

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, July 28, 2017

PARTICIPANTS:

TPAC Members:

DEE ANN WELDON-WILSON, Chair

JODY HALLER DRAKE

LISA A. DUNNER

JONATHAN HUDIS

TIMOTHY J. LOCKHART

MEI-LAN STARK

ILENE B. TANNEN

BRIAN J. WINTERFELDT

Also Present:

HOWARD FRIEDMAN, NTEU 245

TAMARA KYLE, POPA

ANTHONY P. SCARDINO

DANA COLARULLI, Director, Office of Governmental
Affairs

AMY COTTON, Senior Counsel, Office of Policy
and International Affairs

MARK COHEN

MARY BONEY DENISON, Commissioner for Trademarks

ROB HARRIS, Program Manager

FRANK MURPHY, Acting Chief Financial Officer

JOSEPH MATAL

PARTICIPANTS (CONT'D):

PAM ISOM

SHARON MARSH

BILL BARBER

HAROLD ROSS

SUSAN RICHEY

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P R O C E E D I N G S

(9:01 a.m.)

CHAIRMAN WELDON-WILSON: I appreciate everybody coming today. I would like to take just a minute to introduce the TPAC members, the ones that are here today, Jody Drake is over here, and she is a partner at Sughrue MionMion. She is also a former trademark attorney at USPTO. She heads up TPAC's International Subcommittee.

Lisa Dunner, who is founder and managing partner at DunDunner Law. She serves on the IT Subcommittee and works with the Regulatory Reform Group here at TPAC.

Jonathan Hudis is a partner at Quarles & Brady, and he is leading our TTAB Subcommittee and our Regulatory Reform Group.

Tim Lockhart is in his second non-secular term, and he is a member of Willcox Savage, and he heads up our IT Subcommittee, and on a personal note, has recently published his first book. We will all have to run to Amazon and purchase that one. I have read it, I enjoyed it.

Mei-lan Stark is serving her first term as Senior Vice President and Chief Counsel of IP for NBC Universal. She heads up our Finance Subcommittee.

Ilene Tannen in her first term is Of Counsel with Jones Day, and serves on our TTAB Subcommittee and is working with the Regulatory Reform Group as well.

Brian Winterfeldt is an IP partner and co-head of the Global Brand Management and Internet Practice at Mayer Brown. He serves on the Finance Committee.

We have Howard Friedman, who is the Union Representative for NTEU 245, and joining us through the Internet is Bill Barber, who is currently co-chair of TPAC, and he stays on top of many of the TTAB projects as part of that role.

We are all delighted to have you here today. Speaking of being delighted, we are thrilled to have Joe Matal here today. He is performing the duties and functions of the USPTO Director, and has agreed to make some opening

remarks for us today.

MR. MATAL: Thank you, Dee Ann. Thank you all for having me here. I'm delighted to participate in this meeting.

You are probably wondering who I am. Let me just introduce myself briefly. I've spent the last five years at PTO in the Solicitor's Office where we defend both the PTAB, the TTAB's decisions in the Court of Appeals for the Federal Circuit.

My first oral argument was actually a trademarks case, Timex, who sought the trademark for intelligent quartz for a watch. I actually lost that one. Sorry about that one, Chief Judge Roberts. (Laughter)

Some of you probably first came across my name in the Matal v. Tam case, where we lost the fight to preserve the bar on disparaging trademarks. Sorry, I guess I haven't been much luck for the trademark system in litigation (Laughter), hopefully, things will turn around. I am exercising this role for an interim period. We

expect that a permanent Director will be nominated sometime in the near future.

There is one issue I wanted to address that has arisen in one of our preliminary discussions with the TPAC, and that is the issue of shared services. About three years ago, the Commerce Department began an initiative to combine administrative services across the 12 different Commerce Bureaus, and PTO made an early decision to agree to participate in the start-up of this shared services center in order to preserve the ability to participate.

We didn't commit to necessarily participating, but at least agreed to pay for the start-up and then would evaluate the services that were available. Early on a decision was made that PTO's financial management needs are so unique and so different from the other Bureaus that was excluded, but information technology and hiring remain part of this initiative and are the main parts of it at this point.

This has been going on for three years

now. This year, the PTO has received some bills for our share of the start-up of this shared services center. They are a little larger than what we had anticipated. Mr. Scardino, our Chief Financial Officer, can go into more of those details.

We have also started taking a hard look at how this would work operationally, whether it would be practical or what kind of day-to-day functioning problems and issues it would raise in order to have our IT and hiring remotely managed to some extent.

Those have proven to be some difficult questions. Obviously, on the hiring side, it's not clear how anyone else could best evaluate candidates to be trademark examining attorneys or patent examiners. On the IT side, as many of you already know, PTO overall has some very acute and very sensitive IT needs.

My top priority while I'm in this interim role is to make sure we get absolutely the best IT services that we can because we need them.

The PTO still struggles under a number of legacy computer systems that are extremely fragile and vulnerable to shutting down, as is our network.

As you know, if our network goes down for a substantial period of time, examining attorneys aren't working, and people can't make their filings.

Trademarks, unfortunately, has the distinction. John Owens can go into more of this when he speaks of having what I believe is the oldest of the legacy IT systems, the data basing system, which I think is our last system that is written in COBOL. John actually has a cartoon outside of his office that has a college student going to class and he says yeah, I'm studying dead languages, Ancient Greek, Latin, and COBOL.

(Laughter) We are phasing out these systems,

currently scheduled to phase them out in 2025, and in that interim, these systems are still what examiners use to do their work. Keeping them up and running and scaled to serve an examining

corps that is far larger than what was ever intended is a huge challenge every day. Again, our top priority at PTO will be to make sure that we maintain that same level of service, and our IT systems continue to be managed as well as possible. Again, we need it.

This whole program in process is currently being evaluated and considered at the Commerce Department. I can't promise or project where things will head one way or the other, but I am confident some workable resolution will be achieved. The Secretary is a businessman and he cares about how things work. He's going to want a system that functions and that he understands to function well.

I'm confident that we will achieve some workable solution that serves the agency's needs. With that, I'll turn it back to Dee Ann.

CHAIRMAN WELDON-WILSON: Thank you very much. We appreciate you taking time out of your very busy schedule to come and meet with us today and for the meetings we have had previously.

Thank you.

Given that, shall we move on to the legislative update. Dana Colarulli, Director of the Office of Governmental Affairs, is going to give us an update and report.

MR. COLARULLI: Good morning, Dee Ann. Good morning, everyone. Happy to give the legislative update. There has been many things happening on Capitol Hill, very few of them related to IP, so the trend has continued.

Let me give you a sense of what Congress has been up to. Just a sense of the calendar for the next couple of months. The Senate announced they will be staying in session, they are up on the Hill right now continuing to debate health care reform. Unclear how long they will stay, but at least they have announced they will be staying for the next couple of weeks. The House is scheduled to leave on schedule, but may come back into session.

For the first time in a number of years, at least a couple of decades, the August schedule

is up in the air. Friends of mine who have been long time staffers on the Hill said you know, for the first time in 20 years, I got non-refundable tickets for my vacation, I guess I won't be using those.

A little bit uncertain in terms of their schedules, but that is essentially the schedule that is playing out right now. I think for the balance of August, the rest of the summer, it will be pretty quiet.

Back in September, as is normal, the Congress will look at moving appropriations bills. The House has done their work at least on our appropriations bill. They reported out a bill early July. The Senate is still looking to report out more activity in September. Unclear what that might look like. It's been many, many years, I think you have all heard me say before, since the Congress passed individual appropriations bills. It's the same situation now, likely to see some type of omnibus as we move forward.

Other issues certainly Congress is

trying to look at. There are some IT aspects to it. NASA renegotiations the Administration announced its negotiation principles. Congress will take some of those up as well. Again, other issues unrelated to IP including tax reform, including reauthorization, and certainly health care.

We thought it would be interesting to show folks kind of what the normal appropriations process is, thanks to our friends at the National Journal, and some graphic. We generally start in the House, that is why we tend to look at the House first, move through the committee, in our case, the Commerce Justice Science Committee.

The relationships we keep with our appropriations staff are very, very important, so that they understand not just our model, but also how we do our projections, how we manage our budget, how we use our fee reserve, what the difference between a fee reserve in statute, to make sure we keep all the fees that come into the agency, and an operating reserve to make sure we

have continued operations.

We spend a lot of time with both the House Appropriations staff and the Senate Appropriations staff between the CFO and my team to try to help them understand those issues.

As the bills move along the process, the Senate considers a parallel bill. The two bills get reconciled at the end. Committee staff are in regular communications, and then it moves onto the White House.

This should happen for each of the bills. Each of the bills should be reported out regularly. Again, that hasn't happened for about two decades.

Issues that we are continuing to keep an eye on are so-called "riders" that address some IP issues. On the trademark side, there has been at least two or three that we have kept an eye on. Certainly, a rider on the Havana Club mark.

The appropriations language seeks to try to address the Administration's -- the previous Administration's changing views on Cuba and the

action on the Havana Club mark.

Unfortunately, the language has failed to actually do anything in the short term, but could have some significant operational impacts on the way it is crafted. There have been a couple of different versions of this language. We have been trying to keep staff educated about what the provision actually does to try to make sure we understand this language.

This same language has been introduced in the early appropriations bills now for a number of years, and has been struck at the very end. Again, we're watching it. We're concerned, but we are hopeful it will be pulled from the appropriations bill at the end.

The appropriations bill also carries language addressing free trade agreements, addressing tobacco, which is somewhat related to IP issues, so again, issues that we have been following.

In addition, my staff has been trying to make sure we are educating congressional staff

about operational issues. Our telework program generally, but in particular the TEP Program, the authority which expires on December 8 for at least about 40 percent of our full-time teleworkers across the agency. A lot of interest in how telework works at PTO.

When I go up to the Hill, they also ask me about workforce management issues, those issues continued to be coupled. We have had a couple of good conversations particularly with House Oversight and Government Reform about extending TEP. We're not sure whether that is going to be possible, but we have been continuing to answer questions and trying to educate staff about what the operational impacts are when the authority expires.

If something does happen, like it would be a short term extension of the current pilot program without any other changes, we are watching and answering questions from staff. Hopeful that could happen.

There has also been interest in

geographic indications, a lot of congressional interest in the last two Congresses on Lisbon, as it was moving through WIPO, and hopefully Congress weighed in with letters raising serious concerns about the USC is not being taken into account as Lisbon was moving through. We will likely get up to the Hill this fall and do another briefing in advance of the General Assemblies on those issues. Amy is going to help us.

