at this stage but you never know when they're going to get legs.

The first one is there seems to be a desire for some countries -- notably Jamaica, and now Switzerland is getting on the train -- where they want to achieve some sort of legal instruments at the international scale to protect the name of their country, nicknames of their country, adjectival forms of the name of the country, abbreviations for the country. Lots of issues there.

Originally they were proposing to amend the Paris convention to put in a provision that would actually create this protection with a hard law treaty. Over the past four years, we pushed back, pushed back, pushed back -- and at this point, they are asking for a joint recommendation

on the protection of country names.

Now, a joint recommendation is considered soft law. They're guidelines. Certainly countries can implement them as hard law if they want to. But, really, it's considered a best practices document. However, in the case of the United States, we've actually put soft law obligations in trade agreements. So, you can make a soft law joint recommendation into hard law via trade agreements. So, you do have to keep an eye on these things.

As for this particular joint recommendation, the mechanism at this stage is to have trademark offices and courts consider that the use of a country name in a trademark is per se deceptive unless it is the country itself or some entity authorized by the country that is applying for registration or using the name.

But it's a bit of a hybrid. It's a mashing of different protection concepts, from where I sit. You've got country names, which many would consider to be in the public domain so anyone can use them accurately. But then you've got governments wanting to actually control their

reputation and control the use of them and also probably commercialize them and get a licensing revenue stream going.

In the case of Jamaica, they have a very small manufacturing base, and they want to actually license the name of their country to entities outside of Jamaica so that, you know, if we got an application from some entity in some other country but it was using the word "Jamaica," we would have to call up the Jamaican government and ask them if it's been authorized. And then they would do that.

And I will say that we actually do routinely get calls from other governments saying: We have an application that has the U.S. flag in it or the name of the United States. Do you authorize this? And we say: We don't have the authority to authorize that, and no one at the State Department is going to authorize that. Under your law, how do you treat that? Is that geographically descriptive? Mis-descriptive? How do you treat it? Here's how we do it.

And so we'll give them a tutorial on how we've implemented those sorts of provisions in

the United States. Getting calls to authorize use of the name of the United States...that's a big ask of us to do.

So, we have a lot of concerns about, you know, a country name being considered per se deceptive and how we would implement that and how that would impact traders. That's obviously a big issue.

And rules of origin: Rules of origin are, you know, a byzantine set of regulations that they've negotiated on an international level to say when a product actually comes from a place, for example, when you can say something is a product of the United States. So, there's lots of wrangling there. So, lots of thorny issues, but that doesn't seem to necessarily matter to the officials coming to these meetings who really want protection for country names.

Consider the Swiss government's push for Swissness legislation. They passed legislation to regulate the use of "Switzerland," the Swiss cross, and the Swiss flag; a certain percentage of the ingredients of the goods have to come from the Swiss boundaries in order to be

able to call it Swiss.

So, this is a trend. The Swiss are certainly pushing this, and they have a loud voice. Other countries think that this might be a good idea for nation branding. So, it's something to keep definitely an eye on. At the SCT, I am not yet sure how best to try to control this, because there definitely is a demand from the developing world for some sort of nation branding that they can get a revenue stream from.

Jonathan, did you have a question? You're looking agitated, so I just want to make sure. (Laughter)

MR. HUDIS: I'm looking --

MS. COTTON: And you should be, yes.

MR. HUDIS: Yeah, I'm looking puzzled, because how would we implement that in the United States without radically changing §2 of the Lanham Act?

MS. COTTON: And how would you do that, regulate commercial speech that's non-misleading? I don't know. That's why I'm troubled.

Other countries don't have the First

Amendment doctrine that we have, so perhaps they're not as concerned by that part. But I have a lot of concerns about this. But it has to be, as you know, handled very carefully. At WIPO, you've got a U.N. body where there are a lot of developing countries saying that they're not necessarily getting the benefits of the IP systems of the world and they want to try to figure out how to get those benefits. Nation branding is a way for them to claim to do that. So, we have to be very sensitive to these concerns and see if there's another way to get at what they're trying to achieve. So, yes, it is puzzling.

Now, I know Shira Perlmutter was here last time talking about the Lisbon agreement. We are trying to pursue a more robust and transparent dialog on geographical indications at WIPO. We're doing that through the Standing Committee on Trademarks. We're trying to pursue some sort of discussion of national systems -- national and regional systems, how they operate.

We're really not trying to go in and reopen the Lisbon agreement at this point, although we'd love to do that. But in order to

get a work plan moving at the SCT, everyone has to have consensus. So, we're trying to promote robust discussion about how countries operate their Geographical Indication Examination System: How does it work? What are they doing? And from that, we can sort of figure out what's going on around the world and maybe figure out if we can have some sort of constructive best practices approach to GI systems to create more certainty for businesses.

Now, let's switch to the Madrid Working Group. As you know, the Madrid Protocol was designed to move away from the original Madrid Agreement, which was really a European-centric agreement of reciprocity. You know, I have my European country registration, and I want protection in the country next door, so I just take it and I get protection there. Well, the Madrid Protocol is a different agreement entirely. It's a different framework with the international applications and the designations. So, when we conceptualize Madrid, we're not looking at it as a reciprocity system; we're looking at it as a filing system and maintenance

system, because that's where the real benefits are. We think that that gives more power to the contracting parties, less power to WIPO.

But of course Europe is very used to the system. They've all cut their teeth on the Madrid Agreement, and they like the way it works. So, you're fighting a certain amount of inertia in Europe because they like things the way that they are. Plus, they've got the push-pull between the European member states and the European Trademark Office, which now will be the European IP Office actually, after the Trademark Reform Directive is implemented.

So, we have our work cut out for us in trying to make the system function better for United States nationals.

But an example of how this works is, for instance, when the country of origin sends a limitation to the ID through the system and it needs to go out to WIPO and all the designations, Europe has asked the IB -- the International Bureau -- to examine those lists of goods and services. And we're like, what? Why would they examine? What's their authority to examine?

Their authority is on classification. They administer the Nice agreement. That's classification. Okay. We'll give that to them. But why would they examine as to scope of the words in the goods and services?

So, we pushed back pretty hard on that. Europe seems to not want to have to do much work, and they would rather the IB did the work. When you have the IB do the work, then you have bottlenecks, and you have U.S. folks having to call Geneva to try to figure out why this examiner in Geneva is doing whatever they're doing. It's not the system we were looking for. But we were able to push back and contain the issue to classification only.

Another proposal that's being discussed is division. Now, for us, we didn't have any idea that this was the case, but in the United States, we have a division practice, and we have that division practice for Madrid designations. No one else does that. No one else in the world allows you to divide when it's a Madrid designation. So, Switzerland and many European countries wanted the ability to divide,

which makes perfect sense because that's very useful. If you got a refusal as to some goods, those would get held up, but everything else gets to move forward in the child application. But they want to do it at the international level, which of course adds complexity to the system, adds more work for the International Bureau and more ways that things can get screwed up.

Actually, the International Bureau has not been that excited about it because of the complexity, so they keep having the United States talk about how we allow for division at the national level and how great that is. And everybody says, fine, but the long and short of it is that many countries did not implement national serial numbers from Madrid designations; they only used the IR number. They can't divide the national designation because they only have one number. Well, that's seems to be a dumb reason to be forced to implement division at the international level. But it is what it is, so that's what we're dealing with. They don't want to institute separate numbers, and it's sort of a case where the horse is out of

the barn.

