

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, July 26, 2019

PARTICIPANTS:

TPAC:

ELISABETH ROTH ESCOBAR, Vice Chair

STEPHANIE BALD

CHRISTOPHER KELLY

ANNE GILSON LaLONDE

KELLY WALTON

BRIAN J. WINTERFELDT

Union Members:

JAY BESCH

PEDRO FERNANDEZ

USPTO:

MARY BONEY DENISON
Commissioner for Trademarks

ROBERT HARRIS
Acting TMNG Portfolio Manager

LAURA PETER
Deputy Under Secretary and Deputy Director

GERARD ROGERS
Chief Administrative Trademark Judge

PARTICIPANTS (CONT'D):

MARK THURMON
Deputy Chief Judge

BRANDEN RITCHIE
Director, Office of Governmental Affairs and
Oversight

SEAN MILDREW
Acting Chief Financial Officer

JAMIE HOLCOMBE
Chief Information Officer

AMY COTTON
Office of Policy and International Affairs

* * * * *

P R O C E E D I N G S

(9:03 a.m.)

VICECHAIR ESCOBAR: I think we're going to go ahead and get started if everyone could please take their seats. Good morning, everyone. My name is Elisabeth Escobar and I am the Vice Chair of the Committee. Our Chair, Bill Barber, was unable to join us today. In addition to being Vice Chair of the Committee, I'm also Vice President and Senior Counsel for Intellectual Property at Marriott International around the beltway in Bethesda.

We have a pretty small crew today. I am going to introduce the participating members of the Committee. To my left, we have Stephanie Bald who is a partner at Kelly IP in Chicago. That's where you are but Kelly IP is in DC. Okay. Anne Gilson LaLonde who is the author of the well-known treatise "Gilson on Trademarks" from Vermont. On the other side of the table, oh great, we have Chris Kelly with Wiley Rein in DC. Brian Winterfeldt who is the founder of Winterfeldt IP in DC. Jay Besch who is representing the Union. And I'd

like to welcome Pedro Fernandez who is our new POPA representative taking over for Tamara Kyle, so welcome.

The first person on our agenda is Laura Peter who is the Deputy Under Secretary of Commerce for Intellectual Property and the Deputy Director of the United States Patent and Trademark Office. I think this is your third consecutive visit to TPAC?

MS. PETER: It is. Do I need to do anything with this?

VICE CHAIRWOMAN ESCOBAR: There we go. Welcome.

MS. PETER: Thank you so much. I'm so happy to be here and it's been a whirlwind of a week. Elisabeth, it is my third consecutive time here. I'm happy to be able to participate in so many of the TPAC sessions and we have an impressive lineup of presentations today as always and it's exciting times and continues to be exciting times at the USPTO. Earlier this week we had a very wonderful event. We had our celebration of the Apollo 11 moon landing, the

50th anniversary of the moon landing. We had a lineup of entrepreneurs who have excelled in space commerce. We had the head of NASA, and the Secretary of Commerce, Secretary Ross was here. I moderated a panel of astronauts and a pioneer in engineering for the space telescope. But not only was it a celebration of space and a celebration of innovation, but it's a celebration of commerce and branding too.

And so, this presentation is being flipped up on the screen just so you can see it. This was in the lobby of the USPTO for the past week or so, all different space-related branding and logos and it's quite impressive and quite delightful. Of course, the space brands that come to mind that are so strong these days, the franchises of Star Wars, of SpaceX, of Star Trek, are very, very important to the Trademark Office, very, very important to what we do here.

So, I'm just going to let these roll and you can kind of see some of them because people are very creative in what they do and

very enchanted by the magic of space and I encourage you to glance at them once in a while as we go here, but it's also been a very busy week in other ways for the Commissioner of Trademarks and the United States Patent and Trademark Office as it comes to trademarks. Commissioner Denison testified before Congress last week. She did a phenomenal job as always. The Congress was extremely focused on counterfeiting and on fake specimens being submitted to the Office and what the Trademark Office was going to do about it. I know she's going to talk a lot about that coming up soon and we have had a variety of ways that we're trying to attack this problem including training our examiners to spot these issues more carefully. And I'll tell you Mary showed me a picture of four real scarves with different tags on it and I was like, "Well, how would you ever know to look at the other pictures that it was false?" So, her team is doing a phenomenal job at catching different things in different ways be it the same filer or the same address of the filer or different

odd things that just trip something in their minds.

So, the training is important, the extra scrutiny is important, our IT processes are hugely important. We are exploring many different ways on how we can bring in artificial intelligence or some other kind of machine learning or any kind of screening to help pull these fake specimens out. As I said, Commissioner Denison did an absolutely phenomenal job last week. The Chair of the Subcommittee, Johnson, came up and thanked her personally as well as during the open session for her great work as Commissioner of Trademarks and I believe that was the last time she would testify before them and so he thanked her personally.

I'm just flipping through here. As always, we have a lot of work to do. I personally am taking a strong interest in getting the branding and trademark issues out to the public and encouraging the regional offices to take a little bit more active role in getting the word out to our constituents

and our stakeholders as well.

So, with that, I will turn it over to Commissioner Denison as I speed talked here and I encourage you to take a look at all of the marks when you get a chance and it's a pleasure to be here. Thank you so much.

VICE CHAIRWOMAN ESCOBAR: Thank you so much for joining us. Okay. Commissioner Denison.

COMMISSIONER DENISON: Hi and thank you so much, Laura. That was very kind of you. I'm glad to be back at TPAC. Always love to see everybody and tell everybody what is happening here. So, let me just start off with employees. So, we're over 950 now and of that, of course, the majority of employees remain the Examining Attorneys and beyond that, we have a very talented staff and we are doing great things because of all the hard work of our team. I'm very proud of everything that our team has accomplished. This year we hired 83 new Examining Attorneys and the plan is to hire 40 next year probably to start in the Spring, but, of course, we

always kind of play that by ear depending on how filings come in. If you're interested or know somebody who might be interested in being an Examining Attorney, they should preprogram USAjobs.gov and it will let them know when there's an announcement because we do not keep our announcements up for very long.

New filings continue to come in. The projection is to have a slight increase this year, maybe 1 percent, although we had a very strong filing week last week. So, we never quite know how it's going to come out, but we do expect to have a slight filing increase this year. We have only had four years since 1984 when we did not have a filing increase. So, next year may be flat, but then we expect to resume increases again.

This year, because of all the hard work of all of our lawyers pulling together on our Pendency Initiative, we are doing great on pendency so at the end of June we were at 2.4 months. We do expect that number to climb somewhat before the end of the year, but still expect it to be well within our range of 2-1/2

to 3-1/2 months.

So, also, looking at our quality, our quality is doing great. Again, really proud of our Examining Attorneys for keeping up with this and we've a huge pop in the exceptional office action. That is a much more comprehensive quality measure. I think when I first got here eight years ago it was something like 12 percent and now we're at 55 percent and this is a voluntary quality measure that's been implemented. So, it looks at the search, the evidence, the writing, and the decision. And so, we are delighted that this number continues to climb.

Now, the big news is that the U.S. Counsel requirement was published on July 2 and it will be in effect on August 3. It will require all foreign-domiciled trademark applicants and registrants to be represented by a U.S. licensed attorney to file at the PTO and that would include not just in the trademark prosecution part, but also at the TTAB. We are working on an exam guide feverishly. Our team has been very, very hard

working on this and so, that's going to be out a few days at least before August 3, I hope so. It is coming and we're very, very pleased with this and hope that it will help stem the tide of fake specimens. We believe that it's going to also increase confidence that registrations that issue to foreign applicants are not subject to invalidation for claims such as improper signatures and use claims and we also believe it will help us with the problem of unauthorized practice of law.

So, U.S. licensed attorneys will be required to enter their bar numbers and confirm that they're active members in good standing of a state bar. In addition, the owner's address will be required. If you send in a P.O. Box, you're going to receive an office action. You will hear from us. I wanted to mention that there are a lot of foreign solicitations. We started back, I think it was, in February right after the proposed rule came out. We had lots of people receive an e-mail from groups from China. Since that time, there have been a number of

these from different sources looking for the use of a bar number of a U.S. lawyer and just offering to pay for that and do all the work, which, of course, is not permitted under U.S. law. So, beware of that if you get one of those solicitations.