In addition, given it is a quiet time for IP, the Judiciary staff have been interested in all the cases that have been going to the Supreme Court. We were up there just recently briefing them on the cases, a lot of the patent cases, some of the TTAB issues in particular are being brought up by the lower courts and the Supreme Court, and certainly TAM as well. Staff are familiar with the terms, familiar with what is happening, and can at least understand as people come in their door and advocate for legislation.

Here are the issues that are in play that affect us. That was well received.

With that, I'll end. I'm happy to talk about other issues. I wanted to keep the slides short, just to get you started. Not much going on in Congress for IP issues, but they certainly are busy up there and they will continue to be at least through part of this August recess.

CHAIRMAN WELDON-WILSON: Thank you very much. Does anyone have any questions for Dana? Jonathan has a question for you.

MR. HUDIS: Dana, we have been hearing that certain folks in the House of Representatives are seeking once again to revived the project of re-codifying the Lanham Act. Is that getting any traction?

MR. COLARULLI: The House folks have reached out to me as well asking about it, but it has been a very soft ask, what about this. I gave them a long history about why this was a bad idea, and encouraged them to talk to many of our stakeholders who I am sure reiterated even louder than I did.

It is an issue that comes up with some

regularity. There is an office on the Hill, the Office of the Law Revision Counsel. Their job is to clean up the statutes, to clarify the statutes. Because of the parallel references in trademarks, they look at us as a particularly interesting target, although at least we have reiterated it would cause a lot more problems than it would solve. There is lots of case law that would be called into question, and at least the agency doesn't support moving forward with codification at this time.

CHAIRMAN WELDON-WILSON: Any other questions or comments? (No response) Dana, thank you for coming today. We appreciate all the information.

MR. COLARULLI: You are very welcome. Have a good weekend.

CHAIRMAN WELDON-WILSON: Moving to our policy and international update. We are pleased to have with us today Mark Cohen, who is Senior Counsel, China. Does that mean we are heading over to that part of the world today?

MR. COHEN: That's all that I do. Thank you very much, Dee Ann. I am here to talk to you about China related work we have been doing in the trademark space.

Let me begin by noting that as you may know, the Office of Policy and International Affairs, which is headed by Shira Perlmutter, has a dedicated China team. I lead that team, and it includes U.S. and Chinese attorneys, and the attaches who are posted in China and their staff.

In fact, we have five Chinese lawyers at the Embassy in Beijing and the consulates, which gives the PTO the largest legal team at the U.S. Mission in China. Three of my colleagues from the China team are right behind me, Conrad Wong, Duncan Wilson, and Cindy Henderson who handles trademarks. Conrad and Duncan are full-time on the team.

Trademark work is more or less focused on four areas, namely trademark prosecution issues, of which there are two, bad faith filings and trade dress, GIs of enforcement. I will be

talking about each of these, but I am mostly going to say a word about the outreach we have been doing to educate U.S. businesses about protecting their IP rights in China.

First, some very quick words about our interactions with our counterparts in China on trademarks. We work with the China Trademark Office, which is a component of the very large ministry, the State Administration for Industry and Commerce, SAIC. We do this bilaterally through the TM5 at WIPO and through trade negotiations.

My focus today is mostly on bilateral engagement. We concluded an MOU with SAIC in 2008 that covers a wide range of topics, including trademarks, unfair competition, GIs, but our work with SAIC in fact predates that MOU.

Interestingly, Madam Wang Binying, who is now the Deputy Director General at WIPO, was an early trainee from SAICD at the USPTO at a program here in the early 1980s. Our relationship goes at least that far back.

I'd just like to mention that last year, an educational program we conducted with SAIC included an outreach seminar with industry on bad faith trademark filings and trade dress. We are always pleased to provide an opportunity for U.S. companies to engage directly with SAIC on these matters. Let me turn to some of them right now.

I'm sure all of you know that bad faith actors exploit weaknesses in China's trademark registration system to register trademarks that are owned by others, and I imagine many of you and many of your clients have been victims of that practice.

When we first began to share our concerns with China on this, they resisted discussing it with us. They insisted that the problem wasn't limited to them. Over time, we have been successful on engaging with China on this, including in bilateral discussions with SAIC through the U.S. Joint Commission on Commerce and Trade, with the Beijing IP Court, which is the Court of Appeals from the Chinese Trademark

Office, and with the China Supreme Court, the Supreme People's Court, which issues guidance to lower courts and with China's legislative bodies.

These engagements have produced some results, and I would like to highlight a few. In 2014, China enacted a new trademark law that included provisions designed to address the problem, such as the requirement that filings be made in good faith and prohibitions against submitting applications in cases where the applicant is aware of prior conflicting uses.

At the 2016 JCCT, China agreed to make further efforts to combat bad faith filings. At the beginning of this year, SAIC issued revised guidelines for trademark examiners which among other things clarify how examiners should apply the bad faith provisions of the new law.

The courts have also shown a greater willingness to adopt innovative solutions to address bad faith filings. For example, in 2015, in the Kung Fu Panda case, the court recognized that DreamWorks' merchandising rights were

violated by a bad faith filing. That is particularly significant for U.S. filers because although U.S. and other non-Chinese companies account for a relatively small percentage of trademark filings submitted to SAIC, they file about half the cases at the court challenging SAIC decisions.

Many of you may have also filed a case involving Michael Jordan's trademark, which also involved a bad faith actor. In that case, the court recognized that foreigners had naming rights which could be the basis for contesting bad faith decisions, bad faith filings. I note that we have had active discussions with Chinese courts on issues involving this case.

Let me just give you a few examples of work we are doing to raise awareness on bad faith filings. We will be co-hosting a seminar with SAIC next month, which will include participation by court officials. We will be hosting officials from the CTMO and PTO for a workshop on trademark appeals, oppositions and cancellations. We plan

to place specific emphasis on bad faith filings, including by addressing the type of evidence needed to establish a bad faith.

SAIC recently established new procedures that govern oral hearings of a Trademark Trial and Appeal Board, and we expect to talk to SAIC about how those can be used to allow parties to challenge bad faith filings.

Another matter that is a cause for worry for rights holders and a focus of ours is China's inadequate protection for trade dress. Companies tell us it's difficult to obtain trademark registration of 3D marks in China, such as product shapes and packaging. In fact, there isn't even a term for "trade dress" in current Chinese law.

Not only is it hard to register these marks, the alternative enforcing protection not via registration but through China's anti-unfair competition law is also difficult.

As you know, China is now amending its anti-unfair competition law for the first time since 1993. We have commented on two public

drafts circulated, including on provisions that will provide improved protection for unregistered trade dress.

In the 2016 JCCT negotiations, China committed to co-hosting an educational program with us on protecting trade dress. We hope to work with China's Ministry of Commerce on this program, and it will involve not only SAIC but other agencies as well because protection of products, designs, shapes and packaging touches not only on trademarks but also on design patents and copyright protection.

I also want to talk briefly about GI protection. By way of background, let me note that as you may know, China protects GIs through the trademark system, which is of course established by law. It also protects GIs through a competing Sui Generis System set up through rules promulgated by the general Administration of Quality Supervision, Inspection, and Quarantine, or AQSIQ, which is a standard setting agency, and the Ministry of Agriculture.

That is particularly significant right now because China recently entered into a trade agreement with the EU under which it accepted a number of GIs for registration under the AQSIQ System, that is the Sui Generis System. Under this agreement, AQSIQ published 79 new GI applications for opposition and the period to oppose them, soon, on August 3.

This agreement may impact trademark owners because it is possible the GIs might be registered without regard to prior trademark rights. We have been working with industry groups to engage with AQSIQ and to learn more about the process for opposition. We also continue to engage with China overall on the benefits of protecting GIs through the trademark system.

Now, let me turn for a few minutes to our efforts on enforcement. As I think everyone knows, there continues to be widespread counterfeiting in China, and we have engaged with China through our trade dialogues, including the JCCT, strategic and economic dialogue, and others,

and by working with law enforcement colleagues in China and the U.S., and through direct discussions and training.

Two areas of focus in particular this year are on online counterfeiting and counterfeiting in the automotive sector. As consumers worldwide increasingly buy goods and services over the Internet, enforcement of IP online has become a top priority in the U.S./China relations.

In 2015, one of the outcomes of the JCCT discussions was to establish a taskforce with China to study this issue. Internally, we have been working to develop better empirical tools to deepen our understanding of the problem and to identify trends. We do this through our China Resource Center which collects and analyzes empirical data and by engaging with database researchers and providers who collect information on enforcement trends, e-commerce trends, and other matters.

We are also thinking about the big data

that large e-commerce platforms, such as Ali Baba and Amazon have, and how that data can be shared with rights owners to assist with their brand protection efforts. Thus far, Ali Baba has been unwilling to share its data, but we hope that over time we will be able to work with them to evaluate such issues as counterfeiting hot spots, how to target our efficacy, and how to better advise our companies.

We are also helping SMEs on getting more effective protection through notice and take down procedures with online platforms in China. I will have more to say about our work with SMEs in a moment.

Turning to counterfeiting of automotive products, our China team participates in the Automotive Anti-Counterfeiting Council, A2C2, a joint initiative between the U.S. Government and automotive OEMs, which is devoted to stopping the manufacture and sale of counterfeit auto parts. We offer expertise on U.S. trademark law, particularly as it relates to auto parts and

related services.

U.S. law enforcement has identified the interdiction and seizure of counterfeit auto parts as an enforcement priority, and counterfeit parts are estimated to cause a \$45 billion loss to the parts industry.

Some of the most dangerous counterfeits include the explosive charge that deploys in an airbag. Counterfeit airbags literally can explode in the victim's face during an accident, spraying plastic and metal shards. These counterfeits often originate in Southern China.

I want to tell you a bit about our efforts to help one of the groups that is really impacted by China's IP problems, namely U.S. small and medium-sized enterprises. We conduct educational programs including ones we call "China IP Road Shows," to help our SMEs understand the importance of obtaining patents and registering trademarks and obtaining copyrights in China.

We invite speakers from both the U.S. and Chinese companies, and the topics we cover

range from the basics of IP filing strategies to more complex matters such as antitrust, the impact of industrial policy, and how to license your IP rights.

Speakers at our program include lawyers, academics, and government officials, and attendees have included members of Congress and mayors.

A side benefit, by the way, is the programs often afford CLE credit.

