

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

QUARTERLY MEETING

Alexandria, Virginia

Friday, February 7, 2020

1 PARTICIPANTS:

2 TPAC Members:

3 ELISABETH ROTH ESCOBAR, Chair

4 CHRISTOPHER KELLY, Vice Chair

5 STEPHANIE BALD

6 ANNE GILSON LaLONDE

7 KELLY WALTON

8 DONNA TOBIN

9 KELLY WALTON

10 SUSAN NATLAND

11 JENNIFER KOVALCIK

12 DINISA HARDLEY FOLMAR

13 Union Members:

14 JAY BESCH, NTEU 245

15 HAROLD ROSS, NTEU 243

16 USPTO:

17 ANDREI IANCU, Under Secretary of Commerce for  
18 Intellectual Property and Director of the  
USPTO

19 KIM ALTON, OPIA/Office of Governmental Affairs

20 AMY COTTON, Office of Policy and International  
Affairs

21 PEDRO FERNANDEZ, Patent Office Professional  
22 Association

1           DINISA FOLMAR, International Subcommittee

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## 1 PARTICIPANTS (CONT'D):

2 MERYL HERSHKOWITZ, Acting Commissioner for  
Trademarks

3 JAY HOFFMAN, Chief Financial Officer

4 JAMIE HOLCOMBE, Office of Chief Information  
5 Officer6 SHARON MARSH, Trademark Policy/Office of Policy  
and International Affairs

7 SEAN MILDREW, Deputy Chief Financial Officer

8 LAURA PETER, Deputy Under Secretary and Deputy  
9 Director, USPTO10 BRANDEN RITCHIE, OPIA/Office of Governmental  
Affairs11 GERARD ROGERS, Chief Administrative Trademark  
12 Judge

13 MARK THURMON, Trademark Trial and Appeal Board

14 EUNICE WANG, Office of Chief Information Officer

## 15 Also Present:

16 HELEN KINSON

17 MIRIAM RICHTER

18 ALLISON RICKETTS

19 JULIE SHURSKY

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## P R O C E E D I N G S

(9:02 a.m.)

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3 CHAIRWOMAN ESCOBAR: Welcome to the  
4 first TPAC Meeting of 2020. My name is Elizabeth  
5 Escobar, and I -- during the -- my day job is with  
6 Marriott, in Bethesda, but I have the distinct  
7 honor of being the Chair of TPAC, this year,  
8 following in the footsteps of Bill Barber, and Dee  
9 Ann Weldon- Wilson, both who hail from the great  
10 state of Texas.

11 Bill and Dee Ann, if you're out there,  
12 thank you for all the great guidance. You were  
13 tremendous Chairs, and I hope to honor that. I'd  
14 also like to welcome Chris Kelly, who is going to  
15 be Vice Chair of TPAC. Chris is a partner at  
16 Wiley Rein, here in D.C., and just going around  
17 the room, in order of seniority, Donna Tobin, who  
18 is a partner at Royer Cooper, in New York, and  
19 you're serving, also, your third year on TPAC, and  
20 Gilson LaLonde, who is from Vermont, and is the  
21 author of the esteemed treatise "Gilson on  
22 Trademarks", welcome, also serving your third

1 year. We have Stephanie Bald, who is a partner at  
2 Kelly IP, who is serving your second year on TPAC,  
3 and Kelly Walton, who's at Dell, in Austin,  
4 serving her second year in TPAC, and I'd  
5 especially like to welcome our three new members,  
6 Dinisa Folmar, who is head of Intellectual  
7 Property, at The Hershey Company, in Hershey,  
8 Pennsylvania, and I learned that you started your  
9 legal career at a Trademark Examiner, so, Jennifer  
10 Kovalcik, with Community Health Systems, in  
11 Nashville, and Susan Natland, with Knobbe Martens,  
12 a partner at Knobbe Martens, in Irvine,  
13 California. So, welcome brand new TPAC Members.  
14 We are delighted to have you. I'd also like to  
15 mention our Union Reps. We have Jay Besch, from  
16 the NTEU, and Pedro Fernandez, from POPA. Thank  
17 you for coming.

18 Our first order of business; we're very  
19 honored to have Director Iancu, here with us. He  
20 is the Under Secretary of Commerce for  
21 Intellectual Property and Director of the United  
22 States Patent Trademark Office. He oversees the

1 PTO, which has over 12,000 employees, and has a  
2 budget of over \$3 billion a year. He also serves  
3 as the Principle Policy Advisor to Wilbur Ross, on  
4 Intellectual Property Matters. Before joining the  
5 PTO, Director Iancu was the Managing Partner at  
6 Irell & Manella, and I believe you focused on  
7 Intellectual Property Litigation. I will turn it  
8 over to you.

9 DIRECTOR IANCU: Thank you. Thank you  
10 so much, Elizabeth. Welcome to everybody, both  
11 folks in the room and online, so good to see you  
12 all, and to kick things off, not just this  
13 meeting, but kicking off the TPAC year. Let's  
14 begin with swearing in the three new members. So,  
15 Dinisa Folmar, Jennifer Kovalcik, and Susan  
16 Natland. So, Dinisa, Jennifer, Susan, would you  
17 all come up? We're going to do the official  
18 swearing in, and take pictures, and then we'll  
19 resume.

20 (SWEARING IN OF NEW MEMBERS)

21 DIRECTOR IANCU: All right, great, and  
22 congratulations, also, to our new Chair, Elizabeth

1 Escobar, from whom you've already heard, and Chris  
2 Kelly, our new Vice Chair. Congratulations to  
3 both of you.

4           Let me start with a couple of comments,  
5 and then I'll turn it over to Deputy Director  
6 Peter, but as you probably have seen, a couple of  
7 days ago, we have announced a new Commissioner for  
8 Trademarks, David Gooder, who will assume the role  
9 beginning March 2nd. For over 25 years, David has  
10 demonstrated a passion for IP, and has a  
11 well-deserved reputation as a Dynamic Leader of  
12 Teams. He has served as Chief Trademark Counsel,  
13 for Brown-Forman Corporation, he also served as  
14 Managing Director and Chief Trademark Counsel at  
15 Jack Daniels Properties, and, as some of you might  
16 know, he became somewhat famous as the author of  
17 what came to be known as the nicest, or the most  
18 polite, cease and desist letter, and he said, at  
19 that time, it went viral, when he issued it, I  
20 think, in 2012, or thereabouts. When he was  
21 interviewed, he said a nice approach gets things  
22 solved faster; probably true.

1                   David has been an Officer and Director  
2                   of Intel, he also served as Chairman of Intel  
3                   Foundation, and was a Founding Architect and  
4                   Director of The International Federation of  
5                   Spirits Producers, The Distilled Spirits  
6                   Industries Anti-Counterfeiting Allegiance. He was  
7                   on the Board of IFSP, for 14 years, and was a  
8                   Chairman of that organization for 10 of those  
9                   years. Obviously, counterfeiting is -- and  
10                  anti-counterfeiting efforts, hugely important in  
11                  our economy, today.

12                  I want thank Meryl Hershkowitz, who has  
13                  been acting, since the beginning of the year, as  
14                  Trademark Commissioner, and continues to do so,  
15                  until David starts next month. She's been doing a  
16                  fabulous job.

17                  Before I turn it over to the Deputy  
18                  Director, I just want to mention that, a couple of  
19                  days ago, the U.S. Chamber of Commerce, the GIPC  
20                  Unit of the Chamber, released its annual rankings,  
21                  of IP Systems, around the world. The United  
22                  States continues to rank number one, overall, in

1 the world. We widened our lead, over the second  
2 -- over the rest of the field, and a major  
3 contributor to that was Trademarks, which moved up  
4 to first place, with a perfect score of 100, in  
5 the Chamber Study, and that's just the one study,  
6 and nevertheless it's emblematic of the work that  
7 -- and the work that the USPTO does, and all of  
8 our examiners, and staff members, in conjunction  
9 with the public, and the stakeholders, and,  
10 importantly, on the trademark side, with all of  
11 you. We couldn't do what we do without the  
12 incredibly valuable input from TPAC, and Meetings,  
13 such as this. So, with that in mind, I want to  
14 thank you, once again. I look forward to working  
15 with you, throughout the year, and, now, the  
16 Deputy Director will continue with opening  
17 comments. Thank you.

18 DEPUTY DIRECTOR PETER: Thank you so  
19 much, Director, and thank you, for being here,  
20 this morning, and greeting our new members.  
21 Congratulations to the new members, and welcome to  
22 the continuing members, returning members. I want

1 to thank each of you, for your service to TPAC,  
2 and for your long- standing leadership to the  
3 Trademark Bar. I'd also like to greet the members  
4 of the public, who are attending here, in person,  
5 and also online. As has been my tradition, since  
6 arriving at the USPTO, over a year ago, I'm  
7 delighted to attend all TPAC Meetings, including  
8 this first one of 2020.

9 As we start our day here, today, I'd  
10 like to provide you some updates, from the  
11 Trademark Organization. First, an IT Systems  
12 Update. Our next major deliverable, on the IT  
13 Front, is the implementation of Mandatory  
14 Electronic Filing, on February 15th, auspicious  
15 after Valentine's Day. It will be -- it fol --  
16 going to be followed the second phase, of  
17 Mandatory Login, this summer.

18 On the Rulemaking Front, I'd like to  
19 thank this committee for its efforts on Fee  
20 Rulemaking. You'll hear a report provided -- your  
21 hearing and report provided very useful feedback,  
22 that is now being incorporated into the draft of

1 the Proposed Rule. I'd also like to express my  
2 appreciation, for your dedication and stewardship  
3 of the Trademark Budget, which, in turn, is  
4 helping to ensure the USPTO's Trademark  
5 Organization has stable funding and processors  
6 that are more cost efficient, thanks, in large  
7 part, to the ongoing work of this committee, the  
8 USPTO's efforts to protect the accuracy and  
9 integrity of the Trademark Register have  
10 unflagged, over the course of this past year.  
11 We've increased scrutiny and examination, by  
12 training Examining Attorneys to issue refusals on  
13 suspicious digitally created or mocked up  
14 specimens of use and are requesting more  
15 information about proof of actual use. We've also  
16 increased our scrutiny of the Trademark  
17 Registration Maintenance Filings, by expanding our  
18 Proof of Use Audit Program.

19 Our Special Task Force continues to  
20 identify and bring to light new schemes, that  
21 meant to circumvent our rules, including  
22 circumventing the U.S. Counsel Rule. As many of

1       you are likely aware, we've had some bad actors  
2       who've attempted to use U.S. Attorney Bar  
3       Credentials, to file applications without the  
4       Attorney's knowledge. To address this, our former  
5       Commissioner, Mary Boney Dennison, and our acting  
6       Commissioner, Meryl Hershkowitz, have started  
7       issuing Show Cause Orders, to which the applicant  
8       must respond.

9               The first set of orders are, now, posted  
10       on the USPTO's Trademarks Updates and  
11       Announcements page. In the coming months, we'll  
12       examining the impact that the United States  
13       Counsel Rule has made on improper behavior. It's  
14       still early, but preliminary data suggests that  
15       the rule has had positively impacted our efforts,  
16       to improve the quality and accuracy of submissions  
17       to the office.

18               Furthermore, all attorneys practicing  
19       before the office have been encouraged to  
20       regularly check our database to ensure that no one  
21       is improperly using their name. On the  
22       counterfeit front, also in support of our mission

1 to improve the protection of IP Rights, the USPTO  
2 is looking at how it can help mitigate the global  
3 scourge of counterfeited goods and piracy. The  
4 rapid growth of ecommerce is revolutionized the  
5 way we trade, and also contributed to the increase  
6 in counterfeit and pirated goods sold in the  
7 United States.

8 Counterfeiting is a big problem because  
9 it threatens consumer safety and health. Indeed,  
10 last year, U.S. Customs and Boarder Control, the  
11 CBP, seized more items that pose health and safety  
12 risks, than ever before. An investigation by the  
13 U.S. Food and Drug Administration's FDA Forensic  
14 Chemistry Center, for example, found that 60  
15 percent of suspected counterfeit contact lenses  
16 were contaminated with microbial bacteria, that  
17 could lead to painful infections of the cornea,  
18 and potentially loss of vision, and blindness.

19 In addition to counterfeit products that  
20 can endanger health and safety because they are  
21 ingested, used on the skin, or are given to  
22 children, there are examples of exploding

1 counterfeit lithium batteries, that have led to  
2 intense fires, third degree burns, and severe  
3 property damage. Pharmaceuticals, personal care  
4 products, construction materials, consumer  
5 electronics, apparel, car parts, shoes, sports  
6 equipment, and countless other goods are  
7 counterfeited, and, alarmingly, the number of  
8 items is growing.

9           Not surprisingly, there are significant  
10 effects on job market, through the displacement  
11 legitimate economic activity, by counterfeiting  
12 and piracy. Clearly, counterfeiting is not a  
13 victimless crime, and it can lead to other crimes.  
14 Just last year, the United Nations' Commissioner  
15 on Crime Prevention and Criminal Justice reported  
16 that counterfeiting is, now, the second largest  
17 source of income, worldwide, for all forms of  
18 criminal activity.

19           To address this problem, the USPTO has  
20 taken a leading role in advancing the enforcement  
21 of Intellectual Property Rights, in the United  
22 States, and in the world, including through

1 training and technological assistance. In fact,  
2 the USPTO has long been engaged with the anti-  
3 counterfeiting efforts around the world, through  
4 its work with Foreign Office Officials and Judges,  
5 as well, as providing Training Programs, which  
6 highlight the risks to consumers of buying  
7 counterfeit goods.

8 Many of our training programs are  
9 designed to promote effective enforcement of  
10 civil, criminal, and boarder provisions, to combat  
11 trafficking in counterfeiting goods, for customs  
12 and Officials from all over the world. Some of  
13 things we focus on, in these programs, include  
14 techniques for identifying counterfeits, the  
15 importance of cooperation between the various  
16 government agencies that have responsibility for  
17 enforcing IP rights, in the importance of handling  
18 investigations and seizures, using procedures that  
19 are fair, equitable, and transparent.

