PARTICIPANTS:

TPAC Members:

ELISABETH ROTH ESCOBAR, Chair
CHRISTOPHER KELLY, Vice Chair
STEPHANIE BALD
ANNE GILSON LaLONDE
KELLY WALTON
DONNA TOBIN
KELLY WALTON
SUSAN NATLAND
JENNIFER KOVALCIK
DINISA HARDLEY FOLMAR

Union Members:

JAY BESCH, NTEU 245
HAROLD ROSS, NTEU 243

USPTO:

ANDREI IANCU, Under Secretary of Commerce for Intellectual Property and Director of the USPTO
KIM ALTON, OPIA/Office of Governmental Affairs
AMY COTTON, Office of Policy and International Affairs
PEDRO FERNANDEZ, Patent Office Professional Association
DINISA FOLMAR, International Subcommittee
PARTICIPANTS (CONT'D):

MERYL HERSHKOWITZ, Acting Commissioner for Trademarks

JAY HOFFMAN, Chief Financial Officer

JAMIE HOLCOMBE, Office of Chief Information Officer

SHARON MARSH, Trademark Policy/Office of Policy and International Affairs

SEAN MILDREW, Deputy Chief Financial Officer

LAURA PETER, Deputy Under Secretary and Deputy Director, USPTO

BRANDEN RITCHIE, OPIA/Office of Governmental Affairs

GERARD ROGERS, Chief Administrative Trademark Judge

MARK THURMON, Trademark Trial and Appeal Board

EUNICE WANG, Office of Chief Information Officer

Also Present:

HELEN KINSON
MIRIAM RICHTER
ALLISON RICKETTS
JULIE SHURSKY

* * * * *

22
PROCEEDINGS

(9:02 a.m.)

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

Bill and Dee Ann, if you're out there, thank you for all the great guidance. You were tremendous Chairs, and I hope to honor that. I'd also like to welcome Chris Kelly, who is going to be Vice Chair of TPAC. Chris is a partner at Wiley Rein, here in D.C., and just going around the room, in order of seniority, Donna Tobin, who is a partner at Royer Cooper, in New York, and you're serving, also, your third year on TPAC, and Gilson LaLonde, who is from Vermont, and is the author of the esteemed treatise "Gilson on Trademarks", welcome, also serving your third
year. We have Stephanie Bald, who is a partner at Kelly IP, who is serving your second year on TPAC, and Kelly Walton, who's at Dell, in Austin, serving her second year in TPAC, and I'd especially like to welcome our three new members, Dinisa Folmar, who is head of Intellectual Property, at The Hershey Company, in Hershey, Pennsylvania, and I learned that you started your legal career at a Trademark Examiner, so, Jennifer Kovalcik, with Community Health Systems, in Nashville, and Susan Natland, with Knobbe Martens, a partner at Knobbe Martens, in Ervine, California. So, welcome brand new TPAC Members. We are delighted to have you. I'd also like to mention our Union Reps. We have Jay Besch, from the NTEU, and Pedro Fernandez, from POPA. Thank you for coming.

Our first order of business; we're very honored to have Director Iancu, here with us. He is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent Trademark Office. He oversees the
PTO, which has over 12,000 employees, and has a budget of over $3 billion a year. He also serves as the Principle Policy Advisor to Wilbur Ross, on Intellectual Property Matters. Before joining the PTO, Director Iancu was the Managing Partner at Irell & Manella, and I believe you focused on Intellectual Property Litigation. I will turn it over to you.

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

(SWEARING IN OF NEW MEMBERS)

DIRECTOR IANCU: All right, great, and congratulations, also, to our new Chair, Elizabeth
Escobar, from whom you've already heard, and Chris Kelly, our new Vice Chair. Congratulations to both of you.

Let me start with a couple of comments, and then I'll turn it over to Deputy Director Peter, but as you probably have seen, a couple of days ago, we have announced a new Commissioner for Trademarks, David Gooder, who will assume the role beginning March 2nd. For over 25 years, David has demonstrated a passion for IP, and has a well-deserved reputation as a Dynamic Leader of Teams. He has served as Chief Trademark Counsel, for Brown-Forman Corporation, he also served as Managing Director and Chief Trademark Counsel at Jack Daniels Properties, and, as some of you might know, he became somewhat famous as the author of what came to be known as the nicest, or the most polite, cease and desist letter, and he said, at that time, it went viral, when he issued it, I think, in 2012, or thereabouts. When he was interviewed, he said a nice approach gets things solved faster; probably true.
David has been an Officer and Director of Intel, he also served as Chairman of Intel Foundation, and was a Founding Architect and Director of The International Federation of Spirits Producers, The Distilled Spirits Industries Anti-Counterfeiting Allegiance. He was on the Board of IFSP, for 14 years, and was a Chairman of that organization for 10 of those years. Obviously, counterfeiting is — and anti-counterfeiting efforts, hugely important in our economy, today.

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

Before I turn it over to the Deputy Director, I just want to mention that, a couple of days ago, the U.S. Chamber of Commerce, the GIPC Unit of the Chamber, released its annual rankings, of IP Systems, around the world. The United States continues to rank number one, overall, in
the world. We widened our lead, over the second
-- over the rest of the field, and a major
contributor to that was Trademarks, which moved up
to first place, with a perfect score of 100, in
the Chamber Study, and that's just the one study,
and nevertheless it's emblematic of the work that
-- and the work that the USPTO does, and all of
our examiners, and staff members, in conjunction
with the public, and the stakeholders, and,
importantly, on the trademark side, with all of
you. We couldn't do what we do without the
incredibly valuable input from TPAC, and Meetings,
such as this. So, with that in mind, I want to
thank you, once again. I look forward to working
with you, throughout the year, and, now, the
Deputy Director will continue with opening
comments. Thank you.

DEPUTY DIRECTOR PETER: Thank you so
much, Director, and thank you, for being here,
this morning, and greeting our new members.
Congratulations to the new members, and welcome to
the continuing members, returning members. I want
to thank each of you, for your service to TPAC, and for your long-standing leadership to the Trademark Bar. I'd also like to greet the members of the public, who are attending here, in person, and also online. As has been my tradition, since arriving at the USPTO, over a year ago, I'm delighted to attend all TPAC Meetings, including this first one of 2020.

