

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia
Friday, January 25, 2019

PARTICIPANTS:

TPAC:

WILLIAM G. BARBER, Chair

ELISABETH ROTH ESCOBAR, Vice Chair

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PARTICIPANTS (CONT'D):

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Chief Administrative Trademark Judge

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Chief Financial Officer

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Office of Policy and International Affairs

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRMAN BARBER: Okay. Well, hello everyone and welcome to all of you to the first public meeting of the Trademark Public Advisory Committee for calendar year 2019. My name is Bill Barber. I will be serving as your chair this year. You only have to put up with me for one year so that's good news for everybody. I am with the law firm of Pirkey Barber in Austin, Texas. I know I have very big shoes to fill. I've been blessed to have served with two outstanding Chairs during my terms on the TPAC. Deanne Weldon Wilson, my immediate predecessor, and her predecessor Marrie Tepper, so Deanne and Marrie if you're out there listening thank you for all you did for us.

I would like to introduce the other TPAC members that are in attendance today. First of all, our new Vice Chair is Elisabeth Escobar. She is Vice President and Senior Counsel for Intellectual Property at Marriott International in Bethesda, Maryland. She is

serving her second year on TPAC.

Next, Brian Winterfeldt. He is the founder of Winterfeldt IP Law Group in Washington DC. In addition to his active trademark practice, he is president of ICANN's Intellectual Property Constituency so he is definitely a pre- eminent expert on domain name issues. He's serving his third year on TPAC.

Next, let me introduce our dynamic duo from the Big Apple. We have Ilene Tannen. She's of Counsel with Jones Day in its New York office. She is also serving her third year on TPAC and also from New York we have Donna Tobin. She's a partner at Frankfurt, Kurnit, Klein, and Selz in New York. She's a Co-Chair of the firm's Trademark and Brand Management Group. She's serving her second year on TPAC.

Next, we have Ann Gilson LaLonde. She's the author of the ten volume Trademark Treatise Gilson on Trademarks so she is our walking encyclopedia of trademarks. She resides in the great state of Vermont, which I

found out last night has no billboards. She is also serving her second year on TPAC.

Finally, let me introduce our new members. We have three new members this year. First, Stephanie Bald. She resides in Chicago, but she is a partner at Kelly IP here in Washington DC. So, welcome Stephanie.

Next, we have Chris Kelly. He's a partner at Wiley Rein in Washington DC. He is also a former Trademark Examining Attorney at the USPTO.

And last, but not least, we have Kelly Walton. She's the Vice President of Trademarks and Copyrights at Dell in Austin, Texas, greatest city in the world. She oversees Dell's global trademark and copyright portfolio and supports its global marketing initiatives across all business units.

And then finally, I'd like to introduce our union reps that are here today, also members of TPAC, Jay Besch. This is his very first meeting as President of the National Treasury Employees Union Chapter 245, which represents trademark examining attorneys

and inlocuitor attorneys at the TTIB. He is succeeding Howard Friedman who served on the TPAC I think in every TPAC since its existence so you have big shoes to fill, Jay, and welcome to your first meeting.

And then we have Tamara Kyle. She is the TPAC Union Rep from the Patent Office Professional Associations. Thanks for joining us.

So, now, without further ado, I'll turn it over to our Commissioner for Trademarks, Mary Boney Denison, who will be introducing a special guest for us.

COMMISSIONER DENISON: Thanks so much, Bill, and welcome to the new members, welcome to the all the TPAC members and were delighted to have Bill as the new Chair and Elizabeth at the Vice Chair so thank you so much for your service.

So, it's my honor today to introduce the Deputy Under Secretary of Commerce for Intellectual property and Deputy Director of the US Patent and Trademark Office, Laura Peter, and welcome her to her first TPAC

meeting. Prior to assuming this role, Deputy Director Peter was Deputy General Counsel of A10 Networks. In that role, she helped shepherd the company through its initial public offering and oversaw daily legal matters related to commercial agreements, litigation, and intellectual property portfolio development. Deputy Director Peter has practiced IP law for over 20 years. Her former positions include Vice President and General Counsel at Immersion Corporation and Assistant General Counsel and Director of Intellectual Property at Foundry Networks. Ms. Peter holds a Bachelor of Science in Industrial Engineering from Cornell University, a Masters in Public Policy from the University of Chicago, a JD from Santa Clara University School of Law and an LLM in International Business Law from Kings College London. Wow, is she well educated.

(Laughter) So, Ladies and Gentlemen please join me in welcoming USPTO Deputy Director, Laura Peter. (Applause)

MS. PETER: Thank you so much. It's a pleasure to be here today and I think to start off we are going to swear in our new TPAC members. So, if I could ask Stephanie Bald, Christopher Kelly, and Kelly Walton to come up. The three of you should put your hands on the Bible if you can and repeat after me, I do solemnly swear or affirm --

GROUP: I do solemnly swear or affirm --

MS. PETER: -- that I will support and defend the Constitution of the United States ---

GROUP: -- that I will support and defend the Constitution of the United States --

MS. PETER: -- against all enemies foreign and domestic --

GROUP: -- against all enemies foreign and domestic --

MS. PETER: -- that I will bear truth faith allegiance --

GROUP: -- that I will bear true faith and allegiance --

MS. PETER: -- to the Constitution of the United States saying that I take this obligation freely --

GROUP: To the Constitution of the United States saying that I take this obligation freely --

MS. PETER: -- without any mental reservation --

GROUP: -- without any mental reservation --

MS. PETER: -- for purpose of evasion --

GROUP: -- for purpose of evasion --

MS. PETER: -- and that I will well and faithfully discharge --

GROUP: -- and that I will well and faithfully discharge --

MS. PETER: -- the duties of the office --

GROUP: -- the duties of the office --

MS. PETER: -- on which I'm about to enter --

GROUP: -- on which I'm about to

enter --

MS. PETER: -- so help me God.

GROUP: -- so help me God.

MS. PETER: Congratulations.

(Applause) Thank you, everyone. I am so excited to be attending my first TPAC meeting. Many congratulations to Bill on your new position and also to our three new TPAC members, Stephanie Bald, Christopher Kelly, and Kelly Walton. Although I've been at the USPTO for only a few short months, I've jumped into the deep end of the pool and I'm looking forward to working with you all on furthering our mission. As Mary mentioned, in my prior practice, I managed Intellectual Property Portfolios for a number of companies. I have personal knowledge on how important trademarks are to a well-balanced IP portfolio.

Since joining the USPTO in November, I've had the honor of sitting on one trademark case before the TTAB so far and that was very, very energizing and enlightening and I hope to be able to participate in more.

We, at the USPTO, or as some of us

like to call it the USTPO, continue to focus on improving the dialogue surrounding intellectual property. You've probably heard that just last June we issued patent 10 million, but did you also know that we at the PTO have issued over 5.5 million trademark registrations since 1870. About 2.4 of them are still alive. Congratulations to us.

Trademarks play an important role in our national economy. For instance, in 2017 the most valuable trademark in the world was valued at 184 million dollars and that was Apple.

We must keep the public aware of the importance of trademarks to avoid the so called trademark graveyard where the terms that were once trademarks have now become generic go to die. Such commonly used words such as cellophane, dry ice, Raisin Bran, escalator, and zipper.

Today I'd like to update you on a few important topics; on the government shutdown, the status of our IT systems, and our proposed new trademark rules on mandatory

e- filing and U.S. counsel representation.

So, first let's discuss what's on the top of everyone's minds today, which is the effect of the partial lapse in funding to the USPTO clearly known as the government shutdown. The USPTO has been functioning as normal using it's reserve funds. These funds are comprised of fees that were collected in the beginning of the partial lapse, but prior to December 22, 2018. In other words, these reserve funds were from 2018 and they were shut off December 22 and we've been running off of those funds since. In the absence of an Appropriations Bill, we have no authority to access the fees collected since that time in accordance with the law. Based on current estimates and expenditure rates, we expect our reserve funds to fund patented operations until at least the second week of February and trademark operations until at least mid-April 2019.

The agency continues to evaluate options for conserving funds to lengthen the time those operations can continue for as long

as possible. We have this formal statement posted on the website and I believe each of the TPAC members received it yesterday evening.

In the event that we exhaust our funds and have to shut down, a small staff would continue to work to receive both electronic and paper applications in any other post examination, post issuance, and PTAB and TTAB filings. They will also receive payments related to such filings and to maintain IT infrastructure among other functions. We will post any updates to our operating status on our website and inform the news media as soon as reasonably possible and unfortunately, I don't have any other answers on that topic for you at this time.

With regard to the status of our IT development, at your last meeting in October, Director Iancu gave you a brief update and promised to report more today. With respect to the Chief Information Officer position, we are still in the process of reviewing applications and should know more in the

coming weeks and months. We are continuing to maintain our current systems and our updates are scheduled over the next few months to be released.

Additionally, we've gone through a complete review of our IT projects both current and planned. This will provide us with a thorough understanding of our needs to modernize our trademark systems and we are in the midst of completing this review and finalizing recommendations for moving forward. We've considered questions such as the success of the current trademarks next generation systems, the TMNG system development plans, and whether we should consider to continue the current plans or use new information to update those plans. Although it would be great to have more answers now, I believe that a thorough and complete review is critical and that takes time. We hope to have some final decisions about our future IT plans shortly and will be sure to report them out to you as soon as we can.

I'd also like to give you a brief

update on the electronic filing and local counsel rules. Although 99 percent of our initial trademark filings are electronic, only 88 percent of applications remain electronic through the life of their prosecution. In order to save time and money and reduce scanning errors, we aim to make the process fully electronic end-to-end. We've now completed drafting a notice of final rule making for mandatory e-filing. Publication and implementation are planned for later in fiscal 2019. This rule will make using the TEAS mandatory for all trademark filings other than a few specific exceptions and will require all communications with the USPTO to be via e-mail.