20 For example, the USPTO has partnered  
21 with the U.S. Customs and U.S. Postal Inspection  
22 Service, the USPIS, in coordination with Law

1 Enforcement Officials from other countries. We've  
2 worked with colleagues at mail sorting facilities,  
3 at various local and international airports, to  
4 support the inspection and interdiction of  
5 shipments, that may include illicit and counterfeit  
6 goods. In other words, we've been working  
7 diligently to stop the supply of fakes, but we  
8 must, also, educate the public to stop the demand  
9 for fakes.

10 That's why, this past November, we  
11 launched a multi- year nationwide public awareness  
12 campaign, with the National Crime Prevention  
13 Counsel, to educate U.S. consumers about the  
14 dangers of counterfeit goods. We believe that  
15 educating the public and fostering respect for  
16 intellectual property is key to lowering the  
17 demand for counterfeit and pirated goods, and  
18 we're making good progress, in this regard.

19 In the months and years ahead, we'll be  
20 looking to new and emerging technologies, that  
21 will help us take Trademarks to even higher levels  
22 of quality and performance. A particular focus

1 that I have taken on is helping to move our IT  
2 Systems, on which Trademark Operations run, into  
3 the modern era. While this has been a goal for  
4 some time, we are taking concrete action, to  
5 replace the aging infrastructure, to pave the way  
6 for modernization.

7           The goal is to create a system on which  
8 Trademark Applications, for various purposes, can  
9 be plugged in and pulled out, without worry. With  
10 this will come the ability for more agile systems,  
11 more easily updateable systems, and more resilient  
12 systems. Some of the elements of this new system  
13 will include reliance on cloud technologies, as  
14 well as application of Artificial Intelligence  
15 tools. We're exploring a number of potential  
16 Artificial Intelligence Technologies, that could  
17 be applied to help goods in service  
18 classification, identify fraudulent submission of  
19 specimens of use, and, perhaps, even someday,  
20 helping an examiner search an image database, for  
21 potentially confusing similar marks, for him or  
22 her to analyze.

1                   These are just a few of the many things  
2                   that have been happening on the trademarks front,  
3                   at the USPTO. As you are brought up to date,  
4                   throughout the day, today, on all of our  
5                   activities, we welcome your comments, questions,  
6                   and feedback, and, in closing, I'd like to thank  
7                   you, for your dedication, hard work, and service  
8                   to this committee. The continuing collaboration,  
9                   between the USPTO and TPAC, is extremely  
10                  important, and your insights and guidance, on a  
11                  number of issues, have been invaluable. With  
12                  that, I'd like to turn this over to Acting  
13                  Commissioner Hershkowitz, who will update you on  
14                  Trademark Operations. Thank you.

15                  CHAIRWOMAN ESCOBAR: Thank you, Deputy  
16                  Director Peter. On behalf of TPAC, I'd just like  
17                  to express our appreciation for your support and  
18                  Director Iancu's support, and, in particular, we  
19                  greatly appreciate your attendance at our  
20                  meetings. It's always great to see you.

21                  DEPUTY DIRECTOR PETER: Thank you,  
22                  indeed. Thanks so much.

1                   CHAIRWOMAN ESCOBAR: Over to you.

2                   COMMISSIONER HERSHKOWITZ: Thank you.  
3 Thank you, Deputy Director Peter. Thank you,  
4 Director Iancu, for all your support, both  
5 personally and professionally, and for really  
6 paying attention to Trademarks. Sometimes, we do  
7 get lost in this big agency, but the Deputy  
8 Director and the Director have been incredibly  
9 supportive and helpful to us, and thank you, of  
10 course, my thanks, my personal thanks, to TPAC,  
11 over the years, for everything you've done, to  
12 help us remain the number one agency, who give  
13 Trademarks throughout the world, and register  
14 them, and examine them, and really give value that  
15 supports our Trademark Owners.

16                   I would like to take this opportunity to  
17 look at the state of the Trademark Organization,  
18 during this time. Every day, I miss Commissioner  
19 Boney-Dennison, I've told her that, and it's  
20 amazing, as we look back over the past five years,  
21 and look at the changes in the organization, and  
22 what we've accomplished, and where we're headed.

1 So, this slide is always one of my favorite slides  
2 because it shows the continual demand for  
3 Trademark Registrations.

4 This shows the filings, from the last  
5 several decades, and you can see that the trend is  
6 always up. There's only been four times, where  
7 we've had the slightest downturns, but, over time,  
8 you can see that the trend and the demand, for  
9 Trademark Registration, is constantly on the rise.  
10 In 2016, we had 530,000 classes filed. Last year,  
11 2019, we had 673,233 classes filed. So, we've  
12 gone, over the years, as some people would say,  
13 up, and up, and up, and, this year, we are seeing  
14 a little bit of flattening, but we're still  
15 predicting a 2.8 percent increase in filings.

16 What does that mean to us? Well, it's  
17 good to look at the kind of filers, and things are  
18 fairly steady, where we have about -- between 20  
19 and 35 percent of the applications filed by pro se  
20 applicants, and the filing basis, also, are fairly  
21 steady. You can see that about a third to a  
22 little bit -- up to 40 percent have been sectioned

1 1-A or U-Space filings, and a little bit more have  
2 been intent to use, and then you can see the  
3 foreign basis for filing is a little bit under 10  
4 percent. So, what does this mean to us,  
5 organizationally? Well, of course, it means we  
6 have to continue to grow, with the workloads, and,  
7 since 2014, we've increased staffing by 17  
8 percent. That's a lot of new people to on board,  
9 train, enculturate, and it puts a lot of burden on  
10 our Management Staff, and we've also had to  
11 increase our Management Staff, to go along with  
12 the increase in Examination, and Technical, and  
13 Professional Support Staff. So, all of this is  
14 great, but it does put a strain on the  
15 organization. So, I just wanted thank the staff,  
16 for all their hard work, despite all of this, and  
17 I would say, despite all this incredible growth,  
18 we have become number one, in the world, as a  
19 Trademark Organization, and, also, we have  
20 continued to meet our very challenging, but  
21 important goals, to meet the needs of our  
22 Trademark Owners.

1           So, again, thank you to all the staff,  
2           the Professional and Support Staff, the Examining  
3           Attorneys, and all our Management Staff, and our  
4           Policy Staff. So, thanks to everyone.

5           As always, our pendency goals are  
6           important, to help our Trademark Owners to be able  
7           to plan and market their goods, in a timely  
8           manner. We remain, again, in 2020, the first  
9           quarter, meeting our goals. So, we are currently  
10          at 2.8 months, for first action pendency, and 9.4  
11          months, for disposal pendency, and we're very  
12          happy that we met these goals, considering all the  
13          challenges, especially of last year, where we  
14          actually hired 81 new Examining Attorneys.

15          In addition, we've been able to keep  
16          quality numbers up. Our first action compliance,  
17          and our final action compliance, are within our  
18          goals, and, of course, those numbers are measured,  
19          based on random reviews of cases throughout the  
20          process, and what they show is we've been able to  
21          meet our legal standard for registrability, based  
22          on statutory rules.

1           Our Exceptional Office Action, which is  
2           a much more difficult challenge to meet, includes  
3           every action in the file being taken correctly.  
4           So, that includes the search, the writing, the  
5           evidence, the statutory decision making, and the  
6           procedural decision making, and we love seeing  
7           that this number is continuing to increase, year  
8           after year. So, more than half of our first  
9           actions are -- we consider excellent and  
10          exceptional. So, we're very, very proud of our  
11          Examining Attorneys, for accomplishing that.

12           Besides growth, we've also kept up with  
13          the times, with our rulemaking and policy making,  
14          again, to meet the needs of our Trademark  
15          Community. So, I -- and, also, this puts a burden  
16          on the office because we have to keep training,  
17          and training, and training, and keeping our staff  
18          up to date. We've even, over the past couple of  
19          years, had Supreme Court decisions, which has  
20          really changed a whole section of our statute. So,  
21          those of you familiar with *Matal vs. Tam*, and  
22          *Iancu vs. Brunetti*, where the Supreme Court ruled

1 that parts of our section 2-A of our statute were  
2 unconstitutional violations of the First  
3 Amendment, and I would urge everyone to keep on  
4 top of the latest case, in front of the Supreme  
5 Court, where we are a party, which is USPTO vs.  
6 Booking.com, where the issue is how we decide  
7 genericness. So, keep on the lookout for a new  
8 Supreme Decision.

9 We also have issued several Examination  
10 Guides, in the last year, and today. So, that's  
11 really important because the examination guides  
12 give advice to the Examining Attorney and to the  
13 public, about how to interpret the law on statutes,  
14 and help us be as consistent and clear as we  
15 possibly can, so everyone understands what the  
16 rules are.

17 So, we issued a new Examine Guide, on  
18 cannabis, among other things, and the big change,  
19 there, had to do with the Farm Act of 2018, and  
20 how we handle goods involving hemp, of course,  
21 post-Brunetti Guidance, and as Deputy Director  
22 Peter talked about, important guidance on how to

1 handle digital and mocked up specimen. In August,  
2 the U.S. Counsel Rule went into effect, and we  
3 have an examine guide on that, as well.

4 The Examine Guide for MEF, for Mandatory  
5 Electronic Filing, is out today. It is posted on  
6 our website. An alert went out last night. So,  
7 everyone should be very anxious to read that, and  
8 I'll talk about that in a minute. For just a  
9 second, I want to talk about the U.S. Counsel  
10 Requirement. Clearly, Deputy Peter talked about  
11 this, the benefit of the rule, which requires  
12 foreign-domiciled applicants, registrant sent  
13 parties to be represented by a U.S. Licensed  
14 Attorney, is important to us, and to the Trademark  
15 Community, to increase confidence, that  
16 registrations that issue to foreign applicants are  
17 not subject to invalidation, for reasons, such as,  
18 improper signature and improper use claims.

19 As she said, we don't -- this is still  
20 preliminary, it just happened in August, but we're  
21 already seeing indications that it's working, in  
22 the sense that we have received -- and you can see

1 the requirements that we've made, for you, as  
2 Counsel, have gone down drastically. So, we think  
3 the message is out, and you can also see the  
4 change in filing, from, especially, China, where  
5 we have had peak, in July of 2019, of 20,000  
6 applications, whereas, in December, we only had  
7 3,800 applications, from China.

8           There are still challenges, of course,  
9 that the U.S. Counsel Rule can't solve every  
10 problem, and we have a special task force that we  
11 put together, to make sure that they're reviewing  
12 data analytics every week, to identify suspicious  
13 activities, such as fictitious attorney names, or  
14 names of attorneys that have not consented to  
15 represent the applicant, and I recently signed  
16 about 100 show cause orders, in that vein. We,  
17 also, of course, are working hard to prevent fraud  
18 from the get go, and we are working on login  
19 systems to ensure that, and we started one in  
20 October, and we will continue to work on login,  
21 and I'll talk about that in a minute.

22           I love this graph because it shows

1 another trend that I think is really helpful. So,  
2 we are able to identify the refusals and  
3 requirements, that the examining attorneys make,  
4 and this graph shows how we increase the scrutiny  
5 and examination of mock specimens, by training our  
6 examining attorneys, through issue of refusals,  
7 and ask for more information, as Deputy Peter  
8 said, and this graph shows exactly how that has  
9 worked. You can see, it's really hard, but  
10 there's a little arrow, where it's indicating that  
11 we had increased training -- advanced training, in  
12 June of last year, and you can see those little  
13 bars going up, and up, and up, and, finally, in  
14 October, it reached its peak, where we issued over  
15 6,000 refusals for mock specimens, and then, it  
16 seems, the U.S. Counsel Rule, and wouldn't --  
17 because we're three months behind, that was right  
18 before the U.S. Counsel Rule, and, after the U.S.  
19 Counsel Rule, you can see that the requirements  
20 have gone down, and fin -- and you can see then,  
21 in December, we only issued a 1,000, or so, of  
22 those requirements. So, something is heading in

1 the right direction.

2           So, now, I'd like to talk about the  
3 examination guide that issued today, in advance of  
4 implementation of the Mandatory Electronic Filing  
5 Rule. I have to tell you, when I started here,  
6 about 30 years ago, when I came to work, on my  
7 desk, was a legal pad and a pen, and a bunch of  
8 files in manila folders. Over the last 30 years,  
9 we've made tremendous strides in increasing our  
10 electronic use of computers and tools, to help  
11 examine more efficiently.

12           As a Managing Attorney, in the late  
13 '90s, I spent most of my day hunting for files,  
14 and moving things around, and finding papers, and  
15 asking for copies of new papers that we lost, and  
16 I am happy to say that no longer happens. We  
17 don't lose things. So, it really has been a boon  
18 for quality. What you see is what you get, when  
19 you enter the information, into our data base.  
20 So, there is less manual entry, a lot more  
21 efficient processing, less optical scanning,  
22 which, as we know, doesn't work really well.

1           So, we're very excited, after all these  
2 years, to finally say, we're going to try to  
3 eliminate almost all paper, and I think it's  
4 exceptionally exciting. Of course, there's always  
5 pain in change, and I am sure we will be learning,  
6 along the way, how to make this new rule even  
7 better than it is now, but, at that the moment, I  
8 think, we're on the right track, and you will see,  
9 when read the Examination Guide, it really is a  
10 pretty simply rule, and we're following lead of  
11 The Trademark Trial and Appeal Board, who is also,  
12 now, all electronic.

13           So, we have very few exceptions to the  
14 rule. We do have a treaty obligation to accept  
15 paper from some very, very few countries.  
16 Obviously, we can't accept paper for scent marks  
17 and flavors marks, and, sometimes, of course,  
18 there are emergencies, whether it's a hurricane,  
19 natural disaster, or just a power outage, that  
20 affects either us or the Trademark user. So, we  
21 will have, and we do have rules for our petition  
22 process to request acceptance of paper, in those

1 unusual circumstances.