The INTA was very supportive of division, so we were sort of caught off guard by this, thinking that it would be relatively easy for countries to just implement division at the national level. Apparently, it's not. So, we think that division will go forward at the international level. It shouldn't impact U.S. practice at this point. I think we can handle it. One thing we're not sure we can handle is the idea that you could merge them back together again, because we don't do merger in the United States. So, that's one place where we would have to push back a little bit. These conversations take years, so nothing will happen precipitously. You'll hear about it.

Now, two more topics of conversation at the Madrid Working Group: I think we might have spoken about this before. There has been talk about how to streamline the Madrid system, and one way to do that would be to eliminate the basic mark requirement so that users would file an international application directly at WIPO, designate their countries, and off they go.

Now, there are a lot of reasons to hold on to the basic mark -- and we've heard from our stakeholders. We've done consultations with you guys on this topic before. A lot of you like the basic mark. You like central attack. So, we've held the line and tried to find other ways to address the limitations of dependency.

One of the other proposals has been, okay, what if we freeze the concept of dependency? What if we say that the international application is no longer dependent on the base, so the international application can be a little bit broader, let's say, on the ID and than what is in your base? So, your base -- you start out with a broad ID in the United States. You know we're going to tell you that you have to narrow your ID but not until your international application goes out to WIPO and the designated contracting parties with that broad ID in it. Maybe you can get that broad IDs in all your designations.

In the meantime, your U.S. application ID gets narrowed ultimately, in order to register. But that narrowing will not result in a limitation through the system. If we froze

dependency, you could theoretically keep your broad IDs in all of your designations, even though your base narrowed in the U.S. So, that's sort of the concept that it's no longer dependent -- the international application would no longer be dependent on the scope of the base. So, this was a concept we were pursuing, and the idea was that somehow this was going to be a way to get around having to create a new treaty.

If we just froze a treaty provision, then, the thinking was, we wouldn't have to go through a diplomatic conference that would take 5 to 10 years, right? But the State Department says you can't just freeze a treaty provision without all of the members of that treaty consenting to this. So, there are problems with that approach.

So, we've been going round and round trying to figure out how to get at this issue. But I'll tell you, a lot of people didn't even support freezing dependency. A lot of people still like the basic mark and keeping it intact as a governor on bad faith applications or perpetuating problems through the system. So,

the long and short of it is that we are continuing to try to figure out how to improve the system, how to streamline it, but there's not a mandate to get rid of the basic mark. There's not a mandate to freeze dependency. So, we're just trying to figure out other ways where we can address some of these problems. The U.S. problem is our specific ID policy -which means that you're held to that specific ID as you go through the Madrid System.

Can we address the dependency problem to help with non-Latin character countries like Japan and Korea? They have their basic mark in Japanese but they don't use that in their export markets, so they want to figure how they can use the Madrid System for export marks. Japanese applicants cannot have to have two sets of marks, an English set of marks and a Japanese character set of marks, and then send them through the system. Japan has use requirements, and if the registrant is not using the English-language mark in Japan, it will die. And then all the registrant's designations in the Madrid System die. So, there are a lot of issues to try to

figure out to address country-specific concerns. We're continuing to have these discussions and we're still hopeful that we can find some ways to improve the system.

Lastly, I wanted to talk about this one. In the United States, if you change the legal nature of the holder, it's an ownership change. You assign it. And that's the way the Madrid System has been designed. Well, in some countries, actually, if you change the legal nature, the legal entity, it's not an ownership change; it's something different.

So, many of these countries -- Italy, Spain, France, Germany, Czech Republic, Mexico, and Colombia -- wanted a rule change in the Madrid System so that they could change the legal entity status without it being an ownership change. And we thought no way would everybody go for this, because, you know, what about the validity? If somebody from Colombia indicates that there's an entity change and doesn't do an ownership change, what happens to the designation United States? Is the owner of the international registration same owner as the US designation? How does that

work?

INTA was incredibly supportive of the Colombian proposal, and a lot of the user groups were supportive of it, so we were sort of on the back foot trying to figure out how to respond to this. Ultimately, you know, a lot of the users were telling us that, well, it won't impact the United States. Well, it may. Certainly it's at your own risk -- the validity of your U.S. registration.

In the Madrid System, if you changed the legal entity status and you did not do an ownership change and sent it through the system, there's a question about the validity of rights in the United States. So, we'll see how that plays out. But there certainly was a lot of support for it, and we felt concerned. But we did not feel like we were in a position to block the proposal, but we did take a reservation.

One last point: I wanted you to know that MARQUES is a European trademark user group. They asked us, on the margins, whether the USPTO could come to Europe and meet with their representatives to explain the pitfalls to avoid

when designating the United States so that they can better use the system. So, we were very gratified to have them reach out to us for more education so that they wouldn't come to the United States and screw up their designation. So, certainly we're on that job, and we're working on setting up three different seminars in Europe to have meeting and seminars with the MARQUES user groups so we can better educate them. Certainly we know we'll beat them up on their broad ID claiming practice. We'll address that with them.

I think that's it. Oh, one last thing I just wanted to bring to your attention. The European Trademark Regulation -- that whole reform that we talked about here a couple of meetings ago -- the European Trademark Regulation will enter into force March 23rd, 2016. Generally this won't affect you. The entry into force March 23rd begins a six-month grace period where anyone holding an OHIM registration can go in and clarify their intention, if they filed with a class heading, whether they intended to cover any goods and services beyond that class heading.

As you may know, the IP Translator decision in Europe caused a lot of change within the classification system in Europe. Now, the European office requires that there be sufficient clarity and precision in the ID to enable the competent authorities to determine the extent of the protection sought. So, this calls into question the European practice of claiming class headings for their IDs.

In order to make sure that you have the full coverage that you intended when you filed prior to 2012, they are allowing you to come in and say what additional goods and services you had intended to have covered in your ID. Now, to the extent that you all are filing through Madrid with the U.S. base, this is not going to affect you. You started out narrow, you ended up narrow in OHIM. You're not going to have a problem. To the extent, though, if you used, through Madrid, a base in another country, you may want to go in and check your European registrations and see if you need to take advantage of this grace period and file for a clarification. And even if you file directly, you would still need to do this.

So, any application filed prior to June 22nd, 2012 -- that's the date of the IP Translator case -- would be -- you could use this grace period. So, you might want to check that. There was a question of whether Madrid designations were going to be able to take advantage of this, but it turns out, actually, after some wrangling, that Madrid designations into Europe will also be covered.

So, check your portfolios. If you have a European registration that you got prior 2012, you have a six-month period starting March 23rd to September 23rd to file this declaration of what you actually intended. So, I wanted to alert you to that.

But that's all I have. Happy to take any questions.

CHAIRMAN WELDON-WILSON: Does anyone have any questions?

Well, you obviously did a very thorough job, so thank you very much. We appreciate that.

Also, it's time for our break right now, and unless you had anything else you wanted to add, great, then let's take a break right now.

Let's make it exactly 10 minutes. Come back at 10:38 and we'll start up again. Thank you.

(Recess)

CHAIRMAN WELDON-WILSON: If everyone could take their seats. Thank you.

(Pause) Hello, welcome back. We still have some exciting speakers and information to hear, and so our next speaker is going to be our Chief Administrative Judge for the TTAB, Jerry Rodgers.

So, welcome, Gerry.

CHIEF JUDGE ROGERS: Thank you, Dee Ann. A pleasure to be here as always. Hope this is coming through for the recorder.

(Interruption)

CHIEF JUDGE ROGERS: Yup, yup. Is that better? Okay, I wanted to start with some performance measures but will also talk a little bit about something that's probably on a lot of people's minds, and that is perspective rulemaking by the Trademark Trial and Appeal Board, and then we can review a little bit about some of the outreach that we've got scheduled in the coming months. But the performance measures and the metrics I think tell a lot of our story

about where we are and we've been doing and what we expect during the rest of the year. So, it will be useful to go through those numbers, provide some context for our discussion.