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

On the Rulemaking Front, I'd like to thank this committee for its efforts on Fee Rulemaking. You'll hear a report provided -- your hearing and report provided very useful feedback, that is now being incorporated into the draft of
the Proposed Rule. I'd also like to express my appreciation, for your dedication and stewardship of the Trademark Budget, which, in turn, is helping to ensure the USPTO's Trademark Organization has stable funding and processors that are more cost efficient, thanks, in large part, to the ongoing work of this committee, the USPTO's efforts to protect the accuracy and integrity of the Trademark Register have unflagged, over the course of this past year. We've increased scrutiny and examination, by training Examining Attorneys to issue refusals on suspicious digitally created or mocked up specimens of use and are requesting more information about proof of actual use. We've also increased our scrutiny of the Trademark Registration Maintenance Filings, by expanding our Proof of Use Audit Program.

Our Special Task Force continues to identify and bring to light new schemes, that meant to circumvent our rules, including circumventing the U.S. Counsel Rule. As many of
you are likely aware, we've had some bad actors who've attempted to use U.S. Attorney Bar Credentials, to file applications without the Attorney's knowledge. To address this, our former Commissioner, Mary Boney Dennison, and our acting Commissioner, Meryl Hershkowitz, have started issuing Show Cause Orders, to which the applicant must respond.

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

Furthermore, all attorneys practicing before the office have been encouraged to regularly check our database to ensure that no one is improperly using their name. On the counterfeit front, also in support of our mission
to improve the protection of IP Rights, the USPTO is looking at how it can help mitigate the global scourge of counterfeited goods and piracy. The rapid growth of ecommerce is revolutionized the way we trade, and also contributed to the increase in counterfeit and pirated goods sold in the United States.

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

In addition to counterfeit products that can endanger health and safety because they are ingested, used on the skin, or are given to children, there are examples of exploding
counterfeit lithium batteries, that have led to intense fires, third degree burns, and severe property damage. Pharmaceuticals, personal care products, construction materials, consumer electronics, apparel, car parts, shoes, sports equipment, and countless other goods are counterfeited, and, alarmingly, the number of items is growing.

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

To address this problem, the USPTO has taken a leading role in advancing the enforcement of Intellectual Property Rights, in the United States, and in the world, including through
training and technological assistance. In fact, the USPTO has long been engaged with the anti-counterfeiting efforts around the world, through its work with Foreign Office Officials and Judges, as well, as providing Training Programs, which highlight the risks to consumers of buying counterfeit goods.

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

For example, the USPTO has partnered with the U.S. Customs and U.S. Postal Inspection Service, the USPIS, in coordination with Law
Enforcement Officials from other countries. We've worked with colleagues at mail sorting facilities, at various local and international airports, to support the inspection and interdiction of shipments, that may include elicit and counterfeit goods. In other words, we've been working diligently to stop the supply of fakes, but we must, also, educate the public to stop the demand for fakes.

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

In the months and years ahead, we'll be looking to new and emerging technologies, that will help us take Trademarks to even higher levels of quality and performance. A particular focus
that I have taken on is helping to move our IT Systems, on which Trademark Operations run, into the modern era. While this has been a goal for some time, we are taking concrete action, to replace the aging infrastructure, to pave the way for modernization.

The goal is to create a system on which Trademark Applications, for various purposes, can be plugged in and pulled out, without worry. With this will come the ability for more agile systems, more easily updateable systems, and more resilient systems. Some of the elements of this new system will include reliance on cloud technologies, as well as application of Artificial Intelligence tools. We're exploring a number of potential Artificial Intelligence Technologies, that could be applied to help goods in service classification, identify fraudulent submission of specimens of use, and, perhaps, even someday, helping an examiner search an image database, for potentially confusing similar marks, for him or her to analyze.
These are just a few of the many things that have been happening on the trademarks front, at the USPTO. As you are brought up to date, throughout the day, today, on all of our activities, we welcome your comments, questions, and feedback, and, in closing, I'd like to thank you, for your dedication, hard work, and service to this committee. The continuing collaboration, between the USPTO and TPAC, is extremely important, and your insights and guidance, on a number of issues, have been invaluable. With that, I'd like to turn this over to Acting Commissioner Hershkowitz, who will update you on Trademark Operations. Thank you.

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

DEPUTY DIRECTOR PETER: Thank you, indeed. Thanks so much.
Thank you, Deputy Director Peter. Thank you, Director Iancu, for all your support, both personally and professionally, and for really paying attention to Trademarks. Sometimes, we do get lost in this big agency, but the Deputy Director and the Director have been incredibly supportive and helpful to us, and thank you, of course, my thanks, my personal thanks, to TPAC, over the years, for everything you've done, to help us remain the number one agency, who give Trademarks throughout the world, and register them, and examine them, and really give value that supports our Trademark Owners.

I would like to take this opportunity to look at the state of the Trademark Organization, during this time. Every day, I miss Commissioner Boney-Dennison, I've told her that, and it's amazing, as we look back over the past five years, and look at the changes in the organization, and what we've accomplished, and where we're headed.
So, this slide is always one of my favorite slides because it shows the continual demand for Trademark Registrations.

This shows the filings, from the last several decades, and you can see that the trend is always up. There's only been four times, where we've had the slightest downturns, but, over time, you can see that the trend and the demand, for Trademark Registration, is constantly on the rise.

In 2016, we had 530,000 classes filed. Last year, 2019, we had 673,233 classes filed. So, we've gone, over the years, as some people would say, up, and up, and up, and, this year, we are seeing a little bit of flattening, but we're still predicting a 2.8 percent increase in filings.

What does that mean to us? Well, it's good to look at the kind of filers, and things are fairly steady, where we have about -- between 20 and 35 percent of the applications filed by pro se applicants, and the filing basis, also, are fairly steady. You can see that about a third to a little bit -- up to 40 percent have been sectioned
1-A or U-Space filings, and a little bit more have been intent to use, and then you can see the foreign basis for filing is a little bit under 10 percent. So, what does this mean to us, organizationally? Well, of course, it means we have to continue to grow, with the workloads, and, since 2014, we've increased staffing by 17 percent. That's a lot of new people to on board, train, enculturate, and it puts a lot of burden on our Management Staff, and we've also had to increase our Management Staff, to go along with the increase in Examination, and Technical, and Professional Support Staff. So, all of this is great, but it does put a strain on the organization. So, I just wanted thank the staff, for all their hard work, despite all of this, and I would say, despite all this incredible growth, we have become number one, in the world, as a Trademark Organization, and, also, we have continued to meet our very challenging, but important goals, to meet the needs of our Trademark Owners.
So, again, thank you to all the staff, the Professional and Support Staff, the Examining Attorneys, and all our Management Staff, and our Policy Staff. So, thanks to everyone.