2 I do want to point out that, because we  
3 no longer have paper, we no longer have what we  
4 call a TEAS Standard Application, which allowed  
5 for paper processing during the examination  
6 process. Obviously, that's not true anymore. So,  
7 we've renamed our TEAS RF Application, T-Standard,  
8 and, obviously, we are requiring electronic  
9 communication with the office. You don't have the  
10 option to opt out of that anymore. In addition,  
11 we have added a new field, as a result of a lot of  
12 customer feedback, and we do like to hear from you  
13 all, even if it's negative, because we can always  
14 improve.

15 So, with the new filing system, we are  
16 adding a new field that allows you, not only to  
17 have a mailing address, that could include a post  
18 office box, or a care of address, but we're adding  
19 a new field, that allows you to meet the  
20 requirement for domicile address, but we will not  
21 publish it in the Public Application TSDR. So,  
22 that will be kept private. Of course, we still

1 have a domicile requirement under the Latham Act,  
2 so you do have to give it to us, but we will keep  
3 it private from the public.

4           You also need, of course, an email  
5 address, because how could we communicate with  
6 you, electronically, if we don't have your email  
7 address? So, we no longer have that check box,  
8 that allows you to opt out, and we will continue  
9 to correspond with the Attorney Representative, or  
10 if there is no Attorney Representative with the  
11 applicant, but we are requiring distinct email  
12 addresses for the Attorney Representative, and the  
13 applicant because, sometimes, attorneys do not  
14 continue their representation throughout the  
15 process. In addition, the representation is not  
16 presumed after registration, and, furthermore, we  
17 have these bad actors, who require us to question  
18 the representation and, in order to do that, we  
19 need to be able to communicate directly with the  
20 applicant.

21           Director Peter already thanked you for  
22 your input on our rulemaking, regarding fee

1 changes. I would like to thank you, as well, and  
2 just to remind everyone that the TPAC had a public  
3 hearing, in September, on our rulemaking on fees,  
4 issued a report, gave us great recommendations,  
5 which we are currently digesting, and will be  
6 incorporating many of them in the proposed  
7 rulemaking, that should be coming out, hopefully,  
8 in the next month or so.

9 Other initiatives, and we've talked  
10 about this, is mandatory login, again, to make  
11 sure that we are -- have a more secure system, and  
12 we stop people impersonating other people, as much  
13 as we possible can. So, that went in -- the first  
14 stage of that login system went into effect in  
15 October, and we hope to have two new phases, one  
16 this year, and one late in the calendar year,  
17 which will allow us to authenticate and identify  
18 the login holder, the account holder, and, also,  
19 hopefully, give them role-based access, depending  
20 on who is allowed authority to work on the file,  
21 so the attorney, hopefully, would be able to give  
22 some access, for example, to other staff

1 attorneys, or to their paralegals.

2 Deputy Direct Peter, also, mentioned our  
3 proof of use audit, where we audit applications  
4 for maintenance of registrations, to make sure  
5 that the use claims are accurate, and we've been  
6 doing this now for three years. We aim for -- our  
7 current aim is 5,000 a year, of the files to be  
8 audited. Unfortunately, I would have to say, not  
9 much has changed, in the last three years. About  
10 fifty percent of the files, and more for the  
11 foreign filers, seem to have responses, wherein  
12 they delete goods, where they previously said they  
13 were using them. So, that's a little bit  
14 disappointing, but we will continue to educate our  
15 Trademark Holders and Owners, to make sure that  
16 their filings are as accurate as possible.

17 Deputy Peter, also, talked about our  
18 Anti-counterfeiting Campaign. So, I won't go  
19 into this again, but, again, we're very excited,  
20 and hope that we will have a public service  
21 announcement out soon, where we are targeting  
22 teens and tweens and their parents, to understand

1 the dangers of counterfeiting.

2 On the international front, we're still  
3 very active in the Trademark Five, which is  
4 comprised of the five largest Trademark Offices in  
5 the world, and we had a delegation, headed by  
6 Deputy Commissioner Sharon Marsh, go to Tokyo, in  
7 December, to the annual meeting that Japan hosted.  
8 The exciting news is that we, of USPTO, will be  
9 the host for 2020. So, we will be meeting in,  
10 hopefully, Singapore, for the mid- year meeting,  
11 and the annual meeting will be in the fall, here,  
12 in Washington D.C., and you'll hear more about  
13 that from our OPIA Staff, hopefully soon, and I  
14 just would like, again, to thank everyone, for all  
15 their support, during this time of transition,  
16 and, again, let the public know, and all of you  
17 know, who are in the room, that we love your  
18 feedback. It's really, really, helpful to us to  
19 keep improving. We never want to rest on our  
20 laurels. We always want to be the best Trademark  
21 Office in the world. Thank you.

22 CHAIRWOMAN ESCOBAR: Thank you, Acting

1 Commissioner Hershkowitz. I think we are the best  
2 Trademark Office in the world, and we appreciate  
3 all of your efforts to keep it that way.

4 COMMISSIONER HERSHKOWITZ: Thank you.

5 CHAIRWOMAN ESCOBAR: Do we have any  
6 questions from TPAC Members? All right, well,  
7 thanks again for that update, and, I think, next  
8 up is OPIA. We have Amy Cotton, who is Senior  
9 Counsel for the Office of Policy and International  
10 Affairs. Welcome, Amy.

11 MS. COTTON: Good Morning, everyone.  
12 Thank you. I don't think Meryl saw me. She was a  
13 little concerned. Hopefully, we'll see if -- I'm  
14 here. Come here. Shira couldn't be with us,  
15 today, because she's, right now, in Geneva, in  
16 consultations for the WIPO Director General  
17 Elections, which are coming up, and which we're  
18 paying a lot of attention to. So, she's sorry to  
19 miss you, but you got me again.

20 Wanted to come back to some  
21 developments, we've talked in this meeting,  
22 before, about the spread of Trademark labeling

1 restrictions, or labeling restrictions that impact  
2 Trademarks, as a method for regulating public  
3 health, and I wanted to come back to this.

4 Remember that it sort of falls on a spectrum, the  
5 restrictions that you see in various countries.  
6 One end represents restrictions on marketing, or  
7 on restrictions on promotion, and we see this with  
8 the high- fat, high-sugar foods.

9           We see this, also, with infant formula,  
10 when they want to prevent any labeling information  
11 that suggests that infant formula is a  
12 substitution for breast milk, when they want to  
13 promote breastfeeding, for infant health and  
14 obesity, but then you go up the spectrum, and you  
15 see, on alcohol, you'll see those graphic warning  
16 labels, a diseased liver picture covering the  
17 label, which is delightful, and then you see all  
18 the way on tobacco, you've seen plain packaging,  
19 where all of the trade dress, and the trademarks  
20 are eliminated from the packaging, except in the  
21 brand name, in a standard font.

22           So, now, we've seen, in Chile, labeling

1 restrictions there. It started in Chile, but,  
2 now, it's sort of spreading, but you'll see that  
3 -- well, I'll show you a picture of the stop  
4 signs. So, these are little hexagonal stickers,  
5 that show up on the packaging. They -- you know,  
6 obviously, how much the sticker covers is  
7 important, but they do have regulations that, you  
8 know, will make it so that the sticker is small,  
9 if the packaging is small, but larger if the  
10 packaging is larger, but they've also eliminated  
11 the use of characters, from packaging. So, these  
12 are the ones that are targeting children. We've  
13 been working, at least, since 2016, with the  
14 Chilean Government, on this issue, but there seems  
15 to be a lot of support for it. I wanted to show  
16 you what it looks like on the shelves, so that  
17 Tony the Tiger is gone, and, now, you just have  
18 the package without it, but you can see that, if  
19 you're looking to identify a product you're  
20 familiar with, it's a very different product, look  
21 and feel at this point.

22 The other thing is these creepy,

1 faceless Santa's, on the chocolate, with the  
2 stickers plastered all over it. You're not really  
3 sure what that is. So, it's kind of takes the fun  
4 out of that one, which, I guess, was the point,  
5 and you've got Pringles without the little dude on  
6 there, which is just a little sad.

7           In Peru, they're doing the stickers, as  
8 well, now. So, it -- they wanted to see if Chile  
9 got sued at the WTO for this, and, which they  
10 didn't, so, now, that Peru has picked up on it,  
11 however, Peru is a little bit more measured, they  
12 have the stickers, but they did not go for the  
13 characters. So, we've been talking to Peru, as  
14 well, but the Intellectual Property Office, in  
15 Peru, also handles anti -- unfair competition  
16 issues. So, they were a little -- able to be a  
17 little bit more engaged in the rulemaking, but  
18 these are the stickers. So, if you have high-fat,  
19 high-sugar, high-sodium, or contains trans-fat,  
20 you have to stick on of those stickers on it, or  
21 all of the stickers, if you meet those  
22 requirements.

1                   Now, Mexico, it's gone to Mexico. So,  
2                   in Mexico, they published a regulation for  
3                   comment. The comment period closed in December,  
4                   and it looks like it has been adopted, has not  
5                   entered into force yet, but will very soon. These  
6                   are their stickers. Also, they have stickers for  
7                   sweeteners and caffeine, and those are to warn  
8                   parents that excessive consumption, for children,  
9                   is problematic. So, if any of these stickers are  
10                  required, that immediately means you can't use  
11                  characters, you can't have promotions or toys,  
12                  contests, discounted prices, nor can you advertise  
13                  on social media.

14                 We do think this will go into force,  
15                 very soon. We have definitely engaged with  
16                 Mexico, on this issue. Our IP attaché, in Mexico  
17                 City, is actually my colleague, Cindy Henderson,  
18                 who's worked with me for many, many years, on this  
19                 issue. So, she's been engaging with them, but  
20                 there's a lot of support in Mexico, for this  
21                 regulation, and it is going into force. So, sorry  
22                 for that.

1                   Moving on, a little bit better news. The  
2                   Department of Homeland Security, with the support  
3                   of many USG Agencies, including PTO, recently,  
4                   released a report to the President, on combatting  
5                   trafficking and counterfeiting pirated goods. The  
6                   report leaves out two sets of recommended actions,  
7                   one for the private sector, and one for the  
8                   government sector, on how to address the  
9                   ever-increasing threat posed by illicit trade and  
10                  counterfeit and pirated goods.

11                  On the private sector side, ecommerce  
12                  platforms and other third-party intermediaries are  
13                  encouraged to adopt a set of best practices,  
14                  identified in the report, with monitoring from ICE  
15                  and Homeland Security Investigations. The IPR  
16                  Center is under those organizations. So, it's not  
17                  just leaving the platforms on their own. There's  
18                  monitoring and checking to see if they're  
19                  following the best practices.

20                  On the government side, DHS Agencies  
21                  will take immediate steps to address the flow of  
22                  counterfeit and pirated goods coming into the U.S.

1 For example, to make it easier for customs to  
2 identify abuses in the small package environment,  
3 CBP will now treat ecommerce fulfillment centers,  
4 and warehouses as the ultimate consignees for  
5 goods, that have not been sold to a specific  
6 consumer at their time of importation in the U.S.  
7 This will give a little bit more control to CBP on  
8 small package shipments.

9           The report also calls for the formation  
10 of the anti- counterfeiting consortium to identify  
11 online nefarious actors. You see an acronym  
12 coming, right, ACTION? Under the ACTION  
13 framework, among other things, the various  
14 stakeholders in the ecommerce supply and  
15 distribution chains will share information on  
16 sellers, shippers, and other third-party  
17 intermediaries involved in trafficking and  
18 counterfeit and pirated goods. ACTION members  
19 will also be able to share information with the  
20 IPR Center. So, of course, sharing information  
21 about bad actors, repeated offenders is always  
22 going to be very helpful.

1                   So, other USG Agencies are on the hook  
2                   to take action, as well. For example, The  
3                   Department of Commerce, we've been asked to study  
4                   and consult, on secondary liability, to see if any  
5                   changes are necessary for the online world. We're  
6                   currently working out who's responsible, and what  
7                   that would look like, but there's -- I think there  
8                   is anticipated stakeholder consultations on that  
9                   issue. Also, USG Agencies are encouraged to  
10                  partner with industry to launch a Public, Private  
11                  Awareness Campaign, targeting consumers. Well,  
12                  we're already ahead of the game on that one, which  
13                  is kind of nice. We recently, as you know,  
14                  launched a five-year Nationwide Campaign and  
15                  Partnership, with the National Crime Prevention  
16                  Counsel, to raise awareness with consumers of the  
17                  dangers of buying fakes. So, we're hopeful that  
18                  this focus on ecommerce platforms and small  
19                  shipments will help stem the tide of imported  
20                  counterfeit goods.

21                  Now, Meryl already talked about the TM-5  
22                  Meeting. The dates that we're looking at are

1 Mid-November, for Alexandria, but we'll see.  
2 We're negotiating with a lot of different  
3 partners. The projects that we've worked on, we  
4 -- the list on our -- the new website. It's a  
5 brand-new website. Hopefully, it's a little  
6 better, than it's been. All the projects are  
7 listed there, but just to let you know, the TM-5  
8 Bad Faith Report, we issued that in December. So,  
9 it's a compilation of all the seminars and  
10 reporting -- the out, that the various partners  
11 have done, on bad faith cases that they've had in  
12 their jurisdiction.

13 A report -- we issued a report on Paris  
14 Priority Claims, across the TM-5 Jurisdictions.  
15 That was in January. We've got two more reports  
16 that are forthcoming, one on Quality Services.  
17 These are the quality services that each office  
18 provides, and, just so you know, TPAC is a Quality  
19 Service, from our perspective. Encouraging  
20 stakeholder engagement is a quality service. So,  
21 we pushed you, for other offices to consider, and  
22 we also have another report, that we're going to

1 be issuing, a little bit longer term, Application  
2 Requirements for Non-Traditional Marks. So, if  
3 you wanted to know what is required in a  
4 jurisdiction for a non-traditional mark, this  
5 report should have a detailed account of what the  
6 application requirements are for these.