We've also completed drafting a notice of final rule making regarding U.S. counsel representation and we're awaiting OMB clearance, which is unfortunately delayed due to the government lapse in funding. This rule will require foreign domiciled trademark applicants and registrants to be represented by a United States licensed attorney in order

to file all trademark documents at the USPTO. This will help us effectively enforce compliance with statutory and regulatory requirements for all applicants and would aid our efforts to improvement the accuracy of the United States Trademark Register.

Despite the massive growth in the number of trademark registration applications, the Trademarks Unit has met of all its pendency and quality goals for more than a decade straight. Congratulations. We are very, very proud of that.

But this has placed a strain on our personnel and resources. So, although we have currently over 600 trademark examining attorneys, we are looking to hire over 100 more this year. The USPTO is committed to protecting all forms of intellectual property and promoting public awareness of the importance of intellectual proper rights in the United States. In accordance with this, the USPTO recently conducted an anti- counterfeiting video contest and I've seen some of the submissions and some of them

are very fun and some of them are a little odd. (Laughter) Look out for winners to be announced soon.

In closing, I'd like to once again welcome the new members and thank you all for your ongoing cooperation and hard work throughout the year. I want you to know how much we appreciate the collaboration between the USPTO and TPAC. This relationship and the trust that exists is extremely important and we value your insights and your guidance on key issues and we look forward to the continued collaboration in the months ahead. Thank you for inviting me to speak this morning and it's a pleasure to be here and I look forward to working with you in the coming year. Thank you.

CHAIRMAN BARBER: Well, thank you very much, Laura. First of all, congratulations on your appointment as Deputy Director. It's wonderful to have somebody in that position now. On behalf of TPAC, we welcome to your first meeting of TPAC.

MS. PETER: Thank you.

CHAIRMAN BARBER: And you're welcome to come to as many TPAC meetings as you would like. We really do appreciate the support of both you and Andrei for TPAC and attending our meetings. I know you have a very busy schedule so we don't take it for granted that you carve out time to spend with us and we welcome at any time you are able to do it. We don't take it for granted, but we certainly welcome it so thanks both you and Director Iancu.

So, any questions for the Deputy Director before we let her go? Thank you so much.

MS. PETER: Thank you indeed.

CHAIRMAN BARDER: Okay. So, I'll turn it back over to Mary now to give us an update on Trademark Operations.

COMMISSIONER DENISON: Thank you so much. I want to reiterate how much we appreciate your being here today, Laura, so thank you.

MS. PETER: You all are very, very important to us, so it's really a pleasure.

Thank you again. Thank you for your work.

COMMISSIONER DENISION: So, I'm going to jump right in to the Trademark Operations update. So, right now we have 939 employees in Trademarks. We have hired 61 new examining attorneys already this year and we are looking to hire more. We have completed interviews and we will be making final decisions in the next few weeks on how many more we're going to bring on this year. We still have a robust telework force with 77 percent of our examining attorneys teleworking full-time.

Now, with regard to the application filings, what you see by this interesting chart is that we have only had four years since 1984 when we had a decline in filings and so we have not had a down quarter since the first quarter of fiscal year '10. And so it was a little bit surprising to me that the 4th quarter of fiscal year '18 was down.2 percent, which is pretty negligible, and then the first quarter of fiscal year '19 was down 1.1 percent. So, our forecast had been 6.1

percent growth this year over fiscal year '18, but with these two quarters, they're not really negative but slightly negative, growth, we're watching very carefully to see whether we should change our 6.1 percent. One of the issues with the government shutdown is that all the statistics that we rely upon are not necessarily being updated. So, we're having to work very carefully to work on our forecast. So, our team is diligently pursuing that and it's very important to us to have an accurate forecast because that helps us determine how many people to hire. So, stay tuned on that.

Now, with regard to performance, we ended that year last year very close to the top of our goal at 3.4 months and we ended the first quarter at 3.4 months. We have had an ongoing push to make sure that we continue to meet our pendency goals. It's very important to us to say in the 2.5 to 3.5 First Office Action range. So, all lawyers in Trademarks, except for me and one other person who are never examining attorneys, are now examining

cases and we are happy to report that we are ahead of our projections. Every employee in Trademarks has pitched in and participated in this effort and I'm really grateful to everyone for all the hard work that they have put in so that we continue to deliver a high quality product in a timely fashion. We know that our users count on us for that and as Laura mentioned, we've been meeting our goals for a very long time and I don't want to be the one who misses it and I know you don't want me to.

So, the great news is that even though we've had this big push for examination, our quality looks great and so, I'm really delighted to report that the quality has been great with the pendency push going on.

E-government. We continue to encourage people to file electronically and when OMB reopens we will be pushing for the final rule in mandatory electronic filing as Deputy Director Peter mentioned so that e-filers are no longer supporting the paper

filers.

Now, myUSPTO.gov, initially I had thought of this as a resource for pro se filers to have a docket and what's interesting is that many law firms now use it as a backup docket so that was kind of an unintended, but positive development for us.

On myUSPTO, we have a Trademark Form Finder widget. Some people complained that they were having difficulties finding forms on our website and so this makes it much easier for you. We continue to work on a trademark electronic application system short form and we will hope for public user testing by the end of this quarter, but of course it could be delayed due to physical conservation efforts.

Laura's already mentioned the mandatory electronic filing. What she didn't mention in detail was what the exceptions were so there are certain international agreements which require acceptance of paper from certain countries. Of course, if you file for smell, you know, flavor, that kind of thing, you're not going to have to send that electronically.

There are postal service interruptions, emergencies, and there will be a petition process for accepting paper under limited circumstances, but that is on hold during the government shutdown.

Also, the Deputy Director mentioned the U.S. Counsel requirement. We have the proposed rule ready to go. It was in the clearance process at OMB, but again, until OMB reopens, that is on hold. So, we're very anxious to have that moved forward but they're closed so hopefully before long we can get back on that.

Another development you may have seen in the news is that the Supreme Court has granted cert on the Brunetti case. The Brunetti decision by the federal circuit was issued back in December of '17 and it held that the immoral or scandalous provision of Section 2A of Lanham Act was unconstitutional. So, the opening brief is due February 19 with respondents brief due March 21 and then a reply brief due at least seven days before argument. We expect the argument to be April

15, that week, so hopefully we will have a decision within six months or so.

Now, I want to talk a little bit about some of our initiatives. Anti-counterfeiting everybody knows is near and dear to my heart. I'm very interested in raising public awareness of this very important issue. We started off with the video contest that Laura mentioned. I am one of the final judges so I'm going to be watching videos this afternoon, which I'm looking forward to, and we are hoping to have a celebration of the winners in April here at the office. We are also planning an event with the McCarthy Institute on June 6 here on counterfeiting and we are working with Office of Policy and International Affairs on this very important initiative. We are also in the process of hiring a contractor to help us launch a five year nationwide campaign to raise awareness.

In addition, the TM5 is working on a new project that would be raising public awareness in all five members of the TM5.

The next thing, since our Director wasn't here, Laura didn't get the message that she needed to mention decluttering because that's his favorite topic, but anyway, I thought I should mention decluttering. Back in 2017, we launched a permanent Proof-of-Use Audit Program and so as of earlier this month, we had sent out about 2,500 First Office Actions and your registration is subject to audit if you have filed a Section 8 or 71 Declaration of Use and your registration includes one class with four or more goods or at least two classes with two or more goods or services. The Proof-of-Use Audit Program results are quite disappointing. At least half, about 48 percent, of the responses are deleting at least some goods or services and of those four out of five are coming from lawyers. So, that's very upsetting to us and the trend is steadily up as more responses come in in terms of deletions. So, again, none of that is good. So, we are looking at a number of decluttering initiatives. We are looking at expanding the number of cases that

get audited. We are looking at recalibration of fraud standards, perhaps a deletion of a Section 7 fee, there's a pilot program at the TTAB that's going on, and looking back expungement actions.

So, we are open to TPAC and any member of the public who has other ideas they would like us to consider. The audit program and we had already changed the Declaration of Use to make you have to read it with the checked boxes, but we would welcome any other ideas because these have not been very effective so far. So, please feel free to reach out to us if you have some thoughts on this.

Speaking of problems, we identified a problem last year where unauthorized parties were making changes to trademark records so we have started -- we noticed a significant increase back in 2018 and so, back in October we set some parameters for a daily report to catch the vast majority of unauthorized filings. So, the IT process caught about 96 percent of the unauthorized correspondence

changes and the rest of them we are catching manually. We have a web page up there so if it happens to you or your client then please take a look at this web page where we are trying to let people know what to do if this happens to them. But, we think that we are really catching pretty much all of these and you should be getting an e-mail alert if we miss something.

Another problem we have is misleading solicitations. We have been doing quite a bit on this. We have a lot of information up on our website. We held a round table with TPAC back in 2017 on the topic. We have a TM5 project on it. We participate in an informal agency working group on this. So, we are really trying to educate consumers about the misleading solicitations and, you know, they get notified quite a few times. They get it in the filing receipt, they get in the cover e-mail for the office actions. When they get a registration, they get another notice with a bright orange sheet of paper. So, we're doing what we can

to educate people about this. We are also working very closely with the Department of Justice. They had some successful prosecutions back in 2017 so in 2018 we said, "We understand you're short-staffed so we're going to send you some lawyers". So, we have had two lawyers there since 2018. One of them was supposed to be done in February. They asked for an extension so I've just extended that for another year. They are making great progress, I understand, so I'm delighted about that. And I'm thinking they're probably going to ask the other person to be extended who started in May. So, we are continuing to both educate and prosecute.

Now, we've been very interested in enhancing the customer experience. We have implemented two of the Touch Point Surveys for customers already. The website content went live in August and the Trademark Assistant Center Survey went live in October. My USPTO is another survey and I understand that that also is at OMB for clearance and you see how OMB is very important to us. And then we have

drafted up the fourth one on application prosecution. So, we've got these surveys out there and more are coming.