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

In addition, we've been able to keep quality numbers up. Our first action compliance, and our final action compliance, are within our goals, and, of course, those numbers are measured, based on random reviews of cases throughout the process, and what they show is we've been able to meet our legal standard for registrability, based on statutory rules.
Our Exceptional Office Action, which is a much more difficult challenge to meet, includes every action in the file being taken correctly. So, that includes the search, the writing, the evidence, the statutory decision making, and the procedural decision making, and we love seeing that this number is continuing to increase, year after year. So, more than half of our first actions are -- we consider excellent and exceptional. So, we're very, very proud of our Examining Attorneys, for accomplishing that.

Besides growth, we've also kept up with the times, with our rulemaking and policy making, again, to meet the needs of our Trademark Community. So, I -- and, also, this puts a burden on the office because we have to keep training, and training, and training, and keeping our staff up to date. We've even, over the past couple of years, had Supreme Court decisions, which has really changed a whole section of our statue. So, those of you familiar with Matal vs. Tam, and Iancu vs. Brunetti, where the Supreme Court ruled
that parts of our section 2-A of our statue were unconstitutional violations of the First Amendment, and I would urge everyone to keep on top of the latest case, in front of the Supreme Court, where we are a party, which is USPTO vs. Booking.com, where the issue is how we decide genericness. So, keep on the lookout for a new Supreme Decision.

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

So, we issued a new Examine Guide, on cannabis, among other things, and the big change, there, had to do with the Farm Act of 2018, and how we handle goods involving hemp, of course, post-Brunetti Guidance, and as Deputy Director Peter talked about, important guidance on how to
handle digital and mocked up specimen. In August, the U.S. Counsel Rule went into effect, and we have an examine guide on that, as well.

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

As she said, we don't -- this is still preliminary, it just happened in August, but we're already seeing indications that it's working, in the sense that we have received -- and you can see
the requirements that we've made, for you, as Counsel, have gone down drastically. So, we think the message is out, and you can also see the change in filing, from, especially, China, where we have had peak, in July of 2019, of 20,000 applications, whereas, in December, we only had 3,800 applications, from China.

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

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

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

As a Managing Attorney, in the late '90s, I spent most of my day hunting for files, and moving things around, and finding papers, and asking for copies of new papers that we lost, and I am happy to say that no longer happens. We don't lose things. So, it really has been a boon for quality. What you see is what you get, when you enter the information, into our data base. So, there is less manual entry, a lot more efficient processing, less optical scanning, which, as we know, doesn't work really well.
So, we're very excited, after all these years, to finally say, we're going to try to eliminate almost all paper, and I think it's exceptionally exciting. Of course, there's always pain in change, and I am sure we will be learning, along the way, how to make this new rule even better than it is now, but, at that the moment, I think, we're on the right track, and you will see, when read the Examination Guide, it really is a pretty simply rule, and we're following lead of The Trademark Trial and Appeal Board, who is also, now, all electronic.

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

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

So, with the new filing system, we are adding a new field that allows you, not only to have a mailing address, that could include a post office box, or a care of address, but we're adding a new field, that allows you to meet the requirement for domicile address, but we will not publish it in the Public Application TSDR. So, that will be kept private. Of course, we still
have a domicile requirement under the Latham Act, so you do have to give it to us, but we will keep it private from the public.

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

Director Peter already thanked you for your input on our rulemaking, regarding fee
changes. I would like to thank you, as well, and
just to remind everyone that the TPAC had a public
hearing, in September, on our rulemaking on fees,
issued a report, gave us great recommendations,
which we are currently digesting, and will be
incorporating many of them in the proposed
rulemaking, that should be coming out, hopefully,
in the next month or so.

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

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

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

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

CHAIRWOMAN ESCOBAR: Thank you, Acting
Commissioner Hershkowitz. I think we are the best Trademark Office in the world, and we appreciate all of your efforts to keep it that way.

COMMISSIONER HERSHKOWITZ: Thank you.

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

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

Wanted to come back to some developments, we've talked in this meeting, before, about the spread of Trademark labeling
restrictions, or labeling restrictions that impact Trademarks, as a method for regulating public health, and I wanted to come back to this. Remember that it sort of falls on a spectrum, the restrictions that you see in various countries. One end represents restrictions on marketing, or on restrictions on promotion, and we see this with the high-fat, high-sugar foods.

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

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

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

In Peru, they're doing the stickers, as
well, now. So, it -- they wanted to see if Chile
got sued at the WTO for this, and, which they
didn't, so, now, that Peru has picked up on it,
however, Peru is a little bit more measured, they
have the stickers, but they did not go for the
characters. So, we've been talking to Peru, as
well, but the Intellectual Property Office, in
Peru, also handles anti -- unfair competition
issues. So, they were a little -- able to be a
little bit more engaged in the rulemaking, but
these are the stickers. So, if you have high-fat,
high-sugar, high-sodium, or contains trans-fat,
you have to stick on of those stickers on it, or
all of the stickers, if you meet those
requirements.
Now, Mexico, it's gone to Mexico. So, in Mexico, they published a regulation for comment. The comment period closed in December, and it looks like it has been adopted, has not entered into force yet, but will very soon. These are their stickers. Also, they have stickers for sweeteners and caffeine, and those are to warn parents that excessive consumption, for children, is problematic. So, if any of these stickers are required, that immediately means you can't use characters, you can't have promotions or toys, contests, discounted prices, nor can you advertise on social media.

We do think this will go into force, very soon. We have definitely engaged with Mexico, on this issue. Our IP attaché, in Mexico City, is actually my colleague, Cindy Henderson, who's worked with me for many, many years, on this issue. So, she's been engaging with them, but there's a lot of support in Mexico, for this regulation, and it is going into force. So, sorry for that.
Moving on, a little bit better news. The Department of Homeland Security, with the support of many USG Agencies, including PTO, recently, released a report to the President, on combatting trafficking and counterfeiting pirated goods. The report leaves out two sets of recommended actions, one for the private sector, and one for the government sector, on how to address the ever-increasing threat posed by elicit trade and counterfeit and pirated goods.

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

On the government side, DHS Agencies will take immediate steps to address the flow of counterfeit and pirated goods coming into the U.S.
For example, to make it easier for customs to identify abuses in the small package environment, CBP will now treat ecommerce fulfillment centers, and warehouses as the ultimate consignees for goods, that have not been sold to a specific consumer at their time of importation in the U.S. This will give a little bit more control to CBP on small package shipments.