7 We have invited more countries,  
8 including WIPO's Madrid Monitor, to adopt common  
9 status descriptors. So, these are the icons that  
10 we are encouraging countries to use in the  
11 National Data Bases. You don't need to know the  
12 language because it's just an icon, but it tells  
13 you the status of the application or registration  
14 in that country. WIPO's trying to figure out how  
15 to map their statuses in Madrid, to the icons that  
16 we already have.

17 Also, we're up to 20,000 terms, in our  
18 harmonized ID List. So, these are terms, which  
19 will be accepted in all TM-

20 Offices, and on participating offices.  
21 We've invited other countries to dock on and  
22 accept these lists. So, we're hopeful that that

1 will streamline the application process, for the  
2 various office that participates.

3 So, that's all I have today. Well,  
4 these are busy times, here, as you know, but,  
5 please, let us know, if your interested in  
6 learning any developments in the Domestic or  
7 International Trademark Policy Sphere. We're  
8 happy to give you a report or research it for you.  
9 Happy to take any questions.

10 CHAIRWOMAN ESCOBAR: Thank you, Amy.  
11 It's clear OPIA is very busy, as always. Do we  
12 have any questions from TPAC? You're all very  
13 quiet this morning. All right, thank you so much  
14 for your time, and, I think, up next, is  
15 Government Affairs is -- we were running a few  
16 minutes ahead of schedule. Is Branden Ritchie --  
17 nope, not yet? Let me see who's next on the  
18 agenda. OCFO, Jay Hoffman. No?

19 You want to go ahead and do TTAB? Okay.  
20 Gerry, Chief Judge Rogers, thank you so much for  
21 coming. Can we ask you to -- I think we'll need  
22 to skip ahead a few slides.

1                   CHIEF JUDGE ROGERS: While I'm waiting  
2                   for the clicker, I'll just follow up on something  
3                   Acting Commissioner Hershkowitz mentioned about  
4                   Electronic Filing, and she pointed out the  
5                   importance of having email addresses because, at  
6                   some point, for the applicant, as well as for  
7                   counsel, because, at some point, the office  
8                   presumes that representation has stopped. The way  
9                   the TTAB uses the information, that is gathered  
10                  during the Trademark Application Process -- if you  
11                  want to go back to Branden, you can, but I'll make  
12                  this comment, and then, if you want to stick to  
13                  your schedule, you can, or I can continue. It's  
14                  up to you.

15                  CHAIRWOMAN ESCOBAR: I think you should  
16                  continue.

17                  CHIEF JUDGE ROGERS: Okay. So, what we  
18                  will do at the Board is, when the application is  
19                  opposed, or if it comes to us on appeal, something  
20                  like that, we will certainly rely on and use the  
21                  email information and correspondent's address  
22                  information, that's in the application. What we

1 will not do is, when we get a petition to cancel a  
2 registration that has already issued, we are not  
3 going to presume that the attorney, who  
4 represented the applicant during prosecution of  
5 the application, is still representing them, which  
6 can be many years down the road. So, that's why  
7 it would be very important for us to have email  
8 and correspondence information, for the applicant,  
9 because that -- that point, they are a registrant,  
10 and we are going to correspond with them -- excuse  
11 me -- directly in regard to any petition to  
12 cancel. So, that's kind of how we dovetail with  
13 the collection of information in Trademarks, and  
14 we -- it has worked pretty well, for us, since we  
15 went to mandatory electronic filing, in 2017.

16 For the slides, I will start by  
17 observing that, at TTAB, we have a slogan. We  
18 have our trials, but our work is appealing. It  
19 works for us on many levels, and, in recent years,  
20 boy, have we had our trials, and sometimes  
21 travails. So, let's look at some of the  
22 statistics, and see how a dramatic increase in the

1 number of trial cases has affected the Board.

2 Okay, so, in the last three years, you  
3 can see, from this slide, that we've had a really  
4 dramatic increase in the number of trial cases  
5 being commenced, the number of oppositions, and  
6 the number of petitions to cancel. One of my  
7 theories is that the dramatic increase in the  
8 petitions to cancel stems, in part, from  
9 recognition by many attorneys and mark holders,  
10 that there are a lot of registrations out there,  
11 of questionable provenance, and which may not be  
12 supportable because of what we know from the  
13 Random Audit Program, the Trademarks has been  
14 conducting, and what we know about specimens.

15 So, more people are willing to oppose  
16 these applications, and more people are willing to  
17 petition to cancel them. Now, the -- one of  
18 things I wanted to point out, on this slide, is,  
19 while the trend, for the last three years, has  
20 been towards a dramatic increase in the number of  
21 trial cases, coming in the front to the TTAB, in  
22 the first quarter of this year, we did see a

1 little bit of a flattening, in terms of the number  
2 of extensions. Certainly, extensions are down a  
3 little bit, extensions of time to oppose.  
4 Oppositions and cancelations are increasing at a  
5 rate this year, which is lower than in previous  
6 years.

7           The yellow, that I've highlighted, in  
8 the bi- quarters and FY-19, showed that, in every  
9 quarter, in fiscal '19, it went up, every quarter,  
10 one after another. It just went up, and up, and  
11 up, throughout the year, but we're hopeful that,  
12 perhaps, this is a leading indicator, that, maybe,  
13 the flood of trial cases is slowing down a little  
14 bit, but we'll see.

15           This slide focuses on the other end of  
16 the process, not cases that are coming in the  
17 front door, but the number of cases that have gone  
18 through our processes and require disposition by a  
19 panel of Judges, and you will notice in FY- 19, I  
20 bolded it, 744 cases, matured to ready for  
21 decision. That's appeal and trial cases combined,  
22 and that was a very dramatic increase, from the

1 previous two years, where the number of cases,  
2 maturing to ready for decision, had, actually,  
3 declined. So, that's the other aspect of the  
4 deluge of trial cases coming in, over a course of  
5 three years. Last year, the ones that were coming  
6 in in '16 and '17 began to hit us on the other end  
7 of the process.

8           Interestingly, in the first quarter of  
9 this year, the number of cases maturing to ready  
10 for decision is down by over 20 percent, and the  
11 percentage of them, that are trial cases, has  
12 dropped from 30 percent, in fiscal '19, to under  
13 24 percent in fiscal '20. So, again, this may be  
14 a sign for us, that we'll be able to catch our  
15 breath a little bit, in fiscal '20, and improve  
16 our pendency measures, and handle the trial cases  
17 more expeditiously.

18           On the bottom right hand corner of this  
19 slide, you'll also see that in fiscal '19 -- well,  
20 this year, we're under 35 percent of our existing  
21 inventory being trial cases. That's still above  
22 what it was, back in fiscal '17, and, in earlier

1 years, where it was always 30 percent or less, but  
2 it's down from the 40 percent high, in trials  
3 cases that we saw last year, so, again, kind of  
4 hopeful signs that, maybe, the flood of trial  
5 cases is abating, to some extent. That's, again,  
6 just kind of the three-year split on trial cases.

7           So, I wanted to just bring you up to  
8 date on what our pendency measures are, for this  
9 year. These are our performance goals, that focus  
10 on the aspects of our work, that are within our  
11 control. Obviously, end to end, or commencement  
12 to completion pendency for our appeals and trial  
13 cases involves work that we do on those files, but  
14 also work that applicants are doing in appeals,  
15 and work that parties are doing in trial cases,  
16 and we don't always have control over how many  
17 extensions, or suspensions, or how much motion  
18 practice goes on in trials cases, but, for the  
19 things that we do have control over, the work that  
20 we do, we have performance goals.

21           So, for contested motions, new for this  
22 year, a slightly expanded target, we have an eight

1 to 12-week target, for processing contested  
2 motions. Now, it's kind of a broad band, it used  
3 to be eight to nine weeks, but we realized, with  
4 the very trial heavy docket that we have, it was  
5 not a realistic goal, and we also needed to  
6 reflect the fact that we get a wide range of  
7 motion, some of which are very quick, and easy to  
8 dispose of, and some of which take a much longer  
9 period of time, such as very large record summary  
10 judgement motions. So, the new goal, we were  
11 slightly above this target, the high end of this  
12 target, through the first quarter, but we expect  
13 that this is a realistic goal, and it reflects the  
14 nature of the docket, and we want this goal to be  
15 realistic because these goals that we have are  
16 intended to allow attorneys to counsel their  
17 clients, about how long things are going to take,  
18 at the Board.

19           So, if we had unrealistic goals, it  
20 would not help you in counseling your clients.  
21 So, this is encouraging because, of course, more  
22 trial cases means more trial motions, but we seem

1 to be getting things under control. We've hired a  
2 bunch of attorneys. We hired five last fiscal  
3 year, and we just had three more start, this year.  
4 So, we're very hopeful that we're in a position to  
5 get the motion practice work under control, as we  
6 work through this year, and we saw, usually, our  
7 inventories increase a lot in the first quarter,  
8 but, in the first quarter, this year, we were only  
9 up eight cases with contested motions, from the  
10 end of the last fiscal year. So, that was very  
11 good.

12 Trends in Motions, you can see that  
13 those maturing to ready for decision were down,  
14 whether you compare the first quarter, based on  
15 one quarter of what we received last year, or  
16 first quarter to first quarter. So, that's,  
17 again, a good sign, and production of decisions on  
18 motions, and the number of motions resolved  
19 increased. So, that's a sign that all those  
20 attorneys we've been hiring are getting up to  
21 speed and doing a lot of good work.

22 Focusing on what the Judges do, we, this

1 year, have adopted two different pendency  
2 measures, for the first time. We've always  
3 traditionally had a pendency measure that was time  
4 to decision, from when cases were ready for  
5 decision, and that means either the briefing was  
6 done, or there was an oral argument, and we had  
7 one measure that focused on appeals and trials,  
8 together, and we decided that was not realistic  
9 because trial cases take longer, most of the time.  
10 They can have very large records, compared to  
11 appeal cases.

12 So, we have two separate measures for  
13 this year, and our goal for pendency in appeal  
14 cases, after they've been fully briefed and or  
15 argued, is to get them decided within 10 to 12  
16 weeks, and to get trial cases to decided within 12  
17 to 15 weeks. We were not nearly as close to those  
18 to goals, in the first quarter, as we would like  
19 to be, but we set these goals with the intention  
20 that we would meet them by the end of the year,  
21 and we spent a lot of time, in the first quarter,  
22 working off older cases. So, we know that this --

1       these measures are going to go up for a little  
2       while, at the beginning of the year, but,  
3       hopefully, come down significantly, by the end of  
4       the year.

5                 So, the inventory, too, again, the --  
6       again, focusing on the abating of the trial case,  
7       heavy portion of our docket. The inventory was  
8       up, in the first quarter, which is typical, in  
9       terms of the cases waiting to be decided, but, if  
10      you compare the opposition cancelation and  
11      concurrent use numbers, they were all very steady,  
12      and it was only an increase in appeals that  
13      brought the overall number up. So, that's  
14      something that we can deal with. This, I think,  
15      we've covered.

16                The other thing that we focus on is end  
17      to end pendency because you want to be able to  
18      counsel your clients, about how long a proceeding  
19      is going to last, if you go through the entire  
20      process, and, in the last few years,  
21      traditionally, we've averaged 40 weeks, or so,  
22      sometimes a little bit less than 40 weeks, end to

1 end processing time, for ex parte appeals, and our  
2 trial case results, in recent years, have been  
3 about three years or less, so closer to that 140  
4 weeks figure that we achieved, in the first  
5 quarter, this year. Last year, we were lagging  
6 behind, again, because of all the trial cases,  
7 and, so, the figure went up, the pendency went up,  
8 but we're starting to bring it down, again, and  
9 one of the things I will also point out, on the  
10 very bottom left of this slide, are the number of  
11 cases, trial cases, that were decided, following  
12 the parties' election to use some form of  
13 accelerated case resolution.

14           That was a high number for us, last  
15 year. We see a lot more parties, who are  
16 interested in pursuing their trial cases, through  
17 more efficient means, than the Rules would allow,  
18 and, so, we see more parties agreeing to  
19 stipulations of fact, stipulations of procedure,  
20 and, in many cases, agreeing to decide the case on  
21 a summary judgement model, where the summary  
22 judgement briefing is submitted to decide the case

1 on the merits, and we are provided with a  
2 stipulation, that allows us to resolve any  
3 lingering issues of fact, which we would not  
4 normally be able to do, based on the mere filing  
5 of a motion for summary judgement.

6 So, I think, it's encouraging as --  
7 well, these are staffing notes, but, here, I will  
8 come back to staffing in a minute, but the  
9 continuing interest in ACR is a very positive  
10 thing, I think, for all parties involved in trial  
11 cases before the Board. We will work with you to  
12 try and help you craft any kind of trial plan,  
13 that you and your adversary thinks is going to  
14 lead to a more efficient and quicker resolution of  
15 the case. One thing we always want to remind  
16 people of, though, is if you are the plaintiff,  
17 remember you have a burden of proof, and the  
18 burden of proof does not lesson when you're  
19 involved in an ACR case. So, you still have to  
20 have the right evidence, and the evidence that  
21 will allow you to bear your burden of proof.

22 The previous two slides, that I jumped

1 through, basically, just covered our staffing  
2 updates, and, again, I mentioned earlier, we hired  
3 five attorneys, last year. They're all up and  
4 running, now, doing great work, had three more  
5 hired this year. Two of our attorneys, last year,  
6 were promoted to Judge, and we hired a third one  
7 from the outside. So, there were three Judge  
8 additions to the staff, last year, and two more,  
9 just this week.

