TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, May 21, 2021
PARTICIPANTS:

TPAC Members:
CHRISTOPHER KELLY, Chair
SUSAN NATLAND, Vice Chair
STEPHANIE BALD
DAVID J. CHO
TRACY L. DEUTMEYER
JOMARIE B. FREDERICKS
JENNIFER L. KOVALCIK
TRICIA MCDERMOTT THOMPKINS
KELLY WALTON

Union Members:
CATHERINE FAINT, NTEU 245
HAROLD ROSS, NTEU 243

TPAC POPA:
PEDRO FERNANDEZ
HOWARD WILSON

USPTO:
COKE STEWART, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office
DAVID GOODER, Commissioner for Trademarks
PARTICIPANTS (CONT'D):

JAY HOFFMAN, Chief Financial Officer, USPTO

BRENDA HOURIGAN, Director, Office of Planning and Budget, USPTO

DAN VAVONESE, Deputy Director for Trademark Operations, USPTO

AMY COTTON, Deputy Commissioner for Trademark Examination Policy, USPTO

GREG DODSON, Deputy Commissioner for Trademark Administration, USPTO

JAMIE HOLCOMBE, Chief Information Officer, USPTO

OSMAN TURAN, Acting Trademark Product Line Manager, USPTO

TAMARA FOLEY, Attorney, Office of Legislative Affairs, USPTO

KARIN FERRITER, Deputy Chief Policy Officer and Deputy Director for International Affairs

HELENE LIWINSKI, Attorney-Adviser for the Office of Policy and International Affairs

THE HONORABLE GERARD ROGERS, Chief Administrative Trademark Judge, Trademark Trial and Appeal Board, USPTO

BISMARCK MYRICK, Director of the Office of Equal Employment Opportunity and Diversity, USPTO

Also Present:

MARK THURMON, Deputy Chief Administrative Trademark Judge, USPTO

MARY CRITHARIS, Chief Policy Officer and Director for International Affairs, USPTO
PARTICIPANTS (CONT'D):

SEAN MILDREW, Deputy Chief Financial Officer, USPTO

MICHELLE PICARD, Senior Advisor for Financial Management, USPTO

ANASTASIA JOHNSON, Executive Assistant, Office of the Commissioner for Trademarks, USPTO

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CHAIRMAN KELLY: Well, hello, and welcome to the second public quarterly meeting of the Trademark Public Advisory Committee. My name is Chris Kelly and I am a partner at Wiley Rein in Washington, D.C. and have the privilege of serving as this year's TPAC Chair.

Before we begin today, I would like to introduce my fellow TPAC members beginning with this year's Vice Chair Susan Natland; Susan is a partner at the Knobbe Martens firm in Irvine, California. Moving on in the seniority, Stephanie Bald, a partner at Kelly IP in Washington, D.C., Kelly Walton Senior Counsel at Electronic Arts in Austin Texas; Jennifer Kovalcik Vice President Technology & Intellectual Property Counsel at Community Health Systems in Franklin, Tennessee; Tricia Thompkins General Counsel at Shoe Show in Charlotte, North Carolina; David Cho Assistant Vice President Senior Legal Counsel for Trademarks and Copyrights at AT&T in Dallas, Texas; Tracy
Deutmeyer, a Shareholder at the Fredrikson & Byron firm in Des Moines, Iowa; and Jomarie Fredericks, Deputy General Counsel and Chief Intellectual Property and Brand Counsel and Director of Intellectual Property at Rotary International in Evanston, Illinois.

And I would also like to recognize our union representatives here today, from NTEU we have Catherine Faint filling in for Jay Besch, and Harold Wilson and Pedro Fernandez from POPA. Again, welcome to everyone and thank you for participating.

Our first speaker today is Acting Deputy Under Secretary of Commerce for Intellectual Property and Acting Deputy Director of the United States Patent and Trademark Office Coke Stewart. We are very pleased to have Acting Deputy Director Stewart with us today and I will turn it over to her for her opening remarks.

MS. STEWART: Great. Thank you so much, Chris, for introduction. Can everyone hear me okay?
CHAIRMAN KELLY: Yes.