In terms of hiring, as you heard from Mary, of course trademark filings have increased regularly since 2009, and ultimately they mean increased filings for the board, and we'll get to some of those numbers in a second.

But we don't hire in groups of 60. For us, a big hiring class is if we have three or four judges come on in a year. And recent changes in the judge and attorney composition -- we had one judge position left over from fiscal '15 that we filled in December by promoting one of our attorneys, George Pologeorgis, to a judge position. So, that got us to actually 24 judges, but then Dave Bucher, one of our long-time judges, retired, so we're back down to 23. So, we've got a vacancy there in the judge corps and of course a vacancy in the attorney corps because of George's promotion.

We also have two judge positions in the budget for this year, so we've got a total of four

positions that we can fill, and our plans going forward are to add another two attorneys. We'll probably get a vacancy announcement out shortly for interlocutory attorneys, and we'll add two more, and then we'll still have two positions in reserve. And if we need to, depending on filing levels and workload later in the year, add some judges, then we'll be in a position to do that.

Below these staffing numbers, you see the filing numbers for the first quarter coming in this year, and I wanted to point out that these show increases across the board. The variance in the first quarter is not first quarter this year versus first quarter last year, but instead it's just taking what we got in the first quarter and comparing that to a quarter of what we got last year, because I'm really trying to look at what the annual trend is likely to be if this first quarter rate continues through the rest of the year. So, if they do, we would be up at the end of the year by 7 percent in appeals and 2 percent in extensions of time proposed, almost 6 percent in oppositions, and 4 percent in cancellations. Those would be significant increases for us

during the year. And last year --

MR. HUDIS: Judge Rogers?

CHIEF JUDGE ROGERS: One second,
Jonathan.

MR. HUDIS: Sure.

CHIEF JUDGE ROGERS: Let me just point out that last year we actually had a drop in oppositions -- 4 percent -- though we had almost over -- we had an increase in cancellations for two years in a row. So, we kind of have a mixed picture and things go up and down, but from everything I can see in the tea leaves, I'm expecting these increases to continue throughout the year. This is a pretty strong first quarter for us, so I'm expecting that while these are only compared to a quarter of last year's filings, they're probably a good leading indicator of where we'll be throughout the year.

Jonathan?

MR. HUDIS: Just for example -- we discussed this yesterday in a subcommittee -- for example, most of the P.O., the 800 number is a 7 percent increase over one quarter of 2,992 from the year before.

CHIEF JUDGE ROGERS: That is correct.

MR. HUDIS: Okay.

CHIEF JUDGE ROGERS: Yup. So, it's not quarter over quarter. Quarters tend to vary. For me, it's a better predictive tool to be able to compare what we got in the first quarter to a quarter of what we got last year, so. But in any event, these filing levels are expected to continue going up I think through the year. And of course that's just what comes in the front door. What goes out the back door on the other side, to a certain extent -- or the work that we get coming in the front door -- generates work for the attorneys in terms of contested motions that they need to decide; uncontested motions that either ESTTA approves automatically or the paralegals handle; and of course ultimately final decisions that the judges have to write in both appeals and trial cases.

So, the production, if you will: You can see the judge's production down 10 percent compared to one quarter of what we produced last year in the first quarter. No surprise to me and no concern for me, because even though the

production was down, we maintained our inventory of cases awaiting final decision and our pendency measures where we wanted them to be. And so I knew that we could kind of reduce the production of the judges a little bit in the first quarter; put some of that judge time into the preparation of the Notice of Proposed Rulemaking that we needed to work on; and also have some of the judges work on some contested motions. So we had some judges in December producing decisions on contested motions for summary judgement, which was a priority in the first quarter of this year because we ended up last fiscal year a little over where we wanted to be on pendency on contested motions.

So, we shifted some resources around for what I think are good reasons, which resulted in a little decrease in production in final decisions on the merits. But, again, nothing to worry about because everything else that we measure and that we needed to take care of has been taken care of. And of course we also get larger production from the judges in the second quarter, third quarter, fourth quarter. So, I'm sure

ultimately at the end of the year we will have issued more final decisions than we did last year, because we'll have to -- because we have many more cases coming in the front door and more cases to decide.

Precedential decisions: It's not unexpected that we only get a handful out in the first quarter of the year. We have a lot of people on vacation and holiday leave in December. We also tend to have a big push at the end of the year, end of a fiscal year, to get precedence out. And then we just don't have as many in the pipeline. We try to finalize as many as we can at the end of the fiscal year and don't normally have that many in the pipeline in the first quarter. We got four out; we got another couple out in January; and we have quite a few in the pipeline either internally, going through internal review at the TTAB, or with the Solicitor's Office for clearance review. So, we're going to be fine on precedential decisions this year. And we had four in the first quarter last year, and we hit our goal, and I expect that we'll do the same thing this year.

Contested motions decided: 1.6 percent variance. That's kind of normal for a quarter, and so that's fine.

Uncontested motions: The fact that we had that many processed in the first quarter, whether by ESTTA or the paralegals, is again probably an indicator that those filing levels in terms of new proceedings coming in the front door will generate work for paralegals and for attorneys, again another reason why it's useful for us to get another couple of attorneys on board.

I don't know what happened with this slide. It's certainly not the one that I have in my handouts. The percentage of calls answered -- those figures are from the previous slide. I don't know how they got on the second slide, so somehow these two slides got merged, and the numbers on the bottom of this slide should be reflective of, basically, just the response time for our information specialists in how quickly they answer the phone and that sort of thing. So, I apologize for those numbers. But we're doing okay with the response to the public when it comes

to incoming phone calls.

We also ran a special project last year into the first quarter this year with Dora Best, who Mary mentioned earlier from the Trademark Assistance Center who came over and monitored the work our customer service specialists, information specialists do. And so we're going to get a report out from her next week on some recommendations on how to increase the level of service that we provide for email inquiries and phone inquiries. And I'm sorry that this slide doesn't have that information. But I can certainly get it to you if anybody wants it.

I hope the rest of the slides are okay. Very weird how that happened.

All right, so this is contested motions, and you can see that we ended fiscal '15 above where we wanted to be. Our target, our goal for pendency on resolving contested motions was the same last year as it is this year, 8 to 9 weeks. So, last year we ended up a bit above that goal, which is one reason why we threw some extra judge resources at the contested motions in the first quarter this year and hit squarely in the middle

of where we want to be for the first quarter at 8.5 weeks.

The second pendency measure for contested motions is one that you can clearly see we did not meet if we had a motion pending for 19.4 weeks at the end of the quarter when we don't want any motion to be older than 12 weeks. But this is a goal I will gladly have every quarter. And if I don't meet it because there's one case that's over that threshold, it's okay by me because it's a goal, it's a stretch goal, and we have it there because we want to maintain our focus on getting the contested motions tracked and decided.

And this is one -- I can tell you what happens, because when we have one case that's over the limit, we try to figure why so it won't happen again. And this is one of those cases that, within the automated docketing system, just was in the wrong cue or it was in the wrong electronic shelf, if you will, and it just got overlooked. But we found it, because we did the work at the end of the quarter to make sure that we got everything taken care of or at least inventoried.

So, again, this is a goal which, if we

don't meet it, you know, it's concerning and we'll figure out how we can avoid having motions get old in the future. But I would rather have the goal and not meet it than not to have the goal at all.