10 So, hopefully, the additional staff, and  
11 the -- on this slide, the additional inhouse help,  
12 that we are grabbing, will help us continue to  
13 catch up on the trial work and the appeal work,  
14 that we've gotten. So, we have resumed  
15 interlocutory attorney training details, by  
16 bringing examining attorneys over from Trademarks,  
17 to learn the job of the interlocutory attorney.  
18 That gives us a group of potential applicants for  
19 the attorney position in the future. We weren't  
20 able to do that, for a number of years, as  
21 Trademarks was working through their tremendous  
22 increases in filings, but we're able to that

1       again, now, and we have a full-time law student,  
2       extern, on board.

3               So, one of the things we've been doing,  
4       recently, is -- we've had our Expedited  
5       Cancellation Pilot Program going. It's almost two  
6       years, since we started that. This was started  
7       after the Office held a round table, here, on  
8       campus, to discuss the possible deployment of an  
9       expungement proceeding, or expedited cancellation  
10      proceeding, to remove marks from register, that  
11      are no longer in use. We ran this Pilot Program  
12      to kind of explore how that might work, and we  
13      found that default rates were very high, in  
14      cancellation cases, involving non-use or abandon  
15      claims. So, again, if you're a plaintiff and  
16      you're doing your due diligence, and you know that  
17      this mark, based on your investigation, is not  
18      likely to be defended, is not in use, you have a  
19      very high chance of getting a default judgement in  
20      a petition for cancellation.

21              We're going to wind down this pilot, by  
22      the end of next month, and then assess everything

1       that we learned from it, but then we are going to  
2       pivot, and we are going to focus on a couple of  
3       new initiatives, and those will be a continuing  
4       hard cell of ACR, to all the parties, who are  
5       involved in our trial cases, and some of you may  
6       have experienced the hard cell, if you've been  
7       involved in trial cases, with some of our  
8       interlocutory attorneys. Some are more active  
9       cases managers, than others. The interlocutory  
10      attorneys are given a lot of discretion,  
11      professional discretion, in how they manage the  
12      cases on their docket, and some of them believe  
13      that the best way to manage them is to really push  
14      the parties towards ACR and the use of  
15      stipulations.

16                 We may accelerate that, or attempt to  
17      accelerate that, by we -- well, we will. We --  
18      it's not may -- we will do this. We're going to  
19      update all the information, on ACR Options, on our  
20      website, and we're going to make it all much more  
21      accessible. So, look for improvements in our  
22      website, later in the year, with new and,

1 hopefully, more accessible forms of information,  
2 on ACR, and we will, also, explore the possibility  
3 of deploying a pre-trial conference pilot, where  
4 we will attempt to identify cases that have either  
5 gone off the rails, or have involved a lot of  
6 motion practice, and look like, at trial, they  
7 might be very involved and complicated, and,  
8 therefore, we will try to divert them, into a  
9 pretrial conference, where we really focus the  
10 parties attention on what they need to do at  
11 trial, and, the last thing, I won't run through  
12 the few remaining slides. The last thing I wanted  
13 to bring you up to date on is the Standard  
14 Protective Order. We've received comments from  
15 TPAC, which we're very thankful for, and from  
16 other customers and stakeholders, about possible  
17 revisions to the Standard Protected Order. We've  
18 report on that, here, before. We just issued the  
19 revised Standard Protective Order, this week. So,  
20 it's up on our website, if you want to take a look  
21 at it. Basically, the changes are clarifying  
22 areas, where our stakeholders identified a need

1 for clarification, and a need to reduce ambiguity,  
2 but we will always take suggestions for  
3 improvement of the Standard Protective Order, and  
4 the parties are always free to agree to supplement  
5 it or supplant it with an order of their own  
6 agreement, so.

7 I'm not sure if we're on schedule or off  
8 schedule, because of the change in schedule, but  
9 I'm done. Thank you. I'm willing to take any  
10 questions.

11 CHAIRWOMAN ESCOBAR: Thank you very  
12 much, Judge Rogers. Do we have any questions,  
13 from TPAC? No? Okay, well, thank you so much.  
14 We're scheduled to take a break, but I wanted to  
15 check with Director Ritchie. Can you accommodate  
16 that, or do you want to delay the break, and go  
17 ahead?

18 DIRECTOR RITCHIE: Whatever you  
19 recommend.

20 CHAIRWOMAN ESCOBAR: Okay, well, why  
21 don't we -- why don't we do that. We'll take a  
22 10-minute break, and we'll be back at 10:26.

1 Thank you.

2 (Recess)

3 CHAIRWOMAN ESCOBAR: So, I think we  
4 should get started soon. I want to thank Branden  
5 Ritchie and, also, Jay Hoffman, for being flexible  
6 in your scheduling. Next up is Branden Ritchie,  
7 who's the Director of the Office of Governmental  
8 Affairs and Oversight. Take it away.

9 DIRECTOR RITCHIE: All right. Well,  
10 thanks for having us today. I have Kim Alton, the  
11 Deputy Director of OGA, here with me, and just  
12 wanted to chat with you about what's happened  
13 since we last met, and I don't know if there are  
14 some new faces here. By way of background, Kim  
15 and I both have worked on the Hill, quite a bit,  
16 and, for myself, I was there for the past 16 and a  
17 half years, until 2019, when I came back to the  
18 USPTO, and I was an Examining Attorney on -- a  
19 Trademark Examiner, for three years, about 20  
20 years ago, before I went to the Hill. So, I have  
21 some experience on these Trademark issues, and we  
22 were just talking about cases at the TTAB, and all

1       that stuff, but -- so, it's good to be back, and  
2       it's good to be here, this morning.

3                 So, first, I guess, what we'll do is go  
4       through some of the -- I'll give a quick overview.  
5       I think we have 10 minutes. So, I'll make this  
6       quick, but, this Congress, there's been a lot of  
7       activity on IP Issues, and it wasn't, necessarily,  
8       surprising because the Senate IP -- the Senate  
9       Judiciary Committee created an IP Sub-committee  
10      again, and, when that happens, there's double the  
11      committees focused on IP, and, sometimes, double  
12      the hearings, double the fund, and everything  
13      else, double the bills, and, so, we had a -- what  
14      we think is a record number of hearing with USPTO  
15      witnesses, last year, five total, where they,  
16      actually, provided testimony, and they were all  
17      very positive. They were all very kind of  
18      collaborative.

19                Congress is -- appreciates the work that  
20      the PTO has done, and we've seen this as a  
21      partnership, to develop and grow. So, it's been  
22      very good. Also, when you have times of

1 difficulty, with politics, and, when that is  
2 heightened, there -- sometimes, it's hard to work  
3 on certain bills, but IP Bills don't break down  
4 that way. They don't break down by party lines,  
5 and, so, there are a few types of bills, types of  
6 issue areas, where there's still kind of a fertile  
7 ground to go forward, and, so, while some  
8 legislation is likely to stall and start  
9 stagnating, in Congress, I think, the life of IP  
10 Legislation Initiatives goes a little longer, even  
11 in this year, with the Presidential Election, and  
12 all of the House Members up for re-election, and a  
13 third of the Senators, I think, even with that, we  
14 can still get things done, a little further into  
15 the year, than some of the other more hot button  
16 issues. So, that's opportunities, as we see them.  
17 So, that's good. So, we'll talk about some of the  
18 hearings that happened since last we met.

19           We had -- in the House, we had the  
20 hearing on the PTAB and the Appointments Clause.  
21 That's relevant because everyone is looking hard  
22 at any impact that may have on the TTAB and for

1 this audience, but the focus has definitely been  
2 on the PTAB, and the hearing featured a number of  
3 witnesses that had ideas for how to fix the  
4 Arthrex Decision, everything from, just simply,  
5 clarifying that the Director already has  
6 authority, sufficient authority, supervising the  
7 PTAB Judges, all the way to appointing a  
8 presidentially appointed PTAB Chief Judge or  
9 Judges, to kind of run the PTAB. So, it doesn't  
10 seem like they've come to any conclusions on  
11 what's the best way forward, in the Congress, but  
12 they're considering that.

13 We haven't seen any draft text or  
14 anything, but that's an issue that's getting  
15 worked on, right now, and that hearing was the  
16 beginning of that process for the House. The  
17 other one was the Senate had -- The Senate  
18 Judiciary IP Sub- committee, that new committee  
19 that -- new sub-committee, that they formed, did a  
20 hearing that was similar to the House Hearing, on  
21 Fraudulent Trademark Filings, focusing on overseas  
22 filings. Earlier in 2019, Commissioner Dennison

1 testified before the House, and she did an  
2 excellent job, and then, in the Senate, they did a  
3 hearing to follow up on that, and to establish  
4 process in the Senate, for that issue, and  
5 Commissioner Dennison provided testimony for that  
6 one, but did not -- was not asked come and appear  
7 before the committee. So, we were able to get  
8 some thoughts across, on that.

9 Third, we had, most recently, this past  
10 month, in January, there was a House Small  
11 Business Committee hearing on our Success Act  
12 Report, and that report, as you may know, was  
13 required by Congress, for the PTO to do a study of  
14 Publicly Available Information, on the rates of  
15 Patentee and Entrepreneurship, by women,  
16 minorities, and veterans. So, the PTO did that.  
17 Andy Toole, the Chief Economist, led that effort,  
18 and he -- he and his team surveyed all the  
19 publicly available information, compiled the  
20 report, and it was submitted to Congress, on time,  
21 on October 31st, and, in a nutshell, what the PTO  
22 found was that there was not a lot of information

1 out there. There just isn't a lot of information  
2 out there, on this topic, among scholarly  
3 research, and things like that, so, and the best  
4 information out there was the PTO's report, that  
5 they did on the Participation of Women in  
6 Patenting, which was in last February, and, so,  
7 that's pretty much the best piece out there, on  
8 this, and then the report goes on to say that we  
9 need more information, to be able to measure that,  
10 measure the rates, and, so, I had recommendations,  
11 too. We'll talk about that in just a second.

12           So -- but that hearing, in the Small  
13 Business Committee, was very good. We talked with  
14 them, before the hearing. We provided information  
15 to them, after the hearing, about the patenting  
16 process because that's not typically their  
17 jurisdiction, and we've developed a good  
18 partnership with that committee, which is great.

19           So, Legislative Activity in the 116th  
20 Congress. So, here's some hot issues, that are  
21 going on right now. The biggest is the effort in  
22 the House, with respect to the Fraudulent

1 Trademark and False Use Claims Issue. So, that's  
2 what we eluded to earlier. These hearings  
3 produced big momentum, on the part of Congress, to  
4 want to tackle this problem, and the House has  
5 done -- has convened two round tables, where they  
6 brought stakeholders in, shared confidentially  
7 drafts, and asked for feedback, and it's  
8 anticipated that they will introduce a bill, based  
9 on feedback. They are still awaiting, toward the  
10 end of this month, that they would introduce a  
11 bill, potentially as early as the beginning of  
12 March.

13                   So, we're watching that. We're  
14 providing technical assistance and feedback on  
15 that, and it's a -- it's interesting, and, so, a  
16 lot of what the bill does, it -- what the draft  
17 would do, and we don't know if these provisions  
18 will be in there, at the end of the day, but they  
19 establish processes for challenging, for  
20 petitioning, for expungement, of registration --  
21 of a registration, if it was never, ever used in  
22 Commerce, or to ask for a re-examination, if it

1       wasn't used by the relevant date, that was  
2       required.

3                 It, also, currently, includes a creation  
4       of presumption, of -- it's, basically, the -- oops  
5       -- yeah, irreparable harm fix. There's a  
6       presumption of irreparable harm, if infringement  
7       is shown. So, it kind of fixes the eBay case,  
8       with respect to Trademarks. So, that's just in a  
9       nutshell. There are other provisions, too, but  
10      it's a big topic, and that's the big thing, that  
11      the House is working on, in the Trademark Space,  
12      right now.

13                I'm just going to mention a couple of  
14      these, just because we're pressed for time, here.  
15      The Trademark Licensing Protection Act, that's the  
16      bill that would clarify that, because a Trademark  
17      owner have to exercise control over their marks,  
18      that that wouldn't constitute a sufficient control  
19      -- that it would not constitute sufficient  
20      control, to establish a franchise or a franchisee  
21      relationship. We've heard from stakeholders, and  
22      in the Trademark Space, that that is -- that they

1       oppose that, especially as it -- if it is included  
2       in the Latham Act, and we've been talking with  
3       Congress about those concerns. It doesn't -- it  
4       hasn't moved yet. It has been introduced. There  
5       is some interest, but, I think, the Hill is also  
6       aware of the stakeholder issues with it, and, so,  
7       we're monitoring that closely.

8                   The FLAG Act, the FLAG Act was  
9       originally going to be moved. It kind of has  
10      stagnated. It remains to be seen if that is going  
11      to come back up, again. At this point, it doesn't  
12      look like it's coming back up, in the near future,  
13      and then there's Brunetti, so, you know, the  
14      Brunetti Case happened. The Supreme Court struck  
15      down the refusal, rational, and the statute.  
16      There hasn't been a bill that's been, to our  
17      knowledge, that's been drafted to address that.  
18      We did brief folks on the Hill, about the issue,  
19      but, so far, we haven't seen drafts, and it's  
20      complicated because of the Free Speech Issues, and  
21      we'll see. We'll see if they take that up.

22                   So, we're actively monitoring these

1 efforts, and it's exciting time for IP because  
2 there's so much stuff going on, on the Hill. I  
3 think there's more bills being discussed, now, on  
4 IP, than in the past six years, I'd say, and  
5 they're all happening at one time, which is pretty  
6 interesting. So, as mentioned before, we -- the  
7 PTO submitted the Success Act Study. It was  
8 widely praised, and we submitted recommendations,  
9 Legislative Recommendations, for Congress to  
10 consider, and we talked about some initiatives,  
11 that the PTO is going to work on, and the list of  
12 initiatives is in your materials, and they're  
13 listed there, as well.