The next big thing is mandatory electronic filing. I am expecting the final rule for that to be published in the next week or so in the Federal Register and we expect to be implementing the mandatory electronic filing rule on October 5 so right at the beginning of our new fiscal year. And it says on the slide the next step is for final review and signature by the Under Secretary and Director. That has actually happened since the slide was prepared. So, it's just a matter of what day it goes into the Federal Register at this point. So, you should stay tuned for that because it is coming very soon and as I said, it will be implemented on October 5.

Another way we've been in the news, Trademarks is just, you know, ever popular

these days. The Supreme Court has ruled on Brunetti. We lost. The rule that had been in effect since 1946 has been declared unconstitutional so we will no longer be refusing trademarks based on the immoral or scandalous provision of The Lanham Act. We have issued a new examination guide to give people further guidance on that.

Now, the bar groups have been extremely interested in allowing multiple extensions and so, we have a legal policy attorney who has begun drafting a notice of proposed rule-making on this and so, stay tuned. Now that we've got the U.S. Counsel rule done and the mandatory electronic filing done, of course, we cannot give any rest to the weary, we are moving forward with this next thing so stay tuned for that.

Another very popular topic that people are very interested in is cannabis-related trademarks. So, there are three different laws that are relevant to our examination. The first one is the Controlled Substances Act. As you know, marijuana is a

controlled substance under federal law and drug paraphernalia is also prohibited under the Controlled Substances Act. The 2018 Farm Bill made an amendment to the Controlled Substances Act and it said that hemp, if it was no more than .3 percent THC, would no longer be a controlled substance under the CSA. However, there is a catch for those of you who think that that means that you're going to get your mark registered. You may or may not because there is another law that applies and that is the Federal Food Drug and Cosmetics Act. So, the exception to the Controlled Substances Act did not cover the Food Drug and Cosmetics Act. So, we have a group of examiners who are sorting all of this out and we do have a backlog in these because we have been inundated with applications. We have thousands of them now and so, we have to follow the federal law and that's why we have this special group sorting it out to make sure that we are consistent and do follow federal law on this. There's an examination guide we put on May 2 so if you're interested in filing

an application that's cannabis-related, I urge you to read the exam guide before filing.

We have been doing a bit of training. We worked with INTA in May to do training on the cheese industry. Unfortunately, I was out of town. I love cheese and I missed the cheese tasting. I understand the legal content was also quite good, but that was a fun CLE for our examiners.

And then June 11, we had training on the U.S. Counsel rule, which, as you know, is coming August 3 so we went ahead and gave training on that to the examiners so they'd know what to expect and we also offered advanced training on identifying and refusing digitally altered specimens of use.

Everyone in Trademarks will be coming into the office August 12, 13, or 14, one of three days. We can't fit any more so we had to break it up over three days and they will be receiving office-wide training. There will be XSearch, which is like TESS to the outside. Refresher on that. There will be

training on mandatory electronic filing and we will again be discussing specimens.

Now, I've mentioned this before, but I just want to reiterate that we continue to see lots of improper behavior at the Office be that fake specimens, unauthorized changes to address, fake claims of use, misleading solicitations, unauthorized practice of law, and, of course, even before the U.S. Counsel rule goes into effect, efforts to circumvent that. So, we have been extremely busy on this. We have made the audit program permanent. I'll talk more about that in a minute. I have issued a number of exclusion orders excluding foreign practitioners from appearing before the USPTO. We have updated our examination guidance to require examiners to refuse fake specimens, not just ask for information, so that is a shift in our approach to these. So, if we think something is fake, then you are going to immediately get a refusal, not just an inquiry for more information.

Of course, sometime back we improved

the readability of the Declaration to try to reduce the likelihood that people would not read the Declaration. The Trademark Trial and Appeal Board is doing an expedited cancellation pilot for non-use or abandonment claims and Judge Rogers will probably talk about that in a few minutes. And, of course, we have issued the U.S. Counsel rule. We believe that by bringing in U.S. attorneys, there is a higher likelihood that some of these bad behaviors will decline.

In addition, we have a lot of other things going on. We have always had a database of marks. We have never had a database of specimens. So, Deputy Director Peter made a reference to four different pictures of the same scarf with four different applicants and four different marks and this is the kind of thing that would help us with that. So, I have met with the CIO and it is one of his top priorities to develop the specimen database to enable our staff to see highly similar specimens used by multiple different applicants.

In addition, we are moving to a login requirement. We expect that to be implemented around the 1st of November so if you do not already have a MyUSPTO account, please consider going ahead and setting that up because you will need to do that again later this year in order to file anything.

Another thing that we've done is that we've set up a special taskforce and the mandate of the special taskforce is to develop policies, procedures, look for trends, and to help us deal with all of these problems. We are talking to other federal agencies for best practices and we are looking at technical solutions. So, the taskforce has IT people on it as well as trademark lawyers and Congress asked that we report to them on what the special taskforce is doing so we will be providing reports to Congress periodically.

I mentioned the audit program. The permanent program was launched in November of '17 and you may be audited if you file a Section 8 or Section 71 Declaration of Use and your registration has at least one class with

four goods or services or two classes with two or more goods or services. So, we are significantly increasing our audit program. I believe we have gone to 12 people doing the audits now so we are expecting going forward to be auditing approximately 5,000 registrations a year.

What's disconcerting about it is the number of people who are deleting goods. So, slightly more than 50 percent of the time, people are deleting goods and services and these are just after they have filed a sworn document saying that these are all in use. So, that is continuing to be troublesome to us. And the number is not lower when you see that the person has a lawyer. 80 percent of these people are represented by an attorney and, in fact, I believe that the number of deletions when you have an attorney is actually higher. I think it's 52 percent. So, it's extremely disturbing and that's why we are beefing up this program.

I mentioned unauthorized changes to files. Please are going into other people's

files and changing things without authorization. Particularly, the correspondence address. We believe that this has become popular because people want to get into certain online brand registries and we have set up a program to intercept the vast majority of these unauthorized changes. But once we get to November and we have the MyUSPTO login, this will obviously be less of a problem.

So, Phase 1, as I mentioned earlier, is you are going to have to log in and you're going to have to provide a two-step authentication. So you can get it by e-mail if you would like, you can get it by phone call if you like, and you will get a six digit code and then you need to use it within 20 minutes or request a new code. So, this is just an effort of ours to provide greater security to our applicants and registrants.

In Phase 2, you're going to have to prove who you are. We're expecting that sometime early in the new year and so you'll likely have to provide either a passport or

some kind of form of ID such as a driver's license to prevent saying you are someone that you are not.

And then Phase 3 will be a little bit later in 2020 and in that phase you will be able to authorize as a lawyer multiple staff accounts to access and edit filings.

The specimen protest pilot, people may recall we instituted about a year and a half ago and that was an e-mail box where people could send in complaints about specimens they saw that were troubling. We started off with a limited pilot where you had to have evidence of identical specimens or you had to have registration or serial numbers showing an identical specimen. So, it was either you found something on the internet that was the same as a specimen or you saw multiple uses of a highly similar photograph. We are expanding that now and we urge people to take a look. We are going to be updating our guidelines on that and we are going to make the ability to submit much more liberal. What we would like to ask is that if you see

something that you think looks doctored, please take a look at Examination Guide 3-19 - - that's the guide that examiners use when determining whether something is fake or not. So, see if you can provide us support for one of the examples such as, for example, does the label appear to be floating over the product or is there pixelization around the mark? That kind of thing is listed in there. So, that would be very helpful to us if you could provide some evidence of why you think the specimen is fake.

Specimen rule revision. When the mandatory electronic filing rule comes in, we are going to be more restrictive about what types of specimens we take. So, for example, if you send in a webpage specimen, you're going to have to show the URL and the date on it. Those have been missing from some of our fishy specimens and so, that's now going to be required. And, in addition, we used to just take for goods a hang tag without any necessary connection to the product itself and we are going to be requiring that that label

or other mark be showed in connection with the goods themselves. So, that's coming in October.

