

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, October 26, 2018

PARTICIPANTS:

TPAC:

DEE ANN WELDON-WILSON, Chair

WILLIAM G. BARBER, Vice Chair

ELISABETH ROTH ESCOBAR

ANNE GILSON LALONDE

ILENE B. TANNEN

DONNA TOBIN

LISA DUNNER

Union Members:

HOWARD FRIEDMAN, NTEU 245

USPTO:

DANA ROBERT COLARULLI
Director, Office of Governmental Affairs

GERARD ROGERS
Chief Administrative Trademark Judge

ANDREI IANCU
Under Secretary of Commerce for
Intellectual
Property Director, USPTO

MARY BONEY DENISON
Commissioner for Trademarks

SHIRA PERLMUTTER
Chief Policy Officer and Director for
International Affairs

ROBERT HARRIS
Acting TMNG Portfolio Manager

PARTICIPANTS (CONT'D):

AMY COTTON
Office of Policy and International Affairs

DEBORAH STEPHENS
Deputy Director, Office of the Chief
Information Officer

SEAN MILDREW
Acting Chief Financial Officer
Office of the Chief Financial Officer

* * * * *

P R O C E E D I N G S

(9:00 a.m.)

CHAIRMAN WELDON-WILSON: Welcome to the TPAC meeting. This is the last meeting for a couple of people, so that's why we are taking a few minutes here at the first to recognize that. And so first, I'm going to turn this over to Mary Denison for our presentation.

COMMISSIONER DENISON: Thank you for being here today. We wanted to take a moment to recognize our outgoing chair, Dee Ann Weldon-Wilson (applause). She has been on TPAC since 2012. So, she has served two terms. And, we've been delighted with her leadership and we are going to really miss you, Dee Ann. So, we have a certificate to give you and wanted to say thank you very much for your service.

CHAIRMAN WELDON-WILSON: Mary, thank you so much (applause). Thanks, thank you very much. I'm quite honored.

COMMISSIONER DENISON: And next, we have Lisa Dunner who has served since 2015.

And, Lisa, I wanted you to know how grateful we are to you for your service. And, we have a certificate of appreciation for you as well (applause).

MS. DUNNER: Thank you. Thanks a lot.

CHAIRMAN WELDON-WILSON: Thank you for allowing us that small diversion. I have certainly enjoyed being here on TPAC. And, I'm very honored to have served with all of these wonderful people, and to have had the opportunity to work with all of the professionals that are so dedicated to the USPTO. So, thank you very much.

I would now like to turn to our agenda as printed. And, we're very pleased to have Andrei Iancu here. He's Under Secretary of Commerce for Intellectual Property and Director of the USPTO. We appreciate you taking your time out today to come with us, because we know you have a very busy schedule. He has agreed to make some opening remarks to us.

UNDER SECRETARY IANCU: Great.

Thank you, Dee Ann. And, congratulations once again for a wonderful term as the leader of the TPAC. You've done a wonderful job. And, good luck in the future and keep coming back. And, the same for you, Lisa. So, thank you to both. And, great to be with all of you again today. Thanks for having me here to speak with you a little bit.

So, we just closed fiscal year 2017. So, let me begin by congratulating Trademarks on another successful year making and meeting all of the goals, all the pendency quality goals. And, this has been an accomplishment of the Trademarks organization yearly since 2007. So, that's quite remarkable. And, this is in the face of increased filings every year without exception for the past nine fiscal years. So, that really is remarkable. I'm sure that Mary will have more details, but I do want to take this moment to congratulate the Trademark leaders and all the examiners and all the employees for this wonderful accomplishment. And, thank TPAC for your involvement and guidance as well.

So, I was at the AIPLA annual meeting yesterday, and I'm going again today. And, today in particular, we will honor examiners, both in the patent and the trademark side. And, in particular, we'll honor nine Trademark examining attorneys who will receive awards for their accomplishments this past year. I don't know if any of you will be there, but if you have time, I would encourage you to come. It's this morning. I believe at 11:00.

So, the work of our examiners, obviously, as you know, is extremely important and the awards address that and I take every opportunity to communicate that to them. It's important to the people who actually come before them, obviously, but it is also critically important to the economy and the nation in general. And, it is not easy work, obviously. And, the dockets keep growing. We keep hiring more and more people that we have to integrate. And, the examiners, the examining core has done a tremendous job on the Trademark side. So, recognizing and

celebrating their hard work, commitment, and dedication at today's AIPLA ceremony is a fantastic opportunity to celebrate.

Speaking of celebrations, I don't know where Gerry is, hello. The TTAB celebrated its 60th anniversary just a few weeks ago. And, by all accounts it was a wonderful celebration. So, all in all, October and 2018 has been a remarkable year.

Let me change subjects a little bit and talk a bit about our IT systems. Because, there are significant changes afoot there. So, first of all, with a final rule for mandatory electronic filing for all trademark filings pending, I'm sure this is an issue that is top of mind for many of you.

And, as I'm sure you're aware, there were some IT challenges, especially on the patent side. Trademarks were not completely spared, but by and large the outage that we had this summer dealt mostly with the palm system on the patent side. It highlighted a very important issue for us. Our Legacy Systems are old, and it is time -- and I've

said that I actually think it is well beyond time to undertake a fundamental modernization effort of the entire IT system at the PTO. So, we are taking a broad, fresh look at all of our IT systems.

So, to that end, we've assembled a task force of USPTO leaders. Commissioner Denison is one of them on the task force. And, we are also working with outside consultants to tackle this issue head-on and as quickly as possible. I have said before that no options are off the table when it comes to modernizing our vital IT systems. And, we've already begun.

We've begun, but it's a lengthy process. But, hopefully, it's not going to be all that lengthy. By the way, as a visible start, so to speak, about a day and a half ago we launched a new home page for our website. I don't know if you've had the chance to see it, but if you haven't, please go there. It is quite modern, and most importantly, it makes it easier to find quickly the most important items. The business side of the

webpage, in general -- so, when you go to search for example or to file and application -- when you go to those pages, those pages have not changed at this time. But, the homepage itself, I think that change, in and of itself, is quite good and I think very successful.

And, additionally, as you know we still have a job opening for our chief information officer position. It was posted. That posting has now closed and just a few days ago we received a very large number of applications, actually. And, I personally don't yet know who has applied. It is such a large number that I'm truly hoping that we're going to find highly, highly skilled applicants. I do know that there are quite a few applicants from within government, and quite a few applicants from outside, and from industry. So, it's a very good thing to see. We'll be trying to expedite the selection process. So, by the first TPAC meeting of the new calendar year, I expect that we'll have more to report to you on the IT efforts.

And lastly, I'd like to thank you all once again for your ongoing collaboration and hard work throughout the year. I want you to know that I really very, very much, and everybody in PT leadership appreciates the collaborative relationship between the USPTO and TPAC. This relationship and the trust that exists is extremely important. We value your insights and guidance on all key issues affecting the Trademark operation. And, we really do look forward to continued collaboration in fiscal year 2019.

So, with that, thank you once again. And, thank you for the opportunity to be here. And, I think I'll now turn it over to Commissioner Denison. Thank you.

CHAIRMAN WELDON-WILSON: Thank you so much for being here today. We appreciate that. Just before we go to Commissioner Denison, I have been neglectful in some of my duties. I think I said a general welcome to everybody, but I am not sure that I specifically welcomed all of the people watching the webcast today. And, just wanted

to mention very quickly the TPAC members who are able to attend today. We have Bill Barber who is the vice chair of TPAC. Elisabeth Escobar, Donna Tobin, Ilene Tannen, Ann Gilson LaLonde, Lisa Dunner, and Howard Friedman. So, thank you. Now, Ms. Denison, would you mind getting us back on track with the agenda, thank you.

COMMISSIONER DENISON: Thank you so much, Dee Ann. As our director just said, we very much value our relationship with TPAC. And, I, having been a former TPAC member, particularly appreciate it. So, thank you for everything you do for us.

We're going to start off with a little bit, information about where we are in Trademarks. We have close to 900 employees now. And, 581 of those are examining attorneys. We hired 61 new examining attorneys last fiscal year. This fiscal year we are going to be hiring more than 100, probably in the 110 range. And so, that's really important to us. Because, take a look at this slide. Our filings were up all but

four years since, I think it's 1984. And, we have been up since 2009. Every year we've been increasing. And, we were -- in fiscal year '17 we were up 12 percent, fiscal year '18 up 7.5 percent, and our forecast team is predicting that we will continue to have more applications this fiscal year. So, for fiscal year '18 the final total number of classes was 638,847.

In spite of the 12 percent in '17 and the 7.5 percent in '18, we still made our pendency goals. We know that meeting these is very important to our users, and so we are doing everything we can to keep within the 2.5 to 3.5-month range. It's going to become increasingly challenging this fiscal year, but we are working on that.