Our next IP road show will be in D.C. in early September, and we certainly welcome the participation of the TPAC at those events.

It has been a pleasure talking to you today. Before I conclude, I wanted to note that the members of our team, both the ones who are here, the ones based at PTO, and the IP attachés, are eager to hear from you about what sorts of problems you and your clients might be facing in China to ensure we are well aligned. Thank you.

CHAIRMAN WELDON-WILSON: Thank you. We appreciate you taking us on our little tour of China today. It was very interesting, and there

are a lot of topics, obviously. We specifically appreciate you mentioning that we are welcome to attend the road show in early September. Thank you.

Does anyone have any questions?

Jonathan has a question.

MR. HUDIS: Mark, first I want to say that was an excellent presentation. Bad faith filings in China for those of us in the trademark business is nothing new, but what we are seeing now is some of those practices coming from China to our shores.

Something that your office should be aware of, because of local Chinese government funding, there has been a spike in trademark applications coming from China to the United States. What is alarming us is, as you well know, in order to obtain a registration in the United States, you have to show proof of use.

We have seen a spike of Chinese filers basically making up specimens of use and filing them as part of their applications in the PTO.

This is going to cause a problem eventually. Right now, this practice is basically going on under the table, but eventually this is going to give you inflated filing records and an anticipated inflow of maintenance fees ultimately for registrations that are not going to stand the test of time.

That is something we hope your office is going to look into and educate the SAIC, that there is a problem with fraudulent specimens and applications coming from China to the United States.

MR. COHEN: Thank you very much. We have been working very closely with Commissioner Denison's office on this issue. Actually, we have a fair amount of related experience involving subsidization of Chinese patents, both domestically and overseas, and how to analyze that trend.

We are well aware of the problem with the specimens, and also we have been isolating regions where there seems to be subsidy programs,

how pervasive they are and if they're spreading.

Our experience with patent subsidies is they began in Shanghai and they rapidly spread throughout the country, and they spread beyond monetary subsidies to include things like getting out of jail, getting a reduced sentence, getting a residency, getting tenure, getting your dissertation approved, all these externalities that encouraged filings that often were of limited duration.

One of the things we struggle with here is the growth of e-commerce and how that is affecting legitimate trademark applications, and whether some of those may also be short lived. We have a bit of a challenge in teasing out what may be distorted through subsidies, what may be a market response, what might be small actors who have a limited attention span.

One of the problems with the bad faith filings in China originally, I can recall, the Chinese Trademark Office indicated to us that the average life of a Chinese company was only two to

three years. If the trademark process was delayed two to three years before issuance, the company might no longer be in existence.

You have very opportunistic commercial behavior which also affects the types of trademarks that are being filed. We have started to engage with local governments on this and collect the data. We hope to continue doing that.

MR. HUDIS: Mark, one thing I forgot to say in my remarks to you that my colleague, Ilene Tannen, just reminded me, it also affects the integrity of the Register in the United States, which Commissioner Denison has tried mightily with her staff and the PTO to try to correct. This is just going to make the problem worse.

MR. COHEN: We will continue to work on it. We are very much aware. The attachés are speaking about it, and we are working with the Commissioner's office, and we will be continuing to do that.

MS. DENISON: I just wanted to mention to Jonathan that we are working very closely with

the whole China team, and they have been tremendously helpful. We are working on a strategy for this. Thank you.

MR. COHEN: A very minor side note in terms of subsidies. In patents, what we have seen as the impact of subsidies is typically patents are filed in the last quarter of the year. In China, about 60 percent of the patents filed domestically are filed from September to December.

We are trying to bring this experience of subsidy based distortions, which is typical because a fiscal year in China is a calendar year, to the trademark environment to see if we can better isolate the patents and also look at the localities to see if they correspond to places that have offered subsidies amongst other practices.

CHAIRMAN WELDON-WILSON: Lisa Dunner also has a question for you.

MS. DUNNER: Mark, thank you for your presentation. Just a quick question about IP attachés. I have heard that the PTO has made

efforts or lobbied in Congress to increase the status of the attachés in U.S. embassies, so I was wondering if you are making any traction with that.

MR. COHEN: Joe Matal may be the best person to address that. The attaché rank issue has been of concern for some time. I was the first attaché posted in China. Conrad Wong was posted in Guangzhou. Since PTO doesn't have Foreign Service authority, we have to be detailed to other agencies, mostly the International Trade Administration. They don't have as much an incentive to give us a high rank as we might. Because of that, it can affect engagement with counterpart Chinese officials, particularly if they don't know us, will look at the diplomatic list and say first secretary, second secretary, et cetera, minister or counselor.

Elevating it is extremely important. We have been having discussions for some time with main Commerce, with the State Department and others. I think the current indications is the

Administration is supportive, but we certainly look forward to the support of industry in that regard. I think your voice carries the greatest weight.

MR. COLARULLI: If I could add, Mark is right. This has been both a congressional effort and kind of inside the Administration effort. Joe Matal has reached out to State recently to talk about the issue. We are glad that this week there has been very helpful language in our House Appropriations bill, saying this is something we should consider and continue working on. I understand there is parallel language in our Senate Appropriations bill as well.

I think it comes down to how well we can figure out something with State. As Mark said, we have been talking about this for some time.

The U.S. Chamber has been very, very supportive here, many other stakeholders have as well. We are both trying to talk to our stakeholders and Congress about increasing the rank here.

The first piece of legislation that was ever introduced in 2006 actually would have increased the rank, and we have been talking about it since then, so it would be great to make some progress here.

MS. DUNNER: Great. I wonder if there is anything that the associations can do to help, maybe we can talk off line. Our legislative consultant is here. We can talk about that. Thank you.

CHAIRMAN WELDON-WILSON: Any other questions? (No response) If not, thank you very much for coming today. We really appreciate your time.

MR. COHEN: Thank you.

CHAIRMAN WELDON-WILSON: We will next turn to Trademark Operations. Mary Boney Denison is Commissioner for Trademarks and has agreed to give a report today. Thank you.

MS. DENISON: Thank you so much, Dee Ann. Always happy to be back with TPAC. As Dana mentioned, we are funded through September 30,

2017. We really can't predict how fiscal year 2018 is going to go, but I guess we will just have to watch that unfold.

In the past, of course, we have been allowed to continue to operate if there was a shutdown due to our operating reserve, but we do have to get permission to do that. Hopefully that will not be a problem.

Let me talk about filings and some other exciting things happening in Trademarks. New application filings continue to pour in. We are projecting 568,000 fee paid classes this fiscal year. It is an increase of 7.1 percent over the previous fiscal year. As of June 30, we had received 435,023 classes. We are on track to have our highest filing year ever.

As of June 30 of the fiscal year, the first action pendency was at 2.5 months due to the hard work of our examining attorneys. Of course, this is within our 2.5 to 3.5 month target range. Disposal pendency is also doing quite well, well under our target.

Also due to the great work of our examining attorneys, we are meeting all of our quality goals. First action and final action compliance, looking at whether we got it right, the exceptional office action continues to go up year after year. We are over 45 percent now. It measures not just did we get it right but the writing, the evidence, and the search. Again, our examining attorneys are doing very well.

Everyone who knows me knows that e-government is one of my pet projects. Originally, our goal was to have all applications submitted electronically. We are at 99.9 percent. We are pretty much there. After a while, we shifted to making the goal be going through the entire registration process fully electronically. We are hoping to go mandatory electronic for everything next fiscal year. In other words, at the beginning of fiscal year 2019, which would be October of calendar year 2018.

This chart shows you how many applications are going through the process fully

electronically. You can see back in 2015 we were at 81 percent, and as of the end of June, we were up to 86.4 percent.

We raised paper fees in January, but it will take about a year for things to work their way through the system when we started charging people. I expect this to continue to rise.

This is a slide that shows the different types of application. As you can see, paper is way down there at the bottom in blue. We are hoping to, as I said, take it off the charts, but right now most people are either filing TEAS Plus, which is the green line, or TEAS RF, which is the line at the top. We are delighted people have gravitated to those.

Since we implemented the change, the increase of paper applications to \$600 and the charges for filing paper for anything, we have seen a fairly significant decline in the number of paper applications coming in. We had one week this summer, for the first time ever, where we got no paper applications. Very excited about that.

The next week, we had three, kind of disappointing.

We are making progress. Some people are just wedded to paper. I have been calling them, trying to find out why. I have gotten a variety of answers. We are trying to continue to move the dial before we make it mandatory.

In terms of staffing, we have 838 employees in Trademarks right now, and 555 examining attorneys. Of those, 77%, (number missing?)

percent are teleworking full-time. We hired for the fiscal year before January 20. Next year, we are expecting to be able to hire. We are likely to be advertising in September or October, and are thinking that we will be hiring about 50 examining attorneys for next year. We do not make that the final determination on the number until closer to the actual hire date.

When we bring people in, in the past, we split up the new hires to fill in slots in offices that were already in existence. Now, in the last

couple of years we have been trying some new things. We have some training offices. As you can see from the slide, there are five training offices that have been created. We also have some virtual offices. A virtual office is one in which all the examining attorneys and the manager will be full-time working at home.

These are some different management strategies that we are trying. These are still in pilot mode. We are continuing to try out new ways to see what the best way is to train and manage.

TEAPP, as people know, the Telework Enhancement Act of 2010 allowed employees to waive the right to travel expenses for a reasonable number of mandatory trips to the USPTO. You could move away at your own choice, not that we sent you to California, but because you wanted to move to California.

This is what Dana mentioned is set to expire on December 8. Dana and his team are working with Congress on this. It has been a very successful program for us. As the slide shows, we

have 114 employees in 30 states.

Bill Barber, who is a member of TPAC but is unable to be with us today, has sent in a question on TEAPP via the Internet. He asked if it will be a problem for the USPTO if the TEAPP program is not extended.

Our plan is not to bring people back full time to headquarters if TEAPP expires. Those who are already on the program will maintain their duty station where they currently live, as per the original TEAPP agreement with our unions, but the impact would be we would have to pay travel expenses to bring those people back if TEAPP expires. We don't bring them back very often. We would have to pay those travel expenses. We are working through the other details at this point.

I have mentioned in the past that we are interested in improving the customer experience. I am very interested in this as a former customer of the USPTO. We worked with Deloitte, as you may recall, and they gave us a number of recommendations, improving the website, making

searching more understandable, making ID selection easier, simplifying the filing process.