MS. STEWART: Okay. Well, thanks, Chris, so much for serving as Chair of the Trademark Public Advisory Committee. Thank you also to Susan Natland for your service as vice chair. To both of you, we very much appreciate your willingness to lead TPAC and for your sharing your experience with the Agency, and by extension to all of our stakeholders.

I'd also like to represent -- recognize all of the members of the Committee for your willingness to provide us with your expertise, your experience, and your guidance, and we know you have busy careers outside of this public service and we commend you for all that you do for the USPTO and for the IP System. Your commitment is important to the smooth operation of our program and to the continued prosperity, health, and wellbeing of our nation.

Finally, from everyone here at USPTO, a very warm welcome and thank you to everyone tuned in today for our quarterly meeting. Your interest
and engagement in the U.S. System of trademark protection is important and very much appreciated. As I prepared remarks for today, I was reminded of how critical our mission is to ensuring that brand owners are able to protect their intellectual property and succeed in U.S. And in global markets. It is increasingly important for our innovators to have access to the tools that safeguard their IP rights. We continue our efforts to reach America's innovators, entrepreneurs, and small businesses to ensure that they are supported in a rapidly changing economy. As always, there's a lot of material to cover over the next few hours including the latest developments in our business and financial operations. Our Fiscal Year 2021 priorities, legislative affairs, international programs, and updates of the Trademark Modernization Act. You will also hear from Bismarck Myrick on how the office will support President Biden's Executive Order on equity. A lot has happened since our last
quarterly meeting with the economy taking a strong
upward turn and rapid progress in responding to
the pandemic. The result is that 2021 continues
to be a year with an unprecedented increase in
trademark filings. So far this fiscal year to
date, trademark filings are up 56 percent. We are
experiencing strong interest among Americans and
foreign brand owners with China representing the
largest portion of foreign filings.

With the overall increase in filings, we
have stepped up our efforts to guard against those
that appear fraudulent or that appear to
circumvent the U.S. Counsel rules implemented in
2019. We are actively taking measures to stop
bogus applications from moving forward, to secure
and modernize our electronic databases and to hold
fraudulent filers accountable. Protecting the
integrity of the U.S. Trademark Register continues
to be one of our most important priorities and
you'll hear more about that shortly from our
Deputy Commissioner for Trademark Examination
Policy Amy Cotton.
Another priority I'd like to highlight is the expedited processing and examination of COVID-19-related applications. As of mid-May, we have received over 272 petitions for prioritized initial examination of COVID-19 medical goods or services. Sixty percent of these petitions have been granted and the top three classes identified in these granted decisions are Class 5 for vaccines, anti-infected and antiviral, Class 10 for personal protective equipment, and Class A for respirators and respiratory-protected devices.

The USPTO truly has been on the frontlines of our nation's efforts to combat the Coronavirus, and I want to particularly commend all of our trademark employees who are working so hard to address the surge of filings while dealing with the pressures in their daily lives caused by the pandemic.

While the USPTO currently remains in Phase I of maximum telework, we do anticipate moving into Phase II at some point in the coming months. And as we begin the summer season, I
think we are all eager to regain a sense of
normalcy, especially here at the USPTO.

Another top priority of course is
implementing the Trademark Modernization Act of
2020. You'll hear more about the TMA from
Commissioner Gooder and others, and we look
forward to your comments to our Notice of Proposed
Rulemaking that published in the Federal Register
just this Tuesday.

It's also worth noting that we have
embraced our expanding role in promoting
innovation and entrepreneurship in the U.S.
Economy. We've updated our inventor and
entrepreneurial resources website to make it
easier to access resources during each step of the
patent and trademark application process.

This site provides links to trademark
applications and fee tables. It offers
post-application resources to help determine the
status of your application, and it provides
information to respond to office actions and how
to utilize petitions and appeals. It is easily
accessible from our USPTO homepage. I hope you'll all take a look.

Finally we are getting ready to celebrate the 75th anniversary of the Lanham Trademark Act of 1946. Passage of this landmark bill was a monumental achievement by Representative Fritz Lanham from Texas. In the face of fierce opposition, Lanham reintroduced his trademark legislation repeatedly over the span of a decade until the measure was finally passed and signed into law by President Harry Truman.