Misleading solicitations. You may recall that we sent two lawyers to the Department of Justice last Spring. They have been doing a great job over there I understand and the Department of Justice asked that they be extended for another year. I keep hoping that we're going to get some announcements about criminal indictments, but that just hasn't happened quite yet. These things take a long time. But we still have the lawyers over there working hard on this so I wanted you to know that we are doing that.

In addition, we continue to try to educate the public so they won't fall for these scams because I think it's a two-part solution. One is educating people and the other is prosecuting the bad guys.

We continue to make efforts to enhance the customer experience at the USPTO. We have put out a number of different of touch point surveys. The most recent one was

application prosecution. We've also had one this year on MyUSPTO. If you get one of those, I urge you to take it because we very much want your feedback and it's a short survey and we'd really like to hear from you.

In addition, last year we made a serious improvement to the website on searching information, providing information at a level that we had never provided before. We have a number of people working on the customer experience. We have web strategists now who help us figure out which web pages are the most important for us to work on, that kind of thing. So, we are very pleased with our efforts to enhance the website. The team is doing a great job.

On the international front, we continue to be involved with the TM5, which is China, Europe, Japan, Korea, and us and we have a lot of great projects going on. Everybody has adopted the common status descriptors, which are those little logos on the TSDR that you see. So, that has been implemented in all five members. We are now

on a campaign to get other countries interested and a number of countries have expressed interest in joining that and we are trying to see how we can make it as easy as possible for them to do that. There are a number of other great projects going on at TM5 as well. The next meeting of the TM5 will be in December in the suburbs of Tokyo.

I always like to mention the IP Attachés. We have them around the world. We have three in China and if you're a U.S. company or business and are looking to get some free advice on IP issues that you're having outside the country, please consider either contacting us or going directly to the IP Attachés because they are incredibly connected and can be quite helpful to you should you have a problem overseas.

China, I think everybody knows we continue to have an influx of filings. There remain subsidies there. I've asked for quarterly updates from our China team on the subsidies so we can monitor that. The biggest area for filing from China is Shenzhen and the

Shenzhen government has recently proposed to reduce subsidies. I don't know yet whether that will go into effect or not, but there was a proposal put out, I think it was June 22. But we continue to have issues with many different things related to China including specimens, bad faith filings, and counterfeiting.

We are still getting significant filings from China as you can see and I don't know whether we will be higher this year with the Chinese filings, but I think we will be close.

MyUSPTO.gov, there is a real reason for everybody to get on there as soon as possible because you're going to have to, starting in November, but there are also some other reasons to be on there. We are planning to launch in the next few weeks a trademark electronic application for TEAS Plus that is going to be a new format and it's going to be kind of like -- think of it like the 1040 EZ form for your taxes. It's going to be a simplified way of filing. It's going to be

only for intent-to-use and TEAS Plus, but we are expecting that to come out soon and you will have to go into MyUSPTO.gov to access that file. So, consider that please when it comes out in the next few weeks because I think it will save you time even though it was originally sort of planned for pro se's, I actually think the lawyers are going to like it too.

I also urge you to take a look at our app. The USPTO has a free app. It's on the Apple App store and Google Play and you can find it there and it will give you notification of status changes on whatever files you put into it. So, please consider taking a look at that. We are very pleased. This is our first app for the Agency so we hope that it will be helpful to you. And that is it for me unless there are questions.

VICE CHAIRWOMAN ESCOBAR: Thank you so much, Mary. If there are no questions, we will go on to our next topic. I think it is OPIA and we have Amy Cotton who I believe is Senior Counsel at OPIA. Welcome.

MS. COTTON: I am indeed. Thank you. Shira Perlmutter could not be here with us today. She sends her regrets. So, you have me. Starting out I wanted to talk about the Hague Judgments project. We told you all about this last February. The progress of the negotiations to exclude intellectual property from the Hague Convention on the Recognition and Enforcement of Judgments. I've got an update now. There was a diplomatic conference that took place in the Hague from June 18 to July 2. OPIA representatives were there to advance the U.S. position to exclude IP from the Convention. I am happy to report that we were successful. The United States and Canada proposed to exclude IP and we received support from ten other delegations, Japan, Mexico, Peru, Australia, Korea, Serbia, Turkey, Switzerland, and Russia, for our proposal. Overall, many U.S. and foreign IP stakeholders opposed the inclusion of IP. Their concerns are rooted in the danger of requiring recognition and enforcement of judgements based on IP rights or defenses to infringement

that would not exist in comparable form in the recognizing state, essentially imposing rights on a recognizing state that are seen as legitimate.

Stakeholders had also voiced concerns about the vagueness of the text related to IP judgments and how the proposed provisions would actually work in practice. Other concerns related to the types of relief ordered and the appropriateness of blocking conduct that may not be illegal in the recognizing state or not giving adequate effect to important forms of monetary compensations including statutory damages.

We were pleased to be able to explain these concerns to the other delegations, many of whose IP experts were brought in very late in the negotiating process, but now the text should be finalized. There is some tinkering that has to go on, but should be finalized sometime before March 2020.

Next, I wanted to turn to the Madrid System. The Madrid Working Group is going on

right now in Geneva. We have representatives from OPIA and from Trademark Operations. We worked together to develop the negotiating instructions to respond to the various proposals that have been discussed this week.

In particular, I just wanted to highlight a set of three proposals. These are proposals to add Chinese, Russian, and Arabic as Madrid System working languages. Generally speaking, every document that passes through the system and is displayed in the International Register must be translated into all working languages. Right now we have English, French, and Spanish as working languages. Spanish was added about eight or nine years ago to increase accessions from Spanish-speaking countries. And that argument is the same argument that's being used here that adding languages would increase use of the system and its geographical reach.

However, adding languages to the system represents a massive increase in cost, workload burden on the IB, the International Bureau of the Madrid System, and would

increase the complexity of the system rather than decrease it. So, the IB is looking at other options to address these proposals with the Madrid Union should it decide to proceed with this idea. For example, one idea is exploring the idea of increasing just the number of filing languages, not working languages. But the United States really wants to proceed very carefully with this discussion. We already see examples of problems with the existing translation capacity of the IB staff so it's difficult to contemplate adding more languages and more complexities. And if you all have run into any of those issues, we'd like to know about them so we can add those to our discussion.

But, reassuringly, because of the potential implementation impact of these proposals, the IB is proposing a comprehensive review of the current language regimen of the Madrid System and we support this larger review. But our position is that any review of the languages should be done in a parallel or

following a larger review of the Fee System in the Madrid System. Adding languages, either working languages or filing languages, will necessitate a substantial increase in fees. But any fee increase must also take into account that the Madrid System already does not pay for itself yet. The Treaty tells us that it's supposed to do so. The Madrid Fee System schedule has not undergone a comprehensive review in 20 years at this point. The system is responsible for direct costs or expenses of the system as well as indirect costs to contribute to the overall organization, but it's not meeting that obligation. Instead, it's the PCT that is. The PCT is subsidizing all of the registration systems and unions within WIPO. It generates 75 percent of WIPO's income. The long-time strength of the PCT has masked weaknesses in other WIPO fee-funded systems, namely the Madrid, Hague, and Lisbon systems.

So, the U.S. delegation is proposing a review of fees in all the registration

systems to ensure that all are contributing to the organization and not just PCT users. So, we are pleased that the Madrid Working Group already plans on discussing the fee structure next year and I can't say what the outcome will be, but it is possible that Madrid fees will go up, but it is about time so stay tuned here.

Moving on, the Presidential Memorandum on Combatting Trafficking and Counterfeited and Pirated Goods. Commissioner Denison indicated in her testimony last week that this was before the House Judiciary IP Subcommittee. USPTO is actively involved in the policy development process within the administration related to combatting online counterfeiting. The Presidential Memorandum was issued on April 3 and it directed an inter-agency group led by the Department of Homeland Security to prepare and submit a propose this Fall that will assess the current state of counterfeiting and piracy conducted through online marketplaces and intermediaries and identify appropriate administrative

statutory, regulatory, or other changes, including enhanced enforcement actions, that could substantially reduce trafficking and counterfeit and pirated goods or promote more effective law enforcement regarding trafficking in such goods. OPIA is working within the inter-agency group to develop this report and we appreciate the conversation we had at the International Subcommittee yesterday and the thoughts of TPAC in that regard.