So, of course, just as important is that we don't just crank out the applications. We have to make sure they're accurate. We did really well in 2018 on our first action compliance which basically means "Did we get it right?" And, for our final action compliance, which is a higher standard, we

exceeded that as well as our goal on the exceptional office action. I'm very proud of our examining attorneys for doing that. They did so well. Our goal was 45 and they actually came in at 48 percent. This is a voluntary measure. They look at the comprehensive quality of the office action, including the search, the evidence, the writing, and the decision making. So, we're very proud because this number has been going up each and every year.

Now, with regard to eGovernment, originally, we started off wanting everybody to file their applications electronically. And, some years back when we got to 99 percent, we shifted it so that we would have a goal to increase complete electronic processing. That was harder to achieve. Because, people liked filing electronically for the application because they got an immediate serial number. They weren't quite as motivated to allow us to send them emails. And, sometimes they wanted to send us paper. So, we have been steadily working on that

number. And, we ended the fiscal year at close to 88 percent.

As you know, in January of '15 we lowered these to encourage electronic filing. And then, in fiscal year '17 we started charging extra for paper, but the truth is that even the extra charges for paper do not cover our costs. So, that means that the e-filers are covering our costs, because where else is it going to come from? It's not good for the e-filers to have people continuing to file on paper.

Second, e-filing is also very important because of quality. Every time you send us a piece of paper by hand or mail or fax, we have to scan it into the optical character reader and the OCR makes mistakes. We catch some of them, but we don't catch all of them unfortunately. So, it will help both with quality and it will stop the electronic filers from subsidizing the paper filers. And, of course, we're planning for mandatory electronic filing this fiscal year. I'll talk more about that in a second.

Now, our director just mentioned that we're conducting a fundamental review of it; we're looking at all IT systems. Working with outside consultants and the new home page is just one example of how we're moving forward on this front. I'm very, very excited about what's happening on the IT front at the agency. And, our director's leadership has been fantastic on this point. We're really, really excited about this.

I always want to put in a plug for My.USPTO.gov. It is a way for you to have a docket. We started off with this being a docket for pro se applicants who didn't have docketing, but it has really expanded. And, many law firms are using it now as their back-up docket. You can store up to 1,000 applications or registrations in a collection, which is just a group. And, it will list due dates and give you quick links to corresponding forms. It will also send you emails of status changes and certain prosecution history entries.

In addition, in My.USPTO, if you

want to do a weekly search of the Official Gazette, it will store it. And then, it will send you hits whenever they get them by email. So, we urge people to continue to use MyUSPTO. The numbers keep growing every week, and we urge everyone to please consider using it. It's pretty easy to sign up, actually.

Now, when you go into My.USPTO.gov, we have added something recently called the form finder. We heard from the public that they had trouble finding forms. So, in My.USPTO there is something called a form finder which should make it easier for you to find a form that you don't normally use.

In addition, we are working on a TEAS Plus short form. It will be an intent to use application filed in TEAS Plus. And, we are testing now. So, we're hoping that in the early part of calendar year -- this fiscal year, but in calendar year '19, we hope to have a more public release of this form. And, we will really want your feedback when this comes out so that we can make sure that we improve it to your liking. There is a

feedback section there. I urge you to please give us feedback on My.USPTO.

Now moving on to more substance, I mentioned the Mandatory Electronic Filing rule. We have seen the draft of the final rule of Mandatory Electronic Filing and that is still being massaged a little bit and will have to be circulated again. We're hoping that it will be in the federal register later this calendar year and will be implemented sometime in fiscal year 2019.

There will be certain exceptions. There are international agreements that are going to require us to accept paper from a few countries, not very many. And, of course if you have a scent mark or something peculiar, you know, flavor mark or some nontraditional mark, you're still going to need to file on paper. And, there's going to be a petition process. And, of course if there is a postal problem or hurricane or something like that, there will be exceptions.

In addition, we have been working hard on the U.S. Counsel rule. And, I want

to publicly acknowledge Cathy Cain who has been working on both of these; she and a whole team of people have been really doing a fantastic job moving these rule makings through the process.

The new rule would require foreign trademark applicants and registrants to be represented by a U.S. Attorney to file Trademark documents. And, the key is not going to be citizenship, it's going to be domicile. We believe that this will really be very helpful to us and to you. Because, there will be a local person with whom everyone can correspond. This rule is, I believe, at the Department of Commerce right now, about to go to OMB. Everybody has already seen it. So, we're optimistic that we can get this published in the next month.

Another thing that gets a lot of press is the Brunetti decision which was issued last December; holding that the immoral and scandalous provision of 2(a) is unconstitutional. We have petitioned for cert. And, Brunetti has sought an extension

of time (which was granted) to oppose it, but that decision is not expected until January. So, we won't know whether the petition for Cert is granted until his opposition brief has been filed.

Now, onto some fun things.

Anti-counterfeiting video contest. At our TM expo in July, we launched an anti-counterfeiting video contest. This is open to everyone -- you have to be a U.S. citizen -- but everyone in the United States can do this. And, it's a 30 to 60 second video on the harmful effects of counterfeiting. We had originally said that the contest was going to close at the end of October. There was a problem for several weeks which we did not immediately become aware of. Challenge.gov was not accepting the submissions, so we have extended the deadline until November 16th. And, we hope that everyone listening and everyone here will submit a video. We are taking videos from children. We are taking videos from lawyers. We are taking videos from all members of TPAC.

We are taking them, Andrei could enter maybe, no. Or at least your children could, anyway. So, we really want to encourage people because it has a two-fold impact. First of all, you have to learn a little bit to do the video. We either get a good idea or we actually use the video for later. And so, we are using this as the first step in a five-year nationwide campaign to educate the general public about anti-counterfeiting. This is a really important campaign. We've been working very closely with our international department (called OPIA) on this. And, we are very excited about this initiative because we truly believe that the average American would not be buying fakes if they knew the real story. And so, hopefully this will be a great kick-off. We have gotten authorization from our Financial Advisory Board to move forward with this project and we are just waiting for some things to move through procurement right now. So, stay tuned on that. And, please enter.

Now I mentioned the National Trademark Expo. We were very excited about

it. We held this at the Smithsonian Museum of American History at the end of July. One of our TPAC members was a speaker. We were very grateful to Anne LaLonde for doing that thank you. And of course, of slightly less importance, we had Kareem Abdul-Jabbar as the keynote. And, we had 19 exhibitors who participated. And, the exciting thing was the number of people who we reached. Because, over two days there were 43,000 visitors, and we've never really had anything close to that. It was a really great collaboration.

Decluttering. I know Andrei likes to talk about decluttering a lot. So, we've got a number of things. And, Gerry's going to talk about part of this. We launched a proof-of-use audit program back on November 1st of 2017. So, it's been a little bit less than a year. And, we met our goal of sending out 2,500 first office actions. You are possibly going to get audited if you filed a Section 8 or Section 71 declaration of use and your registration has one class with four or more goods, or at least two classes with two

or more goods in the two classes. We require submission of additional proof-of-use.

Now out of the 2,500 (of course people have a lengthy time to respond), 48 percent as of September 30th had deleted goods. And, it's not the pro se's. Look at the slide.

Large percentage of those people had lawyers. So, to say that this is disappointing for me is perhaps an understatement. We are continuing to work. We have a whole team here who is continuing to consider different options. And, as I said, Gerry's going to talk about a pilot that we're doing at the TTAB. We've already implemented changes to the declaration so that people would actually read it. We have a whole list of seven or eight more ideas that we are kicking around right now, and they're not ready for prime time, but we are considering other ways since we are not getting the results that we had hoped. We hoped that the audit would be a deterrent, and so far, it doesn't seem to be.

One thing of critical importance to us -- shifting gears for a moment -- is unauthorized changes. People are going in to other people's files and changing the correspondence address. We think this may be happening because of third-party brand-registry services. So, why go through the registration process if you can just act like you own it? This has been going on for some months and we had been handling it on a case by case basis. We started sending out emails, I believe it was May 5th of this year, to people, to let them know when a change of address had been made on their file. We want to check and make sure it is real, and so, that should continue to happen. But we've noticed a spike in unauthorized address changes and the spike is very disturbing. We felt that we had to make a public announcement, and that's what we have recently done. We are very, very concerned about this. And, we have the same team who will work on this, will also work -- the same IT team will be working on unauthorized changes, the U.S.

Counsel rule, and mandatory electronic filing. As far as I'm concerned, this is the top priority because it has the potential for the most damage. This is going to be our most immediate focus which could have an impact on the other two. Hopefully not too much of one. But, you know, you can't expect the same team to do three things and deliver them all on the same day. We're working on that, I just wanted people to know that this is something that we're working on. We had this temporary solution with the emails, and we're working on a longer-term solution.

Misleading solicitations. More bad people. We have been working with the Department of Justice for some time. Back in 2017 we had some success in California. And, we had a TPAC round table in '17 with a number of other government agencies: The Federal Trade Commission, the Department of Justice, U.S. Postal Inspection, Small Business, Customs and Border. And after that meeting, we started to have further conversations with the Department of Justice. As a result we sent

two lawyers, one went in February and one went in May, to the Department of Justice to work on criminal prosecutions. And, I've talked to the Department of Justice supervisors and they think they're doing a great job. And so, stay tuned. We hope there will be more criminal prosecutions coming before long.