But the inventory is the much better indicator, along with the pendency measure, of the average time to disposition of contested motions about kind of the health and the efficiency with which we are processing the contested motions. Our goal for this year was to keep inventory of contested motions within 145 to 175 range at any given point in time and in a par because we had the attorneys and judges working together on controlling this inventory. We actually bettered even the low end of the inventory. So, we'll be fine with pendency and inventory control and motions going forward, and if we can just ferret out those rogue motions that sometimes get overlooked, then we'll be in good shape.

MR. BARBER: Judge Rogers, can I ask you --

CHIEF JUDGE ROGERS: CHIEF JUDGE

ROGERS: Yup, sure.

MR. BARBER: Can I ask you a question about the pendency of contested motions?

Is this on? Yeah, okay. We discussed this a little bit yesterday, but do you distinguish at all between contested dispositive motions versus contested non-dispositive motions in terms of what your expectation is for the length of time to decision?

CHIEF JUDGE ROGERS: We don't actually have a separate goal that we've established for pendency on, say, contested motions for summary judgement or motions to dismiss as compared to motions to compel or motions for a protective order that would not be potentially dispositive. But we can certainly look into having that as a separate goal, a separate measure, and that's something I would want to consult with Ken Solomon, our managing attorney, on and figure out what we should establish as the goal.

I think they're probably pretty close, because the way the contested motions get decided is every month Ken is going to rebalance the dockets and make sure that the attorneys have a similar amount of work to get done during that

month. So, at the beginning of a month, each attorney knows that they've got so many summary judgments that they've got to get decided before the end of the month and whatever other motions that they have. And so they're all going to get decided within, generally, the same time period.

Sometimes the summary judgment motions might take a little bit longer. Just anecdotally, they have much larger records to be reviewed than some of the discovery motions. So, it's possible that if we delved into the numbers, some of the potentially dispositive motions might take a little bit longer than some of the discovery motions. And we can look into tracking that a little better.

MR. BARBER: Well, I -- yeah, I guess that was my thought, because a summary judgment motion, for example, with a voluminous record -- it seems like you're still -- since you have the goal that the oldest motion, contested motion, would be 12 weeks, that you're anticipating or hoping that even those dispositive motions with voluminous records would be decided within 12 weeks, which is

wonderful. It may be an ambitious goal, but if that's what you're able to do, I think that's a terrific production goal.

CHIEF JUDGE ROGERS: And keep in mind, these pendency measures are average, so some are taking longer, some are taking less. And so there may be some discovery motions that are going to be resolved pretty quickly, because the attorney is actively managing the case, and it comes in, and the attorney knows it has come in and gets the parties on the phone, and they have a phone conference, and they get it resolved quickly and keep the case moving, whereas the summary judgment motion might be the thing that takes a little bit longer. But in the aggregate measure, it is balanced by some of those quicker dispositions of some of the discovery motions. But it's something I'll talk to Ken about and we'll look into it.

MR. HUDIS: Yes, I wanted to follow up with what Bill just asked. I think the information would be very helpful for us if you broke it up into dispositive and non-dispositive contentious motions so that we can see if you are

having any backlog where it is, you know, versus -- you know, if it's dispositive it's the combination of interlocutories and the judges. If it's non-dispositive, then it's going to be solely with the interlocutory corps, all right? So, if we had that separate breakout and we saw sort of, like, an ongoing pattern one way or the other, it would be helpful.

CHIEF JUDGE ROGERS: We'll certainly look into that and see if we can get you some broken out figures for the next meeting, and even before the next meeting since we report this kind of thing on a quarterly basis. Since the next meeting will probably be after we're reporting midyear numbers, if we get it broken out, you may see the data on the Website if you just look for it there.

So, final decisions: The work being done by the judges -- again, we hit both of the goals that we have for final decisions. The pendency measure -- we're better than the target range at just under 9 weeks when the goal is 10 to 12 weeks to getting those final decisions out. Again, an average. So, large record trial cases

are going to take longer than a thin record ex parte appeal, but this is an aggregate measure of basically how long does it take judges to get final decisions out on appeals and trial cases once they're ready for decision. So, it's an average measure. And we want to keep that inventory under control.

This is my mistake. This is not -- that other mistake that happened with the other two slides, I don't know how that happened. That was not my mistake.

But the inventory goal on this slide I didn't update and it should be 125 to 150, as the judge staff has expanded. We sometimes have to adjust the inventory measures to kind of correlate with the size of the staff.

So, the inventory target for this year is to keep the inventory of cases waiting final decision between 125 and 150. So, we were at a 148 at the end of the first quarter, which is within that target range -- at the higher end of the target range -- but, again, I knew it would be because I had shifted some of the judge resources into the contested motions, and we had

some of them on the Notice of Proposed Rulemaking drafting. But they will be coming back to and they're already back on getting final decisions out. And so I've got no worries whatsoever that we'll stay within the inventory control goal throughout the rest of the year.

And again if we do see that the number of cases maturing to ready for decision by a panel of judges gets to the point where we need to add more staff, we've got a couple of positions kind of in reserve that we can fill during the fiscal year.

This next slide just covers total pendency end to end, sometimes referred to as commencement to completion, something that we've also been focusing on regularly for the last four years or so. It's an element in the strategic plan of the USPTO for the TTAB to make sure that we continue our focus on resolving cases as quickly as possible, both appeal cases and trial cases.

In the first quarter the average pendency of appeal cases that were finally resolved on the merits during the quarter was 43.6

weeks, a slight increase over the full-year total for last year but within the normal range of variance. And, frankly, I don't know that there's much more time that we can squeeze out of appeal resolution.

This has been a pretty consistent figure. We've been within the 40- to 45-week range for four or five years now, and I'm just not sure that we're going to get it down under 40 without having to crack down on extensions of time to file appeal briefs and remands to examining attorneys, and things like that. But of course it's useful for applicants and examining attorneys to be able to take a little bit more time to discuss possible amendments that will obviate refusals and things like that.

So, we don't want to, under the guise of efficiency, become so ruthless in pursuit of a lower number that applicants and examining attorneys can't work out solutions and avoid having to get decisions on ex parte appeals.

Trial cases: Again, the number is down. It's been down for four years in a row. We've reduced the overall average pendency for

trial cases, and so we're very pleased about that. I think this comes from the focus that I talked about earlier on getting motions, keeping track of motions, getting motions decided, keeping cases moving, and getting the judges to decide the cases quickly once they are ready for decision. So, the trial case figure -- I think 148 is probably a little bit low. It will probably go up, but it fluctuates normally from quarter to quarter. But hopefully we'll realize another year this year in overall reduction of trial case pendency.

The ACR story, if you will: 106 point weeks, a little over two years, is great for ACR trial cases. And it's a big drop compared to what we achieved last year, but the numbers are pretty small. It's based on six cases that were decided in the first quarter. Another five were pending. A number of those have already been decided.

And ACR cases are cases in which the parties have agreed to certain stipulations or to certain efficiencies that allow the cases to be handled more quickly. But parties often agree to these stipulations at wildly varying times.

Sometimes it's early on in a case; sometimes it's on the eve of trial or after cross motions for summary judgment have been denied. So, these numbers tend to fluctuate a good deal, at least in terms of the average pendency of an ACR trial case.

The number that I tend to focus on more is the number of cases in which parties agree to some sort of efficiency different from the traditional discovery and trial rules.

And we had a breakout year in fiscal '14 where we had over 20 cases -- one in six trial decisions that issued following the parties' use of some form of ACR. And in '15 it dropped back down to 10, which had been kind of the norm before '14, but this year already we've got six out with another five pending, so we already have met last year's number of ACR cases, and I'm confident that by the end of the year we'll be more in line with the '14 number, probably 20 or a couple dozen ACR cases.