We are also dramatically improving our website. We have lots of new things. We heard from you that you had some concerns about our website that's we have spent a lot of effort on that. So, we have new guidance getting ready to search, how to use TESS, the Trademark Electronic Search System, decisions on trademark petitions, why hire a private attorney. Lots of different things that we didn't have and so we have, let's see, I believe it's three, we have now three plain language writers on staff who are working on improving the website and answering lots of questions that people have.

Specimen issues. So, we continue to more-and-more fake specimens. People are getting more-and-more sophisticated. Applicants are pasting their marks, you know, using Photo Shop and other programs like that. So, we have a pilot program going trying out some software. The purpose of the software is

to both show us if there's been a digital alteration and to enable us to build up a database of specimens.

So, these specimens cause all sorts of problems. First of all, they fail to show the mark as used in commerce. It's fraud in the USPTO. There are issues with a lawyer involved with the ops of enrollment and discipline. It could impact the validity of the registration. So, these are of serious concern and we are treating the fake specimens very seriously.

Here's an example of why we need a database of specimens. Having the database of marks is not sufficient. So, look on the right at these scarves. They are sort of a different looking scarf, but they came from four different applicants with four different marks. Now, maybe they're all selling the same scarf under their brand, but it's probably unlikely and this is the kind of thing that a database of specimens would enable us to find more easily. So, that is something that we are working on.

We also continue to have open the Specimen Protest Pilot Program where you see something identical you can report it. We have had less than 100 reported as of December 18 so I would say there has not been widespread participation in that, but we would urge people to continue to send us things.

On the international front, the TM5 I mentioned earlier, it's the EU, Japan, Korea, China, and us and the purpose of the TM5 is to focus on the exchange of information and collaboration and harmonization regarding trademark matters to the benefit of you our users. So, there are a lot of different projects going on. I mentioned earlier there is a new project being developed to raise awareness of any counterfeiting in member jurisdictions and we also have a lot of other things. The common status descriptors, the little icons that you see on TSDR, for example, that was a project so that people, even if they didn't understand the language, could understand what the status was and that is now in place in all five members.

On the TM5 ID list, this has been one of the oldest projects and we are delighted that the ID list has 19,000 terms now that are agreed upon among all five and so that is getting close to 50 percent of our ID list so that is really terrific and all the people in the ID Office deserve a lot of credit for that because that has been a slog getting through that, but it is very important.

Now, in terms of 2018 TM5, events, we had a user session at the INTA annual meeting in Seattle and we had presentations on fraudulent solicitations, priority rights, quality management, and we also had a mid-term meeting in South Korea and an annual meeting in South Korea. And there was a full-day user session at the annual meeting in November in Seoul and the topics that were discussed were quality management, use of AI, artificial intelligent and image searching, user experience and operating e-commerce businesses. So, it was a fruitful meeting in Seoul.

We anticipate that the annual meeting for this year will likely be December 9 and 10 in Tokyo, but I would not say that is a final, final date, but that's what we expect and we also expect for the mid-year meeting to be held at the front end of INTA. Again, I'm not 100 percent sure if we can say it's definitive, but I believe it would be the 18th and 19th of May in Boston.

Now, with regard to China, as you all know, there have been a lot of discussions of China ongoing for some time related to the influx of Chinese filings into the U.S. Of course, specimen issues, counterfeiting, bad faith filings. So, this chart shows that there has been a dramatic increase in filings from China into the U.S. When I say China, I mean Mainland China. The filings in fiscal year '18 constituted 9.1 percent of total file classes at the USPTO.

This first quarter of fiscal year '19, the filings were down slightly to 8.7 percent of all filings in the U.S. Now, people ask whether the growth in fiscal year

'18 was attributable to Chinese growth and the answer is that China only accounted for 15.7 percent of our growth in fiscal year '18.

So, recent trends show that we think that the rates from Chinese filings are starting to level off and that is reflected in the decline of overall filings from 9.1 percent at the end of fiscal year '18 to 8.7 percent this quarter. This just shows a comparison of where the filings came from in fiscal year '18 versus fiscal year '11 and as you can see, there's been a huge pivot to Shenzhen. And similarly, there's been a significant shift in the filers. It used to be more big companies filing and now it is many, many one offs and that's why the dots are smaller for fiscal year '18.

So, I always like to encourage people to subscribe to our e-mail newsletters and you can do that at the USPTO subscription center. We try not to inundate with information, but we also try to keep people informed.

So, I have a question. This is from

somebody who e- mailed in a question. Is the partial shutdown and risk of furlough going to affect the process or timeline for new examiner higher? And I'm assuming this is meaning trademark examiners because I can't talk about patent examiners. And the answer is we are moving forward with hiring now. We're still planning to hire people in March. Does anyone else have any questions for me?

CHAIRMAN BARBER: Thanks, Mary. Any questions or comments for Mary? I would just comment on the decluttering efforts. We certainly appreciate your being so proactive about it in trying to figure out ways to address these problems and issues. We did hear your request for feedback from TPAC on the initiatives that you have or are contemplating and also, new ideas that we may have so we've discussed that briefly. We plan to discuss it further and we will get back to you. I'd also encourage all of the bar organizations out there. I see INTA is represented here. Hopefully others will also take heed of that request and provide feedback

to Mary and her team about ways to address decluttering issues.

So, we are ahead of schedule. Amy, are you ready to go or do we need to wait for Shira? Okay. Next is from the office of Policy and International Affairs. Do I have that right? Amy Cotton is here and she will give us her presentation.

MS. COTTON: Good morning. Shira sends her regrets. She had some unexpected family issues come up. She is on a train from Philadelphia right now, but obviously, didn't quite make it in time to be with you today so you're stuck with me. Good morning. Start of a new year. It seems like a good time to share with you our priorities for trademarks in the coming year. The International Subcommittee yesterday heard these in depth so you'll have a bit of a reread right now. But if you will recall OPIA, Office of Policy and International Affairs, has a trademark team that focuses on the development of substantive trademark law both domestically and in foreign trademark systems. OPIA also has an

enforcement team that specializes in copyright, trademark, and trade secret enforcement issues that includes online enforcement and border enforcement.

The first slide that I have to show you has the priorities for the trademark team and the second slide has the priorities on anti-counterfeiting for the enforcement team.

On the first priority, Advocate for U.S. Interest in Foreign Trade Market and Geographical Indications Systems, the USPTO is considered the most sophisticated trademark examination operation in the world and therefore, USPTO is routinely called upon to train foreign examiners, foreign administrators, and foreign policy makers on trademark related issues. When we provide this training to foreign offices, we highlight our priority areas of concerns with those foreign trademark and geographical indications systems. We collect those priorities from you, our users. The included list is just a few of your priorities that we are advancing in these bilateral training activities.

Additionally, we advance your priority areas through our trade talks, our trade dialogues, and trade negotiations. We are routinely called upon to assist the U.S. Trade Representative in explaining and advancing U.S. trademark interests. We also review countries' trademark, geographical indication, and domain name laws for consistency with trade obligations and for ways that they can be improved.

Our second priority is to improve the global IP infrastructure. This is basically the global trademark system. This includes improving communication and information sharing between offices and engaging in cooperative projects with foreign offices through the work of the TM5 or through bilateral frameworks.

In WIPO, the World Intellectual Property Organization, this means we negotiate with other delegations to advance discussions on specific issues or specific deliverables like guidelines or even treaties.

At the Internet Corporation for

Assigned Names and Numbers, we advise the U.S. delegation to the Governmental Advisory Committee and we monitor IP related developments in the other constituencies of ICANN to support the U.S. IP stakeholders.

At the Hague Convention on Private International Law, we are actively opposing the inclusion of intellectual property in a draft convention on recognition and enforcement of judgments. We do not think the text as it stands adequately addresses IP interests including trademarks. Instead of improving the global trademark system, we think it more likely will negatively influence the development of trademark law.

Our third priority is to improve the U.S. trademark infrastructure. We support the work of the OPIA Governmental Affairs Team by coordinating internal discussions on trademark legislative proposals. We develop briefers and talking points for Dana and other USPTO officials to use. So, OPIA may not develop all these legislative proposals, but we play an important role in proposing a position,

circulating it for consensus views, and then trying to articulate the position for external use.

OPIA takes that same role and approach to coordinating internal discussions on other trademark policy issues in which multiple USPTO business units have equities. We generally try to propose a possible position and then we work with others to come to a consensus and craft outward facing explanations for the policy of the position.

Our fourth priority is to improve the integrity of the U.S. and foreign trademark registers. We have heard an increasing drumbeat from foreign trademark systems seeking solutions to cluttered trademark registers. Since we are facing the same problem here, OPIA is committed to moving the USPTO's decluttering initiatives forward so that we can have a story to tell foreign trademark officials about how to address this growing crisis that is occurring all over the world. There are many talented people in the agency working on solutions including

Commissioner Denison and her staff, the Solicitor's office, the Office of General Law, the Office of Enrollment and Discipline, and the TTAB. OPIA is trying to bring these folks together to propose and articulate ideas and then package them for upcoming industry consultations. We look forward to hearing from you.

On bad faith, OPIA is working to advance appropriate tools in our technical assistance programs for foreign systems to employ. In addition, bad faith provisions have been included in our trade negotiations. Bad faith is definitely another area of extreme interest by foreign offices. We have requests for assistance from these foreign offices to combat bad faith and we engage with them to find solutions. As you heard from Mary, the TM5 is even working on a project on bad faith. We are using that dialogue to highlight the many different forms that bad faith behavior takes and exploring within the TM5 partner offices how they've addressed this behavior in examination and before tribunals

and courts. The TM5 will ultimately issue a report to document all of this activity.

Now, on trademark anti-counterfeiting, this is an OPIA Enforcement Team's activities on anti-counterfeiting for the coming year. Their first priority is to raise consumer awareness of counterfeits and the impacts. We are partnering, as you heard from Mary, on a public service announcement and video outreach contest and rollout. We have a brand protection and anti-counterfeiting strategies event and anti-counterfeiting awareness campaign. You may know our focus on anti-counterfeiting. We spend a lot of time on consumer protection public health and safety when we talk about anti-counterfeiting. So, in that regard, we are working on domestic awareness through training programs with the National Association of Attorneys Generals and we do a lot of programs at the USPTO regional offices.