We also have been very focused on improving the customer experience. We have a customer -- what is your title, Jill? Customer Experience Administrator, I think it is. I got it? Okay. I can never remember people's titles. And so, we've been focusing on improving the website. These are things you may not have noticed. They're not as visible as the home page changing, but we have been focusing on the website content. What you may have noticed is, we've improved the guidance on how to use tests. And so, you may want to mention this to your younger lawyers or paralegals. Because there is definitely improved information on that.

We are also sending out surveys. We have launched a survey for the Trademark

Assistance Center. I urge you to respond if you get one of these. We previously launched one on website content. And, we have two more surveys coming. One is on My.USPTO, and the other is on application prosecution. These are quick, easy ways for you to send us feedback. Please if you get one of these surveys, please, please take it. And, these are different from the one that pops up every time you go on the website.

Other new and improved pages. "Why hire a private trademark attorney". This is not like what it used to be. Which used to say, "Do I need one?" And, it said, "No." And then, there was a long paragraph about maybe you should. I think you'll like it better. Timelines on Decisions on Trademark Petitions, Responding to Office Actions, Drawings. We have tried to make these pages and the website more clear.

In addition, we've been working closely with the Trademark Assistance Center (TAC) and they have been doing Lunch and Learn programs with the Regional Offices. And, that

has been expanded to Patent and Trademark Resource Centers as well. And, we are now offering within the Regional Offices, one-on-one video chats with TAC specialists for walk-in customers.

We continue to get mocked-up or fake specimens. They're getting more sophisticated. Applicants continue to paste their marks on products or services of other people. We're doing our best to refuse them. We have now procured a software program that we can use to review for digital alteration specimens. And, hopefully, we'll be able to use this to build a database of specimens as well. When we get these mock-ups and these digitally-altered specimens, they present lots of issues. Is the mark really in commerce? Is it fraud on the office? Should these people be disciplined by our Office of Enrollment and Discipline? How does this impact the validity of the registration? They cause a whole lot of problems. Here's an example, and I've shown this before, the Walmart is the real picture with the Nova

Scotia flag. And so, we looked at this using the program, and you could see that the Nova Scotia flag was deleted. And, you could see how Walmart had been removed from the picture as well. And then, on the right of the slide, we've got these four examples, different applicants, different marks using the same kind of different looking scarf. That is the kind of thing that would make it helpful if we had a specimen database, so that you could then pick that up.

We also have instituted, as a result of the conversation we had with AIPLA last year, a streamlined process for the public to report improper specimens. So, the email box is TMSpecimenProtest@uspto.gov, and we have guidance on our website about how to do that. We would love it if you would send things in.

On the international front, TM5. It's the five largest trademark offices in the world: Europe, Japan, Korea, China, and us. We focus on exchanging information, collaboration, harmonization. And, we have a lot of different projects going on. The ID

list, we have adopted a series of icons that don't require you to read the language. And, everyone in the TM5 has now got that as part of their website. So, if you went onto a website where you didn't understand the language, you could nevertheless figure out the status of your file by just looking at the icon.

We held an event during the INTA meeting in Seattle for users. We talked about fraudulent solicitations, priority rights, and quality management. And, we went to Jeju Island in June, in Korea. And, we had an interim TM5 meeting there. I'm leaving with Deputy Sharon Marsh and two lawyers from the international department to go to Seoul on Sunday for a full week of meetings. The official meeting is November 1st and 2nd, but then there are other conferences before that that we'll be attending.

Now, I just wanted to mention the TM5 ID list project. The concept is to get as many terms agreed upon in all five TM5 members as possible. Now, we have 19,000 pre-approved

terms. If you go into our ID manual, and it says TM5, and you see a "T" under it, that means that it will be accepted in all the member countries.

We continue to have an influx of Chinese filings with specimen issues. There's still counterfeiting, bad faith issues. These are ongoing issues. We know that there are subsidies coming from regional governments. And, there are serious concerns about legitimacy of some of these applications. I've been in communication with the Chinese government for some time. The last time I saw them they acted much more interested than they had in the past due to the Wall Street Journal press in May. Our IP attaché in Shanghai just let me know that they have opened an office to advise Chinese applicants on filing overseas. It's to be determined what that office is going to do exactly, but that's kind of an interesting development.

This chart shows the significant increase since 2013 of the mainland China applicants. From fiscal '17 to fiscal year

'18 China's filings in the U.S. increased 14 percent. As of the end of fiscal year '18, Chinese filings, mainland Chinese filings, were 9.1 percent of our total filed classes. What's interesting is, so far, this fiscal year, granted we're not very far into it, it's only been five percent of overall filings. So, I hope that it is leveling off a bit, but it's too early to tell.

Now, people ask me if all of this significant growth in our overall filings is attributable to China, and the answer is no. China only accounted for 15.7 percent of our growth in fiscal year '18. So, the vast majority of the growth is coming from outside China.

This chart just shows where -- I know it's hard to read, but where the applications for mainland China are primarily coming from. And, the dark blue, in case you can't read it, is Shenzhen. So, that's the primary location. This shows how there's been a shift in filing. It used to be big companies that filed, and now it's primarily

one-offs coming in from China.

I would urge everybody to sign up to receive updates and announcements from us. If you had signed up, you would have gotten a notice about the unauthorized changes to correspondence address, which you can still find online. But, that's just an example of the kind of thing that we send out. We try not to inundate people, but we also try to keep them informed.

We want to hear from you, so any time you want to contact us please send an email to TMFeedback@uspto.gov. That mailbox is carefully monitored, and I hear from people on our staff who monitor that email box with great regularity. Thank you so much. If anyone has any questions, I'd be happy to answer them.

CHAIRMAN WELDON-WILSON: Do any of the TPAC members have any questions for Mary? Well, thank you for your very thorough report. We appreciate it. And, we're very pleased with the fact that you have met all the measures again for the year. So, thank you

very much for your very positive report.

Let's turn next to OPIA. Shira Perlmutter is here with us today. She's Chief Policy Officer and Director for International Affairs. And, it looks like she's joined by Amy Cotton. So, welcome.

MS. PERLMUTTER: There we go. Well, good morning everyone. I wanted at today's meeting to take some time to talk about our work in addressing the problem of bad faith trademark filings around the world. So, what I'm going to do is to focus first on our international training programs on this issue. Then talk about developments in Mexico and China. And then finally, a bit about the TM5 project that Mary mentioned, dealing with bad faith.

So, looking first at the United States, you know, one of the difficulties in talking about this issue is that bad faith is a difficult concept to define, both in the U.S. And overseas. We don't have a definition in our law, and there's no specific refusal or grounds for opposition or

cancellation for bad faith. So, we've had to be creative in identifying bad faith behaviors and the tools that we use to address them.

Now, historically, the primary tool that the United States has relied on to prevent bad faith applications is the requirement of use or a bona fide intention to use. We are the outlier in this regard. So, most other countries are not in a position at this point to adopt a use requirement as a condition for registration. Some, when we talk to them, are interested in an intention to use requirement, but this would be a culture shift for a lot of countries and will take some time.

And, it can be hard to push for user intent-to-use requirements as an effective tool to combat bad faith registrations, when we ourselves are conflicted about whether statements of use filed here are a reliable indicator of the applicant's good faith. The results of the specimen random audit program and the surge in filings from overseas, that Mary was describing with questionable

statements of use and which appear to feature the unauthorized practice of law by foreign trademark practitioners, have also raised alarm bells. So, as Mary said, we're looking for ways to declutter the U.S. Register and more broadly ways to improve its accuracy. And, we're reaching a point where we may want to further address bad faith and fraud here.

But, looking at what we're doing abroad, if we go to the next slide you can see that we're doing a lot of training. So, OPIA staff trains foreign officials in trademark and geographical indication examination, in Madrid protocol implementation, and in IP office administration around the world. And, these programs really give us the opportunity to share best practices with other countries, demonstrating not just how our trademark system works, but why it was designed the way it was.

And, these exchanges are very helpful for improving foreign examination practices and creating ongoing dialogs about how to handle particular issues. So, we've

begun incorporating presentations on bad faith in our programs to respond to the concerns expressed by U.S. stakeholders. And, also to respond to requests by foreign offices, who are increasingly worried as well about this issue.

So, each of the programs listed here has addressed the issue of bad faith filings. And, you can see just in the past year alone we've done 12 programs involving more than 20 countries. So, we wanted you to have an idea of how active the PTO is on this issue and how many countries are actually asking for our help on it.

So, if we can go to the next slide, turn to Mexico. So, we can see some measurable accomplishments as a direct result of our advocacy efforts on this issue. So, after hearing particular reports from stakeholders about problems with third parties filing for and getting registrations for U.S. marks in the Asia-Pacific region, OPIA presented information at last years meeting of the APEC IP experts working group, where we

explained how the United States handles bad faith filings.