His bill simplified registration, eliminated arbitrary provisions, and provided trademark owners the prompt recourse against infringement. Along with the TMA, we continue to build on the foundations provided by the Lanham Act to guarantee trademark protections for current and future generations of innovators and entrepreneurs. So, thank you, again to the members of TPAC for your commitment to civic service and to all of you who are engaged in the exciting dynamic and constantly changing world of
And thank you to David Gooder, Amy Cotton, Dan Vavonese, and Greg Dodson, and the entire trademark leadership team for working tirelessly, not only to respond to the historic increase in trademark filings, but to implement one of the most significant pieces of IP legislation in recent history.

With that, I'm honored to pass the baton to our esteemed Commissioner for Trademarks who will provide an update on trademark operations.

MR. Gooder: Thanks, Coke, very much.

Welcome, everyone. Good morning, good afternoon wherever you happen to be sitting. Today we're going to talk about a number of things. I'll be updating you with regard to the trademark organization and its personnel business operations, metrics, et cetera. Then we'll be discussing financial performance of the trademark organization with Jay Hoffman, our CFO.

Next, we'll talk a bit about our priorities for Fiscal '21. We're six months into
that fiscal year, and the most important of those
to the trademark community, the Trademark
Modernization Act, our efforts to boost register
protection, IT modernization and what we're doing
to attack the surge. And then, we'll then follow
with questions and wrap up after we cover the
other portions from other parts of the Agency.

So with that, let's go ahead and jump
in. Trademark staffing, as some of you may have
heard, we increased our examiner core by 47
examiners. That class started within the last
month, give or take, so we are now a notch over a
thousand employees of trademarks. That includes
675 or so -- 674 examiners, and you can see in the
chart how that breaks down across the trademark
organization. Some people ask: well, if you've
added 647, why are the examining attorney numbers
and hire from the last time not shown here? That's
because many examiners will maybe take a detail in
a different part of the Agency or change -- that
which unit inside of the trademark office they're
working in such as Policy, et cetera, so it's
always coincidentally in flux.

Next slide, please. So as Coke mentioned, and as everyone is widely aware, trademark applications in the last two years, and especially this year, have been -- you'll hear the word "unprecedented" a lot, and that's true. I'm still searching for a word that's even more so than that, but Fiscal '20 closed out at 9 1/2 percent above the prior year, which for a pandemic year was pretty astounding, but this year, you know, it's -- we're currently 220,000 applications higher and projected to reach just a bit over 950,000 and it may be higher.

We're not sure where that will actually end up, but it's significant, and it is creating a surge on applications which has a knock-on effect throughout all of the trademark organization, and you'll hear more from Dan Vavonese about the things that we're doing to get at that surge.

Next slide, please. When we're looking at this -- the story here is kind of interesting. Last year -- last fiscal year was sort of really,
you know, kind of slow at the beginning and then
crazy at the end. This year has been nothing but
up.

In terms of fiscal years, you'll see the
two big spikes. One came at the end of September
which is the end of the government's fiscal year
and one was the end of December, and we believe
the end -- the spike at the end of December had to
do with the fact that there was a fee increase
starting the 2nd of January which would have
motivated people to get things filed if they
needed to.

The thing that's fascinating is the four
months after that have also seen significant
growth. In fact, April closed out as being the
third highest month in history next to the
September and December of last year, so it doesn't
show any signs of abating although it's
fortunately at a lower level, so we'll keep
watching it through the year.

Next slide, please. So it's interesting
to look at where this growth is coming from, and
you can see that the blue line -- the top blue line is the U.S. The orange-ish line in the middle is China, and the gray line, next, is the rest of the world, and the green line is the European Union. And that's the European Union post-Brexit, so the UK is in the gray line. And you can see that while the U.S. has some, you know, ups and downs, the rest of the world is fairly moderate, you know, and fairly, you know, flat.