The report also calls for the formation of the anti-counterfeiting consortium to identify online nefarious actors. You see an acronym coming, right, ACTION? Under the ACTION framework, among other things, the various stakeholders in the ecommerce supply and distribution chains will share information on sellers, shippers, and other third-party intermediaries involved in trafficking and counterfeit and pirated goods. ACTION members will also be able to share information with the IPR Center. So, of course, sharing information about bad actors, repeated offenders is always going to be very helpful.
So, other USG Agencies are on the hook to take action, as well. For example, The Department of Commerce, we've been asked to study and consult, on secondary liability, to see if any changes are necessary for the online world. We're currently working out who's responsible, and what that would look like, but there's -- I think there is anticipated stakeholder consultations on that issue. Also, USG Agencies are encouraged to partner with industry to launch a Public, Private Awareness Campaign, targeting consumers. Well, we're already ahead of the game on that one, which is kind of nice. We recently, as you know, launched a five-year Nationwide Campaign and Partnership, with the National Crime Prevention Counsel, to raise awareness with consumers of the dangers of buying fakes. So, we're hopeful that this focus on ecommerce platforms and small shipments will help stem the tide of imported counterfeit goods.

Now, Meryl already talked about the TM-5 Meeting. The dates that we're looking at are
Mid-November, for Alexandria, but we'll see.

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

A report -- we issued a report on Paris Priority Claims, across the TM-5 Jurisdictions. That was in January. We've got two more reports that are forthcoming, one on Quality Services. These are the quality services that each office provides, and, just so you know, TPAC is a Quality Service, from our perspective. Encouraging stakeholder engagement is a quality service. So, we pushed you, for other offices to consider, and we also have another report, that we're going to
be issuing, a little bit longer term, Application Requirements for Non-Traditional Marks. So, if you wanted to know what is required in a jurisdiction for a non-traditional mark, this report should have a detailed account of what the application requirements are for these.

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

Also, we're up to 20,000 terms, in our harmonized ID List. So, these are terms, which will be accepted in all TM- Offices, and on participating offices. We've invited other countries to dock on and accept these lists. So, we're hopeful that that
will streamline the application process, for the various office that participates.

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

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

You want to go ahead and do TTAB? Okay. Gerry, Chief Judge Rogers, thank you so much for coming. Can we ask you to -- I think we'll need to skip ahead a few slides.
CHIEF JUDGE ROGERS: While I'm waiting for the clicker, I'll just follow up on something Acting Commissioner Hershkowitz mentioned about Electronic Filing, and she pointed out the importance of having email addresses because, at some point, for the applicant, as well as for counsel, because, at some point, the office presumes that representation has stopped. The way the TTAB uses the information, that is gathered during the Trademark Application Process -- if you want to go back to Branden, you can, but I'll make this comment, and then, if you want to stick to your schedule, you can, or I can continue. It's up to you.

CHAIRWOMAN ESCOBAR: I think you should continue.

CHIEF JUDGE ROGERS: Okay. So, what we will do at the Board is, when the application is opposed, or if it comes to us on appeal, something like that, we will certainly rely on and use the email information and correspondent's address information, that's in the application. What we
will not do is, when we get a petition to cancel a registration that has already issued, we are not going to presume that the attorney, who represented the applicant during prosecution of the application, is still representing them, which can be many years down the road. So, that's why it would be very important for us to have email and correspondence information, for the applicant, because that -- that point, they are a registrant, and we are going to correspond with them -- excuse me -- directly in regard to any petition to cancel. So, that's kind of how we dovetail with the collection of information in Trademarks, and we -- it has worked pretty well, for us, since we went to mandatory electronic filing, in 2017.

For the slides, I will start by observing that, at TTAB, we have a slogan. We have our trials, but our work is appealing. It works for us on many levels, and, in recent years, boy, have we had our trials, and sometimes travails. So, let's look at some of the statistics, and see how a dramatic increase in the
number of trial cases has affected the Board.

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

So, more people are willing to oppose these applications, and more people are willing to petition to cancel them. Now, the -- one of things I wanted to point out, on this slide, is, while the trend, for the last three years, has been towards a dramatic increase in the number of trial cases, coming in the front to the TTAB, in the first quarter of this year, we did see a
little bit of a flattening, in terms of the number of extensions. Certainly, extensions are down a little bit, extensions of time to oppose. Oppositions and cancelations are increasing at a rate this year, which is lower than in previous years.

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

This slide focuses on the other end of the process, not cases that are coming in the front door, but the number of cases that have gone through our processes and require disposition by a panel of Judges, and you will notice in FY-19, I bolded it, 744 cases, matured to ready for decision. That's appeal and trial cases combined, and that was a very dramatic increase, from the
previous two years, where the number of cases,  
maturing to ready for decision, had, actually,  
dropped. So, that's the other aspect of the  
deluge of trial cases coming in, over a course of  
three years. Last year, the ones that were coming  
in in '16 and '17 began to hit us on the other end  
of the process.

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

   On the bottom right hand corner of this  
slide, you'll also see that in fiscal '19 -- well,  
this year, we're under 35 percent of our existing  
inventory being trial cases. That's still above  
what it was, back in fiscal '17, and, in earlier
years, where it was always 30 percent or less, but it's down from the 40 percent high, in trials cases that we saw last year, so, again, kind of hopeful signs that, maybe, the flood of trial cases is abating, to some extent. That's, again, just kind of the three-year split on trial cases.

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

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

So, if we had unrealistic goals, it would not help you in counseling your clients. So, this is encouraging because, of course, more trial cases means more trial motions, but we seem
to be getting things under control. We've hired a bunch of attorneys. We hired five last fiscal year, and we just had three more start, this year. So, we're very hopeful that we're in a position to get the motion practice work under control, as we work through this year, and we saw, usually, our inventories increase a lot in the first quarter, but, in the first quarter, this year, we were only up eight cases with contested motions, from the end of the last fiscal year. So, that was very good.

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

Focusing on what the Judges do, we, this
year, have adopted two different pendency measures, for the first time. We've always traditionally had a pendency measure that was time to decision, from when cases were ready for decision, and that means either the briefing was done, or there was an oral argument, and we had one measure that focused on appeals and trials, together, and we decided that was not realistic because trial cases take longer, most of the time. They can have very large records, compared to appeal cases.

So, we have two separate measures for this year, and our goal for pendency in appeal cases, after they've been fully briefed and or argued, is to get them decided within 10 to 12 weeks, and to get trial cases to decided within 12 to 15 weeks. We were not nearly as close to those goals, in the first quarter, as we would like to be, but we set these goals with the intention that we would meet them by the end of the year, and we spent a lot of time, in the first quarter, working off older cases. So, we know that this --
these measures are going to go up for a little while, at the beginning of the year, but, hopefully, come down significantly, by the end of the year.