And, one thing that was very encouraging was that the Mexican IP office IMPI officials who were there asked us to organize a seminar on bad faith in Mexico City later that year. So, we did this in September last year. And, we had a seminar to gather additional information from stakeholders on bad faith filings and to discuss potential options for addressing the problem, which is really growing, with Mexican officials.

Now, one of the first steps Mexico has now taken is to amend its law to provide for a new ground of refusal based on bad faith, which is also available for opposition and cancellation proceedings. And, as the amendment just went into effect in August of this year, we're going to be monitoring it closely to see how the new ground will be applied and what impact it may have.

And, we also have developments in China. So, as you know, bad faith filings are a significant problem for U.S. Stakeholders

doing business in China and have been for at least the past ten years. So, since 2010, we've been engaging extensively with China to address the issue. We've suggested potential solutions through office-to-office discussions, we've engaged through TM5, and outreach seminars to the public. And, we've looked at how our respective offices handled bad faith and exchanged examples of bad faith cases.

And, we've seen some movement in response. So, first of all, China revised its trademark law to add more tools to address bad faith. And, we heard from stakeholders that the situation improved somewhat, but not enough. And, there were still significant problems. So, we continued to engage on the issue.

And, in August of last year, 2017, we joined with China's trademark office to hold a seminar in bad faith filings in Beijing. And, we had trademark office representatives and stakeholders and judges all participating. So, we were very pleased

with their involvement. And, this past summer China invited the public to submit suggested changes to the current trademark law in part to address the problem of bad faith filings.

We now are seeing some incremental procedural changes being implanted. Such as China launching an online database to publish trademark review and adjudication board decisions. So, that's a positive step, but we're continuing to work with China to try to see further improvements in the area.

And then, if you look at the TM5 bad faith project, we're continuing to work on this. TM5 is focusing on the exchange of information and collaboration and harmonization projects to benefit users. And, one of these projects is dedicated to minimizing bad faith filings.

So, what's been happening is that the TM5 partners have sponsored an ongoing series of seminars on bad faith filings. And, most recently that's been at the 2016 INTA annual meeting which coincided with publication of a report on bad faith case

examples. The next seminar in this series is scheduled for the 2019 INTA annual meeting in Boston. And, it is intended to coincide with the publication of yet another report, a new report from TM5 on recent cases from all five jurisdictions. And, if you're interested in seeing any of the reports or case studies, you can visit the TM5 website and the link is on our slide. I think it's easy to find.

And, just to mention, with this project, one of the interesting things is the identification of cases by each of the TM5 partner offices. And, you know, as I mentioned earlier, it can be hard to identify cases that reflect bad faith, when we don't have a definition or a separate ground for refusal. So, what we've done is use the opportunity of these reports to identify cases with fact patterns that are suggestive of bad faith, even if the holding does not explicitly say that. And, we're trying to be expansive in our interpretation of what we propose for inclusion, because we assume that all of you would want foreign offices to be similarly

expansive in their thinking when one of your client's marks is the subject of a bad faith application. So, we've included in this list a case on dilution; one with a discussion of fraud, a Section 2 (a) false suggestion of connection case, a claim of nonuse, and also one involving a lack of bona fide intent.

So, just to summarize, bad faith is obviously a global problem, and we are very active in instigating a global conversation to advance solutions and find new approaches. And, we're looking at our own tool kit as well to see how we can best improve the accuracy of the register and deter bad faith filings here. So, we very much look forward to future discussions with you on the ideas that we develop. Thank you. I'm happy to take any questions.

CHAIRMAN WELDON-WILSON: Thank you. If you don't mind me asking for clarification, there was a lot of great information in there, and I may have just missed this. You had mentioned that you had 12 programs that involved 20 countries. And, who is the

audience for that? Were they stakeholders or government officials, USPTO officials?

MS. PERLMUTTER: Well, go ahead, Amy.

MS. COTTON: Sure. It's mainly examiners. So, it depends on the program. A lot of times if it's a small office, they will bring in IP stakeholders, you know, agents in the region to come to the program. So, our focus is generally officials, examiners. If you go -- we do a lot of training in-country, where you get everybody who wants to come and participate. So, you get quite a few of the administrative officials as well as the examiners, and also stakeholders. We get really excited when judges show up. And, sometimes judges definitely do as well. So, it's a smattering. It depends on the office and the enthusiasm of the audience. But certainly, it covers a lot of ground.

CHAIRMAN WELDON-WILSON: Thank you for the clarification. And, it sounds like it was well received and well attended. Bill Barber has a question for you.

MR. BARBER: Hi, Shira and Amy. You mentioned that the U.S. law doesn't define bad faith. I was curious whether the amended Mexican law defines bad faith, and in particular, does it apply where, let's say, a U.S. company with a famous or well-known mark that hasn't used or registered in Mexico, would it apply in that situation?

MS. PERLMUTTER: We don't know yet. We'll get you the law and a translation of it, so you can see what they've put in there, but we don't have an idea of whether it would cover that instance, but we will look into it. And hopefully, have further dialogue with the Mexican officials on this.

CHAIRMAN WELDON-WILSON: Are there any other questions? Thank you so much for being here today. We appreciate it. Thank you. We will turn next to our legislative update. Dana Colarulli, Director of the Office of Governmental Affairs, is with us today. And, he has agreed to give us a quick update. I'm not rushing you when I say quick --

MR. COLARULLI: Not at all.

CHAIRMAN WELDON-WILSON: Thank you.
I just look at that, and I think that's quick.

MR. COLARULLI: Not at all. It'll be a very quick update. I have noted at the top, I'm a little early with my tie today. You all may know that just in a few short days, the mid-term elections are coming up. It's a very scary time of year. So, I decided to dress up for that occasion. No, Dee Ann, I'm going to give a very short update today. We are in the end of the 115th Congress. So, the mid-term elections are coming up, followed by something called a "lame-duck" session. The mid-term elections will give us some indication of new leadership, certainly in the 116th Congress. There's a lot of leadership changes, particularly in the House, some in the Senate affecting IP. We don't expect it to be an extremely active time in terms of substantive IP discussion. So, I'm going to update on what's happened so far, and maybe a few things that we should be looking forward to.

Some of this will overlap with my colleague Sean on budget, but we'll start with the good things that have happened to support PTO operations. Certainly, the budget issues. We're under a CR until December 7th. It's quite possible that we'll have an additional continuing resolution, but again, we need to get through the election. We'll see what happens at that point. There's a number of issues on the table for both the House and the Senate.

Telework flexibility, I reported on earlier this year. We got an extension of our current program that expands our flexibility for a portion of our work force. So, that's extremely helpful to support, not only recruiting but keeping the employees that we need on both sides of the house, trademarks and patents.

Last on the list is fee setting authority which was extended for another eight years. Congress was able to do that before it recessed to go back home and campaign for the election season. We expect the President to

sign the bill in the next week or so. Along with the extension, there is direction to the PTO to do a study. We'll rely on, likely, the OPIA folks in the Office of the Chief Economist, who have already done some work in this area to make available the public data on diversity of patent applicants and owners. And, diversity in terms of gender, in terms of race, and in terms of veterans. How many veterans are actually using the system, applying, receiving patents; this requirement mirrors what was in the 2011 America Invents Act (AIA). Now what Congress has said to us -- there's been a number of studies out there trying to get a sense of this -- they've asked the PTO to make that information publicly available; we're happy to do so.

An additional piece of legislation that passed had been pending for a couple of congresses: the Small Business Innovation Protection Act. This bill supports a lot of the work that we've already been doing with the Small Business Administration. It requires us to develop an agreement, to

coordinate particularly on education and training, both on patents and on trademarks. The goal really should be -- as it's been for some time -- if you walk in an SBA facility and you ask about IP rights, they provide you the same information that we would provide if you walked into a PTO facility -- the same thing. We're somewhat limited. We provide education and training to small businesses seeking rights at the point when they need to start growing their business. We need another resource, we rely on our colleagues at the SBA. So, this tries to codify some of that relationship, and encourages us to do a bit more. So, we see this as a good, very complimentary piece of legislation to the work that we've been doing.

I will highlight two other pieces of legislation that were introduced and discussed. I think at this point it's unlikely that either of these two pieces of legislation will move forward before the end of this Congress. First, the Trademark Licensing Protection Act. This is a House

bill, although we know that there had been some discussion in the Senate as well. The issue they're trying to really address is an employee management issue with franchisees. They're pulling in some of the issues of trademarks that doesn't really seem to fit correctly. We've reached out to staff, discussed these issues with them, and we'll yet to see how it will be resolved. It's very likely that it may be resolved by regulatory action.

Second, the Family Movie Act Clarification Act of 2018, amending the Family Move Act of 2005. Again, it amends the Lanham Actual, clarifying filtering. Limiting portions of entertainment content. Unclear what the status will be in the next Congress or how much support the bill has. But again, another bill that we're following.