We advocate U.S. interests with foreign IP officials. We technical assistance

and capacity building, regional training workshops for judges, for Customs Agents, that sort of thing on trademark counterfeiting. Also, you know we engage with Chinese enforcement authorities on various anti-counterfeiting topics.

Our last priority on anti-counterfeiting is to promote the enforcement of intellectual property. Again, we provide technical assistance on enforcement issues that are trade related. So, if we have a trade obligation that we can point to, we use that to advance our enforcement goals in trade agreements, the Special 301 annual review, the Notorious Markets List, and the World Trade Organization trade policy reviews.

So, this is just an overview of what we are going to be focusing on for the coming year. Again, when we're evaluating our priorities, we rely on hearing from you all as to what are your priority areas of concern. We heard from the TPAC at the IP Attaché Consultations. That is a mechanism for consultation so we had members from the

trademark team and the enforcement team. We heard what you had to say and assimilated that into our work. So, again, if you have further information or more in-depth information about the issues that you all raised at that forum, we would be happy to hear it so we can work to advance your interests in foreign markets. That's all I have. I'm happy to take any questions. Thank you.

CHAIRMAN BARBER: Thanks so much, Amy. Any question from TPAC members for Amy? This is your opportunity. Okay. Thank you, Amy. I do appreciate all the time you and your office and Shira give to us. We have a subcommittee dedicated to your office, as you know, and you're very generous with your time dealing with that. Our subcommittee members are Elizabeth and Stephanie for that. So, thank you for spending time with us and listening to our feedback and educating us as well. It's very comforting to be personally to know that we have your office with such bright minds out there protecting the interests of the United States Government and

United States Trademark Owners so thanks for all you do for us.

Okay. Moving right along. I see Dana Colarulli down there. He always provides us with an entertaining and exciting presentation about legislative issues affecting the office in trademarks in particular. So, Dana is the Director of the Office of Governmental Affairs here at the USPTO and I will turn it over to you Dana.

MR. COLARULLI: Great. Good morning. Happy Friday. I'll continue on the Amy compliment train. Amy is very modest. She mentioned that she supports both me and my office. I'm talking about legislative proposals. There are quite a few that have been discussed as the last Congress ended and we started this Congress and Amy has been very welcoming with her time and helpful. I think she's very modest when she describes what her team does. Both Amy and her team act as the experts as we're thinking about proposals that can improve the system. Particularly, for the audience that I spend a lot of time with, they

have lots of questions and Amy is very willing to provide time to help explain the basics and move forward some of these good legislative proposals so I think we have a good dialogue within the office that we can play the role that we're supposed to play actually advising on whether some of these proposals make sense or not and I think OPIA and Trademarks work well together to help support me to be able to answer those questions. As we start out Friday morning, we start on a very good note there.

We've just started the 116th Congress so I'm going to start with just a few slides on the demographics of the new Congress to give you a sense of who we're working with now. As I said, I do think that this Congress has some potential to address some trademark issues that have been bubbling up over the last couple of years and some good things. If not significant changes, things that have helped improve the system.

New Congress. Both new members of the Judiciary Committee that we're just

starting to get to know. Both this slide and a couple other slides -- since we developed these slides, there's additional information. We now have the final membership list for house Judiciary Committee and we have the new leadership. There's an IP subcommittee that looks at patent, copyright, and trademark issues and trade secret issues. In the house, we now have two leaders. Hank Johnson, who is the ranking member last Congress, has now been officially named as the Chairman of the subcommittee so we'll continue to work with his office.

Martha Roby, representative from Alabama, will be the ranking member of that subcommittee. She has not been on the subcommittee before addressing these issues so we look forward to getting to know her and working with her. I think what that means is that at least on the house side they're going to have some good bandwidth to look at some of the issues on the trademark side. The copyright side, there were some things that were leftover from last Congress in that area

as well and certainly on the patent side. And they got some good staff that are PTO alumni we are happy that are out there that are also knowledgeable about these issues. So, I think there's some potential on the house side, judiciary side, for there to be some good discussion about IP issues.

On the Senate side, likewise. We've got some certain issues on the patent side that have been discussion. Section 101 patent ability issues. But trademark issues and copyright issues that committee was looking at. We've got three new members on the Republican side that we're getting to know. Holly Blackburn from Tennessee, previously a House member and very involved in some of the copyright issues that came up in the last couple of Congresses. And Ernst three members that we're starting to reach out to to kind of understand their staff's perspective on IP. So, as the year goes on, we'll know more, but some new challenges for us and certainly some new personalities.

In terms of the (inaudible) schedule

for taking up some of these issues, I've talked about the potential. I think it's still quite a bit unclear certainly the partial lapse and appropriations provide some murkiness to what issues will those committees look at first. I think on the house side there certainly are non-IP issues that they will go to first. As you've all heard me say before, often times IP issues become the issue you turn to to work collaboratively. We like that. There are non-partisan issues that members on both sides of the aisle generally like to talk about and like to support. So, I like to say we deal with some contentious issues on the Judiciary Committee overall when they're ready to start compromising and working together. They often turn to IP issues. So, I think IP will be low on the agenda, but it's certainly something that will be address by this Congress.

Just a little bit more in terms of the dynamics, the demographics, House of Representatives. If you look at the House of the last Congress and you look at the House of

this Congress, it's essentially flipped in terms of parties. The majority held by Republicans in last Congress are now held by the Democrats about the same margins. Some interesting dynamics. Don Young being the oldest and longest serving member. Alexandria Ocasio-Cortez who has been very visible and the youngest member at 29. Interesting to see and very consistent in the Senate. The youngest member jumps up ten years and is John Hawley, as I mentioned, one of the newest members of the Senate Judiciary Committee. So, just for fun, some additional demographics.

So, likewise, we had some updates to this chart since we developed them. The House of Representatives we've got Jerry Nadler who was ranking member last session now a Chairman of the House Judiciary Committee. Doug Collins who had been extremely active on some of the IP issues both on Music Modernization Act. He deserves a lot of credit for helping to move a lot of those conversations forward. He's now the ranking member.

Subcommittee on courts, IP, and the internet. Hank Johnson I mentioned now the Chair of that committee and Martha Roby just announced only two days ago as the ranking member. As I said, we'll see what the agenda might be for that committee.

On the Senate side, Lindsey Graham now the Chairman of the Judiciary Committee. Chairman Grassley from last Congress still sits on the committee. Took a Chairmanship of the Finance Committee in the Senate so he has stepped down, but will continue to be active. And Dianne Feinstein continues in a ranking position for the Senate Judiciary Committee.

Now, the interesting thing is there's a talk of recreating a subcommittee on IP again the Senate. Now, the Senate has had a subcommittee on IP in the past. It has not had one for some years since Senator Hatch had shared that subcommittee. The committee had preferred to deal with IP issues at the full committee level. I think creating a subcommittee potentially will mean more attention, more bandwidth for some of our

issues. There's good and there's challenges there, but I think we are likely to see the recreation of the subcommittee. Leadership yet to be determined. There are members of the committee who have been very active particularly on the patent side of the house on some issues so I would expect that they probably ascend to the leadership of that committee and we'll see what other changes comes. But that's one we're watching very, very closely and I think given some of the staff changes and the priorities of the Judiciary Committee, the creation of a subcommittee would mean probably more attention to a lot of our issues.

In terms of PTO's legislative priorities, there likely will be a number of pieces of legislation that will be discussed during this Congress including, as I have mentioned, I think some trademark issues that had been bubbling up at the end of the last Congress. In terms of our legislative priorities, there's three things that probably bubble up to the top for ensuring that the

operations of the PTO are functioning the way they should be. The first one initially was focused really on ensuring that the Director has the flexibility to suspend legal deadlines. Particularly in areas that the statute had not anticipated when it was written. Power outages, system outages, particularly on the trademark, but also increasing on the patent side. The extent to the reliance on our electronic systems were not really envisioned. We want to make sure that the Director has the flexibility to say to the extent that those systems are unavailable your submission would be appropriate at that later date when they did come on line. So, that's certainly something we have been starting to talk to staff about. I think continued access to fee collections it's quite ironic. We're talking about it right now as it was talked about this morning the fact that we can't access the fee collections that we've gotten during this partial lapse in appropriations, but that certainly continues to be a priority for us

and we'll continue to talk about that.

Two others, which I think I mentioned to this committee in the past, elevating IP attaché rank. I know you all have been briefed on the work of the attaché's. Much of that work ends up being trademark work so we want to make sure that they continue to be successful and add a rank at the same level as their counterparts in foreign government. So, it continues to be something that we talked to our colleagues that stayed about. We've gotten a lot of interest from Capitol Hill from as well.

Last one, coordination of copyright policy functions. There had been legislation at the end of the last Congress to make the Registrar of Copyrights a political appointee. Our advocacy of the bill is if you're going to that, raise the visibility of copyright issues, that's certainly a good thing. We should make sure we coordinate those different roles in government. You now have two political appointees who are by statute responsible for advising the Congress in the

administration on IP policy issues. Let's make sure they are working together. In all practice, that has worked exactly that way. We think the statute should match it.

So, very quickly, I won't go in incredible depth, but some legislative activity we've seen. You're already aware of the appropriations activity. The House did pass a Bill at the levels that we would have requested. That has not had action in the Senate. The House has actually passed additional Bills at this point which have been politically invariable until some resolution is found to reopen the rest of the government to pass appropriations for those remaining agencies so those we're watching closely.

Two other Bills I'll mention. Office of Critical Technologies and Securities would create an Office of Critical Technologies and Securities at the White House responsible for coordinating a whole of government strategy against theft of IP so this certainly relates to some trademark issues and copyright issues, but specifically

focused on technology theft and risks to critical supply chains. It will be interesting. I think there are offices within the government that already do some of this. This is a slight different focus so it's an interesting proposal that we're watching. We'll see if there is some traction there.