However, that leaves me to our rulemaking, and one of the significant goals behind our drafting of a Notice of Proposed

Rulemaking was to take many of the lessons learned in ACR cases and to inject those efficiencies into all trial cases or at least to make them available to all parties. As any of you know who are involved in trial cases before the board, ACR cases involve the parties having to agree to utilize more efficient means of conducting discovery and more efficient means of creating a record at trial for the board to decide the case on. But based on what we've seen the parties agree to for a number of years, one of the significant goals for the drafting of our Notice of Proposed Rulemaking was to make available to all parties, whether or not they agree with the other side, more efficient means for taking discovery and creating records.

So, for example, as we've discussed many times -- and this will be no surprise to anybody who sees a Notice of Proposed Rulemaking in the near future -- we will be allowing parties to choose to present testimony by affidavit or declaration. We'll be proposing that as a right that any party can elect, subject to the right of the adverse party to conduct live cross

examination if that's something that they want to do. We also will be expanding the use of Notices of Reliance and essentially doing or allowing parties to do some of the things that have been typical of ACR cases.

So, let me just point out essentially four major changes, major goals for the rulemaking, and then I'll tell you when you can expect to see it on the newsstand and start reviewing it.

One major goal is we're going to leverage technology. We're going to make much greater use of electronic communication. Commissioner Denison and I share the goal of having increased electronic filing and increased electronic communication between the parties, too. So, you'll see proposals in that area in the Notice of Proposed Rulemaking.

You'll also see some tweaking of the discovery portion of -- oh, actually, before I get into discovery, we will also be proposing to remove the obligation from plaintiffs to have to serve complaints on defendants, so, you know, that's kind of part and parcel of the greater use

of electronic communication and our ability to simply issue Notices of Institution that will then serve the defendant with a copy of the complaint or a link to a copy of the complaint -- so, greater use of electronic filing, greater use of electronic communication, including obviating the need for plaintiffs to have to serve defendants directly.

In discovery, you'll see proposals that will focus on getting the parties to serve discovery earlier, getting responses provided within the discovery period, perhaps a novel concept -- I've discussed this a lot -- that we would actually complete discovery within the discovery period. But we know in the past that -- and our rules allow for this -- I can't blame the parties for this but our rules allow for discovery to be served right up until the end of the discovery period. And then we would often be facing motions to compel in discovery disputes after the close of discovery while the parties were supposed to be preparing their pretrial disclosures. So, it could get very confusing and very disconcerting for the smooth progress of

trials cases to have a lot of that motion practice going on when the parties should be focusing on their preparation for trial or perhaps settlement discussions based on their resolution of their discovery disputes.

So, we're going to be tweaking discovery in that sense, getting discovery taken and served and responded to during the discovery period and getting discovery motions resolved quickly after the close of the discovery period.

We also will want motions for summary judgment which, under the existing rules, could be filed up until the eve of trial -- also get them filed and resolved prior to the deadline for parties to serve pretrial disclosures. And the idea here is let's get the discovery disputes resolved. Let's figure out whether the case can be handled by summary judgment either during discovery or shortly after discovery. But by the time we face the first pretrial disclosure deadline, we should have all of those issues resolved, and we should be able to squarely focus on going to trial. And that trial will have those efficiencies that we talked about earlier, which

will be use of affidavit or declaration testimony, greater use of notices of reliance, that sort of thing.

There are a lot of other proposals in the package that we've drafted up, which reflect changes in case law and cases in technology and things that have just needed to be updated as part and parcel of this general approach. But you can see our basic approach to trial cases is generally going to remain the same. We're just trying to make it more efficient for everybody involved, both the board and the parties.

When will you see this? When you will you be able to read this? Well, it's my hope that you will see this in the Federal Register sometime in March.

So, Commissioner Denison, I mentioned earlier the fee proposal is expected out in April. We weren't actually having a race in this regard, but we did want to get this Notice of Proposed Rulemaking out at a point in time when a lot of the bar groups can discuss it during the spring and during ABA-IP section meetings and INTAA meetings and things like that, and the spring is

a good time for people to review this kind of package and be able to provide us comments on it and allow us to digest all the comments and work on a Notice of Final Rulemaking during the summer.

So, our projection is that we would have a final package in place by January, the same approximate time as the fee package. But, again, we've completed our drafting. We've done all of our internal review, and it's shortly going to be on the desk of the director and the deputy director for their staff to review and for them to sign so we can get it into the Federal Register. So, that's our hope.

And then -- I won't go through all of what we've scheduled unless somebody wants me to, but we've scheduled a lot of outreach. We're willing to participate in roundtables or other outreach events that Trademarks does, to the extent that it will be useful to discuss our Notice of Proposed Rulemaking, and of course we will have people at the ABA-IP section, the Rocky Mountain IP Institute. We will have people at four sessions for joint programs -- Patent Board and Trademark Board programs that are scheduled

for law schools around the country -- and we'll have opportunities there to talk about the Notice of Proposed Rulemaking.

So, we expect the publication in the Federal Register to just begin what will be a continuing discussion that I think started when we first had a round table here on campus well over a year ago and previewed a lot of this stuff that we wanted to consider putting into a rule package, and now we've simply followed through on that and are prepared to continue the discussion.

So, I've said a lot, but I want to leave time for questions if anyone has any questions.

CHAIRMAN WELDON-WILSON: Are there any questions? Well, it sounds like you've discussed this sufficiently so that everyone is comfortable with this. I do want to mention, just as a personal matter, I applaud that you do have goals, because otherwise it might be hard to be find those rogue motions. (Laughter) So, at least you were looking for them and trying to find out what happened. And you did a great job of walking us through the statistics. So, thank you very much. We appreciate your help.

CHIEF JUDGE ROGERS: You're welcome.

CHAIRMAN WELDON-WILSON: And now we'll turn to our OCIO update. I believe we have both John Owens -- our Chief Information Officer and Raj Dolas -- the portfolio manager for Trademarks Next Generation here to talk with us today. Welcome, gentlemen.

MR. OWENS: Good morning. Thank you for having us. Does someone have the flicker? Awesome. Okay, so I want to take a moment to address the elephant in the room as far as IT went at the end of December, and that was our very unexpected power outage.

At a very high level, contrary to what were some people's ideas that they shared in public and print, we do have a redundant power supply system here at the USPTO. It is part of our lease through GSA for the building provided by -- that we rent here, and as part of that lease we have a feed from grid A aboveground in the city, a feed from grid B provided by a city, and that's belowground, and then two separate generators, any one of which can power the entire data center. And they're all connected to a series of switches

with what's known as a flywheel, and the flywheel basically filters the power; cleans the power signal so it's nice and even; and allows us to switch from any one power feed to any one of the other power feeds without interruption, because computers that are operating, particularly legacy computers, when they suddenly go from on to off bad things happen.

So, what ended up happening was we had an electrical short in a conduit. A conduit is a tube of metal, and inside of it was a wire, and over time that wire chaffed against the conduit, and when the power line touches the metal conduit, it energizes the entire series of conduits. In fact, it literally took a conduit that was about an eighth inch to a quarter inch steel conduit and immediately turned it into vapor, which we're very lucky someone wasn't killed.

That short goes of course goes to ground, and it shorted out across that panel, that switching panel, and took out both flywheels, which are redundant. That should not have happened. We're continuing to work with GSA to find out what exactly happened there.

So, all of a sudden we went from being able to switch to four power sources and having filtered power to being completely shut off and no ability to switch. This is unexpected. The system -- GSA just -- and it so happened a few years ago, about three years ago -- GSA, at our request, came back in and recertified the entire power plant. No one had X-ray vision to see into the conduit. No one knew that it was happening.