14           One of the big things, that we're doing,  
15 is establishing a Counsel on Innovation  
16 Expansiveness -- expansion, and to develop a  
17 National Strategy, to help promote  
18 underrepresented groups in the Patentee and  
19 Entrepreneurial Process. So, you'll see more  
20 about that, and it's a very serious effort, that  
21 the PTO is doing, and more to come, but I just  
22 wanted to make sure you were aware of that, when

1       you see it, and when you hear about it. So, what  
2       we always say is that the PTO's efforts to reach  
3       groups and encourage innovation, by  
4       underrepresented groups, did not start with the  
5       Success Act. It did not end with Success Act.

6                 We have numerous programs that we do, to  
7       do outreach to all communities, and have had those  
8       for years. We did our Gender Study, in February  
9       of 2019, the Success Act in October 31, 2019, and,  
10      as you can see, we have very healthy programs, and  
11      we have plans to expand those, even further, and  
12      it's really important that we have diversity in  
13      innovation, to make sure that there's rich ideas,  
14      and America continues to be the leader in  
15      innovation.

16                So, some of the other things that we're  
17      working on, we have a few priorities that we're  
18      working on, right now, and the Trademark  
19      Legislative Package, and watching that. Any fixes  
20      to the Arthrex Decision, we're closely monitoring  
21      those. In the Patent World, they're working on  
22      Section 101 Reform, and we're watching that, as

1 well, and working with Congress. We're working  
2 elevating the rank of the IP Attachés because they  
3 do great work in all these countries, and they are  
4 often excluded from meetings because of -- the  
5 rank that they have is too low, whereas, Attachés,  
6 that are from other countries, that are similarly  
7 situated, they have a rank that is sufficient to  
8 get them in the meetings, and, so, so, we're  
9 working on that with other Government Agencies,  
10 and others. They do great work, and then the  
11 other big thing that we work on, and will be in  
12 some of our priorities, is Continuity of Service,  
13 for the PTO, and that, basically, involves making  
14 sure we continue to have access to our Fee  
15 Collections. Congress has been appropriating.  
16 I'm not going to get into that, too much, because  
17 I know that Jay will talk about that, but there's  
18 the deal that was struck many years ago, where we  
19 get, basically, the appropriation of the fees we  
20 collect. We just want to -- we're very  
21 appreciative of that. We want to make sure that  
22 continues, and then we want to clarify the

1 authority for the Director to suspend illegal  
2 deadlines, in cases of power outages and weather  
3 emergencies, to make sure that we can handle and  
4 be responsive to the needs of the stakeholders and  
5 the customers, when those kinds of things happen,  
6 and provide clear guidance, and then, finally,  
7 well, not finally, but the other one that I'll  
8 list here, is the TEAP Program, so, the Telework  
9 Enhancement Act Pilot Program.

10           That's a really successful program.  
11 It's very unique for the PTO. In 2010, there was  
12 a statute that passed, that created -- it was a  
13 kind of two columns. One was a 10- slot possible  
14 telework program, and, so, any agency, that wanted  
15 to take part in that, could apply and try to take  
16 part in that, but it was limited to 10 slots.  
17 That was discretionary, and then, for the PTO, it  
18 was mandatory. So, the statute required that the  
19 PTO set up a pilot program, to allow employees to  
20 work in remote locations, change their duty  
21 stations, and volunteer for that program, in  
22 exchange for, you know, the PTO asking that they

1 pay any travel expenses, if they have to come  
2 back.

3           It's been a great benefit to the  
4 employees, and we have stories of employees, who  
5 have been able to stay in their hometowns, take  
6 care of parents, grandparents, be involved in  
7 their communities, and they say this is why --  
8 this is one of the reasons why we stay, and we've  
9 worked with jay, and his team, and their support  
10 from the employees, and the unions, and the  
11 management, to make this permanent, to lock in the  
12 benefits. It saves over a hundred million dollars  
13 a year, in real estate costs, travel  
14 reimbursements, attrition, costs that are -- that  
15 don't have to be paid because people stay, and  
16 examiners are more productive, when they're on  
17 these programs.

18           So, it seems like a win, win, win. So,  
19 we've been talking Congress, and other Government  
20 Agencies, about that, and just to see if we can  
21 get that made permanent, so we can lock in those  
22 benefits. So, with that, that kind of ends our

1 presentation, and we're happy to answer any  
2 questions you may have.

3 CHAIRWOMAN ESCOBAR: Any questions from  
4 TPAC? Thank you very much --

5 DIRECTOR RITCHIE: All right.

6 CHAIRWOMAN ESCOBAR: -- Director  
7 Ritchie. I have a question. I thought, maybe,  
8 folks might be curious about how the office is  
9 handling applications that have come in, in the  
10 light of Brunetti?

11 COMMISSIONER HERSHKOWITZ: All right,  
12 thank you. Thanks, it's always an interesting  
13 question, especially when you look at some of the  
14 marks. We're handling them in the normal course  
15 of business. So, if they've been suspended, as  
16 they come out of suspension, the examiners are  
17 looking at them again, and, obviously, any other  
18 refusals that should have been made, or were made,  
19 we're handling.

20 So, for example, one thing you might  
21 think about is some common words that might be  
22 used ubiquitously, that the way they're being

1 used, whether they're on the front of a tee shirt,  
2 or a poster, or something, whether the question  
3 has to be asked, does this really act as a  
4 Trademark. So, functionality is definitely looked  
5 at, and the other issue is can there be legal use  
6 in Commerce of a Mark? So, this would be  
7 extremely rare, and I hope it will never happen,  
8 but if we got a mark that violated, you know,  
9 obscenity laws, for example, contained child  
10 pornography, or something like that, we,  
11 obviously, would have another reason for refusing  
12 it, as unable to be lawfully used in Commerce,  
13 but, other than that, we're registering as  
14 appropriate.

15 CHAIRWOMAN ESCOBAR: Thank you very  
16 much, Meryl. Up next, we have Jay Hoffman, our  
17 Chief Financial Officer, and his Deputy Sean  
18 Mildrew. Thank you so much for your flexibility,  
19 on time.

20 MR. HOFFMAN: Well, good morning, and  
21 thank you. All right, I'm going to just dive  
22 right in, and try to get us back on schedule here,

1 for you. We have a fairly short presentation  
2 today, to provide you with an update on our  
3 financing situation. I'm going to give you a quick  
4 briefing on where we're at, at this point in the  
5 fiscal year, 2020, also, provide you a brief  
6 recap, of where we are going, in FY-2021 Budget,  
7 which will be submitted on Monday, and then an  
8 update on the Trademark Fee Rulemaking.

9           Next slide, please. The USPTO began the  
10 year, as all Federal Agencies did, funded by two  
11 continuing resolutions. Those continuing  
12 resolutions resolved themselves on December 20th.  
13 We were provided a full year of appropriations of  
14 \$3.45 billion. Of this amount, we were  
15 appropriated about \$341 million in authority, for  
16 Trademark Fees. The bill provided the USPTO two  
17 key pieces of authority and or direction.

18           One was the authority to continue to use  
19 the Patent and Trademark Fee Reserve Fund, and  
20 I'll talk about more -- about that in a moment,  
21 and also directed us to provide \$2 million to the  
22 Office of Inspected General, for Audit

1 Investigation Support. For those of you who are  
2 not familiar with the Patent and Trademark Fee  
3 Reserve Fund, that is a fund that was established  
4 to collect and hold revenues, that are in excess  
5 of amounts appropriated, and that's what Branden  
6 was eluding to you, just a moment ago. That's a  
7 key mitigant, in how we, essentially, replenish  
8 reserve funds to deal with cash flow asymmetries,  
9 either by workload demand or a lapse in  
10 appropriations, or whatever those maybe.

11 The four-year bill provides Federal  
12 Employees with a 2.6 percent pay raise. For  
13 employees that are in the Washington D.C. area, a  
14 lot of those also received a locality adjustment,  
15 and that equated to a -- an aggregate pay raise of  
16 3.52 percent. I would just note that, for policy  
17 reasons, that was not included in our budget  
18 formulation, in FY-2020. However, it was  
19 identified as a key risk scenario, and we were  
20 able to fund that pay raise in the course of  
21 putting our Spend Plan together. So, there's no  
22 impact to operations, our ability to address

1 workload.

2 I would note that, for the first time,  
3 in a number of years, the Agency did collect fees  
4 above the appropriated level. So, last year, for  
5 Trademarks, that was about 4 million dollars. In  
6 order to access those funds out of the Patent and  
7 Trademark Fee Reserve Fund, we did need to seek  
8 Congressional Approval, and that Congressional  
9 Approval was provided, in early January. So,  
10 those funds have been transferred, and are  
11 available to the Agency. Next slide, please.

12 This slide gives you a sense of where  
13 we're at, in terms of fee collections,  
14 year-to-date. The top table shows a  
15 year-over-year comparison. As you can see, in  
16 FY-2020, the plan is to collect \$368 million in  
17 fees. This plan level of collection is about 7.2  
18 percent higher than FY-2019, at \$343 million in  
19 fees. When you look at the table below, that is a  
20 quarter-to-quarter comparison. So, our FY-20  
21 collections, through the end of December, were  
22 almost \$81 million, which was about nine tenths of

1 a present less than what we had collected in  
2 FY-2019, so, all things considered, about the  
3 same, within one percent of where we were the  
4 prior year.

5 I would, however, note that our  
6 year-to-date straight-line projection has been  
7 updated recently, to reflect our latest  
8 assumptions, which includes changes to the  
9 Trademark Fee Collections, and, relative to that  
10 plan, we are about \$8.3 million below where we  
11 would expect to be on a straight-line basis. Some  
12 of the things that are underlying those numbers,  
13 we're 9.5 percent below plan, and application  
14 filing fees, about 4.6 million, 16.6 percent below  
15 plan, in maintaining exclusive rights, \$3.6  
16 million, roughly, and, at this time last year,  
17 application filing fees were 7.2 percent below  
18 plan, and maintaining an exclusive right fees were  
19 4.7 percent below plan.

20 I would note that we're not overly  
21 concerned about where we're at, at this point, and  
22 the reason is the numbers I'm providing haven't

1       been seasonally adjusted, and the seasonal  
2       adjustments, for first quarter, in terms of trade-  
3       rock revenue fees, have historically been a little  
4       bit lower than other quarters. So, we're looking  
5       at that, and we'll have a much better sense of  
6       where we are, second and third quarter. So,  
7       really, no cause for concern, at this time. Next  
8       slide, please.

9               Our FY-2020 spending, I just wanted to  
10       provide a quick overview here. We are -- not all  
11       of these numbers are on the chart, but I think  
12       they're important. We are currently on pace to  
13       collect \$3.769 billion, through FY-202, through  
14       September 30th, and that is a net increase of \$320  
15       million, over the appropriated level. Of that  
16       amount, it's about \$20 some odd million, give or  
17       take, for Trademarks. The reason that's important  
18       is those accelerated amounts assume that the new  
19       fee rules go into effect, later this year, and we  
20       actually expect a bump up, in our collections.

21               When that happens, we'll need to go  
22       through the same process of working with Congress,

1 to access any excess fees that were collected,  
2 above the appropriation, in the Patent Trademark  
3 Fee Reserve Fund, and to get access to those in  
4 the first quarter, of FY-2021. This is important  
5 because we -- if the fee rule goes into effect,  
6 before the end of the year, we tend to see an  
7 acceleration of fee collections. Those are fee  
8 collections that, otherwise, would have happened  
9 in the first quarter. So, it's not really as  
10 though we've collected more money. It's just that  
11 we collected money faster, and, so, we'll have to  
12 figure out that -- we'll have to -- excuse me --  
13 resolve that asymmetry and cash flow collections,  
14 through the Reserve Fund.

15 I would note, in this table, it does  
16 show, that we project to dip into our operating  
17 reserve, for Trademarks, by about \$55 million.  
18 The reason for that is it's predicated on planned  
19 IT Expenditures. However, we will remain at the  
20 \$75 million minimum threshold for the Trademark  
21 Reserve Fund, the way the plan is put together.  
22 So, I think we'll be okay, financially, there.

1           Let's me see if there's any other points  
2           I wanted to make, here, real quick. I guess I  
3           would point out that, for those of you who are  
4           really tracking every number, these are our most  
5           current estimates, and they're slightly different  
6           than estimates, that you may have seen in the  
7           prior budget submission. Next slide.

8           The '21 budget, okay, so, the FY-2021  
9           budget request will be submitted to Congress on  
10          February 10th, which is Monday. Normally, the  
11          President's requests goes forward the first Monday  
12          in February. So, we're about a week behind, but  
13          the whole Government's a week behind. It's not  
14          just us. We expect that an appropriation hearings  
15          will be held in the House and Senate  
16          Sub-committees, on the '20-'21 budget throughout  
17          the spring, and, in fact, we've had some initial  
18          outreach from our Congressional Sub-committees  
19          already, and we're going to be going up and  
20          briefing them, as early as next week, on some of  
21          the inputs of the budget. So, I would want to  
22          thank you, for taking a look at the budget, and

1 for providing any feedback. That was incredibly  
2 helpful. Next slide, please.

3           Lastly, I've alluded to this, in some of  
4 my prior talkers, as you know, there's a Fee Rule,  
5 making its way through the approval process.  
6 USPTO is in the process of drafting and reviewing  
7 a Notice of Proposed Rulemaking, to set and adjust  
8 the Trademark Related Fees, with the benefit of  
9 the TPAC Fee Setting Report. The Agency expects  
10 to have the Notice of Proposed Rulemaking  
11 published, in the Federal Register, for public  
12 comment, sometime this spring, and, following  
13 consideration of those public comments, the PTO  
14 plans to release a final rule, adjusting Trademark  
15 related fees, hopefully, in late summer of 2020.