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

The other thing that we focus on is end to end pendency because you want to be able to counsel your clients, about how long a proceeding is going to last, if you go through the entire process, and, in the last few years, traditionally, we've averaged 40 weeks, or so, sometimes a little bit less than 40 weeks, end to
end processing time, for ex parte appeals, and our trial case results, in recent years, have been about three years or less, so closer to that 140 weeks figure that we achieved, in the first quarter, this year. Last year, we were lagging behind, again, because of all the trial cases, and, so, the figure went up, the pendency went up, but we're starting to bring it down, again, and one of the things I will also point out, on the very bottom left of this slide, are the number of cases, trial cases, that were decided, following the parties' election to use some form of accelerated case resolution.

That was a high number for us, last year. We see a lot more parties, who are interested in pursuing their trial cases, through more efficient means, than the Rules would allow, and, so, we see more parties agreeing to stipulations of fact, stipulations of procedure, and, in many cases, agreeing to decide the case on a summary judgement model, where the summary judgement briefing is submitted to decide the case.
on the merits, and we are provided with a stipulation, that allows us to resolve any lingering issues of fact, which we would not normally be able to do, based on the mere filing of a motion for summary judgement.

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

The previous two slides, that I jumped
through, basically, just covered our staffing updates, and, again, I mentioned earlier, we hired five attorneys, last year. They're all up and running, now, doing great work, had three more hired this year. Two of our attorneys, last year, were promoted to Judge, and we hired a third one from the outside. So, there were three Judge additions to the staff, last year, and two more, just this week.

So, hopefully, the additional staff, and the -- on this slide, the additional inhouse help, that we are grabbing, will help us continue to catch up on the trial work and the appeal work, that we've gotten. So, we have resumed interlocutory attorney training details, by bringing examining attorneys over from Trademarks, to learn the job of the interlocutory attorney. That gives us a group of potential applicants for the attorney position in the future. We weren't able to do that, for a number of years, as Trademarks was working through their tremendous increases in filings, but we're able to that
again, now, and we have a full-time law student, extern, on board.

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

We're going to wind down this pilot, by the end of next month, and then assess everything
that we learned from it, but then we are going to pivot, and we are going to focus on a couple of new initiatives, and those will be a continuing hard cell of ACR, to all the parties, who are involved in our trial cases, and some of you may have experienced the hard cell, if you've been involved in trial cases, with some of our interlocutory attorneys. Some are more active cases managers, than others. The interlocutory attorneys are given a lot of discretion, professional discretion, in how they manage the cases on their docket, and some of them believe that the best way to manage them is to really push the parties towards ACR and the use of stipulations.

We may accelerate that, or attempt to accelerate that, by we -- well, we will. We -- it's not may -- we will do this. We're going to update all the information, on ACR Options, on our website, and we're going to make it all much more accessible. So, look for improvements in our website, later in the year, with new and,
hopefully, more accessible forms of information, on ACR, and we will, also, explore the possibility of deploying a pre-trial conference pilot, where we will attempt to identify cases that have either gone off the rails, or have involved a lot of motion practice, and look like, at trial, they might be very involved and complicated, and, therefore, we will try to divert them, into a pretrial conference, where we really focus the parties attention on what they need to do at trial, and, the last thing, I won't run through the few remaining slides. The last thing I wanted to bring you up to date on is the Standard Protective Order. We've received comments from TPAC, which we're very thankful for, and from other customers and stakeholders, about possible revisions to the Standard Protected Order. We've report on that, here, before. We just issued the revised Standard Protective Order, this week. So, it's up on our website, if you want to take a look at it. Basically, the changes are clarifying areas, where our stakeholders identified a need
for clarification, and a need to reduce ambiguity, but we will always take suggestions for improvement of the Standard Protective Order, and the parties are always free to agree to supplement it or supplant it with an order of their own agreement, so.

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

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

DIRECTOR RITCHIE: Whatever you recommend.

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

(Recess)

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

DIRECTOR RITCHIE: All right. Well, thanks for having us today. I have Kim Alton, the Deputy Director of OGA, here with me, and just wanted to chat with you about what's happened since we last met, and I don't know if there are some new faces here. By way of background, Kim and I both have worked on the Hill, quite a bit, and, for myself, I was there for the past 16 and a half years, until 2019, when I came back to the USPTO, and I was an Exa...
that stuff, but -- so, it's good to be back, and it's good to be here, this morning.

So, first, I guess, what we'll do is go through some of the -- I'll give a quick overview.

I think we have 10 minutes. So, I'll make this quick, but, this Congress, there's been a lot of activity on IP Issues, and it wasn't, necessarily, surprising because the Senate IP -- the Senate Judiciary Committee created an IP Sub-committee again, and, when that happens, there's double the committees focused on IP, and, sometimes, double the hearings, double the fund, and everything else, double the bills, and, so, we had a -- what we think is a record number of hearing with USPTO witnesses, last year, five total, where they, actually, provided testimony, and they were all very positive. They were all very kind of collaborative.

Congress is -- appreciates the work that the PTO has done, and we've seen this as a partnership, to develop and grow. So, it's been very good. Also, when you have times of
difficulty, with politics, and, when that is heightened, there -- sometimes, it's hard to work on certain bills, but IP Bills don't break down that way. They don't break down by party lines, and, so, there are a few types of bills, types of issue areas, where there's still kind of a fertile ground to go forward, and, so, while some legislation is likely to stall and start stagnating, in Congress, I think, the life of IP Legislation Initiatives goes a little longer, even in this year, with the Presidential Election, and all of the House Members up for re-election, and a third of the Senators, I think, even with that, we can still get things done, a little further into the year, than some of the other more hot button issues. So, that's opportunities, as we see them. So, that's good. So, we'll talk about some of the hearings that happened since last we met.

We had -- in the House, we had the hearing on the PTAB and the Appointments Clause. That's relevant because everyone is looking hard at any impact that may have on the TTAB and for
this audience, but the focus has definitely been on the PTAB, and the hearing featured a number of witnesses that had ideas for how to fix the Arthrex Decision, everything from, just simply, clarifying that the Director already has authority, sufficient authority, supervising the PTAB Judges, all the way to appointing a presidentially appointed PTAB Chief Judge or Judges, to kind of run the PTAB. So, it doesn't seem like they've come to any conclusions on what's the best way forward, in the Congress, but they're considering that.

We haven't seen any draft text or anything, but that's an issue that's getting worked on, right now, and that hearing was the beginning of that process for the House. The other one was the Senate had -- The Senate Judiciary IP Sub-committee, that new committee that -- new sub-committee, that they formed, did a hearing that was similar to the House Hearing, on Fraudulent Trademark Filings, focusing on overseas filings. Earlier in 2019, Commissioner Dennison
testified before the House, and she did an excellent job, and then, in the Senate, they did a hearing to follow up on that, and to establish process in the Senate, for that issue, and Commissioner Dennison provided testimony for that one, but did not -- was not asked come and appear before the committee. So, we were able to get some thoughts across, on that.