So, we were suddenly faced with a disaster. Not only did all of our computers, thousands of computers, go from completely on to completely off, but then we were left with one supply of power, and it was unfiltered -- which means if any other glitch in the environment would cause us to switch from power side A to B to C to D, we couldn't do it without crashing the entire environment again.

So, my team rapidly, having to deal with this issue, enacted our COOP plan. That's our plan in case of some natural disaster we had to reconstitute. That plan called for a three-day execution to bring the data center from completely off to completely on. But because we

did not have the ability to switch power and it was unfiltered -- which means that any brownouts and/or power spikes could damage any computer that they hit -- it was decided with the Front Office that we would bring up each system in order, repair them, and then turn them back off, because if that were to happen, then of course we'd start all over again and the more damage we had the worse off it was going to be.

Now, we keep enough supplies on hand to repair almost anything on a normal day-to-day basis. The parts supply room we have is, you know, 20 feet tall. It's, you know, 40 feet by -- I mean, it's big. And by the time we were done using our spare parts, to quote the gentleman that's in charge of that for me -- he said, "It looked like the Grinch came and stole our parts spend." We were left with mailing tape and wire and tinsel and not much else. We literally used so much we then had to go out for some parts and purchase them three or four days after the holidays, which complicated all of this. And we have and are still working on filling back up that parts spend of parts, because many of our systems

are 15+ years old. We didn't' -- they're hard to find. Let's just say that.

It was an extraordinary effort on the team's part. We did bring all the systems up. That's why it was reported things were coming back up, and once they were up and stable and repaired we shut them back down to preserve them. In the meantime, the companies that work with our facility here flew in parts and personnel from, literally, Europe and the United States. They fixed our power infrastructure, and my team then took approximately two and a half days to turn everything back on and get it operational.

Lots of sacrifice by my team when it came to giving up personal time with their families over the holidays, as well as Trademarks and Patents and so on in the later part of that effort to test the systems and their availability. So, the recovery was a success story. The fact that it happened was a disaster, though it couldn't have been prevented because no one would have seen into that conduit at least since it had been installed 12 years ago.

We are still investigating how both of

the systems had, in effect -- by design, only one of them should have blown out instead of two, but both sides are up and operational now, and we are able to switch power and all of our power's filter.

Some may have noticed that our email system, our Website, and everything else came back within hours. That is because those are modern IT systems, and this speaks to the disaster readiness of the agency. All of the data from 2009 -- I got here in 2008 -- from 2009 has been backed up, not only on paper but electronically. We do have some systems that are modernized. Our email system, which is in the cloud, share (inaudible) our ability to communicate, video teleconference, our phone system, the Website -- all of that has been modernized and exists not only here but in our secondary data site in Pennsylvania.

Our Trademark Next Gen systems, as they are being built and deployed, as well as patents and others, do have space up in Pennsylvania to operate. Had we been on a completely updated and modern system with no ties to the legacy

computers, which do not support that type of multisite configuration, you wouldn't have noticed anything. In fact, for our systems -- some of the patent systems and some of the other systems -- no one noticed a glitch, because they have already transferred. Unfortunately, not everything is done yet, but that is the end goal.

So, the top rumors of we didn't modernize our electrical infrastructure -- that's completely false. We weren't planning to deal with this -- that was completely false. Things kept coming up and down because we weren't capable of keeping them up -- that was false. So, any of those colorful suggestions made by people in the press were false.

The truth of the matter is a lot less glorious: We had an electrical short; it was an unexpected problem; the engineering said it should have worked, it did not; and we dealt with it as quickly and efficiently as we could.

Our modern systems that were prepared in two sites were up and operational, some in

minutes, some never went down, and some within an hour. The others took quite a bit of time to get up and running due to their nature and inability to be in two sites at once.

So, before I move off of this topic, I did want to ask for questions, because I know this is a big one and while I'm on the topic I'd like to take questions.

MS. HAMPTON: Good morning, John. I actually don't have a question. It's really more of a comment. I just wanted to commend you and your team for the Herculean effort you all put in during a holiday period to get the system back up and running. So, I just wanted to note that for the record.

MR. OWENS: Well, thank you very much, specifically for my team who -- you know, they gave up a lot, right, and federal employees at the end of the year with lose or use -- and many of my employees keep their time so they can spend the time during the holidays with their family. They gave that up this year to make sure that we were up and operational as quickly as possible. And I'm not talking a dozen people. I'm talking well

over a hundred people, and it was a lot, and I do appreciate the thank-you. It is our job. We do take it very seriously. But, you know, I thank you for thanking them. It is important.

MR. LOCKHART: John, I would just echo what Deb said, and I think all of us on TPAC would certainly with agree with that sentiment. We know you guys did a heroic job, and as trademark owners and practitioners we appreciate it. We really do, so thank you and your team for that. And I just want to confirm for the record no data was lost.

MR. OWENS: So, this question was asked in PPAC -- I think it was last week. Any transaction that it completed, no data was lost. Anyone that was on the system at the time transferring data and/or files that did not actually get written somewhere, we did ask people to double-check your submissions, because if the transaction over the Internet hadn't completed yet, I wouldn't have had all of the data, so it would have looked like garbage to us -- or nothing. There would have been no record if you had just started it. So, no data to our knowledge

was received in whole and lost from any log anywhere, and we did an extensive scrub of that environment. But anything that was in flight, as it were, we have asked folks to go back and double-check, as there could have been -- you know, those transactions did not complete. So, any data we received in whole were good; any data or transaction that wasn't complete we ask people to resubmit.

MR. HUDIS: John, the last thing I'd like you to just discuss so we have it on the record -- the other thing that some of us saw in the Chatting class over the Internet was security concerns. So, I just wanted to have you on the record that security concerns were not compromised during this power outage.

MR. OWENS: Not at all. Security had nothing to do with it. The rooms are separated. They are protected downstairs -- the power rooms, multilayers of physical security. You'd need a badge, an access number. No one did anything there. There was no human intervention that caused this. In the way that, literally, the steel evaporated because of the amount of

electricity gone through it, had anyone actually been touching a metal surface in that room, they would have died. I mean, this could have been a much greater disaster than was foreseen, feeling that loss of human life is of course a worse event.

So, nothing physical happened. The data center itself was secure. In fact, our security office for the campus physical security is literally adjacent and in front of the entrance to the data center. So, no, there was no compromise in security whatsoever. This wasn't any hacker attempt or anything like that. It had nothing to do with that. It was a physical fault in a system that was just designed to be redundant but something happened where two sides of the system were shorted out at the same time. And it was no more nefarious than that. Okay?

All right, so let's talk a little bit about -- before I hand things over to Raj to talk about the modernization work that's going on, I wanted to talk to you about a slightly -- it was unplanned for the budget this year, and that's the TRAM hardware upgrade, too. For everyone to be reminded, TRAM is the older Unisys mainframe and

one of its type has been around since the 1970s when the data started being put into the TRAM system. It is the heart of the environment. Everything happens in it, both data as well as all of the transactions and everything else -- examiner goals and tracking and everything happens. The business rules are all in TRAM. And part of a large part of Next Gen has been breaking that apart and building that all separately in a more modern, more distributable design. It is a large unit single point of failure.