In that light, you should know the Department of Commerce did issue a Federal Register notice seeking comments from intellectual property holders, online third-party marketplaces, and other third-party intermediaries, and other private sector stakeholders on the state of counterfeit and pirated goods trafficking through online third-party marketplaces and recommendations for curbing trafficking of such goods. These comments are due July 29 and we will be reviewing all of them. We hope there are many.

Lastly, I just wanted to let you know some IP Attaché personnel changes that we have. First, we're happy to welcome Mike Mangelson to our China team. Mike, where are you? That's Mike Mangelson over there. He's been our IP Attaché in Beijing from 2014 to 2019. He has a tremendous amount of on the ground knowledge of the workings of the Chinese Government in IP and is fluent in Mandarin. In his capacity as an IP Attaché, he led the USPTO team in advocating U.S. IP interests, policies, and initiatives in China. He worked closely U.S. right-holders on IP protection and enforcements issues. He coordinated with U.S. government agencies and China counterparts to resolve IP issues from U.S. policy and encourage effective IP and protection enforcement in China and secure high IP standards in trade agreements and in China IP laws. Prior to government service, Mike was in private practice in IP for 20 years.

Also, I'm delighted to share with you that we are deploying Conrad Wong, a

member of our China team, back to Guangzhou. Conrad was formerly posted there, came back to headquarters for a few years, and now he is going back.

We are also sending out Cindy Henderson who is a member of my trademark team and the China team. She is going to go to Mexico City to take the place of Todd Reeves who now has come back to OPIA's enforcement team.

And then we also have Doran Mazurkevish who is on our enforcement team is going to Kiev. He was actually one of our first Attachés in Rio. He came back and is working on our enforcement team and now is going back to Ukraine. We haven't had anybody placed there in a long time so we're pretty happy to have somebody there. So, I'm happy to take any questions, but at this point that's all from me.

VICE CHAIRWOMAN ESCOBAR: Thank you, Amy. We were going to return it to Mary for a quick comment.

COMMISSIONER DENISON: Yes. So, I

wanted to promote a free webinar that you can also attend in person, but I think most of the attendants are going to be online, which is going to be on Monday afternoon. Does anyone know what time it is? 3:00 o'clock? 3:00 p.m. And it's going to be on the audits. So, if you have recently heard about the audits or been audited yourself, you might want to tune in. We have a maximum of 1,000 participants, online that is, so I would urge you to sign up as quickly as possible if you are interested in participating. Thank you.

VICE CHAIRWOMAN ESCOBAR: I think next we're going to hear from the Office of Legislative Affairs, Branden Ritchie. I believe this is your first -- sorry, I don't have my glasses on. Sorry about that. So, Branden is not here. Should we move on to the next topic? So, Sean is up next.

SPEAKER: Yeah, but Sean's not here either.

VICE CHAIRWOMAN ESCOBAR: Oh, I need to put my glasses on.

SPEAKER: But we do have Gerry.

VICE CHAIRWOMAN ESCOBAR: Yeah.

Gerry, is it okay with you if we take things out of order a little bit? Great. So, Gerry Rogers, the Chief Judge of the Trademark Trial and Appeal Board is here with us. Thank you so much.

CHIEF JUDGE ROGERS: Okay. We'll come back to these slides when our other guests arrive. Okay. Here we go. We always start telling you about our current staffing level. It will tie into the next set of slides which deal with our performance measures and pendency and inventory, etc. We did have, since the last meeting, one judge leave federal service although we're very proud that one of our own has ascended to a Magistrate Judge position in the district court system. It reflects well on federal service and the PTO. But that's a vacancy that we have to fill and as we will see on the next few slides involving our inventory and pendency control, we will be hiring more than just one judge to backfill that position because we're going to need to do that.

The staff attorney delegation or staffing is 14-2. What that means is we have 14 full-time attorneys, we have 2 who are part-time attorneys, and we also to expect to increase their staffing and hire some new attorneys. So, Mary mentioned earlier setting your warning or your announcement on USA jobs if you're interested in the Examining Attorney position. If there are people interested in the Interlocutory Attorney position, we will be getting a vacancy announcement in the near future for Interlocutory Attorneys as well.

This slide basically just shows you something that has been happening for the last few years anyway and continues and that is that appeals are going up. Extensions of time, oppositions, petitions to cancel are all increasing, which is to be expected when we have had increases as significant as we've had in trademark filings for a number of years now. Eventually that means more work coming in the front door for the Board.

One of the things that is particularly interesting though about what is

coming in the front door, and this is the trends in filing slides, is that the increases have been much greater in trial cases than in appeal cases. And so, you can see here the increases over the last three fiscal years and year-to-date in fiscal '19, but I can tell you that the increase in petitions for cancellation has been greater than 20 percent. In fact, over three years, I think the increase in the number of petitions for cancellation is on a par with the dramatic increase in the number of applications coming into the examining operation.

Oppositions are up 10 percent over that three-year period, cancellations, as I said, over 20 percent, appeals only about 3-1/2 percent. What that tells me that is there are a lot of 2(d) refusals that are being made that look good made on paper and so, many people who might otherwise appeal from those 2(d) refusals are perhaps choosing instead to petition to cancel cited registrations because the registration looks good on paper, but you may know or you might

posit that based on our experience with the random audit program there are a lot of infirm registrations out there that might be vulnerable to cancellation. So, that's one possible explanation for the dramatic increase in cancellations versus appeals.

But that also means we're getting more trial cases, which means more motions for our Interlocutory Attorneys to handle in those trial cases and, as the next few slides will show, more trial cases requiring disposition on the merits.

One of the themes for my presentation will be we're going to be struggling with most of our performance measures this year, but we hope that our hiring and other measures will get us back in sync sometime in 2020.

One performance measure we will hit this year and we will meet for sure is our continuing commitment to issuing an appropriate number of precedential decisions each year to provide guidance to the bar and we're up to about 30 as we speak. When this

slide was prepared, it was 27 precedents. I think we're at 30 or close to it and we will easily meet our goal for precedential decisions before the end of the fiscal year.

In terms of the performance measures that focus on discrete parts of the work that we do, the Interlocutory Attorneys again handle all the contested motions that come in in this increasing number of trial cases that we have and we are struggling to keep up with those motions. Quite frankly, in previous years, we've used some of the judges as a kind of a relief valve and when we had excess capacity in the judge ranks, we would move some of the contested motions over and have judges work on them, but we don't have that excess capacity right now.

And we've also had this year a number of health and family-related issues affect some of our attorneys and some of our judges. So, we're basically just down somewhat in productive capacity. Again, we're hiring because of the workload increases, not because we don't expect those people who have

had these issues to come back to full production at some point, but it's just been one of those years for us.

So, when it comes to motions, if you're involved in a trial case, and, as I said, there's a lot more of them these days than there used to be, motions are going to take a little bit longer to get decided, contested motions in these trial cases. Our goal is to get them decided within eight to nine weeks. We are at about 11 weeks these days. Our oldest motion, the last time we took our quarterly snapshot, was 23.3 weeks and there were about 18 or 20 motions that were older than our goal of never having motions pending for more than 12 weeks. So, we recognize the issue and we're taking steps to deal with it. In addition to new attorneys, we will be resuming the Interlocutory Attorney detail that we have not run for the past few years because Examining Attorneys were so needed in Trademarks to keep up with the application filings, we were not able to bring them over on detail to work with

our attorneys, but we will be resuming that program with the new fiscal year. So, that's another step we're taking to handle the increasing motions.

On the measures that focus on what the judges are doing, we're a little closer to realizing that goal. Our goal is 10 to 12 weeks on average for issuing decisions on the merits and we're closer to 13 weeks, but it's possible with the increased production that always comes in the 4th quarter of any fiscal year, that we will get close to or perhaps meet the 12-week upper end of that goal. But the inventory is climbing and so, we know that we're going to have to be very attentive to this issue of the increasing number of trial cases and the increasing number of cases requiring disposition on the merits for some time to come. So, it's kind of like trying to steer an ocean liner. You don't it quickly, but we're taking the steps and preparing to get back to where we need to be in the near future.