That's the end of my slides. I'll mention just a couple of other things in terms of outreach, given the slight downswing in legislative activity. There are some opportunities for us to reach out to members

of Congress and do some education -- we're certainly doing that. The Director is also taking advantage of going out to some regional events that members are holding. He's headed out to Fargo, North Dakota at the end of November. Senator Hoeven is doing his annual State of Technology conference and the Director will have an opportunity to talk about the work of the patent and trademark office there. We're currently working with Congressman Danny Davis in Chicago, Illinois to do an event that he's framed as "Inclusive Innovation," really trying to get to under-served populations. And, we will do basic education on patents and trademarks and on copyright issues. Particularly asking the question, "Are our resources," and frankly, other local resources " getting to those areas that they need to?", for those who are often less likely to enter the system because of lack of knowledge.

And then, the Patents for Humanity Awards, a program here at the PTO that Shira's team manages, is coming up on November.

Again, a program that has gotten interest from Congress before. There's actually been legislation to enhance the program. We have a great opportunity to bring some of those winners up to the Hill as well to highlight the great inventions that they're doing with their Members of Congress. With that, Dee Ann, I'm done. And, I'm happy to answer any questions.

CHAIRMAN WELDON-WILSON: Does anyone have any questions? Bill Barber has a question.

MR. BARBER: Good morning, Dana. I think there are a couple of patent bills currently pending that have a provision for a presumption of irreparable harm, where patent infringement is shown, in terms of getting an injunction. And, I think there's been a proposal, or noises or requests from the associations, including the APLA and maybe INTA, to have a similar provision in the trademark statute. I was just curious whether the PTO has been asked to comment on that. Or, has it taken a position on it?

MR. COLARULLI: We haven't taken a position or been asked to comment, but I think you're exactly right. There is some discussion and I've seen some draft language that INTA has been pursuing. There are also at least a few other trademark legislative items that I think will likely -- we'll push to see some action next Congress. Again, unlikely to move forward this Congress, but irreparable harm is certainly on that list. An issue we've talked about here in this group, centralizing the appeal of TTAB cases to the federal circuit. That's something the agency has pursued -- has pushed for the last two years.

And then, there are a number of somewhat technical changes that we think would be helpful for the system that we'd pursue. Those include: conversion of statements of use, something the stakeholder community has been pushing for. Clarifying response time for office actions; we repealed the regulations around interferences earlier this year, although, there's a companion language in the statute that would be need to be

repealed as well, given that that proceeding has not been used for now some years.

So, there probably are some clean-up items that we could pursue as well. As I see it, and as I've talked to stakeholders, there's some appetite for a miscellaneous trademark bill. Again, probably not in the lame duck, but maybe laying the groundwork for the next Congress. I would think irreparable harm would certainly be in there. There was one other item I missed. Seals and Insignia. Representative Jeffries from New York, in the past had introduced legislation to allow local municipalities/states to rely on the trademark system for their seals and insignia. Whereas that previous legislation, caused stakeholders and PTO some concern, it seems as if he'll be moving forward with introducing legislation that would be simpler and something we would likely support. So, likely ripe to discuss at the next TPAC meeting.

CHAIRMAN WELDON-WILSON: Thank you so much. Are there any other questions? We appreciate you being with us today.

MR. BARBER: Absolutely.

CHAIRMAN WELDON-WILSON: Since Dana mentioned that his comments might be complementary to Sean's, I think that it's appropriate that we go next to the OCFO update. Sean Mildrew is our acting chief financial officer. And, we are very glad to have you here today.

MR. MILDREW: Great, thank you, good morning everyone. I'm here to give a budget update. So, we'll cover a couple of fiscal years, and then some of the efforts that have been ongoing. Great, thanks so much.

Okay. We'll talk about '18, '19, and '20 and the strategic plan, and Bill had already touched on the fee setting authority, so I'll just gloss over that.

So, looking at fiscal year '18, here's a nice summary. PTO collected approximately \$329 million in trademark fees. We ended the year with a trademark operating reserve of 135.3 million. Which is about \$75 million above the trademark minimum operating reserve level of \$60 million. And so, needless to say, this was a very nice year.

It's always good to close out above where you expect to be. And, as I think everyone can appreciate, the operating reserve is a key tool here at the patent and trademark office to continue all of the important work and mission-related efforts that we have ongoing.

So, the fee collection, up top, the \$329 million offset by some adjustments, and those adjustments are really technical things. Things like deposits in transit is the bulk of that adjustment amount of \$2.4 million. And, just for your edification, it's fees that were received in our system but the cash has not been transferred into the treasury. So, it's a timing kind of a thing. So, to keep everyone honest, we make an adjustment downward for that. We add back the prior year operating reserve of about \$120 million, plus some additional other income, parking, rebates, etcetera.

And then, in OIG transfer, this is the trademark portion of that. By law we needed to transfer \$1 million from the USPTO to the OIG. This is the trademark portion of

that.

And then, when you have the available income subtotal of 450 million and you have our year end spending mark at about 315.6 million, that gets you back to the operating reserve that I mentioned at 135 million.

Okay. So, next slide shows a little bit more detail about our fee collections for the trademark area. Our actual trademark fee collections for '18 were slightly below the planned fee collection level by about one percent. That's certainly within an acceptable range when you look at it. And, as Commissioner Denison mentioned in her remarks, there is definitely a growth trend here, and you can see that in just the '16, '17, and '18.

And, just to highlight some of how that looks graphically month-over-month, you see the chart embedded in the slide. There really aren't any concerns for the '18 fee collections-trend line. Most of that variation that you see really has to do with

the amount of collection days in each month. So, we're looking good there. Good shape. And, again, it's always good to be in a growth mode.

So, looking forward to fiscal year '19, which we're currently in, it started on October the 1st. We're under a continuing resolution, or affectionately known as a CR, through December the 7th that funds our operations on a calculated level based off of last years appropriation of the \$3.5 billion. Which was a calculation that we made, taking in that amount from last year and apply it to how many days we are operating under the current CR level through December the 7th. And, that gets you enough funding to certainly take us to December 7th. And, if we -- as Dana had mentioned -- go into another CR, we anticipate having plenty of funds to continue on our normal activities.

So, the next slide, looking toward the 2020 budget. The agency submitted the fiscal year 2020 to the OMB, Office of Management and Budget, budget on September the

10th. And, the President's budget will be finalized and released sometime, anticipated in February 2019. By law the President submits to the Congress the President's budget on the first Monday of February. We look forward to that.

Strategic planning. We appreciate all the comments that were submitted on the strategic plan for 2018 to 2022. We're currently reviewing all of the input and we're making recommendations to the director on how those comments should impact the final document. And, the final document we anticipate to be released next month. Late next month in November.

Fee setting authority, as Dana had mentioned, the fee setting authority was enacted -- well, was passed by the House on September the 25th, and the Senate on October the 11th. It was just recently sent to the President for signature, and we anticipate no problems with that. Just as a footnote though, Trademarks still has the ability to continue to set fees under the current law,

15USC § 1113. However, we are one agency, and it's really important to have that ability to help us set our fees and chart our course to fulfill our mission in all areas of operations. So, that's all I had. It was a brief, brief, but I hope you found it was informative and I'll take any questions or comments if you have them.

CHAIRMAN WELDON-WILSON: Does anyone have any questions of Sean? Well, thank you very much for coming. You actually have us a little bit ahead of schedule. So, I'll go -- our agenda says that we are going to take a ten-minute break until 9:25. Let's try to make it 9:22, and try to stay a little ahead. Because, I know people have some pressing engagements after this meeting. One reason we started early today. Thank you.

(Recess)

CHAIRMAN WELDON-WILSON: Our next presentation is by our well-traveled Judge Rogers, who is the Chief Administrative Trademark Judge. And, he's going to give us a TTAB update. I say well-traveled, because as I

understand it, you flew in last night. Is that right?

CHIEF JUDGE ROGERS: We had a great session with about 150 attendees at the Michigan IP section's annual fall program in Dearborn, Michigan. So, it was a 24-hour trip out and back. We had a room that was full, and we did an end-to-end processing overview for trial cases at the TTAB

. So, it was successful, well attended, so I'm glad to be back here. Glad to be here this morning. And then, we'll be at AIPLA this afternoon to share the same information with them that I'll share with you today.

And, we usually start with the numbers. So, I'll start with those and let you know where we stand with our staffing, our receipts, our pendency measures, all of that sort of thing. As you can see from this slide, we're down at the close of the fiscal year, we were down a couple of judge positions because of two retirements that we had during the year. It did not, as you will see on

later slides, affect our ability to meet our goals for the work that the judges do in processing cases that need to be decided on the merits.

You can also see that the attorney number was up significantly at the end of the fiscal year. And, that's because we hired what, for us, is a large class of new interlocutory attorneys. We brought on five in September. Now in part, that was to fill two vacancies that had arisen during the year in the ranks of the interlocutory attorneys. But also, we knew we needed to expand a little bit beyond us filling the vacancies, because of a surge in contested motions that we experienced in trial cases this year. When I talk about some of the pendency numbers and how we reached the goals that we did, I'll explain how we managed between the judges and the attorneys to get all that motion practice work done.