China had the huge spikes significantly. Now that's slowed up a bit recently, but right now if you look across the whole filings for the year, the left (phonetic) it's at -- that's a bit over on the right, 59 percent with 26 percent of the applications being from China. That is up from typically somewhere in the 15-percent range. And then the rest of the world at 10 and the EU at 5.

Next slide, please. Now, that's obviously that with this kind of numbers and growth it's having an impact on pendency both in first action and then the disposal pendency which
lagged behind about, well, the amount of the first action pendency, so four or five months. And you can see that we are in the low 5-month range for first action, and probably over 10 for disposal. Now, that's currently we're meeting the goal for disposal, but the first action is obviously beyond it.

Now, on the website -- the public website, you can see actually where we sit at any given with regard to this. Dan's going to mention that in a little more detail, how you find it, what it's disclosing, but this is something we're obviously keenly aware of and taking some traditional and some novel approaches to dealing with it.

Next slide, please. The positive news is that on the quality front, we're meeting all the targets and that's a credit to really to the examining core and their ability to not only deal with the pandemic but to maintain the quality, what they were doing on given lots of challenges whether that'd be dealing with homeschooling or
schooling at home by, you know, virtual means or
taking care of family, et cetera. It's been an --
I'm really impressed with the whole trademark
organization in their ability to deal with this.

So if you could get to the next slide,
that'd be great. Thank you. All right. Now, at
this point, I want to turn it over to our
financial team. Jay Hoffman is our CFO and
Brendan Hourigan who's the director of planning in
the office (phonetic), planning a budget, and
they're going to look at the trademark, the
operation from the financial perspective and
update you on that. So, Jay, I'll turn it over to
you.

MR. HOFFMAN: Great. Thanks, Dave. Let
me make a few introductory remarks here, and then
I will turn it over to Brendan Hourigan to walk
through the balance of the slides. So -- let me
see if I can get my camera working here. There we
go. So the revenue uncertainty caused by the
economic impacts of the pandemic is abating. As I
have previously described to the TPAC over the
last year, revenue uncertainty has been quite volatile both to the downside at the outset of the pandemic and to the upside as the economic recovery took hold.

Trademarks has (phonetic) strong growth in filings compared to the prior year albeit with the caveat that the prior year included the springtime 2020 COVID-related economic downturn results. As of today, I can report the trademark revenues have settled into a pattern that is generally consistent with our annual forecast and in fact are tracking above planning levels by about 1 percent.

Trademark spending is tracking slightly above plan due in part to Trademark Modernization Act spending requirements as well as adding some additional capacity to deal with the large surge in applications. However even with these modest spending adjustments, we are well within tolerances for our budget in operating reserve levels.

Lastly, I can report that the operating
reserve is in a very strong position thanks in large part to our conservative spending decisions last year coupled with the fee increase as well as stronger than expected demand the last six to nine months. Right now, the operating reserve is sitting at approximately $180 million which is a $105 million above our $75 million threshold, and it's working its way to the optimal operating reserve level which is defined as six months of operating costs or about $205 to 210 million. So generally, the state of the trademarks business is in very solid shape.

So with that, I'd like to ask Brendan Hourigan, our director of off, (phonetic) planning budget to please walk through the detailed slides. If you can, bring those back up, please.

MR. HOURIGAN: Okay, thank you, Jay. As you can see from the agenda, I'm going to speak to the FY 2021 financial position instead of the business, and then talk about the next steps for our budget processes which includes the '22 budget going to Congress and the process that we are
undertaking with our 2023 budget formulation.

Next slide, please. So at our last meeting, we showed our financial outlook based on the most recent assumptions. We continuously review our estimates so our financial outlook today is a bit different. One of the main changes to our outlook is that Congress approved our reprogramming request to transfer the funds deposited into the Patent and Trademark Fee Reserve Fund back into our salaries and expense account. So the 232 million in revenue that we collected last fiscal year that was above our appropriated authority we are now authorized to spend.