16           I would just note that the approval  
17 process, for that, isn't all internal either.  
18 There's other players, in Commence and L&B, that  
19 will be weighting in on that. So, that concludes  
20 my presentation. This was my first TPAC Meeting.  
21 So, thank you, very much for inviting me. I look  
22 forward to working with all of you, in the months

1 and years ahead. So, if you have any questions,  
2 I'd be happy to try and answer them.

3 CHAIRWOMAN ESCOBAR: Thank you very  
4 much, and I wanted to welcome you, this being your  
5 first meeting with us, and we look forward to  
6 collaborating with you. Do we have any questions  
7 from TPAC? No? Okay, thanks so much. Last, but  
8 not least, definitely, is Jamie Holcombe, our CIO,  
9 and Eunice Wang, who, I believe, is attending your  
10 first TPAC Meeting, as well. Is that correct,  
11 Eunice? You're taking over for Rob Harris, so,  
12 welcome.

13 MS. WANG: Thank you.

14 MR. HOLCOMBE: Good morning, all. We  
15 have a lot of good things to report with  
16 Trademarks. I would like to say that the overall  
17 state of IT, within the PTO, is very strong. I've  
18 spent the last year stabilizing the base, and 26  
19 of our critical systems are now stabilized. We're  
20 looking for other systems, now, to stabilize, and  
21 we'll continue with our vulnerability assessments,  
22 and ensuring that we're plugging all the holes for

1 cyber security. As well as that goes, Eunice will  
2 talk a lot about stabilization, as well as  
3 modernization. We have a good plan ahead, and I'm  
4 very optimistic about the future.

5 MS. WANG: Thank you very much. My name  
6 is Eunice Wang, and thank you for giving me the  
7 opportunity to speak about our progress that we've  
8 been making for the Trademarks and TTAB programs.

9 Since we last met in November, we've  
10 been busy doing different updates and supporting  
11 the stabilization and modernization effort. We've  
12 been making system updates for the Mandatory  
13 Electronic Filing, which will be in effect next  
14 week. We've been making system updates to support  
15 the requirement of the email addresses, making the  
16 domicile address hidden so it's not available for  
17 public view, and other system changes, such as the  
18 form updates.

19 We've also been utilizing Artificial  
20 Intelligence Tools to improve the efficiency of  
21 our Examining Attorneys, and to also make these  
22 tools available for the public. We've been

1 testing Artificial Intelligence Solutions for  
2 image search capabilities, and for the  
3 Identification and Classification of Goods and  
4 Services, and through our testing, we wanted to  
5 look for additional tools and capabilities that  
6 are available in the market, and so, we've been  
7 conducting market research for these capabilities.

8 We released an RFI back in December. We  
9 received responses in late January, and we're now  
10 evaluating those responses, to see how we can  
11 apply those into our future IT Solutions. We are  
12 also testing a solution for Specimen Search,  
13 taking a COTS Tool, a Commercial Off the Shelf  
14 Tool, that we've purchased, and implementing it in  
15 our test environment. We've been testing images  
16 and getting results for it, and it's been  
17 promising, so far.

18 We are also continuing our efforts to  
19 stabilize our Trademark and TTAB systems. We've  
20 been doing server upgrades, to make a more stable  
21 environment, and ensuring that our systems are  
22 continually available. We've also deployed, back

1 in December, changes to TSDR, the Trademark Status  
2 and Document Retrieval System, to support MEF. In  
3 this change, we made the domicile address private,  
4 and we've also stood up agile pilot teams to help  
5 us focus on refining the team structure and  
6 processes, which are to be used for our future IT  
7 efforts. Through this, we've been able to have  
8 lessons learned, and apply them quickly into our  
9 team. Switching over to the next slide, we  
10 continue on our development for our future IT  
11 Solution. We're taking it from a three-prong  
12 approach, which is the Stabilization,  
13 Modernization, and Governance.

14 With stabilization, we had a vendor come  
15 in and do an analysis of all of our USPTO Systems.  
16 Nine Trademark Systems were identified as higher  
17 on the risk and business criticality, and so, we  
18 are addressing those first, and we are also doing  
19 Modernization. While we are stabilizing our  
20 existing systems, we are working on our new  
21 Trademark Systems, but with that, if there are any  
22 changes we need to apply to our Legacy Systems,

1       such as with MEF, the Mandatory Electronic Filing,  
2       we will do so. With the Governance, we want to  
3       ensure that we are applying our lessons learned.  
4       We are also redefining our Software Development  
5       Life Cycle, so that we can provide higher business  
6       value, and to be able to deliver quickly to our  
7       customers. So, I guess with that, are there any  
8       questions?

9                   CHAIRWOMAN ESCOBAR: Do we have any  
10       questions from TPAC? Okay, very quiet morning.  
11       We're rolling right along. In fact, we are done  
12       with our scheduled agenda because Deputy Director  
13       Peter came and spoke with us, earlier in the day.  
14       So, I think it's time to ask if there are any  
15       questions from the audience in the room. Okay.  
16       Why don't -- do you want to -- closest to the  
17       table. Come find a microphone, and let us know  
18       who you are, and who you're with.

19                   MS KINSON: Oh, okay. Hello, my name is  
20       Helen Kinson, and I do Print on Demands, on Merge  
21       and other platforms. So, I'm not with any bigger  
22       company, but there's a lot of people, throughout

1 the United States, and throughout the world, that  
2 do Print on Demand, and it's a very fast- growing  
3 industry, and it's changing tremendously, Class  
4 25. So, I know, this year, there's been a  
5 tremendous amount of increase in Trademark  
6 Applications, as well as in letters of protest,  
7 and it's something that is going to continue to  
8 snowball and grow, very, very, quickly. So, I  
9 don't know if there is any plan in place, to be  
10 able to handle just the shear increase in volume,  
11 in both of those?

12 COMMISSIONER HERSHKOWITZ: So, I'll take  
13 that. It's nice to meet you, and thank you for  
14 coming.

15 MS KINSON: Thank you.

16 COMMISSIONER HERSHKOWITZ: We haven't,  
17 necessarily, seen a difference in the growth, then  
18 from past years. We do have increased filings.  
19 We handle over 600,000 filings a year. So, we're  
20 fine. We're good. We do forecasting every year.  
21 We have great economists on staff, and we are able  
22 to hire, to keep up with demand.

1 MS KINSON: Okay, thank you.

2 COMMISSIONER HERSHKOWITZ: You're  
3 welcome.

4 CHAIRWOMAN ESCOBAR: Thank you, for your  
5 question. I believe we have another one in the  
6 audience. Allison, would you like to -- can you  
7 come up to the microphone? Thank you. Introduce  
8 yourself, for those of us who don't have the  
9 pleasure of knowing you.

10 MS. RICKETTS: Thanks. My name is  
11 Allison Ricketts, and I'm speaking, this morning,  
12 on my own behalf, and not on behalf of my firm.  
13 It just became a lot more dangerous to be a  
14 Trademark Attorney, in the United States. In  
15 order to obtain a filing date, for an application,  
16 the new rules add a requirement for an email  
17 address, for the applicant, and the regulations  
18 use two formulations for that; 2.21-A says the  
19 application must state, quote, the name, address,  
20 and email address of each applicant, and 2.23-B  
21 says that applicants, registrants, and parties,  
22 who are proceeding, must provide and maintain a

1 valid email address for correspondence.

2 So, I wrote to the TM Policy email box,  
3 to ask if the quote, unquote, email address, for  
4 each applicant, is the same as a valid email  
5 address for correspondence? Since 2.21- A-1 is a  
6 filing date requirement, I said I hoped it would  
7 be interpreted as a valid email address, at which  
8 the applicant can reliably receive correspondence.  
9 Otherwise, applications will risk losing their  
10 filing date, and trademark priority date, if the  
11 email address is interpreted as requiring  
12 something more than this.

13 Yesterday, the USPTO issued an exam  
14 guide, that says that, quote, any email address  
15 that can be used to directly contact the  
16 applicant, registrant, or party will be  
17 acceptable, but it further defined this as, quote,  
18 an address that is accessible to, and regularly  
19 reviewed by the applicant. It goes on to identify  
20 certain categories, the email address that are  
21 unacceptable. Here is why this has made it a lot  
22 more dangerous, to be a Trademark Attorney, in the

1 United States.

2 Filing a document with the Trademark  
3 Office subjects a Trademark Attorney to sanctions  
4 and disciplinary action, if the Trademark  
5 Attorney, knowingly and willfully, makes a false  
6 statement. So, let's say, a U.S. Attorney awakens  
7 one morning, to an email from a foreign law firm,  
8 that reads as follows:

9 Good news. Your pitch to take over the  
10 portfolio of Major Worldwide Brand was successful.  
11 They're going to transfer their U.S. Portfolio to  
12 you. First order of business is to file this  
13 Trademark Application, that has a convention  
14 priority deadline, today. Their big competitor  
15 filed a similar mark, last week. So, we have to  
16 get ahead of them. The Chief Trademark Counsel,  
17 client, and I just bordered the same flight to  
18 Singapore for INTA, and they're about to close the  
19 door.

20 She'll be the one to sign the  
21 application, but, since we won't be available for  
22 the next 15 hours, while we're in the air, please,

1 file unsigned. The particulars of the application  
2 are attached. Naturally, the Foreign Associates  
3 instructions do not include the email address of  
4 the applicant, since no other jurisdiction in the  
5 world requires this information, in order to file  
6 a Trademark Application.

7           Sadly, for the Trademark Attorney, she  
8 cannot file the application. The TEAS Form will  
9 not allow the application to be submitted, unless  
10 an email address is typed into the email field.  
11 The Examination Guide states that unacceptable  
12 email addresses are those of outside counsel, a  
13 foreign law firm, or an email address that the  
14 applicant does not have direct access to monitor.

15           So, the Trademark Attorney, faces the  
16 following two choices. Number one, she does not  
17 file the application, for a lack of an email  
18 address. The applicant loses its convention  
19 priority filing date. The Trademark Attorney may  
20 be subject to a malpractice claim, or, number two,  
21 she inserts an email address, that permits the  
22 form to be submitted, but which she either knows

1 is an unacceptable email address, per the Exam  
2 Guide, such as the Foreign Law Firm email address,  
3 or as to which she has no information, one way or  
4 the other, about whether the email address is  
5 accessible, and regularly reviewed by the  
6 applicant.

7 By doing so, she has just violated the  
8 rule, that says filing any document constitutes a  
9 certification, under section 1118-B, that all  
10 statements made of the party's own knowledge are  
11 true and all statements made on information and  
12 belief are believed to be true. Violating this  
13 rule not only jeopardizes the validity of the  
14 application, it may result in sanctions and  
15 disciplinary action, against the practitioner.  
16 Moreover, since providing an email address is a  
17 filing date requirement, she's also created a  
18 vulnerability, for the client's claim of priority,  
19 based on its filing date.

20 If a filing date requirement was not  
21 satisfied, the applicant could be void ab initio.  
22 So, let's say the Trademark Attorney looked up a

1 website, that probably belongs to the client, but  
2 it's a large corporate conglomerate. So, it's not  
3 entirely clear if the website is operated by this  
4 particular applicant, or some related corporate  
5 entity. There was a contact us email address on  
6 the website. So, she used that, crossing her  
7 fingers, that it is an email address of the  
8 applicant, and meets the standard of being  
9 accessible to, and regularly reviewed by the  
10 applicant.

11 After a sleepless night, the next day,  
12 she is assured by the foreign law firm, that that  
13 is correct. This is good news for the applicant,  
14 since the filing date is no longer subject to  
15 challenge, but it doesn't change the fact that,  
16 when she filed the document, the attorney  
17 certified something that she did not know to be  
18 true, or have sufficient information to form a  
19 belief, as to its truthfulness.

20 What is the purpose of making the  
21 Trademark Attorney's job more dangerous? What  
22 will the USPTO do with this email address, for

1       which the Trademark Attorney risked her license,  
2       in order to avoid a malpractice claim? Nothing,  
3       the PTO will do nothing, with this email address,  
4       because it will correspond only with the Trademark  
5       Attorney.

6                   This is not an overly dramatic  
7       hypothetical. I checked one week of filings, in  
8       2019. Seven percent of applications filed, that  
9       claimed convention priority that week, were filed  
10      on the very last day of the convention priority  
11      period.

12                   My question is why are you doing this?  
13      I plead with you, to, please, at least, reconsider  
14      the requirement that the email address be a filing  
15      date requirement. I understand why you want the  
16      email address, I agree with the purpose, but  
17      you're creating an intolerable situation. Thank  
18      you.

19                   COMMISSIONER HERSHKOWITZ: Thank you,  
20      Allison. We always appreciate your feedback, and  
21      you help us think through a lot of things.

22                   MS. RICKETTS: Thank you.

1                   COMMISSIONER HERSHKOWITZ: I will say I  
2 do think email addresses are ubiquitous these  
3 days, and I do think, again, we do appreciate your  
4 comment, and we will think it through, but it does  
5 take time, sometimes, to deal with change, and we  
6 have many filing date requirements, that the  
7 public has learned to have, you know, those  
8 foreign firms know what you need, based on our  
9 published filing date requirements, and I'll -- we  
10 do hope they will learn to include email address,  
11 when they give you the information that you need  
12 for filing.

13                   MS. RICKETTS: I hope so, too. I'm sure  
14 they will. We'll certainly be trying to educate  
15 them, but this is still going to happen, what I  
16 just described.

17                   COMMISSIONER HERSHKOWITZ: The other  
18 thing I do want to say is we do have the Petition  
19 to Director available, in case you do need an  
20 exception, to a certain rule, and that's certainly  
21 always an option to file a petition.

22                   MS. RICKETTS: Is it possible to submit

1 the application, using the electronic system  
2 without an email address filled in?

3 COMMISSIONER HERSHKOWITZ: I don't think  
4 so, at the moment, but, again, the Petition to the  
5 Director Form would be available.