On the bottom of the slide you can see that, as could have been expected, given the filing increases in trademarks in recent

years, everything was up across the board for us. And, it's been following a general trend of increases and appeals, and oppositions, cancelations, extensions of time to oppose -- more significantly over the last ten years or so, we've seen more market increases in oppositions and cancellations than we have in ex parte appeals.

So, it's kind of interesting to me that the dramatic increases in application filings have not resulted in as dramatic an increase in the number of ex parte appeals from examiner refusals, but certainly have resulted in dramatic increases in oppositions and cancellations. So, we're going to expect that those numbers are going to continue to go up just as the trademark numbers are going to continue to go up, and so we're staffing accordingly.

We brought on those new attorneys, and I'm in the midst of reviewing applications for judge positions as well. And, as we've talked at these meetings before in the process of reviewing applications for the deputy chief

judge position. So, we're going to have a lot of staffing changes coming throughout the early part of this fiscal year, and I'm positive that they're all going to be for the better. And, leave us better off.

So, in terms of some of our numbers, the case is decided on the merits. An interesting number, down ten percent during the year, but that is not of any concern to me. Again, we had two judges retire during the year, so that's kind of indicative of the loss of capacity we had when two judges went out. But, as we will see on the next couple of slides, it didn't keep us from reaching our numbers that we needed to reach in terms of pendency to time for final decision on the merits and inventory control. So, we essentially processed as many cases as we needed to decide on the merits to meet our goals. And, it didn't matter that we were down 10 percent.

Precedential decisions, percentage-wise it was up five percent. But, that's not really such a big deal. Which was

our goal last year, and this year 35 to 40. So again, we hit the goal this year. A number of those precedents involved new rules, issues, and procedural issues. So, we tried to get a number of precedents out in decisions that were written by interlocutory attorneys on issues affecting procedural aspects of trial cases at the board.

We've seen the contested motion, as I said, we had a surge in contested motions this year. It was kind of interesting because we didn't really expect it based on first quarter filings of contested motions. But, in the second and third quarters of the year, things really seemed to surge. And, there's also been a bit of a corresponding surge in the number of trial cases -- not just coming in the front door, but actually going through the whole process and requiring decision on the merits by the judges. And, we'll see that when we talk about the inventory of cases waiting for disposition by the judges.

The contested motion figure is the number that were decided during the year, up

six and a half percent, is really a testament to the teamwork of both the attorneys and the judges at the board. Because, three times during the year we ended up transferring contested motion work from attorneys to judges. Who, even with our two retirements, we had a little excess capacity in the judge ranks. And, we were able to use the judges, many of whom were former interlocutory attorneys and well versed in handling those contested motions, to stay current with the contested motion processing. So, it's a great testament to the teamwork that the attorneys and judges showed, that we were able to handle that increase.

At the bottom of the slide, we're continuing to -- we saw kind of a drop off in calls, which was not unexpected. We saw more inquiries last year when the rule's changes first went into effect. Our information specialists saw a little less activity this year as people became more familiar with the rule's changes. They've been focusing on their quality and doing well there.

So, in terms of the contested motions -- back to that for a minute. We knew because of the surge in the contested motions that we had a challenge, by the end of the year it was going to be a challenge to hit our pendency goal, which is eight to nine weeks average processing time for contested motions. And, to get to the inventory control measure that we needed to get, we always want to keep the inventory under control. Because, if we keep the inventory from building up too much, then we know we'll be much more likely to hit the pendency measure. And, we also were at a point at the end of the third quarter, here we had a significant number of cases involving contested motions, that were over our bench-mark goal of 12-weeks pendency. And so, when we take that quarterly snap-shot we don't want to have any cases with contested motions that have been pending more than 12 weeks. And, we had quite a few over at the end of the third quarter. So, there was a really significant push in the fourth quarter, with reassignments of some motions to judges. The

attorneys really knuckling down and getting a lot decided. And, we were able to reach two of the three goals at the end of the year. We had no cases with motions pending over 12 weeks, and we also had the inventory under control. And, you can see that was 165 cases still pending with motions at end of the year.

So, the one we missed slightly was the average pendency figure. We like it to be 8 to 9 weeks; at 9.4 weeks we were essentially 3 days over. That's something that I am less concerned about than having the inventory under control and having no old cases waiting to be decided. Because with the five new attorneys that came onboard in September, this slight three-day increase over our optimal pendency will quickly evaporate as we bring those attorneys up-to-speed. And, they're starting the new year without a backlog of old cases and with the inventory under control. So, that's where we stood and I think this is a really -- a testament, again, to the teamwork of the attorneys and the judges, that we were able to get to this point at the end

of the year, when it was questionable at the end of the third quarter how much success we would be able to realize by the end of the year.

And, in terms of the judges' work, well under goal for processing time for final decisions and appeals and trial cases; 130 cases. Which is on the low end of the inventory control goal for the judges. So, right where we need to be. It puts them in good position to stay current with the work during this current fiscal year.

Interestingly, at the end of last year, we had 28 trial cases waiting to be decided, and we had 65 appeals. This year slightly more appeals, but a much higher number relatively speaking, minor numbers compared to what the patent board has to handle, but for us 54 trial cases waiting to be decided on the merits at the end of the year. Which was much more than the 28-last year. So, almost double the number of trial cases waiting to be decided. I will also say that those trial cases are a mix. We have

seen in the time since the B&B Hardware decision, B&B v. Hargis was decided and there was a lot of talk for a while that people would change their practice significantly at the board. They would take more discovery, they would put in larger records. We've not really seen a significant difference in the types of trial cases that are completely tried and need to be decided on the merits. We always have had a certain number of large record cases. We've always had in the error when parties are pursuing accelerated case resolution. A lot of cases that have very thin and focused records. Because, the parties just need us to make a decision, they're not going to engage in a lot of motion practice. They're not going to really lard up the record with unnecessary or irrelevant evidence. And so, this mix of trial cases waiting to be decided is a typical mix for us. And so, some of them are large-record cases which will take some time to work off. But, many of them are relatively succinct and smaller records and we'll get some of them

processed pretty quickly.

In terms of the end-to-end processing, which again is something we talk about every time we meet, and we always try and maintain our focus on, we were fortunate enough to resume the downward trend in end-to-end processing time for trial cases this year. We had a slight increase last year, which was the first increase in about six years, but we resumed the downward trend on end-to-end processing for trial cases. The same with appeal cases, and there continue to be interest in ACR cases. We had thought that after the rule changes in 2017, which leveraged some of the efficiencies typically agreed to by parties involved in ACR cases into all cases, that we might see a drop off in interest in ACR cases, but we have not. There still are a lot of people who would like to agree to efficiencies that were not automatically leveraged into the rule and automatically available to people. So, we still see cases where parties agree to facts. They'll stipulate to facts, they'll stipulate

to procedures, they'll stipulate to a cross motions for some re-judgement kind of approach. And so, we still see a lot of interest. And, there's utility for parties who are interested in those kinds of options in the ACR process.

Of the seven cases pending at the end of the year, one of them was the first case that came out of the expedited cancellation pilot project, only one. The others are kind of traditional full-trial ACR cases, if you will. But, because of the work that has been done on the pilot project -- which I'll talk a little bit more about in a second -- we had the first of the expedited cases, you know, come through and was submitted as an ACR case. And, that's actually in draft form right now. And, we should be ready to issue that decision pretty quickly, and it will be a case that was commenced and will be completed within about nine months from start to finish. So, that's a good sign.

So, I'll go on in second and cover

some slides on the expedited pilot program and the standard protective order, but if there's any questions about any of these performance measures, I'm happy to take them now. Okay.

CHAIRMAN WELDON-WILSON: I'm sorry, Judge. Howard Friedman has a question.

MR. FRIEDMAN: Yeah, just one comment. I just wanted to thank Judge Rogers, Ken Solomon, and especially the judges for helping out the interlocutory attorneys. This year was very much appreciated by the union and even more appreciated by the interlocutory attorneys. So, thank you.

CHIEF JUDGE ROGERS: Yes. It's our pleasure. I mean obviously we have discreet groups that have discreet areas of responsibility, but we -- as our slogan goes, we have our trials but our work is appealing. And, we'd like to think that we work as a team and can help each other out in reaching the goals that each of the subunits of the board have to reach during the year.

So actually, I kind of talked about this already, the continuing interest in ACR.

And so, I think that that is going to continue for some time to come. And, that's a positive sign. People are just interested in pursuing efficiencies.

So, the expedited cancellation proceeding, the pilot project. This is just a reminder of kind of where we started and the outreach that we had to stakeholders in regard to this issue. And, as a result of all of that outreach to stakeholders, we had these significant concerns that were articulated either in written comments or in our discussions when we had a roundtable here on campus.

And, as a result of the identification of these concerns among the stakeholders, we decided that we really needed to work on a pilot project rather than go straight to a notice of proposed rule-making. And, the pilot project that we're engaged in has got two important goals we're working on accomplishing. And, one is identifying the type of cases that are most suited to an expedited proceeding. And, what kinds of

procedures parties are will to agree to, because at this point, we still need to get agreement of the parties to more expedited proceedings.