I wanted to flag also the Fair Trade with China Enforcement Act. This was a Bill last Congress, reintroduced at a very low numbers, which signifies kind of the importance to these two senators of addressing IP theft particularly as it relates to China. So, again, another Bill that we'll be watching.

Other IP issues likely to be addressed. This is the laundry list of issues that could be taken up and certainly things that we're watching. On the trademark side, INTA and AIPLA and others have continued to be up on the Hill talking about proposal on injunctive relief to create a presumption of irreputable harm in trademark infringement cases. I expect that to get some legs and to

be talked about again this Congress. There are other things that we've talked to the Trade Association certainly about whether it made sense and we've talked to the Hill. That includes consolidation of PTAB appeals. The federal circuit includes the Jeffries Bill that was reintroduced on state seals and insignia. We've talked to them about various versions of this proposal over time. This is one that I think we're more comfortable about and going back to the beginning one that I think Amy's team helped to figure out what was appropriate and in terms of minimal change that gets to where we want that doesn't have unintended consequences to the statute. Again, a credit to her and her team and I expect there to be some attention there. And then, you know, other technical amendments that I've talked to Mary and her team about that support trademark operations and we can certainly talk more about those if there is interest.

On patent side, just very quickly, continue discussion about some of the things

that the Director has focused a lot of time on last year. Section 101, Patent Eligibility Changes to the PTAB proceedings.

And then on copyright issues, I already mentions some of these, but the proposal to make the Registrar of Copyrights a political appointee.

Small claims court, another representative of Jeffries proposal, that's out there to create a small claims court for copyright infringement cases below a certain value to resolve those issues.

And then resale royalties is not up there. That's another issue that's come up and the copyright industry has expressed some interest in.

So, again, just a host of issues that we're watching as this Congress starts. Again, with the partial lapse in appropriations, unclear when these issues might be taken up, but were in the first session of a two session Congress. I expect some of these issues will come up on the table. With that, I'm happy to take any

questions that folks have. There's been lots of attention on the folks that I work with a lot in recent weeks not on IP issues so it's been interesting to watch. Look forward to getting back to business and talking about some (inaudible) that are IP. Happy to answer questions.

CHAIRMAN BARBER: Great. Thank so much, Dana. Any questions? Anne.

MS. LALONDE: Thank you. I'm interested in your idea of allowing the Director to suspend statutory deadlines and I'm wondering if that, in your mind, is limited to e-filing issues in a case the system goes down or if it's broader than that.

MR. COLARULLI: I think that's been since we began talking about this proposal and it really came out of now a few years ago a major power outage that we had. More recently we've had system outages and the trademark side has seen its share as well. I think that is the primary focus.

CHAIRMAN BARBER: Any other questions or comments? I had a comment or a

question about this issue of continued access to fee collections. That's obviously a very timely and sensitive important issue. Do you have any thoughts or ideas of how that could be done and is there anything that TPAC or other Bar organizations could do to assist in that effort?

MR. COLARULLI: That's a very good question. Yes, we've got a good recent history where the stakeholder community and Congress have supported PTO being able to access all of the fees that it collects and that was not always the case and those of you who know me, I have a long history both outside the office and here advocating that the office be able to access. What happened post the American Invents Act was very, very positive. It allowed PTO to, in most cases, access all of its fees and to the extent that we collected above what Congress had set our appropriations level at. We could again access those in the subsequent fiscal year. All of that is good. The situations that have challenged PTO in recent years has been

sequestrations certainly and the situations like the current situation with the lapse of funding. I would argue that even short of a full lapse of funding where PTO was able to rely on its previously collected fees for a period of time, even the lead up to these types of situations is damaging to the agency. We cut back on our planned budget proposals.

I think that consistent, I can't emphasize enough, the consistent access to our fees in a very timely way affects the operations of the office in a way that I think is not always seen by the outside world. I can't believe that the intent of Congress when they made PTO a full fee funded organization went further to allow us to set fees to recover our costs. That inability to access those fees in a timely manner was the intent. So, I think, I'm speaking to the chorus of Tony Scardino right now, I know, I think, Bill, attention to these issues to allow PTO to be able to access its fees. There certainly have been some legislative proposals in the past that would change our funding

structure. Those are worth discussing, but I think continued attention by all of us to find a better solution is really very, very important.

CHAIRMAN BARBER: Well, thank you very much. We will certainly give that some thought on TPAC and if there's any sort of creative ways legislatively we might address this. We might, you know, bounce those off of you so thank you. Okay. Moving right along. Our next speaker is Tony Scardino. He's the Chief Financial Officer so thank you, Tony.

MR. SCARDINO: Good morning. Thank you, Bill. So, it's typical. I've got some slides. I don't have a clicker. But I've got slides.

MR. COLARULLI: I have it.

MR. SCARDINO: Thank you. The agenda often times is two or three fiscal years. Right now we are in the midst of two. We're living in one and we're planning for another so I'll walk you through that a little bit and then give you an update on strategic plan as well as our fee setting efforts.

So, I'll go right to 2019. As you've heard from both Laura and Dana and I'm sure you've just from reading and watching the news, we are in the midst of an appropriations lapse. Our appropriation lapsed on December 22 at 12:01 and what that means for USPTO, just to walk you through it one more time, is that we can continue to collect fees. All right. So, with applications on both patents and trademark side, registration fees, maintenance fees, but a valid appropriation gives us the authority to send those fees. So, USPTO is an operating reserve, you'll recall, that is a total of funds that has been already appropriated, collected, and we have the authority to spend it so that's what we've been living on. We been using the operating reserves on patents and trademark side to continue to operate since December 22.

Any new fees collected, and on the trademark side it's over 20 million dollars, since December 22 we cannot use that money. That's collected in our account. Once there's a valid appropriation we'll automatically get

authority to spend those moneys. They will replenish the operating reserve we've been dipping into during the partial lapse of appropriations. I'm sure I will take questions on that one if you have them. I'm just going to walk you through a little bit more here.

In terms of spending, well actually the fees Collected, we're running a little bit above last year at this time, 2.1 percent year-over-year. That was planned. We certainly planned that, in fact, planned a stronger growth. In terms of spending, we are going to spend about 2 million dollars less than we think we're going to collect this year. What that means is the operating reserve will go from 135 million dollars to 137 million dollars. Again, this is planned now. We've got several months to go. It will all depend on, you know, obviously that spending rates that we do as well as the fees that are collected. If filing rates go up or down, that affects how much we collect. So, this is all again once we have appropriation.

2020 budget. Typically, the President submits a budget to Congress the first Monday in February. This has been on a bit of a pause due to the partial lapse of appropriations. We are still working it internally. We will still plan to get a draft to TPAC hopefully by the end of this month or very early into next month so you can review it before it will be submitted from the President to Congress for 2020.

Strategic Plan was published on our website November 29, which was a couple of months ago. You, of course, had input into it, familiar with it. I just want to remind you what our trademark quality and timeliness goals are and that's what's highlight in the Strategic Plan. We've, of course, got overall four large goals, which is to optimize patent and timeliness as well as trademark quality and timeliness and then provide domestic and global leadership to improve intellectual property policy enforcement and protection worldwide and then we kind of have a catch all called deliver organization excellence, which

is making sure that we've got the right staff doing the right jobs or providing great customer service both internally and externally and such. So we massage in this Strategic Plan over the next four weeks. We have balance score card internally that we manage to make sure that the leadership is abreast of where we are at a point in time in terms of meeting these goals.

And then the last thing I have formally is fee setting authority. Since we met last, Congress passed and the President signed what's called a SUCCESS Act that extended our fee setting authority for eight additional years. You will recall that is actually expired on September 16 of 2018. So, for about six weeks we officially didn't have fee setting authority and then the act pre-dated it and continued it forward so it goes to September 16, 2016.

Kind of along those lines we are in the midst of our biennial fee review. Every two years we are required to do a fee review of all existing fees and whether we need to

introduce new fees, eliminate fees, so we are in the process of doing that right now. That process would certainly involve TPAC if we get to a point where we would want to introduce any new fees or eliminate any fees, but we certainly welcome your input at any point in time. That's all that I got to say formally. Any questions, thoughts?

CHAIRMAN BARBER: Yes, Brian.

MR. WINTERFELDT: Brian Winterfeldt for the records. Tony, thank you so much for the presentation. I want to commend the office for the foresight to create the reserve fund. Obviously, it's shown to be incredibly helpful. I understand that the current reserve fund that's set is approximately five months of operations for the trademark side. I think it might be beneficial to think about extending that perhaps even to a full six months in the future so I wanted to put that suggestion out there.

Also, I'm kind of building on Bill's conversation with Dana. I think we're very interested in working with the office to see

how we can support efforts to allow timely access to fees particularly having some type of revolving access to fees in lapse of appropriation. So, that's something that we, you know, again would very much like to think about how we can support efforts to allow that to happen. We realize that there's a huge impact on the office in times like this and, again, we commend the planning that's been done that's allowing operations to continue and would like to support efforts to continue to plan for the future to make sure that trademark operations are not impacted or at least impacted as little as possible in this type of situation where there is a partial lapse in funding or a full lapse in the future.

MR. SCARDINO: Thank you, Brian. I appreciate those thoughts. You know, I would be remised if I didn't commend Mary and her team. We are doing everything we can to actually extend that operating reserve as long as possible since the lapse. You know, no one can predict how long it will last. It's

actually not ever our job to try to predict it. Our job is to try to protect the Intellectual Property System in this country and we're doing the best we can on both patents and trademark side to stretch out our money to last as long as we can.

CHAIRMAN BARBER: Thanks. Any other questions or comments? I certainly echo Brian's thoughts about getting timely access to the funds even when there is a lapse in appropriation so hopefully there is some way we can skin that cat. Also, support the raising of the level of the operating fund on the trademark, the reserve on the trademark side, to six months if possible. I know that takes time in planning to do that.