We hired a chief customer experience administrator, and we hired two plain language writers. A few examples of what they have been doing include the newly revised application filing receipt. Some other examples on improving the customer experience include a new page on design search codes to clarify that process. We have added the TBMP, Trademark Board Manual Procedure, to the quick link section in Trademarks. It is right there by the TMEP now. People were very interested in that. We have also added a new "after you file" page, so users will know what to expect after their application goes through.

In addition, as people know, we have a procedure in place to look at USPTO regulations and see if there are some that are no longer needed. Deputy Commissioner Marsh has been our representative on the USPTO team on this. We are working with the Department of Commerce. Nick Oettinger, who is Senior Counsel for Regulatory

and Legislative Affairs in our General Counsel's Office is leading the effort.

Stay tuned. We do not have any definitive answers on that yet, but you should be hearing about that in the next few months.

If people would like to send us suggestions for changes to our regulations, the e-mail is Regulatoryreformgroup@uspto.gov. We would love to hear your suggestions.

We are also working on an overall strategic plan for the customer experience, and hopefully by the time of our next TPAC meeting, we will have that to show to you.

I wanted to mention a few improvements to TSDR. We have a maintenance tab. There is a slide up here showing you where it is. If your registration is due for maintenance, it will pop up. Here is an example of what it would look like. It will show you the earliest date that the Section 8 can be filed, the latest date, without a fee, and the latest date and the grace period when you would pay an additional fee.

In addition, we have made some improvements this month. One thing that we think will be helpful to people is if the payment system goes down, we will have an alert that will tell you it is down. We use a system that is outside of our control, so we think it will be helpful to people when it goes down to know that payment cannot be made at that time.

We also simplified this-- let me show you, the "Save Form" instead of "Download Portable Data." That is another customer experience thing that is helpful. We have enhanced the ability to update attorney and domestic representative addresses.

I also wanted to mention My.USPTO.gov. We have since the last meeting merged the docket to track both applications and registrations in one collection or group. We have increased the size so you can track 1,000 applications in one collection. We are really excited about this.

We are also now e-mailing notifications from the Trademark Official Gazette, if you sign

up for that. We e-mail you and alert you every Tuesday that the Official Gazette is out. The e-mail does not specify whether you have new results, but if you log in and if you have a save search, the new results will pop up for you.

We are very interested in getting user feedback. I encourage anyone here or listening to please sign up for My.USPTO.gov, and please provide us with feedback and suggestions on things you would like to see as part of that.

It is pretty easy to sign up. The slide shows you what the screen looks like. Once you set up an account, you can use this as your one stop shopping for the office.

On there, circled on the right of the slide, is the place where you would send us feedback. Please give us some feedback so we can make sure we get this right for our users.

Also wanted to mention GitHub. I just wanted to remind people that you can now get a mobile application that will give you a notification any time status of a trademark

application changes. We again want feedback on this as well.

With regard to initiatives and news, everyone knows about the Tam decision. Joe mentioned it earlier. We sent out guidance in June. We also have another case pending at Federal Circuit. The Tam case was on disparaging marks. The Brunetti case is on immoral and scandalous marks.

The Federal Circuit asked for additional briefing, and that is underway. There is an oral argument scheduled for August 29, I believe. We will wait to see how that goes. We would expect there would be a fairly quick turnaround after the oral argument from the Federal Circuit. Of course, we don't really know when they will come out with a decision on that.

In the meantime, we are going to be working on our cases that are disparaging, and we will be continuing to hold on cases that are in the immoral or scandalous arena.

As you know, two years ago we started

post- registration amendments to IDs caused by the technology evolution. We got a number of requests from users expressing concerns about being unable to maintain their registrations where the technology for the goods or services had changed.

We held a roundtable back in 2014, and then we started with a specific proposal as to a procedure with petitions supporting a rule waiver. We are continuing with this. In the last two years, we have had 131 petitions filed.

We actually thought given the magnitude of interest we had from users that there would have been quite a few more than that. We continue to urge people to look at their portfolios and see if there are things in there where this would be appropriate to use.

MR. HUDIS: Commissioner Denison, what is the difference between a petition being dismissed and a petition being denied?

MS. DENISON: The two denials were due to the failure of the petitioner to respond to a day letter where the filing was

incomplete, and did not meet the requirements. The dismissals, I think they are largely because -- somebody out there can correct me if I'm wrong -- I think they were largely because they didn't need to do it. Some people filed and they actually could -- Sharon is shaking her head yes, that's correct. Didn't meet the requirements or sometimes they didn't need to file the petition.

We also have a new rule that came into effect on July 8 on the revival, reinstatement, and cancellation of expired petitions. We already have that going.

We have posted for some time the exam guide on merely informational matters, and we put it up and we got comments. We have been considering those, and we are in the process of finalizing the exam guide, which should be coming out on Monday, I believe, July 31. Responses to the comments received will also be posted on July

at the issuance. Proof of use initiative. I feel like

we have been talking about this forever.

As you know, we did a random audit pilot. Unfortunately, what we found in post- registration filings, in these 500 cases we looked at, more than half the time the owner could not verify the actual use, even though they had recently sworn everything in their registrations was in use.

That left us with a situation where we had to figure out what to do. We had a lot of meetings with groups and decided on increasing the readability of the declaration to make sure people actually read it, continuing the random audits, and considering expungement proceedings.

We have accomplished part one. On the slide you can see on the left our former declaration format, and on the right, the revisions we have made. The language hasn't really changed, but the way it is presented has changed. Our hope is that applicants will pay more attention to the declaration language by putting in these check boxes.

We did get feedback from users once we posted the new format, and we have made further

changes in response to user feedback.

Part two, the random audits, we have put into effect with the new rule as of March. However, we have not actually started the audits. The slide is not correct. I apologize for that. What we will be doing is randomly selecting maintenance filing documents, and we will be asking for two proofs of use per class.

The slide would be accurate only if you fail to produce those two, would you be asked to produce proof of use for all the goods. We will be meeting with groups very soon, expect to hear from us, and we would hope to get all the details ironed out and to roll out in the fall.

The third part is expedited cancellation proceedings. There was a request for comments that went out in May. The comments are due in mid-August. I'm not going to really talk about this very much because Chief Judge Rogers is here, and I'm sure he is going to address this in his comments.

I will say one thing, which is there

were four options that we considered initially, and we are only going forward right now with the two that don't require statutory changes since that is a much heavier lift. All four options are still under consideration, we have not eliminated any of the options, but we are just focusing on the two that don't require statutory changes.

Earlier this week, we had a very successful joint program with TPAC on fraudulent solicitations. We are aware our users are being inundated with fraudulent solicitations. They come in a variety of formats. Some are asking people to send in money to register their trademark in a useless database.

Some are asking people send in money to record their trademark with Customs and Border Protection. Those even go to people who have service marks, and of course, Customs and Border Protection deals with goods and recording with Customs and Border Protection a service mark doesn't really help you because they can't stop services coming in at the border unlike tires or

some physical good which could be seized.

There are a variety of ways in which these things are manifesting themselves. Dee Ann was the moderator for the section with public speakers, so we had a variety of viewpoints brought in. We had INTA speak, and we also had a representative from AIPLA speak. We also had a panel of government people.

We had someone from our Solicitor's Office speak, as well as the Federal Trade Commission, Customs and Border Protection, Department of Justice, U.S. Postal Inspection Service, and the Small Business Administration.

I think everyone who was able to participate or be present learned a lot about the process, and we are very excited about this event, and the raising of the level of awareness for the public, as well as raising the awareness of the other government agencies.

The Department of Justice and the Postal Inspection Service were able to talk about a recent case. We actually triggered the case.

Laura HamilHammel, who used to be in the Office of Policy and International Affairs, found out about an international mass marketing fraud group, went there and met some of the postal inspectors, and they agreed to take on this first criminal case.

Laura's work was very key to getting this kicked off. We are delighted they went through this long process and actually got five convictions. Two people have been sentenced and three more will be sentenced later in August.

We are very grateful to TPAC for co-hosting this important event with us. Thank you, Dee Ann, and everyone at TPAC. Particularly, Dee Ann and Jodie, for all your efforts on this.

We will be following up. We had a follow up meeting yesterday on this in Trademarks. We are working on a blog that hopefully will go out soon, and we have a lot of other follow up items we will be doing as a result of this.

We have a new page up on this, new non-USPTO solicitations web page. We have a video on it. We also put it in our filing receipt. We

put it in the e-mail that comes with office actions. We put it in an orange sheet that comes with the registrations. It is also in our basic facts booklet.

We are strongly encouraging anyone who gets one of these, each time you get one, to report it to the Federal Trade Commission. The decisions on who to pursue, either at the FTC or at the Department of Justice, are based on sheer volume, in large part. It's very important for people to continue to report to the FTC.

We will be changing our web page to put up that information. It is pretty easy to file a complaint with the Federal Trade Commission. We also learned from law enforcement at the roundtable that it is very important to save the envelope because it shows it was in the mail, and it is also important to save the back and front of your check or print it out and submit that to us.

CHAIRMAN WELDON-WILSON: Commissioner Denison, before you complete your presentation, Jonathan Hudis has a question on this topic.

MR. HUDIS: Just a few things I want to put on the public record, Commissioner Denison. The slide you had on the examining corps, I have been practicing in the trademark area for 27 of my 30 years of practicing law. To my memory, this is the largest examining corps I think we have ever seen with the highest application rate -- and I have never in my entire career seen the period from initial filing to first action be at 2.5 months. That is absolutely astounding.

The efforts that your office and your colleagues are making to improve the customer experience and work on fraudulent practices before the office and with the public is to be lauded, and finally, TPAC commits to working with the Commissioner's office on how trademark audits will be conducted in practice to protect the integrity of the trademark register, so we want to thank you.

MS. DENISON: Thank you, Jonathan, appreciate that. Moving on to international, we are a part of the

TM5, which is the USPTO, the SAIC from China, the EUIPO from Europe, the JPO from Japan, and KIPO the Korean IP Office. We meet twice a year. We have a project on bad faith filings. As you can see from the slide, we have had a number of events. We are continuing to hold events.

As Mark Cohen mentioned, we are not just using TM5 for bad faith events, we are also having a bilateral event coming up on bad faith with China.

I wanted to continue to push promote the common status descriptors and update people on this. If you go to TSDR, as you can see on the left slide, it has these icons now. We are so happy that the other groups are adopting them as well. The EUIPO is now using them. The JPO is using them. The Chinese have also adopted them.