If we eventually get to a notice of proposed rule- making, we would propose things that would be mandatory for these proceedings. But, as we found with past rule-making efforts, it's usually better to work with stakeholders to see what they're willing to do first before we then propose it as mandatory for everyone across the board. And so, what we're trying to do is figure out what percentage of cases do not go by way of default -- that in cases that involve non-use or abandonment claims and what are parties willing to agree to in those cases that we identify as not going by default, but also not likely to create large very fact-intensive records.

So, out of the benefits of this effort is we're taking a much deeper dive into the kinds of cancellation cases that come into the board, and determining default rates based

on the type of cases, the type of claims. This is not something that we can come up with easily from the IT system, so it's kind of labor intensive. We think it's useful to spend time on, and it will help support any notice of proposed rule-making that we ultimately make, because we will need to use that NPRM to target the right kinds of cases.

And, we are also, because of this look that we're taking into the default rate, we figured we should take advantage of the work that we're doing on this to figure out collateral issues related to the bases of the registrations, the types of claims, the types of bases, and see if default rates vary by certain characteristics. So, this is actually going to have benefits beyond the development of the expedited cancellation process. Because, it will give us more information about the kinds of cases that get filed and which ones go by default.

So, we have found in the early results, and Judge Cynthia Lynch and Judge Chris Larkin are the two judges that are

working with our interlocutory attorneys to identify appropriate cases and discuss with the parties what we might be able to do for them. We've found that there are many uncontroversial cases that result in default or quick settlements, so we don't really need to try and sell the parties on putting them into an expedited proceeding.

We also have found that contested cases do involve a desire by parties to investigate some of the issues related to use or abandonment. Now, sometimes the parties will engage in some informal exchanges, but we see plaintiffs who are interested in potentially needing to take a deposition or do a little discovery based on what they see as a result of that informal discovery. And, this has been interesting to note, because one of the ideas that had been floated in our early discussion of a possible form of an expedited proceeding, was that it would not have any discovery except possibly by the defendant related to the plaintiff's standing. We can see that there are still plaintiffs who are

interested in the possibility of at least some minimal discovery. So, that's something that we've learned just from the early phases of the pilot.

In terms of the numbers, we have had about 60 cases that did not go by of default -- cancellation cases involving nonuse or abandonment claims did not go by way of default. Did not have lots of other claims that were pleaded along with the nonuse or abandonment claims, and looked like they were good candidates for early intervention by Judge Lynch or Judge Larkin and the assigned interlocutory attorney. So, we've had conferences with the parties in at least a third of those cases. The number on this slide says in three cases the parties have agreed to ACR. Of course, one of those cases is the case I alluded to earlier, which will shortly be decided. It's now up to four. So, the numbers rise slowly, but again, we're learning things from this process. And so, it's been very useful for us. And, these cases that have resulted in the parties

agreeing to ACR have involved no or limited discovery. So, what I gather from that is, it's going to be critical how ever we decide to move forward to have an opportunity to discuss with parties early on whether they're going to need discovery or not. I don't know that we'll be able to put in an NPRM that there will always be no discovery except as to standing, or there will always be a certain requirement for discovery. We might need to build in a little bit of flexibility there.

So, future results for the pilot project, possible changes to the rules that would support the NPRM and support whatever process we could identify as most desirable. And then also, a possible expansion of this early intervention pilot. If it has yielded some helpful results in regard to processing of nonuse and abandonment cancellation cases, perhaps continuing the early intervention pilot with at least some judges paring up with interlocutory attorneys on some other types of claims might yield some other interesting results for us that could help us in our

continual striving for the most efficient ways to handle our trial cases.

So, the other issue I wanted to talk about is the Standard Protective Order. We've spoken about that in the past. Again, this is something we've done previous outreach on, but the results were rather limited. We have as a result of those comments that we received, identified ambiguities in Sections 3 to 5 of the Standard Protective Order, and we will certainly be addressing those. What we want to do is make all of the necessary changes or updates or revisions to the Standard Protective Order at one time. So, we're not going to do it piecemeal. Even though we've already identified that we need to do certain things, we still have the larger issue of access by in-house counsel to address. And so, we'll be taking more comments on that as we go forward. And then, when we're ready to take care of everything, we'll do it all at one time.

So, we have said before, I'll review it one more time for everyone, that we had the

U.S. Steel Corp. decision which promotes the idea that in-house counsel should be able to have access to attorneys-eyes-only information, unless some reason can be shown why they shouldn't have it. On the other side of the ledger is the AKZO case, both cases by the federal circuit, and so they're not necessarily completely consistent with each other. This was a case where the federal circuit, reviewing a case that came up from the ITC, approved what the ITC judge had done; which was to deny access to in-house counsel of attorneys-eyes-only information. And, of course, the few comments that we've received on this issue from stakeholders are split as these two cases are split.

So, we have drafted some more detailed survey questions, we're finalizing those questions. One of the things that, I think, contributed to us not getting as many comments as we needed on this issue before when we started the outreach was, we basically said the Standard Protective Order, the last revision of it has been in place for a while,

we'd like your comments. It was just kind of an open-ended question. So now, we are developing some much more targeted and specific questions. And, those questions are going to essentially seek to identify the respondents by type so we can know if the concerns of law firms, individuals, in-house counsel, outside counsel, etcetera are shared or where they overlap. We will certainly be seeking their positions, the commenters positions on in-house access. We'll also be interested in whether the in-house counsel that would get access would be foreign in-house counsel or U.S. in-house counsel. So, you can see where we're looking into this in a more granular level, and we are also going to look to get this out and have people comment on the AKZO three-factor test. And, we will be acknowledging that we previously had a three- tiered Standard Protective Order, and we'll be asking parties to comment on whether we should consider returning from the two-tier Standard Protective Order that we have now to the three-tiered order that we

used to have, which was a suggestion in one of the comments that we received. So hopefully, this additional outreach will result in more detailed information and allow us to actually figure out everything that we need to do.

And, that's it for me. But, before Rob starts, if there's any questions, I'm happy to take them.

CHAIRMAN WELDON-WILSON: Gerry, it was very thorough and I appreciate your time today. Thank you for coming.

CHIEF JUDGE ROGERS: Thank you, Dee.

CHAIRMAN WELDON-WILSON: One moment.

COMMISSIONER DENISON: I just wanted to add a couple of things that I omitted in my presentation inadvertently. I wanted to recognize Mei-lan Stark who has been a valuable member of the TPAC for the last three years. And, unfortunately, her term is ending, but she was unable to be with us today. So, I just wanted to publicly acknowledge her service. We're very grateful to her for her service.

The second thing is, I failed to

introduce a new member of the trademark team. We have a senior adviser in the undersecretary's office, Kathleen Cooney-Porter. She is a former examining attorney, and she is providing us with very valuable advice and interaction with the undersecretary's office. So, we're very grateful. So, sorry I didn't mention you earlier.

And, I also wanted to mention that the application is posted on USAjobs.gov for examining attorneys right now. We're looking for attorneys anywhere from GS9 to 14, so we hope that if you know people who are interested in working for us that you will tell them to apply ASAP. Thank you.

CHAIRMAN WELDON-WILSON: Thank you so much. Now I'd like to turn to our trademark IT update. We're very pleased to have with us today Debbie Stephens who is acting deputy CIO. And, Rob Harris who is acting TMNG portfolio manager. So, thank you very much for coming.

MS. STEPHENS: Okay, great, thank

you. And, good morning to you TPAC. Before I turn it over to Rob, I wanted to take a moment and reemphasize and reassure TPAC that the USPTO and OCIO recognize the importance of IT to our internal and external trademark users in the protection of IP rights. And, I wanted to emphasize that we are deeply committed to addressing our current IT challenges. And, understand that it's our job to minimize the disruption to the trademark stakeholder community. And, we really appreciate the engagement opportunity here, and other forums, to help us better understand your needs. And, that enables us to address them appropriately. So, I just wanted to take a moment to reemphasize that, and I'll turn it over to Rob to provide some IT updates. Thank you.

MR. HARRIS: Thanks, Debbie.

Thanks, Dee Ann. I'll start with a quick summary of what has changed and what accomplishments we've made since the last time we were together in July.

First, from a TQR Trademark Quality Review perspective, in late July we provided a

new tool to the TQR program that automates their business process and paves the way to leverage data analytics, to make future improvements to the TQR program. So, it was a huge step from a very manual and labor-intensive process to one that is more efficient and puts us in a position to even gain more efficiencies in the future.

Secondly, from an external prospective, a Trademark Image Search API or application program interface was released on our USPTO's open data portal in July. That portal, I'll give the plug now, developer.uspto.gov. If you want to go play around, there's a tremendous amount of both patent and trademark information there that you can query, run visualization tools on, and it's an area of expansion that we're excited about.