I had a question about the biennial fee review. I know we went through at one point in my tenure on TPAC. We actually raised some trademark fees and the TPAC had a hearing and can you just maybe briefly explain the timeline for this cycle and, like, if we were to propose any changes in trademark fees, when would that be done and how would that be

done.

MR. SCARDINO: So, I'm not sure I will fully answer your question, but I'm going to try and I'm going to explain why. We have a requirement to do an biennial fee review every two years. CFO Act requires it so we do it every two years. Having said that, fee setting takes longer than two years. So, we're actually in the process right now of raising fees or proposing raised fees on the patent side. So we're doing the review for 2019 while the '17 review hasn't finished. Because the review is finished, we are in the process of fee setting so it actually laps each other.

So, if we do in essence a fee review, we look at all fees, touch them all, and say, you know, working with trademarks leadership and stakeholders, what fees are inappropriately aligned? Are the not high enough? Sometimes you need full cost recovery and sometimes you don't. Sometimes you try to incentivized behavior, which may be electronic processing or applications or something and

other times you're trying remove inefficiencies out of the system. All right. So you're trying to sometime incentivize behavior. But, like, especially certainly with the patent side of the house, we are trying to have a barrier to entry so we don't get full cost recovery in every instance. But, in the aggregate we do. That's our requirement. In the aggregate to get full cost recovery. So, we do a fee review. We're trying to figure out, do we need any new fees? Shall we eliminate some fees? Shall we lower some fees? Shall we raise some fees? And it's a bigger rift if you raise fees or introduce new fees. That's when TPAC would get much more involved. They eliminate or reduce fees, you'd still be involved, but you wouldn't have to hold a public hearing. It would be a lighter lift. So, that's my long winded way of saying that you would be involved later in the Fall. We would start discussions with and seeing if we would need a hearing or anything like that. But, happy to discuss at any point in time. Obviously, you

can do it through the Operations Subcommittee, you can it certainly through the Budget Committee. We met yesterday. At any point in time, I'm sure would take your call if you have any ideas.

CHAIRMAN BARBER: Great. Thank you very much. We'll give that some thought. Okay. Any other questions? I also want to thank you, Tony, and your office. You guys are also very generous with your time. We have a subcommittee dedicated to your office and the budget for the trademark and Brian and Chris are members of that subcommittee and you send a lot of folks over to talk to us and you prepare a lot of information for us so it's very much appreciated.

MR. SCARDINO: You're welcome. That's what we're hear for. Welcome to the committee those of you that are knew. I look forward to working with you over the next couple of years and hopefully our lapse of funding will not continue too much longer.

CHAIRMAN BARBER: Okay. All right. I think we are at a break now. We're actually

still a little bit ahead of schedule so we are scheduled to return at 10:40 so please be in your seats with your smiling faces and ready to go at 10:40.

Okay. If everybody could take their seats, I think we'll get going. So, next on the agenda we have Chief Judge Rogers from the Trademark Trial and Appeal Board here to give us all the updates and wonderful information about things going on at the TTAB.

CHIEF JUDGE ROGERS: Thank you, Bill. A pleasure to be here again and to bring you up-to-date on some fluctuating numbers for us this quarter at this point in the year. The first slide, actually this is the second slide, here we go. There's the first slide. So the far right column gives you our staffing levels. Those are the two columns I think we should focus on. We're at 22 judges now because of the two retirements we had last year. We do have recommendations for hiring judges. We want to get back to full staffing if not expand for reasons I will get to in a moment when we talk about some of

the filing figures. But, the recommendations are pending at Commerce, which is not full operating right now because as we all know judges on both boards at the USPTO need to be appointed by the Secretary of Commerce and I don't know what staffers are working in the Secretary's office and which staffers are not, but at some point we hope they'll be able to get back to work and sign off on some of the recommended hires that we have proposed for the judge position.

The lower number, the interlocutory attorneys, is a big jump and that's because we hired five interlocutory attorneys in the Fall. They actually all came on board right at the end of last fiscal year so we had the whole first quarter to begin their training and they're really a great crop of new hires. It's the biggest group of attorneys that we've brought in at one time in all the years I've been at the board and their additions to what is already a very strong group of interlocutory attorneys and we've certainly discussed the work that they've done on

contested motions in previous meetings and they continue to do that work and we're now working very hard to integrate the new hires and very helpful that we will see positive results on the pendency of contested motions and the inventory control on contested motions as we integrate them into the system.

The bottom of this slide shows the filing levels and interestingly, over the last few years we had seen more significant increases in oppositions and cancellations coming in the front door of the system so to speak. And appeals were increasing as could be expected based on the increased number of applications that were being filed, but they were not increasing as rapidly as the oppositions and the petitions to cancel registrations. But, through the first quarter of this year, the most rapid increase we've seen is in the notices of appeal and the oppositions and the cancellations are, I mean, these statistics show that they are down compared to the filing rate last year, but the fluctuations the numbers are so small that

they could easily still be up by later in the year so I'm not sure that we're going to see decreases in oppositions or cancellations this year, but I think it is noteworthy that we've seen a more significant increase in appeals through the first quarter.

In terms of the other end of the process, those numbers were focused on what was coming in the front door at the TTAB. On the other end, of course, the small percentage of trial cases that don't settle or get disposed of by motion or get withdrawn and require a decision by a panel of judges and that small percentage, but a larger percentage of appeal cases that don't resolved by request for reconsideration or remand or something like that. And the cases in both of those categories that work their way through and require attention by a panel of judges has resulted in 124 decisions in the first quarter of the year. So, as you can see here, that's down 15 percent from a quarter of what we put out last year and there's a number of reasons for that, the primary one being those two

judge positions that are vacant that we're waiting to get filled.

The other contributing factor to that is that we were concentrating on getting trial cases decided in the first quarter of the year because we had a burgeoning number of trial cases mature to ready for decision by a panel of judges in the fourth quarter last year and in the first quarter this year. So, we made a conscious decision to try and stay current with the trial cases, which I think will show itself in the end-to-end processing time on trial cases, which we'll get to on a later slide. But, the trial cases tend to take more time and therefore, we got out less work. We got out more trial cases than we normally get out in the first quarter of a fiscal year, but fewer decisions overall so that's why that number is down a little bit.

But, I'm confident that as we get more in balance between appeal and trial cases and we get new judges on board, you know, we'll be fine later in the year.

We also are thankful that Judge

Karen Kuhlke is doing in place of the Deputy, which the Deputy position is also one that we are dependent on Commerce to get filled so we're waiting on that as well. But, Just Kuhlke has been handling the shepherding through of precedential decisions and you can see on this slide that we got out nine precedents which is above average for most first quarters of the year so we're right on target for the number of precedents we want to get out for the year.

Contested motions like final decisions on the merits are down in the first quarter for a variety of reasons. We had two interlocutory attorneys who had some medical leave issues. We were having some of our attorneys train new attorneys. We also were focusing on the disposition of contested motions in more complicated cases in the first quarter of the year because of the motions that we were handling in the fourth quarter of the previous fiscal year. So, a number of things kind of contributed to this overall decline, but, again, it's not a decline that

I'm concerned about as a predictor of where we will be later in the year because we have brought on these new attorneys and they will soon be up-to-speed and, as I said earlier, they are really well-qualified and we expect great things from them as we integrate them into the system.

Our calls and service requests that our information specialists are getting from the public have gone down. Hopefully, that means that people understand what they need to do and don't have problems with the board and don't need to call as much, but the quality of the interactions of the information specialists with the callers and the e-mailers who do contact them has improved and that's something we're focusing on all the time.

So, in terms of more specific measures, the contested motion goals that we have are normally to get contested motions decided on average between eight and nine weeks from the time they're ready for decision. We also try to ensure that at the end of any quarter we don't have any contested

motion that is older than 12 weeks and we try to keep the inventory under control and within a target range knowing that if we keep the inventory under control we will get the pendency measures that we want.

So, again, we are a little bit out of sink with those goals right now, but I'm sure that we will be in sink with them later in the year. The pendency is up a fraction of a week over where we ended last fiscal year. We did have more complicated cases or cases with complicated motions pending in the first quarter because of our focus at the end of the last fiscal year to get out as many motion decisions as we could to make sure that we met the inventory control goal. So, in a sense, we were picking the low hanging fruit and focusing on quantity rather than spending time on some of the more complicated motions. And the more complicated motions are also good training tools for the interlocutory attorneys. They get to see the full extent of what can arise in motion practice and trial cases so they're working on those now. So,

they're taking a little bit more time and some of them are a little bit older, but, again, we'll catch up on them and get the inventory within control later in the year.

In terms of the judge work, although the number of decisions what we've issued, as we discussed earlier, is down some. The pendency goal has still been met. We are within the 10 to 12 week pendency goal that we have for deciding cases on the merits and that's a combined average for both appeals and trial cases. The inventory is about 27 cases above where it should be, but, again, I'm not too concerned about that. First quarter production is usually down. Fourth quarter and second quarter production is usually up. That's just kind of the cycle that we're on so we were certainly above the inventory control goal at different points in time when we took the snapshot last year, but ended the year where we needed to be so we expect to end the year where we need to be. This year as well.

In terms of end-to-end processing, up some on the appeals and again, that may be

because we were focusing more on getting out trial case decisions in the first quarter and the trial case decision end-to-end pendency measure is pretty much the same as what we ended fiscal 2018 with so that's a good thing and I think the end-to-end pendency on processing of appeals will also come down as we get the new judges on board and work off some of those appeals. So, I'm not particularly concerned about that.

The Accelerated Case Resolution or ACR cases looks like a big jump, but as we've discussed at previous meetings, the numbers are pretty small in terms of ACR cases processed in one quarter and so just two or three cases that took longer than the rest will throw off this average a lot. So, if I took two or three cases that I know of that took a long time to have the parties agree to the ACR efficiencies so they were already old before the parties agreed to the ACR efficiencies. If we took those out of the mix, the ACR cases processed in the first quarter, would have been process on average

about the same timeframe as the previous quarter. So, this number, as we've discussed before in previous meetings, is one that's likely to fluctuate a lot from quarter-to-quarter.