If you look at the last line of the table, you will see that what the approved funding does to the end of a year operating reserve. It increased our projected trademark operating reserve by 16.4 million. We are currently on a path to begin being well above our minimum operating reserve level, which is currently 75 million, but we anticipate ending the year at
1 181.9 million.
2 We plan to spend less than we planned to
3 collect this year which means we'll be depositing
4 funds into our internal operating reserve. Our
5 estimated trademark fee collections is 465.8
6 million. Through April 30, 2021, total revenue
7 collections are 2.9 percent or 7 1/2 million above
8 the year-to-date plan. Application filings are
9 4.6 percent or 7.2 million above planned levels.
10
11 Next slide, please. This chart looks at
12 the revenue change comparing Fiscal 2021 to Fiscal
13 Year 2020. The yellow line is the 40-day moving
14 average as a percentage of change. You will see
15 that our fee collections have been consistently
16 coming in at 25 to 50 percent above last year's
17 collections. The caveat of course is that last
18 year's collections were unusually low at the
19 offset of the outset of the pandemic.
20
21 Next slide, please. This slide shows
22 the end of your aggregate revenue projections for
23 the trademarks business line. Each business day,
24 we calculate the end-of-year projection of revenue
based off trends we have experienced so far in the fiscal year. We also factor in trends that we know will occur in the future. That's what the blue line represents, our end-of-year projections calculated every day. We can compare the blue line to the purple line which represents our most up-to-date plan.

The plan is 466 million, the revenue is tracking at 472 million, 6 million above the planning level or about 1.3 percent. Note that trademark revenue was growing steadily during the first fiscal year quarter and then began to converge with the forecast plan starting in January and coinciding with the fee increase.

The next slide, please. This slide shows the trademark end-of-year projections by fee category. The percentages above the bar indicates the percent difference between end-of-year projections of the fee category and the annual plan for the fee category. If you'll note that the application filings are almost 30 percent above plan, consistent with strong demand
particularly in the first part of the fiscal year.

Next slide, please. This chart shows

the trademark operating reserve balance as a
25-day moving average. You will see that we have
kept our levels above the minimum level of 75
million. The more recent numbers include the
funds that we received approval to transfer from
the Patent and Trademark Fee Reserve Fund which
contributes to the slightly higher average.

Next slide, please. So in terms of next
steps for our budget, we are still working to
finalize the FY '22 budget request. The
submission date to Congress is set for the end of
May. We have now heard that that date will be
Friday, May 28th. We sent the draft document to
TPAC last week for review and we have kicked off
our FY '23 budget formulation process. The
process includes re-baselining FY '22 requirements
and revenue estimates. We will also evaluate
aggregate revenue and aggregate cost for decisions
related to initiating a new fee setting effort.

Next slide. And that concludes the
slides for the finance update. Thank you.

MR. GOODER: Thanks, Brendan and Jay.

Moving on, I want to touch on the trademark priorities for the year that we're in the midst of right now and then we'll dive into four of those areas significantly. As you can see on your screen there are essentially four primary priorities and one in the center. That one has to do with the organization of the trademark office itself and we're looking at how -- what do we need to do to deal with the growth, et cetera.

Many people remember the trademark office when it was 2 or 300 people, maybe 400. There is that -- we are now, as you saw earlier, over a thousand people, and if you think about it in private sector terms, we are essentially a company of half a billion in sales, a thousand employees, and customers in 205 markets. That's a significant organization, and so we're looking at the organization and how that needs to evolve. You'll hear more about that in upcoming TPAC meetings, but I just want to make sure everyone's
aware that that's at the heart of everything we're doing right now.

For this year specifically, our four biggest priorities are, one, to get at this application surge as best we can and try to work through it faster than when we might normally have been able to. Dan will talk about that process, but the thing that I find most optimistic and encouraging about it is, you know, it -- the good news is we have more applications than we know what to do with; the bad news is the same thing.

That provides an opportunity, though, to pressure test a lot of our system and really look for ways to make it more efficient, to modify how we examine, how we handle things, everything we do, and over time you'll hear -- today you'll hear some of them, but things we're doing to get at that.

Moving that around the screen to the right, obviously the huge priority this year is to implement the Trademark Modernization Act. That's due by the end of December, and that has been a
one-year path which isn't very long, and Amy Cotton Deputy Commissioner for Trademark Examination Policy will take you through some of that although the more deeper dive will be through the roundtables that we have planned.