Mary mentioned earlier that the Mandatory Electronic Filing is expected to be implemented in FY '19. And certainly, there are many impacts to IT systems supporting that. And, we're in the process of working

and making those changes necessary.

Additionally, from a TTAB perspective, our focus in the last three months has been to make improvements and address defects in our internal facing systems. The TTAB information system is our internal processing system. And, we also made some tweaks and improvements to the ESTA welcome page.

And lastly, from a TMNG perspective, our focus has still been on the editor being used -- or will be used -- by a growing number of folks in the trademark business unit. The focus has been on making sure that editor -- the look and feel -- WYSIWYG -- "what you see is what you get." Making sure some of those concerns and feedback that we got from our August deployment is adequately addressed. We just deployed last weekend, and we are confident that we have a significant portion of the feedback addressed. The feedback this week that we've gotten, since last week's deployment, has been positive. So, the team is excited by that step forward.

On the slide, this is the critical success factors that we have to meet in order to deploy the Exam product. You've seen this in the prior TPAC meetings. And, I'm excited today. I really think we're in good shape. There are two remaining areas of concern that are going to be addressed in mid-November, by a deployment scheduled for the weekend of November 16th. Those two areas are around more of the look and feel of the editor, that I mentioned before. And, also a small item associated with how we send information over to the international bureau when processing an international trademark application.

So, that's going to put us in a position about a month from now to expand the user base and start to get much needed feedback on the tool. So, we are very anxious to take that step forward. The teams, both on the business side, the trademark business side and the IT side have been -- it's been a long haul. And, I think that we are -- I know we are all excited to take that next step and get more feedback and continue to improve the

tool.

The one item I will mention that is beyond the November 16th deployment on this slide is the last, and that is divisional applications. It was in addition to our critical success factor list, and it's one that we have been working collaboratively to define the "as is process". How does a process work today? And, make sure that we've accounted for that and any improvements or changes we want to make before we turn it over and start the development of that work. It's taken a little longer than expected, but it is, from my perspective, very worthwhile. I would think if we rewound a few years on the TMNG program, we were so anxious to dive in and start making changes that we sometimes got a little ahead of ourselves. We're taking the time and the effort now to make sure that we have -- we know what this process is, what's expected of it, and make sure that everyone is on the same page before we start to put fingers to keys and making changes from a development prospective. (pause) I hit the

wrong button.

So, the year ahead for the Exam tool. As I mentioned, we've got a few key items in process. Those are the first, that's what's happening here in the first quarter. It's going to result in us begin beta testing, like I said in November. The key on this slide is in the second quarter. It's a point in time where after we give a broader group the ability to use the tool, provide feedback, we want to together as a team sit down and assess what our next steps are. And, yes, some folks will refer to this as a go/no go decision. What I look at is an ability to say, "Are we on the right course?" You know, do we want to continue, and continue to expand the user base group? Do we want to take a slight turn and take the time to account for the feedback that we're getting in the beta testing? Or is it a point where we say, "Listen, we were expecting a 99 percent approval rate; we got a 1 percent approval rate, do we have to take a more significant turn?" That's a hypothetical. I hope not to

go in that direction, but it's one that we certainly -- again, the excitement is, "Let's start the process. Let's get down. Let's get the tool in the hands of users and start to really assess what our next steps are."

Assuming success in the second quarter, then you see in the last two points here that we would continue to expand the user base, continue to incorporate feedback, and then also complete work on the divisional tool and also the Form Paragraph Editor. And, be in a position to begin training and rolling out Exam to all the law offices later this fiscal year.

And, I'll end on the point that Debbie just made, and that we heard from Director Iancu, and Commissioner Denison earlier. And, that is the fact that we know our goal is to make sure that IT is available when you need it. And, the "you" is a global term. It certainly is focused on our examining attorneys, it's focused on all of our external customers that are submitting trademark applications, using trademark data.

Any customer of ours expects these tools to work when they need it to work. We know for a fact that right now we're struggling to meet that goal. We understand the inconvenience it's causing, and we're taking steps as quickly as possible to address those concerns.

Those steps are really categorized. We had a good discussion at the IT subcommittee yesterday. The two categories we're looking at is, "How do we best stabilize our existing system?" And then, how do we modernize those systems to make sure we're prepared for future demand. I put on this slide a few examples of particularly the stabilization side. For example, TSDR. We know that in late September and early October we were having problems with the TSDR. Every morning like clockwork we knew there was about a 30 minutes outage for a variety of reasons. And, we worked as quickly as we could to get that back up to minimize the impact. We're at the point now where we've stabilized. But, it's a bit more manual than we're comfortable with. So, we're trying to implement tools in

the near term to make the monitoring and any adjustments we need to make more automated. And, we know we have some long-term work to do there as well. The continued delays with Exam that I've mentioned, again, looking at it from a stabilization perspective, we've got to make the tool work before we can expect the customer base to grow.

And lastly, within the category of operations and maintenance, there are areas in our Legacy systems today where we are taking steps to either replace infrastructure or upgrade that infrastructure to make sure that we're in a better position to make changes when needed. A perfect example is mandatory electronic filing. This fall as we've continued to define and elicit requirements for that change, we've been upgrading the infrastructure of TEAS to make sure that we were ready to make the change, we were in a better position to do that.

And, what I'll end on is the business vision. And, I'm not going to reiterate what Director Iancu mentioned this

morning and what Commissioner Denison mentioned this morning. My take away is this, as you heard very clearly, that we have very proactive and involved approach from both leaders. And, that's going to make this visioning work absolutely that much easier, because we have commitment from the absolute top of the organization. The leadership understands that we have improvements to make. We're doing our best to stabilize, but when looking at where we're going next year, five years out, that visioning discussion that needs to be had, it is absolutely imperative that we have leadership support. You heard this morning we have that support and we're looking to dive in over the coming months as Director Iancu described. And, make significant change and lay that plan out for where we're going in the future. Thank you.

CHAIRMAN WELDON-WILSON: Thank you.

Lisa Dunner has a comment or question.

MS. DUNNER: Bob and Debbie, I just want to thank you for your very good report and remarks. And, I also wanted to underscore

the fact that despite the many challenges the OCIO had this past fiscal year, there have been a lot of successes for which the end-users appreciate. And, TPAC very much appreciates the collaboration that we've had with your team and all that you're doing to make the systems as modern as possible.

MR. HARRIS: Thank you.

CHAIRMAN WELDON-WILSON: Bill Barber.

MR. BARBER: Well, I would certainly echo those comments. And, I also wanted to thank you for your reports at these meetings. I think you've been very transparent and candid in your comments. We really do appreciate that.

I did have one question. You know, you mentioned that second quarter of this year is key for TMNG and that there's a sense that you'll be, you know, you're planning on essentially a "go/no go decision". Maybe just from a big picture standpoint, if you could clarify for us, I think it might be helpful, and for the public. Just from a big picture

standpoint, who from the patent and trademark office is involved in that decision? I know you are from the OCIO, but you have a team that is broader than just OCIO. So maybe, you know, what is the team? Or who is involved in that decision?

MS. STEPHENS: So, yes, great question. So, we at all levels involve the business. So, of course Mary and Meryl and her team are involved throughout. And, there are advisors as well as our union stakeholder community. And, that's why I think Rob touched on it a little bit about the beta testing and that involvement and that engagement. So, at all levels we are collaborating to ensure that, as Rob mentioned, kind of an approval rating. How are we doing? How is not only the tool performing from a user perspective, in terms of user experience, but we look at our tools in terms of performance scalability and quality. Right data integrity. So, these are variables that we consider internally, but we engage the entire community that has the

ability to touch that tool and indicate whether it is of the caliber that is needed to go forward. So, I hope that helps address. And, if Mary wants to chime in. Thank you.

COMMISSIONER DENISON: I was just going to say that, as you heard, our director is very interested in this topic and so he will be personally involved.

CHAIRMAN WELDON-WILSON: Are there any other questions? Well, thank you very much for your presentation today. It was very helpful and, as Bill said, transparent on many issues, so thank you. As we near the end of the meeting, does anyone from TPAC have any other questions or comments? Or does anyone from the public have any questions? Oh, I'm sorry, Lisa Dunner.

MS. DUNNER: I would just like to personally thank you, Dee Ann, for a great job that you've done as chair of our group.

CHAIRMAN WELDON-WILSON: Thank you, that's very kind. And, I appreciate everything that you have done as well. So, we'll be self-congratulatory members of TPAC.

Are there any other questions or comments from the public? Or from other USPTO members?

Well, given that, I'm just going to make a mention that TPAC has been working hard with the help of many people at the USPTO to draft the TPAC annual report. Which is coming up soon. So, toward the end of November you can keep an eye out in the OG for the TPAC annual report. And, I hope you enjoy the reading. So, I wish everybody a good day and I will say good-bye as chair of TPAC. And, thank you so much for all of your support.

(Whereupon, at 10:11 a.m., the PROCEEDINGS were adjourned.)

* * * * *

COMMONWEALTH OF VIRGINIA

I, Carleton J. Anderson, III, 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: November 30, 2020

Notary Public Number 351998