Third, we had, most recently, this past month, in January, there was a House Small Business Committee hearing on our Success Act Report, and that report, as you may know, was required by Congress, for the PTO to do a study of Publicly Available Information, on the rates of Patente and Entrepreneurship, by women, minorities, and veterans. So, the PTO did that. Andy Toole, the Chief Economist, led that effort, and he -- he and his team surveyed all the publicly available information, complied the report, and it was submitted to Congress, on time, on October 31st, and, in a nutshell, what the PTO found was that there was not a lot of information
out there. There just isn't a lot of information out there, on this topic, among scholarly research, and things like that, so, and the best information out there was the PTO's report, that they did on the Participation of Women in Patenting, which was in last February, and, so, that's pretty much the best piece out there, on this, and then the report goes on to say that we need more information, to be able to measure that, measure the rates, and, so, I had recommendations, too. We'll talk about that in just a second.

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

So, Legislative Activity in the 116th Congress. So, here's some hot issues, that are going on right now. The biggest is the effort in the House, with respect to the Fraudulent
Trademark and False Use Claims Issue. So, that's what we eluded to earlier. These hearings produced big momentum, on the part of Congress, to want to tackle this problem, and the House has done -- has convened two round tables, where they brought stakeholders in, shared confidentially drafts, and asked for feedback, and it's anticipated that they will introduce a bill, based on feedback. They are still awaiting, toward the end of this month, that they would introduce a bill, potentially as early as the beginning of March.

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

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

I'm just going to mention a couple of these, just because we're pressed for time, here. The Trademark Licensing Protection Act, that's the bill that would clarify that, because a Trademark owner have to exercise control over their marks, that that wouldn't constitute a sufficient control -- that it would not constitute sufficient control, to establish a franchise or a franchisee relationship. We've heard from stakeholders, and in the Trademark Space, that that is -- that they
oppose that, especially as it -- if it is included in the Latham Act, and we've been talking with Congress about those concerns. It doesn't -- it hasn't moved yet. It has been introduced. There is some interest, but, I think, the Hill is also aware of the stakeholder issues with it, and, so, we're monitoring that closely.

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

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

One of the big things, that we're doing, is establishing a Counsel on Innovation Expansiveness -- expansion, and to develop a National Strategy, to help promote underrepresented groups in the Patentee and Entrepreneurial Process. So, you'll see more about that, and it's a very serious effort, that the PTO is doing, and more to come, but I just wanted to make sure you were aware of that, when
you see it, and when you hear about it. So, what
we always say is that the PTO's efforts to reach
groups and encourage innovation, by
underrepresented groups, did not start with the
Success Act. It did not end with Success Act.

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

So, some of the other things that we're
working on, we have a few priorities that we're
working on, right now, and the Trademark
Legislative Package, and watching that. Any fixes
to the Arthrex Decision, we're closely monitoring
those. In the Patent World, they're working on
Section 101 Reform, and we're watching that, as
well, and working with Congress. We're working elevating the rank of the IP Attachés because they do great work in all these countries, and they are often excluded from meetings because of -- the rank that they have is too low, whereas, Attachés, that are from other countries, that are similarly situated, they have a rank that is sufficient to get them in the meetings, and, so, so, we're working on that with other Government Agencies, and others. They do great work, and then the other big thing that we work on, and will be in some of our priorities, is Continuity of Service, for the PTO, and that, basically, involves making sure we continue to have access to our Fee Collections. Congress has been appropriating. I'm not going to get into that, too much, because I know that Jay will talk about that, but there's the deal that was struck many years ago, where we get, basically, the appropriation of the fees we collect. We just want to -- we're very appreciative of that. We want to make sure that continues, and then we want to clarify the
authority for the Director to suspend illegal
deadlines, in cases of power outages and weather
emergencies, to make sure that we can handle and
be responsive to the needs of the stakeholders and
the customers, when those kinds of things happen,
and provide clear guidance, and then, finally,
well, not finally, but the other one that I'll
list here, is the TEAP Program, so, the Telework
Enhancement Act Pilot Program.

That's a really successful program.

It's very unique for the PTO. In 2010, there was
a statute that passed, that created -- it was a
kind of two columns. One was a 10-slot possible
telework program, and, so, any agency, that wanted
to take part in that, could apply and try to take
part in that, but it was limited to 10 slots.
That was discretionary, and then, for the PTO, it
was mandatory. So, the statute required that the
PTO set up a pilot program, to allow employees to
work in remote locations, change their duty
stations, and volunteer for that program, in
exchange for, you know, the PTO asking that they
pay any travel expenses, if they have to come back.

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

So, it seems like a win, win, win. So, we've been talking Congress, and other Government Agencies, about that, and just to see if we can get that made permanent, so we can lock in those benefits. So, with that, that kind of ends our
presentation, and we're happy to answer any questions you may have.

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

DIRECTOR RITCHIE: All right.

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

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

So, for example, one thing you might think about is some common words that might be used ubiquitously, that the way they're being
used, whether they're on the front of a tee shirt, or a poster, or something, whether the question has to be asked, does this really act as a Trademark. So, functionality is definitely looked at, and the other issue is can there be legal use in Commerce of a Mark? So, this would be extremely rare, and I hope it will never happen, but if we got a mark that violated, you know, obscenity laws, for example, contained child pornography, or something like that, we, obviously, would have another reason for refusing it, as unable to be lawfully used in Commerce, but, other than that, we're registering as appropriate.

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

MR. HOFFMAN: Well, good morning, and thank you. All right, I'm going to just dive right in, and try to get us back on schedule here,
for you. We have a fairly short presentation
today, to provide you with an update on our
financing situation. I'm going to give you a quick
briefing on where we're at, at this point in the
fiscal year, 2020, also, provide you a brief
recap, of where we are going, in FY-2021 Budget,
which will be submitted on Monday, and then an
update on the Trademark Fee Rulemaking.

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

One was the authority to continue to use
the Patent and Trademark Fee Reserve Fund, and
I'll talk about more -- about that in a moment,
and also directed us to provide $2 million to the
Office of Inspected General, for Audit
Investigation Support. For those of you who are not familiar with the Patent and Trademark Fee Reserve Fund, that is a fund that was established to collect and hold revenues, that are in excess of amounts appropriated, and that's what Branden was eluding to you, just a moment ago. That's a key mitigant, in how we, essentially, replenish reserve funds to deal with cash flow asymmetries, either by workload demand or a lapse in appropriations, or whatever those maybe.