This slide basically reiterates

something I've already spoke to and alluded to. In the middle row you see Maturing to Ready for Decision. Those are the cases, of all cases that are filed, that require a disposition on the merits. And so, even though we knew for many years that we were getting more cases coming in the front door, we were not seeing more cases proceed all the way through the process and require disposition on the merits on the other end. And in Fiscal '17 and Fiscal'18, we actually saw slight drops in the number of cases requiring disposition on the merits. But over the course of Fiscal '19, the end of Fiscal '18, and all of this year, we've seen a very dramatic swing and it was kind of unexpected. We can't really explain why it is. There's a couple of theories, but we've swung more than 22 percent in the opposite direction and so, this year in Fiscal '19, we've got an almost 20 percent increase in the number of cases maturing to ready for decision.

The other thing that this slide shows is that the make-up of those cases is

more heavily weighted towards trial cases than appeal cases. Just a few years ago we would decide one trial case for every three and a half or so appeals that we had to decide. Now, we are having to decide one or more than one trial case for every two appeal cases that we need to decide. So, the appeal cases have been kind of steady in terms of the number of them maturing to ready for decision on the merits, but the trial cases have increased dramatically and many trial cases can be, as those of you who have been involved in them know, some of them can be very hard fought, involve a lot of motion practice, and some very large records. And so, they are just going to take longer for us to decide than the ex parte appeals.

To date, we've also begun to see some increases in the average pendency in terms of overall pendency. Commencement to completion or end-to-end pendency. So, those numbers are going up both for appeals and for trial cases. One interesting fact is that the number of cases in which the parties have

agreed to use some form of accelerated case resolution, has actually increased this year and that's a bit of a surprise because we thought that when we leveraged a lot of the ACR type efficiencies into our rules with the 2017 rules changes that we might see in interest in ACR because some of those efficiencies that were typical of ACR cases have already been leveraged into the rules and are available to anybody who wants to rely on things like presenting testimony by affidavit or declaration.

But we have instead seen an increase in interest in ACR and we will probably decide more cases. Well, I know we will because we've already gotten more cases submitted for disposition on the merits involving some form of ACR than in any previous year so we will probably decide over 30 cases this year that have used some form of ACR. That's a good thing. It shows that many parties involved in our trial cases are continuing to come to the Board instead of going to district court because they view us as a forum that allows

them, when they want to, to agree on more efficient ways of doing things and getting their disputes resolved.

At one point years ago when we were talking about pendency, there was one practitioner who said of Board proceedings, "when I want them to go fast, I want them to go fast and when I want them to go slow, I want them to go slow." And I think that that's very typical of a lot of people who are involved in our trial cases and we tend to be pretty accommodating and we will certainly help you go fast when you want to go fast, but we will accommodate your desire to go a little slower than some district courts will require you to go if you want to spend more time negotiating settlement of your cases. So, that's just the way the Board operates and I think it's the way most of our stakeholders want us to continue operating.

So, I think I've covered this. One point I added to this slide in regard to accelerated case resolution, is I think some people believe that ACR is kind of like trial

disposition light and so you don't necessarily have to put in as much evidence, you don't have to put in as much effort, and you'll just get a disposition on the merits. But remember, if you are a plaintiff, you have a burden of proof and your burden of proof is no different in an ACR case than it is in any other case and so, we've added that reminder to the bottom of this slide, which points out the reasons why there is continuing interest in ACR.

Before I go on to the other two subjects that I wanted to cover, I just wanted to see if there's any questions about these questionable numbers or pendency measures or the steps we're taking. I'm happy to take your questions or comments. All right. Well, I'll take that as a sign of affirmation that we're taking the right steps to at least try and turn these measures around.

So, the next thing I wanted to talk about is our Standard Protective Order and we've spoken about this in previous meetings and we've had two calls in 2018 and then again

in 2019 for comments from practitioners and interested parties about our Standard Protective Order that applies in trial cases. This current request for comments in 2019 included not just posting in IdeaScale and making it available for comment, but actually reaching out to various bar groups and trying to solicit more active contributions to the discussion.

So, we had six questions. Of the two big questions in the request for comments, involved access by in-house counsel to attorneys' eyes only information and the number of tiers of confidentiality. So, the comments to date, and the comment period officially closed June 30, but we will continue to accept comments from any bar groups or TPAC or others who want to provide us comments on the Standard Protective Order because our request for comments was not in the nature of a notice of proposed rule-making, it was really just an attempt to open dialogue and so, we're not going to cut off dialogue just because that deadline passed.

But we have no clear consensus on changing either the access provisions or the presumptions about access for attorneys' eyes only information or in terms of the number of tiers of confidentiality so we expect that those issues will pretty much stay the same. We had votes for and against and one compromise suggestion in regard to in-house access. We had most commenters voting for keeping the same number of tiers of confidentiality. So, these major issues that were the major reason for requesting comments will pretty much stay the same. However, we know that there are other aspects of the Standard Protective Order that involve some vagueness or need some clarification and so, we will be addressing those issues and we will come out with a revised version of the Standard Protective Order later in the year.

The last thing I wanted to talk about is our expedited cancellation pilot that Commissioner Denison mentioned as part of the agency's effort to avoid clutter on the Register. And so, what we have been doing,

I'm going to just jump ahead here to the objectives of this pilot program. What we've been trying to do is identify the default rates in cancellation proceedings, which we did not have easy access to data on default rates. Our IT systems did not allow us to get easy access to that data so it's been a very labor intensive thing, but we've been measuring the default rates and that's important because we need to know how many cancellation cases involving abandonment or non-use claims go by way of default. We don't need to expedite those cases. They are already as fast as they're going to get. And we also know that there are other cancellation cases that are fact-intensive and have large records and they're not going to be suitable for expedited treatment. So, one of the things we're trying to identify is which types of cases involving non-use or abandonment claims appear to be most suited for expedited treatment and then when we involve a Board attorney and judge in the parties' discovery conferences to discuss possible expedited

handling, we can figure out what kinds of procedures parties are receptive to and are willing to agree to in an expedited proceeding.

So, some of the early results, these are pretty amazing figures really when you think about it. The default rate in all of this increasing number of cancellation cases that I've told you about now a number of times is 44 percent, which is pretty high, 49 percent when the case includes an abandonment or non-use claim, and when the only claims in the petitions for cancellation are non-use or abandonment, they are in the 55-60 percent range so that's pretty expedited treatment for a lot of petitions for cancellation that involve non-use or abandonment claims. And we've also seen that the default rate in cancellations has been going up over the last few years. So, valuable information that we've gleaned from this pilot program.

To date, we have found more than 135 cases when we screened them and these are the cases that did not go by way of default and

therefore, we were screening them to see whether they would be suitable for expedited treatment and then we've held 70 conferences with parties and we continue to go through this process to figure out what we can do, what we can learn from these discussions with parties.

So, what we've basically learned is there are many uncontroversial cases that go by way of default and then there are many cases in which parties are interested in some informal exchange of information about the use of the registered mark by the defendant, but there is also some desire by plaintiffs to take some discovery particularly when there are issues regarding excusable non-use or attempt to resume use.

And so, that's it for the pilot program and the Standard Protective Order and I'm willing to take any questions or help you get back on schedule.

VICE CHAIRWOMAN ESCOBAR: Thank you, Judge Rogers. Does anyone have questions?
Anne.

MS. LALONDE: Thank you, Judge. I'm wondering what you attribute the small number of cases where the parties agree to participate right away in ACR. It's 12 out of around 70 conferences in which you participated so what do you think?

CHIEF JUDGE ROGERS: That's actually a higher rate, if you will, than in most cancellation cases that were not screened and we had a discovery or involvement in the discovery conference. I mean, it's not much higher and one of the things that I think has been typical of our experience in the pilot and has been typical in other cancellation cases and oppositions is that there are a lot of parties that are interested in the potential for faster treatment of their claims, but they are not quite ready to commit. It's a commitment problem and so, there are parties who are unwilling to commit early on in the proceeding, but they are receptive to the idea of maybe committing to it later on. And I've spoken before at these meetings to point out that the pendency

numbers on end-to-end completion times for ACR cases vary a great deal and one reason is because we do have parties who are unwilling to commit early on who then get tired of the way their relationship with the adversary is going and then they say, "Okay. We'll commit to ACR now because we just don't want to have to go through trial after we've put all this effort into cross-motions for summary judgement that ultimately were unsuccessful and you can just go ahead and take those and decide the case on the merits and so we will commit now and we'll get this decided as quickly as we can." But that takes time for some parties to become comfortable with it.