The only one of the TM5 members that has not done it yet is the Koreans, and they are working on it, and we are expecting it to be up on their web site by the end of the calendar year. We think our users will find these symbols to be

very useful, because even if you don't understand all of the local language, you will be able to see the status that your application or registration is in. It is pretty simple. Green means it's alive. Red means it's dead. If there is a ribbon, it's a registration.

We are delighted that we have been able to come up with these symbols and have them adopted throughout the TM5.

Regarding outreach, we continue to make a significant push on outreach. Our Basic Facts video, which is our 45 minute video, is aimed at people who are launching businesses and has over 725,000 views.

We are really delighted that we are able to reach such an expanded group through the video. We continue to travel around the U.S. and do in person presentations, but just having the video up really expands our ability to reach people.

That is all I have, Dee Ann. Thank you for having me.

CHAIRMAN WELDON-WILSON: We appreciate

you coming and making your comments, and applaud all the progress that is being made. Are there any other questions for Commissioner Denison? (No response) Thank you very much. We appreciate it.

Given that, I think we will move on to Tony Scardino, who is the Acting Deputy Under Secretary of Commerce for Intellectual Property and the USPTO Deputy Director. If you have your microphones on, you may want to turn them off.

MR. SCARDINO: Good morning and thank you. It is a pleasure to be back here presenting before TPAC. It has been a couple of quarters that I have not been here. A lot has happened, took on a few new duties.

We go through three budget or fiscal years. We are usually living in one, waiting for Congress to act on the second, and planning for the third. We are three-quarters the way through fiscal 2017, almost 10 months through.

Application filings have been great the last two quarters, it was a great spring and summer. Income has been a little bit less than we

had planned, but still very strong. Eight percent over last year at this time. We projected a little more than 10 percent. It's still very, very strong. Like I said, the applications are coming in at a great rate.

Where we predict we will end at the end of the year. These are numbers as of the President's budget, which was submitted on May 23. We estimate we are going to add a little bit of money to the operating reserve, about \$4 million, which means we will spend a little less than we collect this year.

2018, very difficult to project what is going to happen in the Federal budget process, or at least the Federal appropriations process. Fiscal year ends September 30. We could get an enacted appropriation, we could have a continuing resolution, we could even have a government shutdown. We have all of them in the last five years. I certainly can't predict what is going to happen.

We have had action on our 2018 budget.

It wasn't submitted until May 23, and Secretary Ross actually testified on May 25 and June 8 before the House and Senate Appropriations Committees on behalf of USPTO and the other 11 bureaus. There were no direct questions concerning USPTO.

We have had a markup, and the request for fiscal 2018 was \$3.586 billion, and the markup came in at \$3.5 billion. It was \$86 million less than we requested or the President requested on our behalf.

We believe the reason why that was is the fee rule, that I will go through in a few minutes, has been delayed a bit.

2019, we are in the process of planning and putting together a budget. It is due the second Monday in September to the Office of Management and Budget. TPAC will receive a summary of this information to review before it goes officially to OMB.

As you will recall in years past, what happens is at the Office of Management and Budget

they review it all fall, eventually it becomes part of the President's budget that is submitted the first Monday in February, so things do change throughout the fall, but that would be the first cut for 2019 for the Administration to consider.

The fee review, few reviews take a while. We started our second last fee review, not our most recent, our second last fee review in 2015. It takes quite a while to review all fees, consider adding, deleting, subtracting, reducing, increasing fees. What happens is no new rules are usually promulgated or approved in the last four to six months of an Administration, and similarly, the first four to six months of an Administration. We have been on hold a little bit. We have had some traction.

The Commerce Department has recently submitted our fee package to the Office of Management and Budget. They have up to 90 days to review. It will go to the Federal Register. We had initially planned for September 1 release of new fees on the patent side, that is not going to

happen by September 1. Anyone's guess. We are tentatively looking at winter.

When we got our mark from Congress on 2018, they took that into account, we believe, so that is why we had the \$86 million reduction in the President's budget request versus what at least right now based on their mark, we would get \$3.5 billion for us to collect and spend fees in 2018.

If we did collect more than that, all the surplus fees would go into the Patent and Trademark Fee Reserve Fund.

The last thing about our fee setting authority is it still expires, still scheduled to expire on September 16, 2018. We are almost six years into a seven year sunset provision. We are hopeful that at some point in time we will get that extended.

Now, questions and comments.

MS. STARK: Hi, Tony. First, I would say we really appreciate your stewardship in what is clearly an unpredictable and challenging budget

season. They are always a bit challenging with the unpredictability. I am sure it must keep you up at night.

I wanted to go back to the reserves points. You had a slide up that showed we are anticipating that our reserves will climb to \$111 million, which as we discussed in the past is about a four month operating expenses reserve. We know you and the team are constantly looking at that to evaluate some fiscal appropriateness and soundness perspectives, whether that is sufficient for the office.

As you know, TPAC has often at times in the past recommended a six month operating reserve. I don't know that it is about TPAC being committed to the idea there is a particular number of months that the reserve should comprise, but understanding sort of the rationale to have that reserve.

The only thing we would ask, we know you are in the process now of evaluating it, we do think there are some sort of new risk factors that

are appearing on the horizon. The first is the unpredictability of the budget that we are going through now with the current Administration, and we also think continued TMNG investments and the progress that is being made but the additional work that needs to happen, we would love to see that factored into that.

The domestic and global economies, as we know, trademarks can have greater fluctuation depending on the state of the economy than the patent side of the practice.

The last thing I would say is as we heard in the operations report from the Commissioner, the size of the office has grown quite a bit, that has helped us with the quality of the examination. We also believe supporting that size of operation warrants consideration as you go through this financial risk analysis on the reserves. We would appreciate you just taking into consideration some of those factors.

MR. SCARDINO: Thank you for your thoughts. We are certainly going to take all of

those into account and more. We have been working very closely with Mary's team. In fact, Mary and I are meeting next Tuesday on it. I think we are very close on reaching an agreement to come to something that we hope that the committee would be happy with.

CHAIRMAN WELDON-WILSON: Any other questions for Tony? Brian?

MR. WINTERFELDT: I am also on the Budget Committee with Mei-Lan. We really appreciate the work you are doing and working with Commissioner Denison to consider what the right reserve is, and I also wanted to add the concern brought up earlier by the Acting head of USPTO on shared services, and I am sure that is something you are already taking into consideration on our reserve budget, and we really appreciate it.

MR. SCARDINO: There is rarely a day that I'm not doing something along the lines of shared services, trust me.

(Laughter)

CHAIRMAN WELDON-WILSON: Thank you, Mr.

Winterfeldt. Are there any other questions?

(No response) Thank you for coming today, Tony.

MR. SCARDINO: Thank you for having me.

CHAIRMAN WELDON-WILSON: We appreciate you giving us that update on where we are. We are now scheduled for a 10 minute break. Let's keep it at 10 minutes, that way we can stay on schedule and honor everyone's commitments for later today. Thank you.

(Brief recess)

CHAIRMAN WELDON-WILSON: I see everyone has returned on time. We are very eager to hear Judge Rogers' update on the TTAB. We really appreciate that you are here today, and we hope that we are able to add something to the proceedings. Thank you, Judge Rogers.

JUDGE ROGERS: Thank you, Dee Ann. It is always a pleasure to be here. Let's start as we usually do with some of the performance measures, and we will mix in some other subjects along the way, and after we get through the

slides.

The first slide, basically we are where we need to be with staffing, as we will see on some later slides. Inventory control, well in hand. You will see on this slide that our filing levels have increased, which is no surprise, as the trademark application filing levels increase, we get more appeals, we get more oppositions, we get more petitions to cancel registrations that have been cited against some of those applications.

The only thing that has dropped this year a little bit is extensions of time to oppose. I think we discussed that a little bit at the last meeting, about whether it might be attributable to the imposition of fees for extensions of time to oppose. We don't think so. We think this is just a periodic aberration in this one class of filings, and we see this from time to time.

A couple of years back we saw a drop in oppositions when other things were increasing, but then the next year, we had an increase in

oppositions. These things happen from time to time.

We have looked at quite a few extensions and looked at some of the data in our system. Unfortunately, it is too soon to tell after the deployment of the new fees for the extensions, to figure out whether the fees have resulted in a change in practice and the way people pursue extensions. In other words, whether they have switched from an initial 90 to a 30 followed by a 60 if they need it, or something like that.

We are continuing to look into it, so hopefully by the next meeting or perhaps the meeting after that, maybe when we have a year's worth of data, we will have more information on it.

On the next slide, we are basically producing final decisions and contested motion decisions, although both of the numbers there are down some from last year, they are not concerning to me because basically the staff is working to the inventory, to keep the inventory under

control.

We are basically doing the work we need to do to keep current, and the slight additional time that we have, staff time for judges and attorneys, can be spent on outreach and other events. Of course, this year, we also had people working on two revisions of the TBMP, one in January to coincide with the deployment of the amended rules, and then the traditional June deployment of an amended TBMP.

Those kinds of things take staff time, and we could afford to use that time on those projects and on outreach. Production dropped a little bit because we knew the inventory was still under control.

As you can see on the bottom of this slide, the calls answered and the service requests that are handled by our information specialists are up pretty significantly this year, possibly due to the amended rules, the new fees, that kind of thing, but they are doing a good job and their quality measure has increased, and we have paid a

lot of attention to the interaction they have with the public and stakeholders, to make sure they are providing good solid information.

The next slide covers the contested motions that the interlocutory attorneys handle. Inventory control is better than average. The only blip on the radar was at the end of the third quarter when we took our snapshot, we discovered one case that had been pending with contested motions for a little over 20 weeks. Our goal is not to have anything over 12 weeks when we take that snapshot.

As I have said before and I will say again now, I would rather have this goal and sometimes not meet it than not to have it because it keeps us focused on at least a quarterly basis kind of searching our electronic case file cues and making sure if there is something that was put in the wrong cue for some reason or slipped through the cracks, we find it and we get it taken care of right away.

That case was 21.1 weeks old when we

took the snapshot. It no longer has a contested motion that has been pending, so we have taken care of that.

In terms of the pendency motion on finals, pure coincidence. You might have noticed this. 7.7 weeks pendency on contested motions, year to date, 7.7 weeks pendency on final decisions. Just pure coincidence, but sometimes you see those things in the numbers. Again, that is better than the target pendency measure and the inventory control is better than target.

Right where we need to be in terms of the work being done by the paralegals, the attorneys, and the judges. They are all doing a great job.