But, what I am very thankful for and I'm pleased to see if that there is still a good deal of interest from parties in ACR and these are points that we've discussed before. I like to remind parties that there's still benefits for ACR even though our rules changes in 2017 leveraged into all trial cases some of the efficiencies that used to have to be agreed to for parties pursuing ACR.

Before I go further on this or on the rest of the slides, did anybody have any questions on any of the performance measures or the numbers? I just want to know.

CHAIRMAN BARBER: I had a question about -- could you just clarify how many, and it all depends on Department of Commerce reopening and approving positions, but how many judges you're planning to hire this fiscal year?

CHIEF JUDGE ROGERS: We have three recommendations pending at Commerce for judges. The certification list from the vacancy from which those three candidates were chosen is still open and our hiring plan allows us the flexibility to propose additional hires during the fiscal year if we think we need them. So, we're going to start with these three that are pending at Commerce now, which will give us a net increase of one after filling the two retirements from last year and then see if we need further reinforcements later in the year and we can either go back to the same pool of candidates from which we pulled these first three recommended candidates or we could always do another vacancy announcement later in the year.

CHAIRMAN BARBER: Okay. Thank you.

CHIEF JUDGE ROGERS: Sure.

CHAIRMAN BARBER: Any other questions at this point? Okay. Thank you.

CHIEF JUDGE ROGERS: Okay. One point I will highlight on this slide in regard

to ACR is I added the bullet point. This slide was used in our last meeting, but I added the Burdens of Proof bullet point at the bottom because parties who agree to ACR because they want a more efficient and quicker resolution of their proceeding sometimes proceed through the case in slightly more lax fashion, but plaintiffs in ACR trial cases need to remember that there is no change in the Burden of Proof in an ACR case. There may be more relaxed rules or agreements that the parties reach for getting evidence into the record. They may agree on restrictions, on discovery, things like that to make the proceeding more efficient, but the Burden of Proof does not change so you still have to make sure that your evidence is sufficient to allow to carry the Burden of Proof. And the reason I added this bullet point and make this suggestion or give this reminder is because we did publish as a presidential decision during the first quarter. The first decision that came out of the Expedited Cancellation Pilot Program, which involved use of ACR and we'll

get to the Expedited Cancellation Pilot Program in a minute, but in that case the plaintiff lost and the plaintiff didn't meet its Burden of Proof. So, it was an ACR case, it was handled very efficiently, it was handled very quickly, but plaintiffs still need to bear their Burden of Proof and so that's just I think a reminder we should all remember.

A couple of IT updates and reminders. As we discussed at the last meeting, we had deployed some IT changes back in August to the consent filing motion and that's the form that you use to seek agree extensions of time or the trial schedule. Not extension of (inaudible). I'm talking just about consented extensions within the context of a proceeding or consented suspensions. We realized that there was a technical problem when the changes were made to incorporate in that consent motion form the new proceeding schedule that allows the filer to see what the set of dates will be when they ask for a 30 day or a 60 extension or a 90 day suspension

with dates to resume automatically upon conclusion of the suspension period. That resulted in a problem whereby parties filing on the next business day after a previous period expired on a weekend or a holiday were getting blocked out of the system. So, we have had for a while now information on our web page explaining that you can either file on line by the deadline day and not rely on the ability to use the next business day and you can do that electronically and you'll be fine. Otherwise, if you need to file on the next business day, after a prescribed period falls and ends on a weekend or a holiday, you will need to use the general filing form and then set forth as an attachment to the form the schedule of dates that the parties have agreed on. So, again, these are consented motions. There shouldn't be a lot of squabbling about them, but just to get them through the system you either have to meet that deadline and not rely on the ability to file the next business day or do the general filing form.

But, IT updates coming in April will fix that problem. So, we've been working on it. Unfortunately, these kind of problems can be identified quickly after changes are made to the IT systems, but they can't get fixed as quickly as they can be identified. It just takes time to work with the CIO and to get the coding changes made that will allow that fix. And there will be a few other features in the Legacy System enhancement package that we'll roll out in April.

Notably, the third bullet, if you are an opposer who is going to be opposing more than one application, and sometimes we've got people who are opposing multiple applications at one time, you won't have to redo the Notice of Opposition Form. For each one of the applications that you want to oppose, you can use it once, you can save it, and then just use it again for the next application. Sometimes you've got multiple applications from one applicant that you want to oppose. So, that's one example of some of the improvements that will be rolled out in

April.

So, the other two subjects I wanted to touch on are the Standard Protective Order and our request for further input from customers and stakeholders. The one point, which we've discussed in the past, had resulted in some significant division, albeit among very few commenters, and that was access to attorney's eyes only information by in house counsel. So, those of you who are subscribers to the Trademark Alert System that Commission Denison alluded to early will have gotten something just this past week letting you know that the IdeaScale tool, which we use to collect comments on proposals and questions and subjects that we want comments on, now has a more specific list of six questions on this subject and on the Standard Protective Order and we also have information on our web page to make it a little easier to use the IdeaScale tool to submit your comments including the option of just sending them to our Senior Counsel, Cheryl Butler here, who will get them loaded into IdeaScale for you if

you have any difficulty using that tool and that was something we had heard about the last time we sought comments on the Standard Protective Order and used the IdeaScale tool.

We've also sent out the information, the questions and what were seeking from customers and stakeholders too. All of the IP stakeholder groups and so we are certainly willing to take suggestions directly from those groups and again, they can be filed through IdeaScale or through Cheryl Butler and then we'll see what happens. We have set the deadline for comments by March 31, but we can always extend that if we need to. I am pleased to say that the same day that the posting went up in IdeaScale and the trademark alert e-mail went out we got our first comment so hopefully that's a sign that we'll get more robust comments this time around than we did the last time around.

This is just to let you know kind of the questions, but if you go to IdeaScale and you got our website, you'll see the background information and what the specific questions

are.

So, turning to the decluttering initiatives that the office is involved in pursuing and the one that is the primary for the Trademark Trial and Appeal Board that's the Expedited Cancellation Program and for those of you who are paying close attention you will know that this request for comments earlier on in 2017 talked about a streamlined cancellation proceeding and our pilot program is referring to these cancellation cases that involve only non-use or abandonment as an Expedited Cancellation Pilot Project.

In once sense, that allow you to differentiate the fact that in the pilot program we are not simply pushing people through or discussing with parties the options that were proposed in the request for comments on the streamlined program. That had a very specific set of parameters that might be used in a streamlined proceeding, but what we're doing in the Expedited Cancellation Pilot is more flexible. And as a result of all of this activity that's detailed on this slide that we

went through, we decided that we needed to work through this pilot first rather than proceed straight to a notice of proposed rule making based on the proposed streamlined cancellation proceeding.

And these are just again kind of some of the concerns that were raised after we've discussed these before in response to that request for comments and which led us in part to decide that we needed to do the pilot program first and be more flexible.

So, the pilot program is trying to identify the types of cases that are most suitable for some sort of expedited proceeding and also, the types of procedures that parties are willing to agree to and find useful in an expedited cancellation proceeding. And this involves one of our judges. The two that you would here if you're involved in a case that involves only a non-user abandonment claim would be Judge Cynthia Lynch or Judge Chris Larkin. You would obviously be contacted first by the interlocutory attorney who would set up the conference to discuss possible

entry into the pilot program with the parties, but Judge Lynch or Judge Larkin would participate in that conference as well.

So, the only results from the pilot show that so far -- and this is very a labor intensive effort. Unfortunately, we have no easy way to identify cancellation cases that involve only non-use or abandonment claims. So, we have embarked on an effort, labor intensive, to actually screen cancellations by a person on a weekly basis and look for those that have non-use or abandonment claims and then make sure that we track them so that if they don't go by way of default and an answer comes in, we can then quickly involved in the discovery conference with the parties and discuss with them possible means for expediting the proceeding, which could include anything from limits on discovery, agreements to use more informal disclosures, and provide documents and information more voluntarily. The parties on a cross motions for summary judgement approach. There are a lot of things that we talk to the parties and suggest that

they could use.

So, so far we've had 33 conferences. These numbers change kind of on a weekly basis as we identify more possibly participants in the pilot project and we've got at least a dozen cases that are in the process now in the sense that the parties have agreed to some form of accelerated case resolution. So, it's still kind of early in the pilot. We expect that this pilot will go on for the rest of the year, but we've already gotten enough experience with it that we also sent out a trademark alert on this pilot this week and have posted information on the pilot on our website to relay the information to the public at large about the early results of the pilot, the goals for the pilot, and how long we'll be pursuing it.

We've also begun to create a list of cases so that you could go to our website and by number look at cancellation case numbers where the parties did have a conference with the board. You can see the orders that issued in those cases. You can see the filings from

the parties. You can also see the agreements that parties have entered into so we will continue to expand that list as we engage more parties and more cases.

And the case at the bottom of this slide, that is the first one that the parties agreed to ACR in an we issued the final decision and we denied the petition for cancellation because the evidence was insufficient.

Points we've discussed before. We are looking into the default rate because there's clearly no need for an expedited proceeding when you get a default and the early information that we have and we're still kind of digging into some of this information is that in petitions for cancellation that involved a non-user abandonment claim, 51 percent of the time the case goes by way of default. We don't even get an answer and it just falls by the wayside. So, that was very interesting to us. We're going to look into whether there are differences in default rates based on the type of application, the basis

for the registration, the size of the party, the number of classes, that kind of thing, but that's early information that we're looking for and going to continue to look for.

Again, early results are that the cases where the parties have most readily agreed to ACR are the cases where the parties don't feel that there's need for a lot of discovery and we've had a lot of parties express their comfort level with ACR, but maybe not agree to it right away. And one of the things that we had talked about in the request for comments on a possible streamlined cancellation proceeding was that there would be very little discovery perhaps by defendants on the plaintiff's standing, but we have found that it's really plaintiffs who are more interested in some discovery even if they get some voluntary disclosures by the respondent about the evidence of use and so we're trying to figure out well how much discovery is really necessary in these kinds of proceedings. And I think that's pretty much where we stand and our goals are to figure out

what changes to the rules we could propose for a new expedited or we could go back to calling it a streamlined proceeding, but at that point we will have an idea of what the rules changes would be that we would want to propose because there would be things that most parties had agreed to in this pilot.