VICE CHAIRWOMAN ESCOBAR: Any other questions? Judge Rogers, I was wondering if you would like to introduce your new Deputy?

CHIEF JUDGE ROGERS: Of course. That was the most important thing and I'm so focused on explaining these declining numbers or increasing numbers. Mark Thurmon, our new Deputy Chief Judge, is here and has been with us for about two months now. It's been great

for us to bring him on board. We've thrown him right into the mix given the number of cases we have to decide on the merits. He sat on an oral hearing in an ex parte case the day after he got here. We sat him on an oral hearing panel and a trial case the second day after he got here and he has been writing decisions and helping us out with our inventory control and working with Interlocutory Attorneys on motion panels figuring out how they do their work and working with our judges as a panel member when other judges are writing the decisions. He has been thrown into various other meetings on IT developments and other things and learning the management part of the PTO and the TTAB and we're very happy to have him here. Mark, anything you'd like to say?

MR. THURMON: I'm glad to be here.

VICE CHAIRWOMAN ESCOBAR: Well, we're glad to have you and I know Gerry is very glad to have you here, so welcome. If there are no other questions, I think what I'd like to propose is that we go back to -- oh,

thank you, by the way, for making your remarks out of the agenda turn. But I think if it's okay I'd like to go back to the agenda and welcome Branden Ritchie from the Office of Governmental Affairs. And, Sean, if it's okay with you, we'll take a break after Branden's comments and then start with you? Great.

COMMISSIONER DENISON: And I would just like to start before Branden says anything to welcome him. I believe this is his first official TPAC meeting as the leader of our governmental affairs team and he's been a fabulous addition and he has his team did an amazing job preparing me for my hearing on the Hill so I'm very grateful and he's, as I mentioned, a great addition to the USPTO.

MR. RITCHIE: Well, thank you very much. Thank you for that warm welcome and hello everyone. I'm Branden Ritchie and I started as the new Director of Government Affairs and Oversight in May taking over where Dana had left off and I come from the Hill before that six years on the House Judiciary Committee as the Chief Counsel there and then

ten years for a member of Congress, Bob Goodlatte from Virginia. And before that I was a trademark examiner for three years so I feel like I've come home in some ways. So, it's great to be here.

So, I'll just skip this slide. This was new since the last TPAC meeting, I believe, but they have established a -- I'm going to focus my remarks on what we're doing with Congress right now. In the Senate, they reorganized the Subcommittee on Intellectual Property. They didn't have one last Congress and Chairman Tillis and the Ranking Member Coons are the leaders of that subcommittee and so, that's a new development and I'll leave it at that.

So, we've had a very busy year in OGA. It's been a very high volume of legislation on IP issues, somewhat unprecedented. The Judiciary Committee that I served on, we dealt with IP issues, but they usually were one at a time for the most part and this year they have really been combined. I mean, we're getting hit from every side with

different ideas and things like that so it's been a very large volume. There's a lot of interest in IP issues possibly because they're bipartisan and it's an area where members can work together still and in a time when it's pretty divided up there. IP is a unifying thing and so, a lot of people are looking to IP in particular to work in a bipartisan way. So as you can see from this list, there have been six hearings that we have participated in or were about issues that we covered. So, the first one was on March 13, the Senate Judiciary Committee Oversight hearing with Director Iancu. He testified at the Senate Appropriations Subcommittee on Commerce, Justice and Science as well.

Then they had two hearings, one in the House and one in the Senate, on our gender study, which was very well received by the Hill and they appreciated the work we did on that.

We then had a hearing on -- the House Oversight Hearing with Director Iancu and I'll just say that it's the first time

I've ever seen that in a general oversight hearing of the PTO trademark questions were more than half of the questions that were asked. There was just an intense interest in trademark issues particularly the filings that aren't showing the use, so-much-so that as Commissioner Denison just referenced, the House Judiciary Committee IP Subcommittee had a separate hearing just on the issue of trademark filings from overseas and whether they meet the use requirements and the trend that we're seeing. So, Commissioner Denison was the sole witness on that first panel and then they had a stakeholder panel afterward that also talked about counterfeiting, which is also a big issue on the Hill right now. It seems like a lot of hearings to me, but maybe that's how it always is.

In particular, to be specific about some of the legislation that Congress is looking at, and I'll talk about very briefly some non-trademark issues but just to name them basically. Section 101 reform of the Patent Eligibility Statute. There was

interest in drug pricing. A lot of the legislation dealt with patents so we're taking a careful look at that. And then we had the Case Act, which is a small claims court bill for copyrights that went through the Senate Judiciary Subcommittee and got marked up last week or the week before. And there's a lot of interest in the PRO consent decrees right now. We'll see what happens with all those things. My college professor told me that when all is said and done in Washington there's a lot more said than done. I find that to be true, but we'll see.

I'm going to move the slide here.

So, on trademark issues, here are some of the things that jump out. Trademark filings with inaccurate or fraudulent use claims. The Hill is really concerned about that as we talked about earlier. They are working on potential legislation to address that. The members were trying to show how progressive they are in trying to fix this problem at the general oversight hearing with Director Iancu and three members, one after the other, said

they're working on it, they're working on it. And then Chairman Johnson said, "I'm glad that there's so much interest because I'm working on it and look forward to partnering with all of you." So, they were very much leaning forward on this. We don't know yet what the legislation will look like. I think they're still talking with stakeholders and so, if you have thoughts on that, you know, potentially go see them. But we think that there will probably be a draft bill in September at some point that deals with this.

Another issue that I think the House is likely to move is legislation dealing with the irreparable harm presumption. I personally think that it's likely that some kind of trademark filings legislation and some kind of irreparable harm legislation will move this year. I'm not sure how far it will move, but maybe all the way through, but I think the House Judiciary Committee in particular is interested in those issues.

Anti-counterfeiting efforts by the Federal Government is also a big topic.

Unclear yet what legislation would like on that. There's a lot of talk about counterfeits and how to fight them. I think there's an interest in doing legislation, but I don't know yet what that would look like.

Then a couple of other issues worth mentioning are the FLAG Act, which was almost scheduled for the House floor and then it got pulled because of some concerns that were raised by other members. That's a bill that Congressman Jeffries introduced. I don't know if we're going to see that again soon. I think they're still working on that and we'll see.

And then, most recently, we're starting to get some inquiries about the franchisor-franchisee relationship and whether controlling trademarks constitutes that kind of relationship and we're just getting questions about that right now, but it's worth noting that there has been Hill interest on that. Interestingly, there's not a sense of urgency about the Brunetti fix right now on the Hill. We briefed the House Judiciary

Committee and informally briefed the Senate Judiciary Committee about what we have to do here at the PTO in the fallout of that decision and we'll see if they take it up. I predict that once we start issuing the trademarks that we have to issue given that the two provision were stricken, they'll have an interest at that point, but we'll see.

Let's see here. So, some of the things we're working on as well generally operationally that we would like to see done. We'd like to see continuity of service during a lapse in funding. We are not currently allowed to use the fees and Sean can back me up on this one, but we are not able to use the fees that we collect during a shutdown so we came pretty close last time so we were looking for language to clarify that to make sure that we won't have the risk of that.

Investment authority for internal operation operating reserve. That's another one. We'd like to elevate the rank of the IP Attachés because they do such good work for everyone and I have personally been on many

CODELs with my old boss and the IP Attachés were instrumental in helping the members understand what was going on in-country and working with stakeholders and businesses there so we're looking to help increase their rank so that they can get better access to the meetings that they need to be in.

Then we are currently working on legislation to clarify that the Director has the authority to suspend deadlines when it comes to power outages and emergencies just to clarify that authority. And, finally, trying to work with Congress on technical assistance as they consider a fix to the Brunetti case. So, that is my general overview. I'm happy to answer any questions you may have. Again, a lot of activity on the Hill. It's very interesting. It keeps everything very interesting for us and I would say it keeps us out of trouble, but I'm not sure about that. So, any questions I'm happy to answer.

VICE CHAIRWOMAN ESCOBAR: Thank you very much. I had a quick question about the continuity of service issue. Are you looking

to change the rule so that the PTO can use fees collected during the shutdown?