The last of these slides that I want to cover is our traditional end to end pendency commencement to completion pendency. Pretty much where we expect to be. As you may recall from previous meetings, we have been reporting quite regularly that each of these end to end measures has been dropping, dropping for a number of years

as we stay on top of the cases.

We do have a slight increase in trial cases this year. By the end of this quarter it could be back down to flat or a reduction, it just depends on the cases being worked off in particular quarters.

I think I have also said in the past that at some point, we won't be able to squeeze out much more in terms of reduction of trial cases and still offer as a model for handling trial cases the more laid back and flexible alternative that many practitioners have said they prize in TTAB trial cases as compared to district court proceedings. We want to continue to offer on a liberal basis -- that is not a political term -- that is a relative term -- extensions of time and suspensions when they will help accommodate the parties' settlement talks.

We can only control so much of the end to end processing and still offer those flexibilities to the parties. I think these are still pretty good numbers for us.

The ACR number again, it is up a little bit as well, but that always fluctuates quarter to quarter because it is a relatively small number of cases. I think as we have discussed, we will probably see fewer ACR cases moving forward because we have taken those efficiencies that were typical of ACR cases and leveraged them into the rule so they are available to all parties and all cases now.

The next thing we have are some ESTTA changes. I went through these ones at the last meeting that occurred in January when we rolled out the new rules. I just want to jump ahead. I kept those slides in to remind people, but we had some recent changes in June.

I really wanted to highlight here the point about automatic institution of cases. We are certainly moving with mandatory electronic filing, towards more automatic institution of cancellation cases. The system has always automatically instituted as many oppositions as we can when we have e-mail information for the

parties, and we are trying to move more in that direction for cancellation cases as well.

We also deployed in June under the second bullet a proceedings schedule that is available for use by our paralegals, our attorneys, our judges. What we used to have to do to figure out what the schedule was in the case at any one point in time, and usually you were trying to figure this out when a motion came in, trying to figure out whether the motion was timely or not, and when you disposed of the motion, how do you reset the schedule, where were we and where do we need to go.

Traditionally, our employees have always had to look back at where is the last consented motion that the parties filed or where was the last Order the Board issued and what was the schedule then, what was the date, that kind of thing.

Now, we actually have a schedule, a calendar, deployed in the system that can be updated. We are going to see how it works, if the

attorneys and paralegals can use it, when they need to set a schedule, just plug the numbers in, get a schedule, generate one, and then it will be maintained and be available in the system so we won't have to be looking back at prior Orders or filings to see what the schedule was.

We hope when we are sure that this is a useful tool, that we can make it available and viewable to the public so anybody at any point in time can just log in and see what the schedule is for that trial case.

We are very excited about this. We hope this will be a useful tool for everybody in the future.

MR. HUDIS: Judge Rogers, excuse my interruption. When you say TTAB internal usage, you are talking about the judges, the interlocutory attorneys and the staff, for now?

JUDGE ROGERS: Yes. You haven't joined us yet.

(Laughter) When you do in the future, you will have access to it,

too. (Laughter) Maybe it will be available to the public while you are still practicing on the outside. We are going to try to move in that direction.

MR. HUDIS: I'll take that as an endorsement, Judge Rogers. (Laughter)

JUDGE ROGERS: A couple of other changes. We are always trying to have prompts in the system to ensure that people know when they are doing something in a timely fashion or not. In the past, we sometimes asked certain questions, when you are filing something via ESTTA, to make sure that you are timely or you are not filing something that you can't. We now have some prompts that are in sync with the amended rules to make sure your motions for summary judgment when you file them will be timely.

We also have a new option, so if you are seeking review of a final decision or a decision on a contested motion, you can tell us this is a request for recon, this is an appeal, this is an

appeal to the district court, that kind of thing, so that we will know very clearly what you are filing.

The reason things like this, even though it may seem like a simple thing, are very useful for us is when we want to mine our database for data, that's useful to report, we usually have to run queries.

We are running queries and looking for cases that have certain date parameters or certain information that's been provided, so when we ask for things like this, we then have it in the database and it can help generate reports in the future.

It can also help us make sure we don't terminate a case prematurely when there is an appeal pending. We may not have been aware of it. The Solicitor's Office may have been but not us. Hopefully, we will find out more about that kind of thing.

On that subject of not prematurely terminating appeals, I will say because we have

talked about the Tam case today, that appeal was terminated yesterday, not prematurely but because we had entered into the file record the Supreme Court mandate. That application is now back on its way to an examining attorney for further processing.

We have already talked about the proceedings schedule and making that available.

Let's talk briefly about future rulemaking and the streamline cancellation case for non-use claims and abandonment claims. I'm not going to run through these slides again because we did that the last time.

This next slide has an update that I wanted to cover, and then just make a few more remarks about this possible proceeding.

What we have added here is the roundtable on September 25. What we are planning to do is to receive all the comments that we expect to come in between now and August 14. We do expect quite a few comments between now and August 14, given that we have only had a couple

from individuals and one stakeholder organization, and that is the ABA IPL Section. Their comments are available for viewing if you go to our web page. You can see the comments we have received. We will continue to post any others we receive between now and the 14th.

Then what we will do is digest and summarize and synthesize those comments, and then have a roundtable on the 25th, which is a Monday. We will be able to discuss with stakeholder groups, who all have received at this point a "Save the Date" announcement, what the comments have said, and what we need to discuss to be able to move forward to prepare a draft Notice of Proposed Rulemaking. We are hopeful that will be very useful.

I suspect that some of the things that we will have to talk about at that session are thing such as what the evidentiary standard would be, what would a plaintiff have to show in a petition to cancel a registration for abandonment or non-use, whether there should be more discovery

allowed than was contemplated in the request for comments, which only talked about possible discovery by the defendant on standing. Perhaps there might need to be some discovery at least, maybe minimum or focused discovery that a plaintiff might be able to serve.

Those are the kinds of issues that we will be happy to talk about with all stakeholders when we have the roundtable on the 25th.

I will stop there for a minute before I talk about how things are going under the new rules, just to see if there are any questions about the performance measures or what we are planning to do with the request for comments.

CHAIRMAN WELDON-WILSON: I want to first say that we applaud you and the TTAB for setting the goals, just watching the progress. For all the reasons you mentioned, we think it has been very beneficial. We just applaud your progress.

We also appreciate you sort of educating us in the past as well as today on setting expectations that we probably can't reduce trial

pendency much more. There may be some ways.

One question I had, and it may be premature, just tell me if it is, given your comments on ACR, do you anticipate a time when we will not need a separate ACR?

JUDGE ROGERS: No, I don't. I actually think it is still a useful option for people in particular cases who would prefer to not -- the amended rules leverage in, as I have said, certain efficiencies, but they do not limit discovery the way some parties have agreed to in ACR cases, where they have agreed to limits on discovery even lower than what our rules provide for, or there will be no discovery at all because it's not necessary.

The rules do not provide the option that parties have agreed to under ACR to submit their legal arguments and their evidence together under the kind of cross motions for summary judgment approach, and for some people in some cases, that's a very useful way to go, to really limit discovery, just get the legal arguments and

evidence in at the same time, forego an extended discovery period, forego an extended trial period.

There are still opportunities for ACR.

CHAIRMAN WELDON-WILSON: Thank you.

Jonathan has a question.

MR. HUDIS: Judge Rogers, to sort of leap off your respondedresponse to Dee Ann, the new rules do not encompass what you have called in the past "ACR like efficiencies," where the parties can stipulate to certain facts and stipulate to the methodology of submitting evidence to the Board, in a way that is not in cross-your-"t's"-and-dot-your-"i's" compliance with all the Board's rules for submitting evidence.

I think there will still be, from my practice before the Board, ACR like efficiencies going forward. I think maybe the number of so-called ACR cases is going to be reduced some.

Ilene and I, after going over a lot of the numbers with you in subcommittee yesterday, just wanted to thank you. The Board is humming

along as well as it has ever been. The two of us want to echo what Dee Ann just said, you are meeting or exceeding all your goals per year, and that is to be lauded.

JUDGE ROGERS: Thank you, Jonathan. To keep us on schedule, I will move on to a little bit of the new rules and how things have been going, just a couple of other points that I wanted to make before moving on to IT.

One question that came in from a web viewer is whether the roundtable will be available for WebX or video conference, and certainly it will be. It will be webcast. I think we have it set for the afternoon. Is it 1:00 to 3:00 or 2:00 to 4:00?

SPEAKER: 1:00 to 3:00.

JUDGE ROGERS: You can put that on your calendars. Next, I just wanted to make a few observations about

how things were going under the amended rules that came out in January primarily for trial cases.

As you know, we mandated electronic filing. That has gone very well. We have had very few paper filings. As some of you may have noticed, we issued a precedential decision refusing to accept a paper filed Notice of Opposition, which was unacceptable for a variety of reasons, but we also took the opportunity of the issuance of that decision to remind people that when you do file on paper, you need to accompany that paper filing with a petition and make a certain showing.

Denise Delgizzi, our Chief Clerk and our information specialist, you saw on an earlier slide. We are getting increased e-mails and increased calls, have been walking a lot of people who need assistance through electronic filing, so it is going pretty well and we are trying to make sure we provide the assistance to make sure it goes well.

In terms of issues that have come up on motion practice under the new rules, we have had a couple of non- precedential decisions that we

issued in regard to untimely motions to compel. We recently issued a clarification in the Federal Register. That came out just last week. That clarifies the timeliness standard for filing a motion to compel, which I hope you all will recall also applies to motions for summary judgment.

I call your attention to the Federal Register Notice, which is available on our website. You can go to our website and link to it there.

We also had at least one motion on cross examination of witnesses who provided their testimony by Affidavit or Declaration, and it really focused the dispute between the parties that our interlocutory attorney had to resolve really focused on the procedures and the process for getting that cross examination done.

That is a non-precedential decision, but I think it is very useful. Jonathan has a copy of it. I am sure he can share it with TPAC. We can certainly make it available.

MR. HUDIS: For the listening audience,

I recommend reading this decision. Kate Spade is the opposer in what looks like consolidated oppositions. The opposition numbers are 91216585 and 91217168. The non- precedential decision by interlocutory attorney Dunn is dated May 19, 2017. It concerns the process of cross examining a declarant witness when the parties don't agree.

JUDGE ROGERS: Right. Again, something that is likely to come up more, and that is why we issued that decision. You might say why didn't we issue that one as a precedent. Well, sometimes we need to get decisions out quickly because parties need a decision within a few days because of the scheduling dispute they are having, and we don't always have time to run it through the clearance process for issuing something as a precedent.