6 MS. RICKETTS: But you still have to  
7 fill something in and submit that to the PTO.

8 COMMISSIONER HERSHKOWITZ: I understand.  
9 We will think about it, like I said, and we will  
10 provide some response, as we go through this.

11 MS. RICKETTS: Thanks, Meryl, appreciate  
12 it.

13 CHAIRWOMAN ESCOBAR: Thank you, Allison.  
14 Do we have another? Please come up. We have a  
15 hot mike right here, next to Eunice.

16 MS. SHURSKY: Hi, my name is Julie  
17 Shursky (phonetic), and my question is on behalf  
18 of myself and my law firm, Eric M. Pelton and  
19 Associates. My question, also, deals with the  
20 applicant's email address, that's going to become  
21 requirement, but it's more so from the side of the  
22 applicant.

1           So, with these emails, they're going to  
2           be, now, public. Is there any -- like, is there  
3           anything that the PTO is going to do, or has been  
4           doing, or what's the status with the scam letters,  
5           that are being sent to the physical addresses of  
6           applicants, that -- just to provide some framework  
7           for what those are, they're letters that appear  
8           from -- they appear to look as if they're from the  
9           USPTO, or a Government Agency, that's sent to the  
10          applicant, via mail, the post office, and it says  
11          that certain documents are due, and requests  
12          money.

13                 However, these are scams and the money  
14          never actually reaches the PTO, if an applicant  
15          does submit that money, and, now, with the  
16          requirement for the email address of the  
17          applicant, it's another way for these scammers to  
18          contact the applicant, where they're likely going  
19          to paying these funds, and kind of what's the  
20          status with the PTO, with these scam letters, and  
21          what they potentially -- if they have any ideas to  
22          do with the email address?

1                   COMMISSIONER HERSHKOWITZ: Thank you for  
2                   that question. It's really a good one, and one  
3                   that we think about constantly.

4                   So, a couple of things we're doing  
5                   immediately, and then, hopefully, we will be doing  
6                   more things in the future. So, right now, the  
7                   email address of the applicant will not be easily  
8                   accessed by the public, in the sense that it won't  
9                   be -- it will be in the documents, but it won't be  
10                  in the status tab. So, we're hoping that will  
11                  help avoid some of the scamming of the addresses  
12                  out from the data base, but the other part of it,  
13                  of course, has to do with what can we hide, and  
14                  what can we -- what must be kept public.

15                  So, we're constantly looking at that. I  
16                  don't know if Jamie wants to talk a little about  
17                  our logins, and our authentication process, that  
18                  we're hoping for later, but we are actively  
19                  working with the Justice Department, against the  
20                  scammers. We are actively publishing scanned  
21                  letters that try to scam people. We have that on  
22                  our website, and we also urge Trademark Attorneys,

1 and I know they do it, to warn their clients, not  
2 to pay any money, send any letters, anything like  
3 that, without going through the lawyer.

4 MS. SHURSKY: Just before you speak,  
5 Jamie, I'm sorry. Is there an option or has it  
6 been thought about to make that not appear to  
7 anyone in the public, the email address, similar  
8 to when you're intern -- your inputting your  
9 attorney information, that number is like red, or  
10 has Xs? It doesn't actually appear. Is that a  
11 potential option to do?

12 COMMISSIONER HERSHKOWITZ: We're looking  
13 into that.

14 MS. SHURSKY: Okay.

15 MR. HOLCOMBE: I could talk all day  
16 about this, because I've been doing this for 30  
17 years. The internet came up not too far -- long  
18 ago, and the fact of the matter is there are  
19 nefarious people using it, for nefarious reasons,  
20 and, so, we encourage you to give us the contact,  
21 or the spam, so that we can stop these scams, at  
22 all times.

1                   That's the biggest thing, and if you  
2                   folks need some help in doing a cybersecurity  
3                   training for your staff, we're more than -- we'd  
4                   love to help you on that. We have those things.  
5                   Social Engineering is a big deal. If you get an  
6                   email that says press this button here, all of a  
7                   sudden, now, your computer becomes a robot for  
8                   some foreign entity, and you don't want that to  
9                   happen.

10                   You have to stop Social Engineering, you  
11                   know, where it starts, and that is getting bad  
12                   emails, and getting attachments. Don't click on  
13                   those links, if you don't know who it's from.  
14                   Don't open attachments, if you don't know who it's  
15                   from. That's just, you know, regular good  
16                   cybersecurity. As far as going in with my USPTO,  
17                   and the logins, what we're doing is phasing in a  
18                   good approach to know who's doing what, and when  
19                   they're doing it.

20                   We anticipate to have that logged, soon,  
21                   within the next year, of course, but that has not  
22                   been a role-based access platform, to this point.

1       So, we're trying to get there, and we'll get there  
2       as soon as we can, and make sure that we are very  
3       secure.

4                   CHAIRWOMAN ESCOBAR: Thank you very  
5       much, Jamie. I think we have a follow up  
6       question, from Holly Kinsen, was it?

7                   MS. KINSON: Yes.

8                   CHAIRWOMAN ESCOBAR: All right.

9                   MS KINSON: All right, this is my first  
10       meeting, so I'm nervous. The reason that I feel  
11       like there's so many increased Trademarks is  
12       because there's so many people that don't  
13       understand Trademarks, and their filing Trademarks  
14       for common phrases on shirts, and it has nothing  
15       to do with their brand, or anything like that, and  
16       the Trademarks are going through, and, so, then  
17       they're applying for another one, and there's  
18       people that have many, many Trademarks. So, I  
19       just -- I don't know if there's a way to slow it  
20       down, or prevent it, but it's just -- it's a  
21       problem that, from our point of view, it's  
22       escalating because there's just so many people,

1 that have been able to Trademark something like  
2 that.

3 CHAIRWOMAN ESCOBAR: Well, I'd like to  
4 point out just -- if an application meets the  
5 statutory requirements, and the procedural  
6 requirements, then the office is going to issue  
7 the registration. I know our examiners do a very  
8 good job at blocking marks that are not eligible  
9 for registration, either for distinctiveness, or  
10 ornamentation grounds, a variety of issues that  
11 arise, but, if the mark meets the requirements of  
12 the statute, they don't really have a choice not to  
13 process the application. Meryl, would you like  
14 add anything?

15 COMMISSIONER HERSHKOWITZ: You know,  
16 it's -- I'm not going to say we're perfect because  
17 --

18 CHAIRWOMAN ESCOBAR: Mm-hmm.

19 COMMISSIONER HERSHKOWITZ: -- there is  
20 no perfect anything. We do have a system, though,  
21 that's pretty good. It's been around for many  
22 years. If we miss something, and we register

1 something you think we shouldn't, that's what the  
2 opposition process, and the cancelation process is  
3 for, at the Trademark Trial and Appeal Board. So,  
4 there is, other avenues, the letters of protest,  
5 as well as, like I said, opposition and  
6 cancelation proceedings, and that's what they're  
7 there for --

8 CHAIRWOMAN ESCOBAR: Yeah.

9 COMMISSIONER HERSHKOWITZ: -- in case we  
10 register something we shouldn't. You may have  
11 information we don't have. The examiners handle  
12 many applications, every day, but, certainly, the  
13 statute has refusal requirements, from marks that  
14 are not functioning as Trademarks, and we do issue  
15 those refusals, regularly.

16 MS. KINSON: Yeah. Right now, letters  
17 of protest are really the only thing we have, and,  
18 so, we have been filing those, and they have been  
19 getting accepted, and trademarks have been  
20 canceled. It's just -- there's not all -- first  
21 of all, there might be a fee for those. So, then  
22 it would be a hundred dollars, each one, and, for

1       tee shirt phrases, it's just -- there's just so  
2       many, you know? It would be millions of dollars  
3       to try to oppose all of them.

4                 So, it's just something that -- I just  
5       want to make sure that everybody is aware that  
6       it's a big problem, and it's a very -- beginning  
7       of the problem. It's getting bigger and bigger,  
8       and, this year, if so many Trademarks get through,  
9       that are common phrases, people just look on  
10      Amazon, and they find a tee shirt, that's selling  
11      well, and they apply for Trademark for that  
12      phrase, and they do it for many different phrases.  
13      So, it has nothing to do with the brand. So, I  
14      just feel like, if they see how well it's going  
15      for people, a lot more people, this year, will  
16      apply for Trademarks, then last year, just because  
17      it's very economical to it. You can make a lot of  
18      money. Thanks.

19                COMMISSIONER HERSHKOWITZ: Okay. Thank  
20      you so much, for your comments.

21                CHAIRWOMAN ESCOBAR: Jen Kovalcik, you  
22      had a comment, or a question?

1                   MS. KOVALCIK: Yes, thank you. In the  
2 New Exam Guide, there is a provision, that states  
3 you can petition to have the applicant's email  
4 address redacted, in extraordinary circumstances.  
5 Could you speak to examples of what might be  
6 considered extraordinary circumstances?

7                   COMMISSIONER HERSHKOWITZ: Probably not,  
8 because its brand new, but I can imagine a person  
9 who fears for their personal safety and doesn't  
10 want any contact from someone who is harassing  
11 her.

12                   CHAIRWOMAN ESCOBAR: Any other questions  
13 from the folks in the room? Okay. You are?  
14 Sure.

15                   MS. RICKETTS: Oh, oh, up here. I know  
16 you email is ubiquitous for most of us, but it  
17 isn't -- there are actually people who don't have  
18 email. I've had two of them as clients. One of  
19 them was a well-known businessman, and he filed in  
20 his own name, but he didn't have email, and  
21 certainly didn't check it because there was not  
22 one. You sent stuff to his business, and the

1 businesspeople printed it out and made him, you  
2 know, gave him what he needed to see.

3 I have another client, right now, who --  
4 I don't know why he doesn't have email. It's sort  
5 of point of pride, but he doesn't, and, as I wrote  
6 you in an email, the other day, I don't know if  
7 you saw it, to TM Policy, you know, email is  
8 pretty quickly being on the way out. The young  
9 people do not use email. They use texting, and  
10 most commercial providers, like airlines and  
11 hotels, that send them confirmations, and boarding  
12 passes, and the people who they have to pay their  
13 bills to, and, you know, everything like that is  
14 done by text. If I have to say to one of them,  
15 you have to set up an email account, in order to  
16 file a Trademark Application, and you have to  
17 regularly review it, they'll say, okay, well, what  
18 am I going to get at it?

19 I'm going to be like, well, you're not  
20 going to get anything at it, because I'm your  
21 lawyer, but you have to have it. Okay, that  
22 person might set up an email account, but they're

1 not going to regularly review it. When you did  
2 the Notice of Proposed Rulemaking, I did suggest  
3 that you not say just email, and that, instead,  
4 you say some electronic means of communication,  
5 but you didn't adopt that suggestion, but I think  
6 that the time is coming more quickly, than you  
7 might imagine, when people actually won't  
8 standardly have email addresses. I know you can  
9 go and change it, by the regs of that time, but  
10 what am I supposed to do with those clients, who,  
11 as a point of pride, or because they're so  
12 important, don't have email? I mean, do I do a  
13 petition?

14 COMMISSIONER HERSHKOWITZ: You could try  
15 a petition. I, honestly, don't think it takes  
16 very long to set up an email address.

17 MS. RICKETTS: No, but they're not going  
18 to regularly review it. I agree, I can tell them  
19 to set one up, but --

20 COMMISSIONER HERSHKOWITZ: I don't know  
21 what to tell you, Allison. They don't have to  
22 have a Registered Trademark, either.

1                   MS. RICKETTS: Right, yes, I agree with  
2                   that. So, that'll be the option I can explain to  
3                   them, and then the other problem is, well, people  
4                   being willing to provide a personal email, or an  
5                   email that goes directly to the applicant, since  
6                   it's not going to be confidential. It'll be  
7                   publicly available, in the TSDR. You know, I  
8                   think Americans are probably more comfortable,  
9                   with the idea of that, but I think that, other  
10                  parts of the world, they are less comfortable with  
11                  that, particularly in Europe, where they have a  
12                  lot of data privacy assurances, and I also have  
13                  found that, I think, that the foreign law firms,  
14                  who instruct us, are quite taken aback, that we  
15                  want to -- we demand from them a way to directly  
16                  contact their client, going around them, and for  
17                  the U.S. Government to directly contact their  
18                  client, going around them. So, I really think  
19                  that it would be better, if you would allow the  
20                  foreign law firm email addresses because, even if  
21                  you exclude us from practice, they're still going  
22                  to be the person to contact, to contact the

1 applicant. So, I just put that out there for your  
2 consideration.

3 COMMISSIONER HERSHKOWITZ: Okay, thank  
4 you.

5 MS. RICKETTS: Thanks.

6 COMMISSIONER HERSHKOWITZ: We do  
7 appreciate your feedback.

8 CHAIRWOMAN ESCOBAR: Okay, last round.  
9 Do we have any questions from the web? No,  
10 nothing? All right, so, I'm happy to conclude  
11 this first meeting of TPAC, in 2020. We'll be  
12 back here Friday, April 17th. Thank you very much  
13 for coming.

14 (Whereupon, at 11:23 a.m., the  
15 HEARING was adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

## 2 COMMONWEALTH OF VIRGINIA

3 I, Irene Gray, notary public in and for  
4 the Commonwealth of Virginia, do hereby certify  
5 that the forgoing PROCEEDING was duly recorded and  
6 thereafter reduced to print under my direction;  
7 that the witnesses were sworn to tell the truth  
8 under penalty of perjury; that said transcript is a  
9 true record of the testimony given by witnesses;  
10 that I am neither counsel for, related to, nor  
11 employed by any of the parties to the action in  
12 which this proceeding was called; and, furthermore,  
13 that I am not a relative or employee of any  
14 attorney or counsel employed by the parties hereto,  
15 nor financially or otherwise interested in the  
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of  
20 Virginia

21 My Commission Expires: September 30, 2022

22 Notary Public Number 301609