The next area is to look also at register protection, and I'll save my comments about register protection until when we get to that but suffice to say that that has become of the most significant areas for us. And finally our IT modernization is back on track because of -- frankly because of the increase in filings. As you may remember from one of the first TPAC meetings I did last year when finally started to fall so dramatically in the spring, we had to pause a whole lot of things, and the biggest thing there was IT modernization.

With the increase in filings, that has put us in much stronger position and we're able to pull all those, A, back on track, and B, get them progressing even faster. So anyway, with that I will turn our conversation over to Dan Vavonese to
talk about this filing surge and how we're attacking it. Dan?

MR. VAVONESE: Good afternoon, everyone.

I'm going to go through the -- go through some of the things we're working on and go through a little further explanation of what the results have been from these huge filings, so if we go to the next slide.

MR. GOODER: Hey, Dan?

Mr. VAVONESE: (inaudible) --

MR. GOODER: Can you -- pull the microphone a little closer? Yes, there you go. Thanks.

MR. VAVONESE: Everybody hear me better now? Mic check? Okay, good. So again, going to talk about the surge and talk about what's causing it, although we've already kind of done that, what's the impact on our internal processing and what we're doing about it, so if we go to the next slide. So as Commissioner Gooder mentioned, you know, these huge filings, especially over the last six to nine months, have really impacted us hard
especially in September and December and the last
couple of months as well. We just continue to get
close to record filings each month.

Our unexamined application inventory,
these are the new applications that are sitting,
waiting to be examined. We have generally been in
the 150 to 200,000 range. That's been a
comfortable level for the number of employees we
have. As you'll see it has continued to go up.
We are now currently at around 425,000 new
application classes, and that's -- you know, and
that's the entire total of our classes that are
examined.

That doesn't mean they're ready to be
examined this moment. That could have -- they
could have been filed yesterday, but that number
is huge, and despite the best efforts of all of
our examining attorneys, they have been continuing
to work as hard as they possibly can despite in
the middle of a pandemic, in the middle of these
huge increases, and while trying to maintain the
register protection which is so important to us,
and I just want to echo Commissioner Gooder's comments on just their continued hard work every day, especially when it comes to the quality of work that they're putting out.

So that's 425,000. That number is continuing to go up. The five-month pendency that we are at now on first action, we're in December right now, so that December filing month which was over a hundred thousand, we have to get through that month which is a huge month to get through just to get -- and just to start to get into January and up (phonetic), so we're doing everything we can to get through that.

So if we go to the next slide. So what's the impact internally as a result of the surge? And I'm going to go on chronological order here based on when we received the file and then on. So when it comes to new applications being received and processed, we process all applications within one week, and that means uploading all the data provided by the applicants and loading the actual file into our systems.
That's generally done within one week.

There are certain circumstances where it takes longer to get that entered. Generally it's when the classification is not specified by the applicant because if this classification isn't specified, we need our pre-examination unit to do their carder (phonetic) review, check on those cases in order to get the data uploaded to the system because we can't just upload that data without a class.

In those situations, it's taking almost over two months to get those cases uploaded. We're looking at what else we can do on this, but I'm going to just put out a plug here, please if you can help us by putting in the international class and that will definitely help in getting your initial data processed into the system. And I'm also --

MS. NATLAND:  Hey, Dan?

MR. VAVONESE:  Yes?

MS. NATLAND:  Real quick. Susan Natland here. I just -- just a thought that came to mind
on this. Is there any way to require that a class be entered? I mean, it may not be the right class
(inaudible) --

MR. VAVONESE: It's required in TEAS plus. It's not required in the T-standard application, so --

MS. NATLAND: Is there a way to make it required in the TEAS-standard? I know that
(inaudible) --

MR. VAVONESE: We can't. Yes, we have treaty obligations on this, but it's a good
thought, and it's something we need to look at going forward both from the external side but also
from the internal side, how can we get these processed.

MS. NATLAND: Right.

MR. VAVONESE: But I wanted to explain that because I think there's been some mixed
communication regarding applications not getting processed, and what we have found is it's that
situation and a couple of other minor situations where the data doesn't get entered initially, and
we always do suggest that if you're having any
issues to contact either our TEAS email box or to
contact our Trademark Assistance Center if you
have any particular questions.