We can also figure out whether early intervention in these cancellation or non-use cases might be useful in other kinds of cases as well and we'll figure out whether we can adapt ACR procedures so that's it for TTAB.

CHAIRMAN BARBER: Okay. Thank you very much, Judge Rogers. Any questions for the Chief Judge. As with other speakers, I want to thank you and your team, Cheryl, for all of your time that you devote to us and meet with our subcommittee, which consists of Ilene and Anne. You're also very generous with your time and thank you for providing us so much information and, you know, soliciting our feedback and considering it.

CHIEF JUDGE ROGERS: Always welcome.

CHAIRMAN BARBER: Okay. Last, but

not least, I see our friends from the CIO over there who have been patiently waiting. So, thank you. Sorry to keep you waiting and I will introduce David Chiles. He's the Acting Chief Information Officer. I see he has with him Rob Harris who is the acting TMNG Portfolio Manager. So, David, turn it over to you.

MR. CHILES: All right. Thank you very much. So, you've introduced so I don't need to repeat that. So, I'm going to hand it over to Rob who will begin to step you through the slides and of course, if there are questions, we'll both be here for our responses. Thank you, Rob.

MR. HARRIS: Good morning. I just have a few brief remarks. First, thanks for allowing us to provide an update. On the first slide, a quick summary of where we've been in the last three months since we were together in the fall. First, we have had some successful deployments around our TMNG products. First, examination. The exam product we updated and incorporated continual

feedback from our end users, from the examining attorneys, and improving the CK Editor, the word processor within the exam product and also deployed letters of protest capability.

From an ID manual perspective, we improved the search and sorting capabilities and EOG again was using an older version of CK Editor. We updated the version of that word processor that was used in that tool.

From a legacy perspective, the most significant improvement that we've made in the last three months involves TEAS and TEASi. We all know that, and we talked some at the last TPAC meeting, one of the technical were facing is an aging infrastructure and we knew we had to fix and update the TEAS and TEASi infrastructure immediately given that that is our intake system and that's a way that we allow everyone into the process. So, that was done successfully in the December timeframe. We know we won't continue to rely on TEAS and TEASi as our intake tool for the foreseeable future so now we feel much more comfortable

that we have shored up that foundation and can continue to rely on that as our intake product.

Chief Judge Rogers also mentioned, I won't go into the details there, but we also had some enhancements that we deployed to our internal TTAB system, that's TTABIS, and also ESTA which is the partner in crime with TEAS and TEASi and that is the product used to receive electronic correspondence from our TTAB customers.

And lastly, and this is what I'll talk most about is our beta testing. We're very excited that in late November we started beta testing of the TMNG exam product. We, actually I'll flip to the next slide. The plan was to start in late November, which we did with about 10 to 20 testers and the functionality we're going to focus on is processing Madrid applications, domestic applications, and letters of protest. The first thing I'll point out is the Madrid cases have been delayed. That capability we haven't been able to deploy it to the point where it

can be tested by our trademark customers. That's something that we hope to address in the next week or so and get that work going.

That being said, we did have now over 30 users processing about 1,000 office actions since we started testing in late November. There's been a lot of feedback and that's exactly what beta testing is for is to make sure that we identify areas where we can improve the product. There are, as you can see, 82 incidents reported. Nothing significant. There were four major pieces of feedback related to abandonments that were fixed in a deployment we did earlier this month, but the theme was around the look and feel of the Editor and that's where we can estimate. It's better to hear from the end users. It's better to hear from the examining attorneys as to exactly what they're experiencing and then react to that and that's what we've done. We've deployed the majority of these. The feedback has been addressed in the deployment we made in mid January. Others are scheduled as part of our upcoming monthly

deployments.

So, our next step is to first fix the Madrid processing capability so that we can test end-to-end all types of applications that are being received and once we're able to do that, put ourselves in a position to make an informed decision with what steps we take next with the TMNG products.

As I've briefed in the prior TPAC's, we do measure the success based on these six critical success factors and these are the items our joint team across the trademark business and OCIO measure our success from. We hold ourselves accountable to these six very specific points. You can see were three for six. As a baseball fan, I'd to be three for six, but as an IT delivery expert, I'd like to be six for six.

The first office actions and briefs must be sent electronically. That remains yellow because of exactly what I said. Until we can fix the one outstanding defect on Madrid cases, we can't flip this to green. So, I expect that defect to be addressed by

the end of this month if not sooner and thus, we are very close to flipping that from yellow to green.

The second one. All office actions must be displayed identically in TSDR and TMNG meaning when an examining attorney finishes working on an office action and hits send, we want to make sure that exactly what he or she saw on their screen is what the customer receives. In some cases right now, there are some formatting issues and some changes that happened between the point that the examining attorney hits send and when the customer receives that office action. So, we're working on those and once those are addressed again, that's the loose end we need to tie up in order to turn the second critical success factor green.

The next three we've met. Dockets are complete and correct. There was a lot of hard work done about a year ago to get us over that hump. The data continues to be reliable and accurate and system performance. We talked at the last TPAC in detail about how

we're testing this. We have automated tests. It's not actual users, but tests run to test in upwards of 1,200 concurrent users on the system. So were planning future growth of the trademark organization. As it stands now, the system is able to meet all of our system performance measures, response times, at the 1,200 level so we're in good shape there.

And the last one is related to properly formatted office actions. There's a little bit of a twist here and that is we added, and we talked in detail about this last time, a new piece of capability that would have to be delivered or have to be ready to use before we can expand the user base and that has to do with processing divisional applications. Divisional is a complicated business process. We've been working very hard with the trademark subject matter experts over the last few months to get our arms around exactly what it is today and what it needs to be in the future. Those requirements are being fed to the IT team now and we expect to start developing. We're developing some

back end capability now, but more the front end, the stuff that the customers see, that will be developed over the next few months and we hope to be in a position so that by the end of the third quarter of this fiscal year, in the June timeframe, we're ready to expand our user base and expand the beta testing and get feedback not on the Editor international processing, but then get feedback on items like divisional processing and others.

That is all my prepared remarks. I will open it up for questions.

CHAIRMAN BARBER: Thanks very much, Rob. Any questions from the TPAC members? Comments? Kelly.

MS. WALTOPN: Hi. At the end you mentioned more about beta testing. Is there a plan to have a, you know, specific phase 2 that will encompass more examiners and what's the timeframe of that.

MR. HARRIS: So we had briefed at the last TPAC meeting that our initial plan was to begin April 1 and increase the number of beta testers from the current plan of

roughly 10 to 20 in upwards to 50. Now, coincidentally, the use of the system has already gone up. We're almost at 40 users now, but the measure we put in place is before we expand into a broader group, we wanted to be able to deliver the Foreign Paragraph Editor, which is on schedule to be delivered in March and also the divisional piece I just spoke to. So, as it stands now, we would continue the system and encourage the use by as many people as possible to get the feedback, but not formally enter into the next stage of beta testing until we a) have made a decision that yes we're going forward and going forward in this direction and b) provide that divisional capability that I mentioned. So, a formal phase 2 would be pushed from the March, April timeframe to the June, July timeframe so that when the next set of formal beta testers get it they have an incrementally improved product, a more complete product to use to include that Foreign Paragraph Editor and divisionals. If we're successful there, then the plan would be to continue to

encourage the user base growth so that we are in a position to deploy to all examining attorneys if we're meeting customer expectations and if everything looks good.

CHAIRMAN BARBER: Any other questions? Well, I think I was would remiss if I didn't comment on the slide on the critical success factors. I think that was significant. It's encouraging so congratulations to you and your team. I've seen three green checkmarks. It's not six out of six, but it's halfway there and I think you mentioned the top two are very close to being switched to green so that's fantastic. I now there's still a long way to go. There's still a lot of uncertainty. There's still a lot of things that will have to be resolved through beta testing. So, we're not, you know, quite to the end of the tunnel, but from an outside observers perspective, it looks like a very positive direction so congratulations to you and your team and the cross, you know, sectional team that you have. And also, thank you to your office. As I've thanked other

speakers for spending so much time with us, preparing slides, preparing information, meeting with our subcommittee, which this year consists of Donna, Kelly, and Jay. Again, we very much appreciate the time and effort that you spend to educate us and work with us. Okay. I think we are at the point of our meeting where we open it up to public comments. I think we have gotten another from the web cast so I'll turn it over to Mary.

COMMISSIONER DENISON: Thank you. Yes, we got internet question. Would someone address the registration certificates last week that were missing descriptions of goods and services? Will they be replaced automatically? If so, when? So, what happened was there was an IT problem last week and there were about 1,400 certificates that went out without goods and services in them and we are fixing what caused the problem, number one. Number two, we are replacing the certificates and I am told that they have started to be mailed out already. So, hopefully this will be wrapped up pretty

quickly and we apologize for the inconvenience. Thank you.

CHAIRMAN BARBER: Any other comments or questions from the audience? Anybody from the public like to take the floor? Yes, Jay.

MR. BESCH: I'd like to thank everybody that spoke today and I'd just like to say that I'm happy to now be a member of the Trademark Public Advisory Committee and, you know, I'm very honored to take over for Howard and honored to represent a great group of exceptional professionals so I just want to thank everybody here today and that's it.

CHAIRMAN BARBER: Well, we certainly welcome you and look forward to working with you and probably many years to come. Okay. I believe we are adjourned. I just want to mention our next meeting I believe is schedule for April 26. That's a Friday so unless that changes or unless the government shutdown lasts that long, which hopefully it won't, that's when we will see you all again. Thanks everyone for coming and we will see you next time.

(Whereupon, at 11:27 a.m., the
PROCEEDINGS were adjourned.)

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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.

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**Notary Public, in and for the Commonwealth of
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