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

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

This slide gives you a sense of where we're at, in terms of fee collections, year-to-date. The top table shows a year-over-year comparison. As you can see, in FY-2020, the plan is to collect $368 million in fees. This plan level of collection is about 7.2 percent higher than FY-2019, at $343 million in fees. When you look at the table below, that is a quarter-to-quarter comparison. So, our FY-20 collections, through the end of December, were almost $81 million, which was about nine tenths of
a present less than what we had collected in
FY-2019, so, all things considered, about the
same, within one percent of where we were the
prior year.

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

I would note that we're not overly
concerned about where we're at, at this point, and
the reason is the numbers I'm providing haven't
been seasonally adjusted, and the seasonal
adjustments, for first quarter, in terms of trade-
rock revenue fees, have historically been a little
bit lower than other quarters. So, we're looking
at that, and we'll have a much better sense of
where we are, second and third quarter. So,
really, no cause for concern, at this time. Next
slide, please.

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

When that happens, we'll need to go
through the same process of working with Congress,
to access any excess fees that were collected, above the appropriation, in the Patent Trademark Fee Reserve Fund, and to get access to those in the first quarter, of FY-2021. This is important because we -- if the fee rule goes into effect, before the end of the year, we tend to see an acceleration of fee collections. Those are fee collections that, otherwise, would have happened in the first quarter. So, it's not really as though we've collected more money. It's just that we collected money faster, and, so, we'll have to figure out that -- we'll have to -- excuse me -- resolve that asymmetry and cash flow collections, through the Reserve Fund.

I would note, in this table, it does show, that we project to dip into our operating reserve, for Trademarks, by about $55 million. The reason for that is it's predicated on planned IT Expenditures. However, we will remain at the $75 million minimum threshold for the Trademark Reserve Fund, the way the plan is put together. So, I think we'll be okay, financially, there.
Let's me see if there's any other points I wanted to make, here, real quick. I guess I would point out that, for those of you who are really tracking every number, these are our most current estimates, and they're slightly different than estimates, that you may have seen in the prior budget submission. Next slide.

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

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

I would just note that the approval process, for that, isn't all internal either. There's other players, in Commence and L&B, that will be weighting in on that. So, that concludes my presentation. This was my first TPAC Meeting. So, thank you, very much for inviting me. I look forward to working with all of you, in the months
and years ahead. So, if you have any questions, I'd be happy to try and answer them.

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

MS. WANG: Thank you.

MR. HOLCOMBE: Good morning, all. We have a lot of good things to report with Trademarks. I would like to say that the overall state of IT, within the PTO, is very strong. I've spent the last year stabilizing the base, and 26 of our critical systems are now stabilized. We're looking for other systems, now, to stabilize, and we'll continue with our vulnerability assessments, and ensuring that we're plugging all the holes for
cyber security. As well as that goes, Eunice will
talk a lot about stabilization, as well as
modernization. We have a good plan ahead, and I'm
very optimistic about the future.

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

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

We've also been utilizing Artificial
Intelligence Tools to improve the efficiency of
our Examining Attorneys, and to also make these
tools available for the public. We've been
testing Artificial Intelligence Solutions for image search capabilities, and for the Identification and Classification of Goods and Services, and through our testing, we wanted to look for additional tools and capabilities that are available in the market, and so, we've been conducting market research for these capabilities.

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

We are also continuing our efforts to stabilize our Trademark and TTAB systems. We've been doing server upgrades, to make a more stable environment, and ensuring that our systems are continually available. We've also deployed, back
in December, changes to TSDR, the Trademark Status and Document Retrieval System, to support MEF. In this change, we made the domicile address private, and we've also stood up agile pilot teams to help us focus on refining the team structure and processes, which are to be used for our future IT efforts. Through this, we've been able to have lessons learned, and apply them quickly into our team. Switching over to the next slide, we continue on our development for our future IT Solution. We're taking it from a three-prong approach, which is the Stabilization, Modernization, and Governance.

With stabilization, we had a vendor come in and do an analysis of all of our USPTO Systems. Nine Trademark Systems were identified as higher on the risk and business criticality, and so, we are addressing those first, and we are also doing Modernization. While we are stabilizing our existing systems, we are working on our new Trademark Systems, but with that, if there are any changes we need to apply to our Legacy Systems,
such as with MEF, the Mandatory Electronic Filing, we will do so. With the Governance, we want to ensure that we are applying our lessons learned. We are also redefining our Software Development Life Cycle, so that we can provide higher business value, and to be able to deliver quickly to our customers. So, I guess with that, are there any questions?

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

MS KINSON: Oh, okay. Hello, my name is Helen Kinson, and I do Print on Demands, on Merge and other platforms. So, I'm not with any bigger company, but there's a lot of people, throughout
the United States, and throughout the world, that 
do Print on Demand, and it's a very fast-growing 
industry, and it's changing tremendously, Class 
25. So, I know, this year, there's been a 
tremendous amount of increase in Trademark 
Applications, as well as in letters of protest, 
and it's something that is going to continue to 
snowball and grow, very, very, quickly. So, I 
don't know if there is any plan in place, to be 
able to handle just the shear increase in volume, 
in both of those?

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

MS KINSON: Thank you.

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

COMMISSIONER HERSHKOWITZ: You're welcome.

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

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

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

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

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

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

She'll be the one to sign the application, but, since we won't be available for the next 15 hours, while we're in the air, please,
file unsigned. The particulars of the application are attached. Naturally, the Foreign Associates instructions do not include the email address of the applicant, since no other jurisdiction in the world requires this information, in order to file a Trademark Application.

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

So, the Trademark Attorney, faces the following two choices. Number one, she does not file the application, for a lack of an email address. The applicant loses its convention priority filing date. The Trademark Attorney may be subject to a malpractice claim, or, number two, she inserts an email address, that permits the form to be submitted, but which she either knows
is an unacceptable email address, per the Exam Guide, such as the Foreign Law Firm email address, or as to which she has no information, one way or the other, about whether the email address is accessible, and regularly reviewed by the applicant.

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

If a filing date requirement was not satisfied, the applicant could be void ab initio. So, let's say the Trademark Attorney looked up a
website, that probably belongs to the client, but it's a large corporate conglomerate. So, it's not entirely clear if the website is operated by this particular applicant, or some related corporate entity. There was a contact us email address on the website. So, she used that, crossing her fingers, that it is an email address of the applicant, and meets the standard of being accessible to, and regularly reviewed by the applicant.