MR. RITCHIE: Yes. And that gets into a larger debate. I was on the Hill when the deal was struck and we were -- if I take a step back from my current role and just give you just a quick history that when I was working for Bob Goodlatte on the House Judiciary Committee, we were pushing for the PTO to have independence and not be burdened with the, let's just say, appropriations process. That was our position back then as Bob Goodlatte's position and we worked really hard. A lot of the authorizers supported that and we pushed a bill that would do that and we got pretty far, but the appropriators having their jurisdiction and they are, you know, they are the power of the purse folks and they did not want to give that so a deal was struck and it is what the current operating situation is today where we collect the fees, we send then to the Treasury. I'm going to butcher this and Sean will correct me later. And then we generally had been appropriated the amounts

that we estimate we're going to collect in the subsequent year. And that's how that works. So, we still are tethered to the appropriations process. So, when there is a lapse in funding, there is no appropriation. There is no authorization specifically for us to use the funds and so, we have ways to have try to mitigate that that I'll leave to Sean to discuss, but once those are exhausted then we're not able to use the fees that we collect. We're allowed to collect them, but we can't use them after a certain point. Yeah. So, we're hoping to clarify that and get the authority.

VICE CHAIRWOMAN ESCOBAR: Thank you. Any other questions? Well, thank you so much. Welcome to TPAC. We look forward to working with you.

MR. RITCHIE: Thank you.

VICE CHAIRWOMAN ESCOBAR: I think we'll take a quick break now. It's 10:23. Let's plan to be back at 10:33. Thank you.

Again, if people could take their seats please. So, I'd like to introduce Sean

Mildrew who is the acting Chief Financial Officer and thank you for your flexibility as we rearranged the agenda on the fly.

MR. MILDREW: Great. Yeah. I'm really happy and thrilled to be here today to just give you the high-level budget update and overview from a CFO perspective. Let me go to the next slide here. We will as usual cover our three years, Fiscal Year '19 status, Fiscal Year 2020, Fiscal Year 2021 budget development, and then we'll round it out with our biennial fee review process update.

So, our first slide here getting into the presentation is a three-year view of Fiscal Year '17, '18, and '19 both estimated and year-to-date so you can there's two charts there. One is the total trademark collections for our actuals for '17, '18, and then our plan for '19 and then year-to-date is the chart on the bottom there. Actuals for '17, '18, and '19. Again, year-to-date. So, trademark estimated fee collections are 340.6 million. This is slightly lower than what we reported as our estimate in April, the last

time we met. Our plan was updated recently. We refreshed our estimates using revised assumptions. Collections through June 30 are currently 2.9 percent above collections through June 30 of last year, 2018 so that's a good sign.

Our next slide. 2019 fee status. So, based on the current plan, the plan for the 2019 working estimate from our latest update, actual collections are .3 percent or \$679,000 above planned collections through this timeframe. The year-to-date plan uses a straight line planned projection just so you know and the main area with lower than projected collections are maintaining exclusive rights, which is below plan of 1.4 million, however, we are showing higher than projected collections in applications filings of 1.8 million so that kind of offsets those fees that are below plan and if you're coming into your plan at .3 percent that's pretty darn good by anybody's estimates.

Okay. Next slide. Fiscal year '19 status end of year funding. So, if you look

at the projected income compared to the projected spending, for the end of year we're looking at approximately 116 million dollars in our operating reserve and this is approximately 3.9 months of expenses so that's a fairly nice way to round out the year. Again, projected income and projected spending.

Moving along to the 2020 budget, the House marked up our 2020 budget request and recommends a 3.45 billion dollar budget, which aligns to our request so that's good news. At the time we created this presentation, we were still waiting on Senate action to markup our budget and Congress does have until October the 1st to enact a budget or a continuing resolution, which we also shorthand note as a CR, continuing resolution. If a bill or a CR is not enacted by October the 1st, there will be a lapse of appropriations and with recent press reports, it looks like that won't be the case so fingers crossed that we have Congressional action before October the 1st, which is the beginning of the fiscal year.

So, looking ahead at formulating our Fiscal Year 2021 budget, we're currently working to pull that budget request together. It first goes to OMB, the Office of Management and Budget, for a review and it will be submitted to OMB just after Labor Day in September. Of course, the PACs and DOC will have a chance to review the draft. That information is all pre-decisional, of course, and is embargoed until the President releases his budget publicly in February 2020 so this is all part of the budget formulation process that all agencies go through.

So, our next slide is the, actually is the last slide, is our biennial fee review. Just an update. We're continuing our biennial fee review, which began in January of this year in keeping with the CFO Act to assess user fees on an ongoing basis. And separate, and somewhat related to our fee review, is the ongoing assessment of our operating reserves. The USPTO policy is to assess our operating reserve on an ongoing basis and just recently, as of last week, we started meeting with the

patent and trademark organizations to get that process rolling and just for edification, some of the key factors that we're considering as we look at assessing our operating reserves and making sure that they are appropriate for the times that we are in and the times as they say, "They are a changing", we look at the economy and obviously, economic forecasts, user behavior, any changes that we might experience now and anticipate in the future. We actually review the structure of our fees, you know, looking at what's fixed and what's variable and how that might change as the future unfolds and clearly, the fiscal environment is something that we really like to keep a pulse on just to see how things are moving. And I understand that the TPAC is asking us to take a look at that optimal level and so, that will obviously be something that we'll be taking a look at as we assess all of those factors and have ongoing conversations not only on the trademark side, but also on the patent side as well. User fee funding, GAO has endorsed those federal agencies that

are funded by user fees. It has the GAO Good housekeeping seal of approval to create and maintain operating reserves and those are just to ensure that you can weather not only the natural business cycles, but also so that you can weather the unexpected, unanticipated events that seem to happen more-and-more frequently than certainly in the past.

So, we're going to keep an eye on that and we'll have some robust discussions internally and I think it's a good time to have those conversations. So, we've got to the end of the presentation. Questions? Comments?

VICE CHAIRWOMAN ESCOBAR: Does anyone have any questions?

MR. WINTERFELDT: Thank you so much, Sean, for the update.

MR. MILDREW: Sure, Brian.

MR. WINTERFELDT: I just want to note that we very much appreciate your attention to the reserve fund and as we discussed, we think it's really important obviously to continue to keep an eye on that

so we just want to say that we deeply appreciate that and continue to support extending as much as possible to six months in the reserve fund for operations. Thank you.

MR. MILDREW: Great. Thanks, Brian. I appreciate the comment.

VICE CHAIRWOMAN ESCOBAR: Anyone else? Okay. Thank you so much, Sean.

MR. MILDREW: Great. Thank you.

VICE CHAIRWOMAN ESCOBAR: Okay. I think that the last speaker is Jamie Holcombe and Robert Harris from the OCIO. I don't know --

MR. HOLCOMBE: Take it away?

MR. HARRIS: Sure.

MR. HOLCOMBE: So, this is my second time here in front of the TPAC and I'm very happy to say that the stabilization efforts are moving forward and we are doing a lot of things within the CIO that have not been done in a while and that is bringing up our technical depth such that we have all the latest and greatest updates to the operating systems, patches to our security, and a whole

new effort underway to ensure that we'll have a resilient system in the future. That means creating fail over capabilities within our current data center here at headquarters as well as building out into our redundant facility in the Boyers, Pennsylvania area. So, I am here to tell you that we're doing very well in that regard and I'm looking forward to the modernization efforts that are to succeed the stabilization efforts. Rob has prepared a good presentation of all the trademark things that are going on. I have tracked a lot of the great efforts that have been going on to ensure that the legacy is stabilized within trademarks as well as ensuring that we have the new applications come to for and actually work and work well for everyone using the trademarks applications. Rob.

MR. HARRIS: Thanks.

VICE CHAIRWOMAN ESCOBAR: Thank you.

MR. HARRIS: Thanks, Jamie. Thanks, Elisabeth. My remarks will be more brief than usual because as I was ticking them off as

Deputy Director Peter and Commissioner Denison covered most of these topics earlier so it will be an abbreviated few minutes here. Activity since we were together three months ago, Commissioner Denison already talked through the U.S. Counsel changes that are effective on August 3. Also, the mandatory electronic filing changes anticipated for October 5. All the IT system updates needed to support both of those rule changes have either been complete or in progress and on schedule there.