We will certainly look for other opportunities when we have more lead time and we can clarify these issues through precedential decisions. We will continue to do that. We know that is a normal process that follows after rulemaking where you end up issuing, as we have

done, this clarification notice in the Federal Register, or precedential decisions to clarify points of practice.

We also had a motion to compel that was denied because it did not allow the responding party its full 30 days to respond to discovery. This relates to the change in the rule that said you need to serve discovery early enough so that the other party can respond within the discovery period, but you can't short change them on their response period.

That decision was issued as a precedent. We had enough time to get that cleared and issued as a precedent.

Those are the kinds of issues that have been coming up, but for the most part, any of these problem cases or most of them except for the cross examination of the declarants, could have been avoided by filing earlier and not waiting until what you think is the deadline day or actually is the deadline day, and if you do things a little bit earlier, it will leave you a little

extra time, you might not be running into these problems. We will continue to address them as they come up.

One other thing we are monitoring, and we will be working with Trademarks and Tanya Amos on this, is undeliverable e-mails. As you might expect, we have always had a problem to some extent with undeliverable mail, including undeliverable snail mail, now that we use more e-mail to notify parties of things, we get undeliverable e-mail.

We are trying to figure out when we get bounce back's or undeliverable e-mails, what the discrete problems are, so that we can figure out how to address them.

What I wanted to say today to all of you and to those who may be listening is that we noticed quite a few problems on the filer's end and not on the PTO end, such as filters that are not set to allow for receipt of e-mail, mailboxes, particularly Gmail boxes as opposed to firm boxes or others, that are full and get overloaded, and

then have no room for e-mails that come from the Board. Sometimes an attorney has left a firm, so we will get a bounced back e-mail because the firm is no longer accepting e-mails addressed to that attorney.

There are various issues that come up. What we will try to do is work closely with Trademarks to see what common issues we have. I think we have noted a few cases where there are typo's in e-mail addresses, sometimes introduced by a filer, sometimes introduced by us.

We will work on all those issues, and perhaps at some point, publish some guidance or have a discussion on how we can avoid some of these problems in the future.

That is something we are monitoring that I just wanted to let you know about.

The last thing I wanted to mention is we have had the revised Standard Protective Order in place for about a year now. We are thinking of a few possible revisions, not much. I think we had done a pretty good job on it when we revised it

the last time, but we have had a few suggestions of things to consider.

What we will want to do is consult with our interlocutory attorneys who are the ones who put this into practice and interpret it and use it, and get their input. We will probably want to throw the standard Protective Order and a few possible suggestions for changes back up on Idea Scale, and make it available for public comment. Then we can consider whether based on a year's worth of experience with this revised Order, if it should involve any tinkering.

That's it for me, and I think we are close to being on schedule.

CHAIRMAN WELDON-WILSON: Thank you very much for your thorough report. Are there any additional questions or comments for Judge Rogers? (No response) Thank you very much. We appreciate you coming today.

We will move on to our next speakers. It is an OCIO update. We have Pam Isom and Robert Harris here today. Pam, you are the Director of

Application and Engineering Development, and Robert is the Acting TMNG Portfolio Manager.

MS. ISOM: Good morning, everyone. I am here also on behalf of the CIO John Owens, and before I turn it over to Rob, there are just a couple of things that I wanted to point out.

When we talk today, there are two things we want to highlight. We will go over a lot of things but there are two things that I think are significant improvements and accomplishments on behalf of the TMNG work efforts. One is the progress we have made towards development of dockets. We have made significant strides there.

The second item and point of accomplishment is our decision around the editor. We were at a point where we were trying to decide what editor should be used, and whether we should replace a custom editor, things like that, and they were very significant decision points, and before we could move forward with development activities in the editor domain, we needed a decision. That decision was made this week.

I am very happy to report these two areas of accomplishments and progressions for the team, and at this point, I will turn it over to Rob to discuss more.

MR. HARRIS: Thanks, Pam. Good morning, everybody. About the time of the last TPAC meeting in early May, we had initiated a group referred to as the TMNG Path Forward team. There are folks from the trademark business, from OCIO, and also from the Office of the Under Secretary. They are working together to really take a step back, ensure we are heading in the right direction, and do a deep dive into the tangible next steps that are needed to get us to a position where we are ready to deploy TMNG examination capability.

The three goals that this team has are the first three sub-bullets, which is first to complete development and deployment of this examination tool, so that it is in a position that it can be rolled out to the first set of users, whether that is a law office or across multiple

offices.

Unfortunately, these slides went to press before the decision was made. The second bullet talks about the analysis and the work and the demonstrations we have done over the last three months around primarily three products, Microsoft Word 2013, Microsoft Word 2016, and an open source product referred to as CKEditor.

The Path Forward team, along with the CIO, created side by side comparisons looking at each tool from a cost schedule and also a capability perspective. As Pam pointed out, it was just earlier this week the decision was made that CKEditor, when weighing all the information that was presented, was the best option to move forward with.

The next steps, which we will get into in a minute, is now turning the team's attention to integrating that tool into the TMNG examination product.

The last area or goal for this team has to do with a third party analysis of TMNG that is

occurring now. Ernst & Young has been brought on board to conduct this analysis, looking at areas like requirements, systems architecture, et cetera. When that report is finalized, what we will do is take the results and the recommendations from that third party review, analyze them and create an action plan of how best to go about implementing their recommendations.

Objectives of this group, first, define the critical success factors. Some of the struggles we have had in the past had to do with when are we done, where is that finish line, and really take the time to make sure we all understand, we are all on the same page as to exactly what needs to be delivered and by when for this product to be used.

That has been checked off the list. I'm not going to bore you with all the detailed critical success factors, but they generally fall in categories associated with system response time, data quality, and also items like the consistency of the display between TSDR and TMNG.

We had some very specific feedback, very candid feedback that we were able to take, identify specific requirements, and schedule that work in the upcoming months for the team to develop tasks and deploy.

The last piece is defining testing expectations. We have started a user acceptance testing before a product gets moved into production, which is a significant step forward. We want to continue to bring that further back to when the development occurs so that our customers, examining attorneys, managing attorneys, whoever is deemed as the appropriate folks can look at this tool.

We want to make sure they have the opportunity to test this product early and often and get feedback as early as possible so we can incorporate that feedback.

The improvements we have made in the testing area with folks involved earlier on in the system life cycle has certainly been beneficial. Again, we seem to be heading in the right

direction.

The result of all this work is what I wanted and hoped when we met in early May to be sitting in front of you with today, which is a detailed schedule of how we are getting to the point where we are ready to deploy to an expanded user group. That schedule is a work in progress. This team is meeting multiple times per week, for a few hours each day.

The schedule, I am now hoping, and the team seems to agree, we are a few weeks away, so we are hoping in the early August time frame to share it first with the TPAC Subcommittee folks, and then by the time we are here as a public meeting next -- I don't know the dates. Dee Ann, you always know this.

CHAIRMAN WELDON-WILSON: October 31.

MR. HARRIS: There you go, isn't that ironic. Halloween, we will have the schedule to share and get feedback on.

Next steps. Again, my apologies for the timing. The top half of the slide had to do with

making the decision on the editor. That is a huge step forward. The decision is made, and the team is already taking actions to set up environments, getting the developers focused on it, getting the work prioritized so we can start down this path.

That is on the critical path to getting the product ready for the first set of users. Beyond that, and the second half of the slide, speaks to where do we go from there. Once we are successful with the initial expansion, how do we get it to all examining attorneys.

That are still some areas that we need to flesh out and get some details on this schedule. It has to do with testing, training, marketing the product, and making sure everybody is on the same page and anxious to make the transition from our current production system to TNMG.

From an accomplishments perspective, in addition to what we have already mentioned, with the decision to go with CKEditor, and also the improvements Pam mentioned around our dockets

capability within TMNG Examination, we continue to use the examination tool to process office actions. That number is up to about 22,000 now, not significant in the total grand scheme of the workload the examining attorneys produce, but still, it is a tool being used today.

We have continued to keep with our monthly deployments. These monthly deployments are not at this point a new capability, but yet continuing to refine and enhance what we have before us, whether it is incorporating feedback from the beta testers and what needs to be improved, or whether it is addressing defects that have been found.

A perfect example is in the areas of dockets where much of the work is around defining the business rules of what goes where in a docket. It is not until we deploy the enhancements with those new rules that we are able to do a side by side comparison, look and see if it is working or not.

In most cases, it is. In other cases we

found some relatively rare business rules that maybe aren't in the day- to-day processing that are uncovered, and we will address that requirement as part of the next iteration. We are continually refining and improving this docket capability.

Speaking for a moment just outside of the internal systems, not much has changed for the Trademark e-filing initiative. Business requirements are being developed by Greg's group. We are working with the Office of Procurement to get a competitive acquisition out on the street and awarded.

We did have a few minor enhancements related to the Electronic Official Gazette (eOG). I'm not going to go into detail here. They are generally expanding the length or characters for a foreign registration number and also the address field from an eOG perspective. Very minor enhancements there.

From an upcoming work perspective for TMNG, I have covered most of this. We know we

have to continue to evaluate defects and requirements for the TMNG examination product. We need to then train and roll out to the law offices, and that is certainly dependent on us meeting or exceeding those critical success factors that have been defined.

Once we get over that hump and can look beyond the examination product, the next priority is to start to address our international application process, a capability referred to as "TMNG Madrid." We have a legacy system now that we are using. We need to keep that on life support and improve as needed, but certainly Mary and her team are very anxious to get a more reliable product out there, and we hope to provide that.

From an external perspective, fiscal year 2018, again, once a contract is awarded, we expect to focus a team on developing TMNG e-file capability.

I caught myself writing notes earlier, and I realized the term "legacy" has a negative

connotation, so I will change that in the future. We will talk about production systems. These are systems we are using today. From today's capabilities, we have deployed, as you heard Commissioner Denison mention earlier and also Chief Judge Rogers alluded to it, improvements to TEAS and TEASi, and also to the TTAB system. I won't go into details there. That was covered earlier.

Finally, looking ahead for the production systems, in fiscal year 2018, we have projects lined up and are in the process of kicking off now in four categories. The legacy Madrid system is one we have identified, very specific feedback and improvements, and in some cases, fixing things that are broken in it that have to be done as a bridge until we have the TMNG Madrid capability.

Second is TEAS. You heard Commissioner Denison mention the goal of mandatory electronic filings. The work here will certainly support that from an IT perspective.