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

What is the purpose of making the Trademark Attorney's job more dangerous? What will the USPTO do with this email address, for
which the Trademark Attorney risked her license, in order to avoid a malpractice claim? Nothing, the PTO will do nothing, with this email address, because it will correspond only with the Trademark Attorney.

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

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

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

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

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

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

MS. RICKETTS: Is it possible to submit
the application, using the electronic system
without an email address filled in?

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

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

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

MS. RICKETTS: Thanks, Meryl, appreciate
it.

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

MS. SHURSKY: Hi, my name is Julie Shursky (phonetic), and my question is on behalf
of myself and my law firm, Eric M. Pelton and
Associates. My question, also, deals with the
applicant's email address, that's going to become
requirement, but it's more so from the side of the
applicant.
So, with these emails, they're going to be, now, public. Is there any -- like, is there anything that the PTO is going to do, or has been doing, or what's the status with the scam letters, that are being sent to the physical addresses of applicants, that -- just to provide some framework for what those are, they're letters that appear from -- they appear to look as if they're from the USPTO, or a Government Agency, that's sent to the applicant, via mail, the post office, and it says that certain documents are due, and requests money.

However, these are scams and the money never actually reaches the PTO, if an applicant does submit that money, and, now, with the requirement for the email address of the applicant, it's another way for these scammers to contact the applicant, where they're likely going to paying these funds, and kind of what's the status with the PTO, with these scam letters, and what they potentially -- if they have any ideas to do with the email address?
COMMISSIONER HERSHKOWITZ: Thank you for that question. It's really a good one, and one that we think about constantly.

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

So, we're constantly looking at that. I don't know if Jamie wants to talk a little about our logins, and our authentication process, that we're hoping for later, but we are actively working with the Justice Department, against the scammers. We are actively publishing scanned letters that try to scam people. We have that on our website, and we also urge Trademark Attorneys,
and I know they do it, to warn their clients, not
to pay any money, send any letters, anything like
that, without going through the lawyer.

   MS. SHURSKY: Just before you speak,

   Jamie, I'm sorry. Is there an option or has it
been thought about to make that not appear to
anyone in the public, the email address, similar
to when you're intern -- your inputting your
attorney information, that number is like red, or
has Xs? It doesn't actually appear. Is that a
potential option to do?

   COMMISSIONER HERSHKOWITZ: We're looking
into that.

   MS. SHURSKY: Okay.

   MR. HOLCOMBE: I could talk all day
about this, because I've been doing this for 30
years. The internet came up not too far -- long
ago, and the fact of the matter is there are
nefarious people using it, for nefarious reasons,
and, so, we encourage you to give us the contact,
or the spam, so that we can stop these scams, at
all times.
That's the biggest thing, and if you folks need some help in doing a cybersecurity training for your staff, we're more then -- we'd love to help you on that. We have those things. Social Engineering is a big deal. If you get an email that says press this button here, all of a sudden, now, your computer becomes a robot for some foreign entity, and you don't want that to happen.

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

We anticipate to have that logged, soon, within the next year, of course, but that has not been a role-based access platform, to this point.
So, we're trying to get there, and we'll get there as soon as we can, and make sure that we are very secure.

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

MS. KINSON: Yes.

CHAIRWOMAN ESCOBAR: All right.

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

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

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

CHAIRWOMAN ESCOBAR: Mm-hmm.

COMMISSIONER HERSHKOWITZ: -- there is no perfect anything. We do have a system, though, that's pretty good. It's been around for many years. If we miss something, and we register
something you think we shouldn't, that's what the
opposition process, and the cancelation process is
for, at the Trademark Trail and Appeal Board. So,
there is, other avenues, the letters of protest,
as well as, like I said, opposition and
cancelation proceedings, and that's what they're
there for --

CHAIRWOMAN ESCOBAR: Yeah.

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

MS. KINSON: Yeah. Right now, letters
of protest are really the only thing we have, and,
so, we have been filing those, and they have been
getting accepted, and trademarks have been
canceled. It's just -- there's not all -- first
of all, there might be a fee for those. So, then
it would be a hundred dollars, each one, and, for
tee shirt phrases, it's just -- there's just so
many, you know? It would be millions of dollars
to try to oppose all of them.

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

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

CHAIRWOMAN ESCOBAR: Jen Kovalcik, you
had a comment, or a question?
MS. KOVALCIK: Yes, thank you. In the New Exam Guide, there is a provision, that states you can petition to have the applicant's email address redacted, in extraordinary circumstances. Could you speak to examples of what might be considered extraordinary circumstances?

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

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

Sure.

MS. RICKETTS: Oh, oh, up here. I know you email is ubiquitous for most of us, but it isn't -- there are actually people who don't have email. I've had two of them as clients. One of them was a well-known businessman, and he filed in his own name, but he didn't have email, and certainly didn't check it because there was not one. You sent stuff to his business, and the
businesspeople printed it out and made him, you know, gave him what he needed to see.

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

I'm going to be like, well, you're not going to get anything at it, because I'm your lawyer, but you have to have it. Okay, that person might set up an email account, but they're
not going to regularly review it. When you did
the Notice of Proposed Rulemaking, I did suggest
that you not say just email, and that, instead,
you say some electronic means of communication,
but you didn't adopt that suggestion, but I think
that the time is coming more quickly, than you
might imagine, when people actually won't
standardly have email addresses. I know you can
go and change it, by the regs of that time, but
what am I supposed to do with those clients, who,
as a point of pride, or because they're so
important, don't have email? I mean, do I do a
petition?

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

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

COMMISSIONER HERSHKOWITZ: I don't know
what to tell you, Allison. They don't have to
have a Registered Trademark, either.
MS. RICKETTS: Right, yes, I agree with that. So, that'll be the option I can explain to them, and then the other problem is, well, people being willing to provide a personal email, or an email that goes directly to the applicant, since it's not going to be confidential. It'll be publicly available, in the TSDR. You know, I think Americans are probably more comfortable, with the idea of that, but I think that, other parts of the world, they are less comfortable with that, particularly in Europe, where they have a lot of data privacy assurances, and I also have found that, I think, that the foreign law firms, who instruct us, are quite taken aback, that we want to -- we demand from them a way to directly contact their client, going around them, and for the U.S. Government to directly contact their client, going around them. So, I really think that it would be better, if you would allow the foreign law firm email addresses because, even if you exclude us from practice, they're still going to be the person to contact, to contact the
applicant. So, I just put that out there for your consideration.

COMMISSIONER HERSHKOWITZ: Okay, thank you.

MS. RICKETTS: Thanks.

COMMISSIONER HERSHKOWITZ: We do appreciate your feedback.

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

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

* * * * *
CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: September 30, 2022

Notary Public Number 301609