We also talked briefly about the TEAS Plus short form that is coming out shortly after the U.S. Counsel effective date. I appreciate Commissioner Denison rallying the troops and looking for participants there. We are for the months of August and September expecting a beta period where we're going to start with a handful of folks and try to ramp up as quickly as possible, but do it in a measured way so that we can incorporate the feedback and make sure that the system is meeting expectations.

And lastly, we've already touched on the TM status app that was released both via Google and Apple on May the 8th.

A few more details. Some of you may or may not have been impacted by the challenge we've had with our Trademark Status and Document Retrieval system, TSDR. If any of you are working with our bulk data customers that use the API to get that information on a regular basis, we had some struggles there. We've addressed those in the short-term by allowing those frequent -- we refer to them as our frequent flyers -- to have access to the day-to-day feed on a daily basis so though there still remains a lot of work in the name of stabilization that Jamie just referenced to improve the architecture and infrastructure of TSDR, the short-term fix is there to make sure that our customers that rely on that bulk data on a daily basis continue to get what they need to run their business.

Artificial intelligence. Again, a theme that we've heard throughout this morning's discussion. There are two areas

that we are focused on right now. The specimen search that Commissioner Denison mentioned earlier and that is just to make sure we are on the same page. The specimen search is looking at the entire image, the entire picture, making sure that there is not a duplication or a similar image already in our database and the example that Deputy Director Peter mentioned earlier. The four scarves is a perfect example as to what we're looking to improve from an IT perspective so that we're not as reliant on the training in the human eyes, but yet we're leveraging the IT systems AI machine learning capability to assist the Examining Attorneys and the trademark staff when identifying those specimens that are very similar to each other.

A second piece of what we're looking at in this area is referred to as image search. The difference between the two is that specimen search is looking at the entire picture whereas image search is breaking it down and looking at subsets or portions of that image so looking at the moon and a

Starbucks logo as an example as opposed to looking at the entire logo in total. Image search and specimen search for that matter are both niche markets, but there are some products out there that look promising and we're hoping to leverage what industry has already borne and we can bring that on hopefully a little more quickly in a position to use it and benefit from it sooner as opposed to building it in house.

The last two bullets just a quick reference to the fact that it's much overdue, but all of our trademark employees and TTAB employees will be getting bumped up to new laptops and a Windows 10 based laptop here in the next five or six weeks over the month of August into the first half of September.

The rest of my remarks are going to be focused on efforts around our modernization effort. TMNG in particular. As a refresher, as we've talked about in the previous two TPAC meetings, we began beta testing the TMNG exam product in late November of 2018. The plan was to run a very fixed beta test from

November through January and what we have done is instead of stopping in January is we have continued that beta test. We have continued to have the tool available for examining attorneys to use on an as-needed and voluntary basis. The result of that is that we do have some power users. A handful of users that have processed hundreds of office actions using TMNG. Others we found pockets that use the product to process very specific office actions. In total, there's about 100 Trademark Examining Attorneys that have used TMNG in one fashion or another since November, which is a significant step forward and the step forward that I think helps both OCIO and Trademarks the most is putting us in a position to receive the feedback from our users and putting us in a position to receive that feedback and address the feedback in a more efficient manner. If I rewind to the November-December timeframe, we were getting feedback, working it as quickly as possible and often targeting a deployment for a fix to a bug that has been identified a month or two

out.

That's happening a little more frequently now to the point where just for some statistics of the 300 or so refer to them as incidents. They could be bug fixes, suggested enhancements that we've recorded since November. We have, after last weekend's deployment, about ten remaining so we're keeping pace and more important, if we compared the TMNG exam product that we have today to the one that was initially deployed in November, there is marked improvement. We are benefitting from all of the fantastic feedback we're getting from the Examining Attorneys.

The Critical Success Factors. Last time I think Bill was encouraging me to talk batting averages. I was up over 500 and now we've got the -- they're on two slides. So, you'll see that between these two, we still have two yellows so that's a .666 batting average, good in baseball, not good enough in this organization. So, the two that we have remaining, the first one here is office action

must be displayed identically in TSDR as what an external user sees. The reason this is yellow is we are working out one last detail with the International Bureau on how we provide images to them in order to publish in the Madrid monitor or IB monitor. The output from the International Bureau. That capability was deployed last weekend. As soon as we ensure that that is exactly what they need, this will flip from yellow to green.

And then on the second page, examination capability must exist to research and prepare a properly formatted office action. The detail behind this is that there were two pieces of capability that we had not delivered yet that kept this Critical Success Factor green. The first is the ability to process a request to divide an application. That capability was deployed last weekend as well. There is one outstanding requirement that we need to address and that will be part of our August deployment and that will then turn this green along with the last piece, which is our form paragraph editor and it will

take a second on this one because the form paragraph editor capability has already been deployed and it's already been tested by our end users and the product is acceptable. The only piece of work that we're waiting on now is we need to migrate the hundreds of form paragraphs that we have in our legacy systems over into the NextGen system. Those form paragraphs are impacted by the mandatory electronic filing rules that are in process now. So, as opposed to migrating the form paragraph once over the Summer and then doing it again once we had the final MEF language, we made a decision as a team to delay implementation until we have those final rules and that would allow us to do the work related to migrating those paragraphs once as opposed to twice.

So, the bottom line to that is when we see mandatory electronic filing implemented early October, that would be the last piece needed to turn all of our Critical Success Factors green. So, going forward, we would be in a position where we would have the TMNG

exam complete product available for examining attorneys to use and again, would encourage those early adopters to begin using the product and continue to provide the feedback we're looking for. And that is it for me. I will open it up for questions for either myself or Jamie.

VICE CHAIRWOMAN ESCOBAR: I have one quick question. You said that you had extended the opportunity for users to beta test beyond the original window. Is there an end date for that or is that just ongoing for the time being?

MR. HARRIS: Right now it's ongoing. In prior TPAC discussions, we had a more structured testing process. In working with the Trademark business and OCIO and also looking forward to changes that are coming down for not just TMNG exam, but the overarching modernization platform. The thought there was that we would continue to leave it open and available to use, but not at any point stop or discourage use because we want to continue to improve the product. We

want to continue to get the feedback from the end users.

VICE CHAIRWOMAN ESCOBAR: And is there any effort to, regulate is not the right word, but to ensure that you're getting enough exposure -- because I understand it's all on a voluntary basis, but you're getting enough exposure to a wide enough group of people. As you mentioned, you've got a couple of power users, which is great, but I wonder, you know, for beta testing in my extremely limited experience usually you want more than just a few people who are spending a lot of time in it and I just wonder how -- if it's just whoever, you know, chooses to spend as much time or little time as they want to or is there an effort to make sure that there is some sort of substantial input from a large enough group of people.

MR. HARRIS: I'm not aware of any, you know, proactive marketing efforts we have to encourage the use and my understanding is that that would be part of a change management strategy going forward with the second phase

or the next phase of this NextGen effort, but right now, no it's purely in the voluntary stage.

VICE CHAIRWOMAN ESCOBAR: Thank you. Does anyone else have any questions?

MR. BESCH: Rob, I just want to thank you for the presentation first and also, say that, you know, we look forward to working with you and giving you the type of input and user feedback that you need. You can always call on our unit and they will be there. They've shown that in the past and they continue to do that so anything we can do to help we're just offering it now so thank you.

MR. HARRIS: Thanks, Jay.

VICE CHAIRWOMAN ESCOBAR: Any other questions or comments from TPAC? Okay. So, I'd like to open it up to the on-site audience. Is there anyone in the audience who would like to speak? Quiet group today. And do we have anything from the webcast? No? Okay. Well, that brings us to the end of our agenda. Thank you so much for the valuable information. We really appreciate it and we

look forward to working with all the groups.
Our next TPAC meeting is I believe November 1
so if there are no further questions, I'll
adjourn for today and wish everyone a happy
rest of the Summer. Thank you.

(Whereupon, at 10:59 a.m., the
PROCEEDINGS were adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Mark Mahoney, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
Virginia**

My Commission Expires: August 31, 2021

Notary Public Number 122985