TRADEUPS. TRADEUPS is an internal system that our Trademark support staff use to enter, edit, and update application data. We have identified a number of enhancements and fixes. We will have a team ready to address that in fiscal year 2018.

Lastly, TTAB. We will continue to receive feedback from the customer roundtables and the TTAB staff, and prioritize those enhancements needed for both our internal and external systems.

That is all I have. I will open it up for questions or comments.

CHAIRMAN WELDON-WILSON: Thank you for the presentation. Mei-Lan Stark has a question for you.

MS. STARK: I think it goes without saying that we were all very enthused to hear that a decision has been made on the editor because that's such a critical piece that leads to a bunch of other pieces. So, I kind of have a two-part question about that.

I think this path forward team has been

a wonderful idea and has really helped to sort of coalesce on things for the project. And it does sound like there have been some cost savings that we anticipate by virtue of the choice of the CKEditor, which as chair of the Finance Committee that's always welcome news to my ears.

I'm curious about how long we anticipate -- I appreciate, Rob, that you were saying that the team hopes to come back to us at the October 31st meeting with the detailed schedule for the rest of the development and deployment, so I would imagine that that CKEditor requires a bit of testing and vetting to make sure that the integration is going to be what you hope for. And I'm wondering how much time we anticipate will be allotted for that.

MR. HARRIS: As I mentioned, the detailed schedule we're still working on. The original estimates just to get the product integrated, the product CKEditor integrated, into TMNG examination it's multiple months. We've given a range right now of about four to seven

months. Over and above that, as you mentioned, Mei-Lan, it's the testing and making sure it all works together. But as a rough estimate that certainly puts us out into early next calendar year at the absolute earliest to be ready to test in any sort of capacity.

So, that at least gives you a ballpark, but we hope, again, in the August timeframe to come back and be able to answer with more specifics.

MS. STARK: The second part of my question then has to do more with the whole costs that we've been incurring for the TMNG investments historically, especially given where we are and some of the thoughts about the current budget climate, it would be really helpful, I don't think you probably have this information at your fingertips, but to understand the full cost that's been incurred from the beginning of the TMNG investments. And I understand that there are three different multiyear sort of investment plans that are incorporated there, two of which are in

midstream and one of which has been completed.

If some time in the next few weeks you were able to provide what the full investment of TMNG to date has been in each of those three projects, that would be great for us as TPAC is getting ready to prepare its annual report and we'll be looking to address that in the annual report.

MR. HARRIS: Sure, I'll certainly take action. I don't have it at my fingertips, but certainly will provide it.

MS. STARK: Okay, thank you very much.

CHAIRMAN WELDON-WILSON: Lisa Dunner had a question as well.

MS. DUNNER: Thanks, Rob and Pam. I really appreciate a thorough report and all you're doing with TMNG. One quick question about the CKEditor.

You said it's based on open source. Is there any concern about using an open source in terms of longevity, support, as compared to Word, which we know is never going away?

MS. ISOM: So, there are things that we should manage with using an open source product, but we have used open source products today and we continue to use them in the environment today for trademark activities as well as other activities. So, what we would do is make sure that we have the proper governance in place.

We'll be making sure that as we take the product and we start working with it, we'll make modifications based on what we need to support TMNG. And then we will be working with the open source community, perhaps providing a copy of the product back to the public depending on what we can share.

So, the only concern we have with using an open source product is the fact that it is a product that's available to the public, managed by and maintained by public users or a user community. But that's okay because we can control that internally. So, we really don't have any concerns. And the price point is very accommodating for us as well.

MS. DUNNER: And just not really having the knowledge that you do, obviously, on this, the security measures with an open source product as compared to Microsoft Word, again, how does that differ? And obviously, there's measures in place or that you're putting in place for security?

MS. ISOM: Yeah, so the security measures would be the same as we would integrate any other product into our environment. We would have to run the scans, make sure that they meet our criteria, comply with the Federal Information Technology Acquisition Reform Act (FITARA), all the things that we would normally do. It's just that instead of purchasing the product from a vendor, we are adopting a product that's made available via a community.

MS. DUNNER: Thank you.

CHAIRMAN WELDON-WILSON: Jonathan Hudis has another question.

MR. HUDIS: Pam, Rob, thank you very much for your presentation. I just want to note the absence of your CIO, John Owens, for the

second TPAC meeting in a row. I hope everything's everything's everything is okay with him.

Just to put a finer point on some of the questions that Mei-Lan Stark raised, when the fiscal year closes on September 30th for the TPAC's annual report, which we have to put in, I believe, Dee Ann, it's the first week in December.

CHAIRMAN WELDON-WILSON: We have to have it ready earlier than that.

MR. HUDIS: Oh, earlier than that. So as soon as after the fiscal year closes, we're going to need expenditures to-date on the three buckets of investments that Mei-Lan described earlier, what has been accomplished in fiscal year 2017 and, as best as you can, a schedule of the TMNG pieces that will be rolled out in fiscal year 2018, what legacy fixes for the products that you still have to maintain until those TMNG substitutes are up and running, and what you're going to be doing in fiscal year 2018.

One thing that we have struggled with

over the years is the CIO's definition of "deployment" of a TMNG piece. If you could give us the PTO's definition of what "deployment" means so that we have that for our report, that would be greatly appreciated. Thank you.

MS. ISOM: Yeah, we can do that. And then I also wanted to point out John is out on vacation, so I'm covering for John today and I work closely with him all the time.

CHAIRMAN WELDON-WILSON: Well, we appreciate that.

MR. HUDIS: And we wish him well.

CHAIRMAN WELDON-WILSON: We appreciate that you're here today and I think we're all in that position in our businesses where we all cover for one another when we're out on personal business or vacation.

Thank you so much for your time today. And we have one more question from Tim Lockhart.

MR. LOCKHART: So, Pam and Rob, I want to thank you very much for being here today and giving us a very thorough and clear explanation of

where you are both with TMNG and the production systems. We appreciate that, as always.

We know you and your team are working very hard and you're continuing to make progress, especially with regard to the production systems. And you're at that decision point with TMNG. Having just chosen the CKEditor, I know that was a big, complex decision. It took a while to make. And it sounds, based on what I know, it sounds like it was probably the right decision.

I just want to make sure I'm clear on the path going forward. So, you're working on your schedule for the full deployment of the examiner tool and you expect to have the schedule done perhaps late September, sometime in October, and we would see that at the October TPAC meeting? That's right?

MS. ISOM: Yes.

MR. LOCKHART: Okay, fine. Now, obviously that schedule is dependent on the smooth integration of the CKEditor. And I think Rob said you might not know for up to seven months, four to

seven months, how that integration is going to go. So, the schedule that you show us in October, to some extent, that's going to be based on how well you think the integration is going at that point?

MS. ISOM: That is correct. It'll be based on how well the integration is going plus it'll be based on our experiences. Because the editor itself is a proof of concept right now, and so we actually have started some integration, but from a proof of concept perspective.

MR. LOCKHART: Okay.

MS. ISOM: So it will be based on those experiences as well.

MR. LOCKHART: Okay, fine. And, of course, you know, as I know you are and as we certainly are, we're certainly hopeful that integration goes smoothly. If you can put any kind of percentage on it, what's your confidence level right now that the integration will go smoothly over whatever period of time it takes, but you can make it work just to put it in a simple question? You're confident you can make

this work?

MS. ISOM: Yes, I'm confident. So, I'm really excited about it. I'm just trying not to show it. (Laughter)

MR. LOCKHART: Well, that's great. That's great and we're excited for you, too.

MS. ISOM: Now you just made me do it.
(Laughter)

MR. LOCKHART: Yeah, good.

MS. ISOM: So this was a significant milestone. We just needed to decide so that the team could move forward. So, we are going to do this right. We are laying out the plans. We are not getting ahead of ourselves. We are working together collaboratively with the right stakeholders to lay out the plan and then execute to the plan. And we're very comfortable that we are doing the right thing, so we will continue to do the right things.

MR. LOCKHART: Okay, good. That's great and it sounds to me like you're doing the right thing, too, like you've got the right approach, so

I commend you for that.

So, let's assume that you get the schedule done by the end of October, that over the four to seven month window that you've laid out you're able to do the integration of CKEditor, that goes relatively smoothly so that no later than seven months out you've got that done. That takes us into early calendar 2018.

So, sitting here today and without making a commitment, because I know you haven't developed the schedule, but is it your belief that you would be able to accomplish the full deployment, full rollout to all examining attorneys of the TMNG examiner tool by the end of fiscal year 2018, meaning

September 2018?

MS. ISOM: So, that I can't answer.

MR. LOCKHART: Okay.

MS. ISOM: Not yet.

MR. LOCKHART: Okay. And that's a fair answer. If you can't estimate with any degree of accuracy that you can do that, that is a fair

answer. You know, I'll probably have the same question in October and maybe then, with the schedule a little more fully fleshed out, and certainly you'll have some experience doing the integration by then, maybe at that point we'll get a better sense of when full deployment is expected. But that is certainly a fair answer having just decided this week to use that editor. I understand that you're going to need some additional time to come up with a more fully fleshed out schedule.

MS. ISOM: Yes, sir.

MR. LOCKHART: That sounds good.

Anything else from my IT colleagues? (No response)

Okay. Well, again, thank you very much. I know you guys are working incredibly hard. Please thank your team. Please thank John Owens. And we'll look forward to getting an update in October.

MS. ISOM: Thank you.

CHAIRMAN WELDON-WILSON: We really

appreciate your time here today as we do all of our speakers. Thank you for coming. And we also appreciate the public and the USPTO employees that are participating today.

Before we go to our public comment section, Mary Denison would like to make a comment.

MS. DENISON: I just wanted to acknowledge that the Deputy CFO, Frank Murphy, many of you know, retired recently. And he was I think a 39-year Federal employee, and everyone loved him, so we're going to miss him. But I just wanted to let you know if you're thinking, wondering where Frank is, he's on vacation permanently now.

And also, the Deputy and CIO, Tony Chiles, has left to take a new position. I just wanted to let people know in case they were wondering where these people are. They are now gone, so we miss them.

CHAIRMAN WELDON-WILSON: Well, thank you so much for mentioning that and we wish them very

well in their new positions, whether it's retirement or a different position within the government.

CHAIRMAN WELDON-WILSON: Do any members of the public have any comments today?

(No response) Well, it looks like we don't, and so we will go ahead and adjourn our public meeting and see you on October 31st. Thank you very much.

(Whereupon, at 11:32 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.

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2021

Notary Public Number 122985