So, the Unisys mainframe -- I'm going to put this is an analogy -- is a very old business model. It is kind of, in my opinion, a diabolical business model. So, let's say you went and bought a car and you spent \$30,000 on a brand new car, and you drove it off the lot and you drove it home and it took you 20 miles to get home, and when you got home you got a bill for driving 20 miles with your brand new car that you paid for. Let's just say you paid for cash, right, for the car. That's how the billing system for the old mainframes work. We buy the hardware, and then

we buy what is called MIPS -- millions of instructions per second. So, every time we do millions of instructions, we pay them a little money for the right to use the product that we just purchased. Now, let's say at the end of its life when the hardware is no longer supported, the car company then came to you and said: Well, we're taking your car and you have to buy a new car, so hand me over another \$30,000 -- oh, and by the way, as soon as you drive it home I'm going to send you a bill to drive 20 miles home again. That's how that works. So, we are at the end of life of the TRAM mainframe that we have. We're running out of MIPS. We started using more MIPS because we're sinking the old system to the new system, and at the original time when this was budgeted for, we thought we would be done at this point, because originally we were going release TMNG last year to the Examining Corps, which would have alleviated the bulk of this problem.

But looking at where we are now and the problems that we've had synchronizing the legacy TRAM system with the new system -- which I described, I believe, last time to you as building

a Ferrari of a new system and attaching the Model T Ford to the back of it -- after discussions with Mary, we decided it was in the agency's best interest for continuity to purchase a new mainframe and the associated MIPS. Now, if I don't, then we don't have a car, and not having a car is really bad.

So, to put it simply, it was not budgeted because originally we thought we weren't going to need it; it was an oversight; the teams got together, worked on it -- both Trademarks and OCIO. We went to the FAB; we asked for the money; we were given the money; and we're purchasing the new product to bridge the gap between now and the release.

Does anyone have any questions about that one before we go on?

MR. LOCKHART: When will the transition be completed?

MR. OWENS: Sometime in '16. We're working with the company to get the new unit in and so on and so forth.

Yes.

MR. HUDIS: All right, John, so what

I'm getting from this slide and your explanation, your current thinking is internal for the Examining Corps is looking like sometime the middle to the end of this year; outward facing for Trademarks Next Generation would be looking at 2017; and the board early 2018? Is that --

MR. OWENS: Haven't gotten quite there on this one yet, but yes. This is just talking about TRAM retirement with the Next Gen. So, those plans got pushed out to '18. But the new system will be made available this year, and we are on track to push out. Raj will get into those dates as we move forward. But, yes.

MR. HUDIS: Thank you. Any other questions there? All right, I am going to now turn it over then to Mr. Dolas, who's going to lead us through the discussion about what's going on with Next Gen.

MR. DOLAS: Thank you, John. Good morning. Before I start, I want to clear one misconception that I've heard in the last couple of weeks. Folks think that Trademark Next Generation is one system. It's really not one system; it's more of a platform that we're

developing where we intend to provide easy-to-use, intuitive, flexible, modernized systems that can hang off of this platform. There are multiple IT projects that we're running for both internal and external users. They will use TMNG as its main platform.

To manage the scope, which is fairly significant -- the large scope of work that we're doing -- the investments for this platform are broken up into three areas. One is TMNG II, which focuses mostly on internal users and the system capabilities that they need. One is for external users -- the T SDR, the TMNG ID manual, the TMNG OG come out of there. And the third one would be on the Trademark Trial and Appeal Board.

As far as the internal users go, we are focused completely on delivering capabilities for the examination corps. Over the last several months, we have been in a test phase, testing out and making sure that data and content that have been brought over from legacy systems is accurate. We're also testing out the user interface and system capabilities and checking them and repairing things as we discover

issues -- or issues as far as user experience goes and improving the user experience. We call that hardening. We also -- in the hardening process, not only the user experience is improved, we also try to tune the performance and make sure the performance is acceptable for our end users.

Several services or capabilities that we have been focused on are the case content viewer; office actions; the internal search that examiners use; the dockets that they use; and the management of the dockets. The case content viewer is a gadget within TMNG. We expect to separate that out and deploy it as an independent product or sole product on all end users' desktops fairly soon. It also can be integrated and will be integrated with our legacy systems so it becomes a link or an icon and users can go to the new content viewer. And, by the way, the content viewer's capability is that it will bring content not just from Next Generation systems but content that was created previously and is available in our legacy content management system.

The importance of bringing data from legacy and bringing it into our Next Generation

environment is critical. We have to make sure that all the data is brought over, that data is accurate in the Next Generation system. So, the process that brings data from multiple data repositories on legacy is critical for us. We try to automate that process as much as possible, but sometimes repairing data is a manual process because legacy system data is fairly old and sometimes requires significant manual intervention -- not all of it but some of it.

The Trademark Next Generation is, again, as I mentioned earlier, a platform and it's a role-driven, role-based access system. All users will go to one single Website to access services that are provided by TMNG, especially for internal users. The role-based access determines what functions and features are available to that individual and allow them to take specific actions on a case. It's critical that we get that right, and we've been working closely with Trademarks to make sure that we understand everybody's roles and those roles are configured correctly for all within our role-based access control. The beauty of our

current role-based access system is an individual can have multiple roles in it. So, it's not tied to one specific role.

Just like all commercial products, online help is an important aspect. We have an online help project, and we have integrated that with TMNG user interface. The current content is focused only for examining attorneys, but the framework will be available and we'll be adding online help for Madrid, petitions, and even external users eventually. It's fairly powerful. It has a search feature built into it so you can go search for a specific key phrase if you wanted to, or you can navigate through an index or chapters that are set up there and just read how to do things in the Next Generation system.

In addition to the examiner, we're also working on non-examiner capabilities specifically for Madrid. We have developed auto-certification and manual certification capabilities for Madrid, and we also have developed capabilities so that international applications and notices related to that can be

stored in the common content management system for TMNG. That will be the paradigm as we go forward. Everything that we develop will use these common databases, the common content management system. The services that are available to everybody will be reused by other capabilities as well.

Any questions on this? Okay. The external facings, services, or systems -- the ID manual, you have been using it for quite a while in beta mode. We feel very confident with the capabilities and the quality of the product. We removed the beta label. We put the final enhancements in production. We'll continue to enhance this based on the feedback that we receive, but we feel confident at this point and we don't want to call it "beta" anymore.

The TM Electronic Official Gazette has been in production for several years now. Some of the features and capabilities that we have added recently are more for the OG group that is internal to us, specifically the filters and selection rules that are necessary for them to do their work. And the other capabilities for

external users -- we generate PDF files of the OG and PDF files for registration and updated registration certificates. The OG PDF files created through the TMNG process -- the registration certs are created through legacy and we're in the process of replacing that right now. So, reliance on legacy is slowly but steadily diminishing as we go forward.

EFile -- we've completed several features in eFile and we're discussing an alpha deployment very similar to EOG and ID manual. We'll expose the capabilities to you. We'll get your feedback and continuously improve those.

Okay, the other portfolio is Trademark Legacy Systems. Within that, in TEAS -- Trademark Electronic Applications System -- the new ID manual, TMNG ID manual, we integrated that ID manual with TEAS so that there is consistency as far as the user's ID manual goes. It will be the same ID manual in TMNG systems as well as the TEAS system now.

In addition, we have added Google Analytics to TEAS Forms so we can run reports and analytics as far as which forms get used more and,

you know, we'll use those internally for several reasons, like improvement of the forms or just basically reporting purposes.

The legacy content management systems that we have, we have built what we call an abstraction layer. What it does is behind the scenes it goes and retrieves content either from the Next Generation content management system or the legacy content management system. It is transparent to you as the user, whether internal or external, where the content comes from. It's important, because some of our legacy systems will not be able to read content from the Next Generation. And it's important that we have this abstraction layer implemented, especially in the legacy systems, so all content is available to employees.

This is a very common feature. We use this in our TSDR system today, because TSDR brings content from multiple repositories. But you as an end user want to see everything in one place. That abstraction layer helps us to do that.

Any questions on the legacy? Okay, upcoming work: As far as TMNG is concerned, here

is a schedule for our deployment to trademark law offices. Our first rollout is planned for the first law office in April of this year. We'll collect to gather feedback from that law office in the April-June timeframe. During the same timeframe training for the other law offices will happen, and rollout of the remaining law offices is planned from July through August.

The TMNG Madrid capabilities are being developed right now and will be deployed in fiscal year '17. The same thing for TMNG petitions. We're currently defining the capabilities, the requirements for petitions. The development and deployment is planned for fiscal year '17.

TMNG disaster recovery capabilities are planned for deployment this year. We are on target. We have an architecture for our disaster recovery environment. We are, right now, duplicating, replicating our data and content in the disaster recovery site. The next step for us is to deploy all the servers that are necessary and start enforcing disaster recovery paradigms so that if something happens on our data center, we immediately switch over to the disaster

recovery site. That's planned for this fiscal year.

For TMNG external, electronic filing is our main focus. Smart response forms will be our next target, and that will be planned for fiscal year '17.

MR. LOCKHART: Raj, for the public record you might want to just explain a little bit what you mean by smart forms.

MR. DOLAS: Okay. So, smart forms are -- in a nutshell, when communication is sent over to the applicant, such as in a first action, let's say, the specific form paragraphs that are used in the Office Action will be utilized to tailor the response from the applicant. Instead of providing them a generic response form, these smart response forms will be tailored to the form paragraphs used in the Office Action.

MR. LOCKHART: Prepopulated?

MR. DOLAS: Some of the data could be prepopulated, or if there is no data available the form at least will be tailored to the specific input that is required from that one.

MR. LOCKHART: So, as I understand it,

the goal is to streamline the response process and guide the applicants toward the information that you need or the Trademark Office needs to finish processing the application.

MR. DOLAS: Correct, right.

MR. LOCKHART: So, it should be faster and more efficient really for both sides.

MR. DOLAS: Correct. And accurate.

CHAIRMAN WELDON-WILSON: I believe Mei-Lan had a question.

MS. STARK: Thank you very much for that great summary of all the work that's happening.

Just so that I can understand better -- and maybe this isn't my lack of knowledge, being a new TPAC member -- you say that the TMNG is really a platform upon which many different systems with different functionalities will operate, and you talk about the rollout beginning with the first law office in April and then subsequent offices after that, depending on the feedback that you receive on the functionalities. So, is it just the platform itself that is being rolled out to the law office

in April, or are there particular anticipated functions on top of the form that will also go in April?

MR. DOLAS: The examination tool that's called FAST is being rolled out during that time. The platform is already existing. The data store is already existing. Those are all used for TSDR, TMEOG, all the other products and services that we have produced. The platform exists. What we're specifically talking about here to the law offices is that examination tool known as FAST -- the replacement for FAST I -- which is the new FAST, TMNG FAST, which is completely rewritten, Web-based, and modernized and doesn't rely on most of the legacy systems other than that part where we were talking about keeping the TRAM system, that legacy mainframe in synch with the data store that's used by the new system. So, that's specifically what we're talking about. There is that tool.

Now, in that tool, all examiners use that tool and all parts of that tool, which includes search and everything else, to do their job. Okay, Office Actions are in there, the

correspondence, everything else. That tool is all encompassing. But it's really the experience that we're talking about rolling out to examiners -- is the examination tool.

That answer your question?

MS. STARK: Yes.

CHAIRMAN WELDON-WILSON: Thank you.

Jonathan, did you have a follow-up?

MR. HUDIS: First I wanted to say, John and Raj, in the year that I've been on TPAC I have learned an incredible amount of the complexity of the work that you and your team have undertaken to get these systems up and running. So, thanks for continuing your Herculean effort.

I want to drill down and follow-up on Tim's question on these smart forms.

I just want to make sure I understand what's happening, Raj.

So, for example, I get an Office Action. It's got a likelihood of confusion refusal with foreign paragraphs. The smart form -- I bring it up in a TEAS-like environment, and then I put my response to that specific form, that specific set of paragraphs in basically an insert block. I

then go -- for example, if the examiner had ID questions and I wanted to revise the ID of goods and services in response to what the examiner said we had to do, I'd have insert blocks there, and on and on and on. Is that what you're talking about?

MR. DOLAS: Pretty much, yes, yes. Yes, it's going to be that way. It's, you know, whichever form paragraphs are used for Office Actions will be used to populate the response to the -- right.

MR. LOCKHART: Do you have any projection for when you might be able to give us a demonstration of that?

MR. DOLAS: Sometime next fiscal year.

MR. LOCKHART: Okay. (Laughter)
Good enough, good enough.

MR. OWENS: That's when it's scheduled for.

MR. DOLAS: We will definitely conduct alpha and beta testing of the smart response form as well.

MR. HUDIS: Is there anything we can do to help?

MR. OWENS: Well, during the alpha period, like in others, we would request that you use the tool and give us feedback, which you've see with others, like the OG and everything else, that we do take your feedback and incorporate it. Yes.

MR. DOLAS: And as far as legacy is concerned, we are focused on improving or making changes to TEAS for the new rules packages that are scheduled for fiscal year '17. Similar to that, there is some impact on the Trademark Trial and Appeal Board systems, especially ESTAA and TTABs. That is also scheduled for release in fiscal year '17.

CHIEF JUDGE ROGERS: I think we have some enhancements coming out soon this year, so.

MR. DOLAS: There is also a plan enhancement where TTAB is in fiscal year '16.

MR. HUDIS: Thank you.

MR. DOLAS: That is all I have. Any other -- any questions?

CHAIRMAN WELDON-WILSON: Does anyone have any other questions for John or Raj? If not, that is -- thank you so much for your time,

gentlemen.

MR. LOCKHART: I just had a --

CHAIRMAN WELDON-WILSON: Oh, great,
Tim does have a follow-up.

MR. LOCKHART: Just a couple of
comments, really, not so much questions, but I
want to commend you for the rollouts you've done
thus far of TMNG, both external and then the
testing you're going through now with the new
examination tool -- FASTER. There you go. The
FASTER tool. (Laughter)

But obviously this training and
deployment schedule is very ambitious. That's
not a criticism. I'm just noting it's ambitious.
Nothing wrong with having an ambitious schedule.
Obviously, we'd be very interested at the next
TPAC meeting, which is -- I guess you'll be sort
of mid-rollout -- we'd be very interested to hear
how that's going. We hope it goes well, and we
certainly would like to get, you know, an update
on where you are at that time.

And also, although I realize you're
focused on TMNG in this briefing, we have talked
previously about the My USPTO portal, and so at

the next TPAC meeting, if we could get an update on where you are with that -- I realize that's outside TMNG, but it's within the scope of your work, so we would like to get an update on that, too.

MR. OWENS: We'd be more than happy to go over that with that. In fact, by the next TPAC meeting, My USPTO will go from beta to production, and your first exposure to it will be logging into My USPTO to interact with our fee system. So, the first part of that is ready to launch -- it will be ready to launch in I believe the April timeframe-ish time.

MR. LOCKHART: Okay.

MR. OWENS: Thank you, and we do appreciate your time in allowing us to speak today.

CHAIRMAN WELDON-WILSON: Well, thank you for coming. We appreciate it.

Do any other TPAC members have any questions on anything we've covered today? If not, I wanted to tell the members of the public we really appreciate you coming out today in the cold weather or listening on the Web. Does any

member of the public have any questions they would like to ask or any comments to make?

Well, thank you very much for coming. We will post the date of the next TPAC meeting on the Website as usual, and we hope to see all of you here at that time as well. Thank you, and travel safely for those of you leaving. Thank you.

(Whereupon, at 11:55 a.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Mark Mahoney, 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.

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