When it comes to first action pendency,
we talked about that. We are now currently at
about five months. The first action pendency is
actually a little over five months from when the
application is received until the application is
examined by an examining attorney. When it comes
to our amendments and responses to office actions,
just like the application surge, the filings have
gone up.

Our responses have come up based on the
office actions that have gone out, so we are
trying to keep up with that backlog as well, and
we have -- while it's typically about two weeks to
get the responses processed, we're now at
currently about three months to get those
responses processed.

If we go to the next slide. So those
were the three main areas, but there are other
areas where we are -- the backlogs have affected us. I'll talk about how we're explaining that in a minute. What are we doing? So we've reorganized workloads among our staff, trying to pinpoint certain areas that where the backlogs have been worse to try to focus on those areas and get that work out as soon as possible.

As Commissioner Gooder mentioned, we also have hired new examining attorneys; that started in April. They are still currently in their training period, but within a couple of months they will be starting to actual -- be putting out more -- examining more applications, so, you know, by the end of this fiscal year we're hoping to see an impact from that.

We will be hiring plenty more examining attorneys next year and in the coming years because the projections are still for our filings to increase. We are also hiring additional staff to support our services areas to assist with those pre-exam backlogs and with our response backlogs as well.
Another route we're taking is on the IT and automation side. We're developing certain improvements in both the robotic process automation as well as in artificial intelligence to help provide tools to our staff so they can more quickly process some of the issues that we specifically know are slowing down the processing. So those are things that we are -- we hope to have -- we're in development and we hope to have them implemented soon because it will definitely start to provide an impact for us.

Most importantly, we are updating our external communications regarding these backlogs. We want to -- we are being more transparent (phonetic) and providing more information about the current timelines we're at so that we can direct our customers directly to pay (phonetic). Here's where we are when it comes to the different parts of the process, not only so that our applicants know where they are, but also so that our stakeholder attorneys can explain to their applicants what's going on as well.
We have launched internal pendency metrics on our trademark dashboard to show where we are on first action pendency and where we are on our pre-exam loading and on our responses post-registration, letters of protest. We're trying to provide all that information and updating it each month so people know where we are on those timeframes.

If we go to the next slide. This is just a quick snapshot of what one of the pages looks like. We have on our homepage, if you scroll barely down, you'll see an hourglass. The hourglass is a link to get to our dashboard, to get to our internal processing timeframes. We will be doing an additional trademark alert and other notices within different pages on our website that direct our customers to this location so that they can see where we are on these different internal processing issues.

So that's the -- that's where we are and the things we're working on and things we'll continue to work on. We appreciate everyone's
patience with this. We are working at this from several angles to try to get our timeframes back to what you have come to expect, but please bear with us as we continue to work through this.

I think that's the last slide from me unless there's any questions.

MR. GOODER: There we go. Sorry about that. Any questions from the TPAC on the -- in this portion?

MS. NATLAND: I have a comment. I just have a quick comment beyond (phonetic) --

MR. GOODER: Please go ahead.

MS. NATLAND: -- and that just thinks -- I really do appreciate the transparency in posting the pendency information. I do think that helps us at least set expectations for ourselves and for our clients, so thank you for being so transparent and providing other information to the public.

MR. VAVONESE: And if you have any additional suggestions and other information you'd like to see there, we all -- I'm happy to -- it's a living website. We can certainly supplement as
appropriate.

MS. NATLAND: Great. Thank you.

MR. GOODER: Any other questions from the TPAC?

MS. WALTON: I had a quick question. This is Kelly Walton from TPAC. How has it been -- you know, I think there was a requirement in the past for trademark examiners to be in D.C., or the home office maybe in the -- and obviously that's probably not happening right. How is it then on-boarding people remotely, and do you all think that's working well and any challenges?

MR. VAVONESE: It's been working well. It was tough last March because we had a new class come on right as the pandemic started, so we had to on-the-fly convert everybody to go home. It's a good thing that we have experience with working in a telework environment, so we had the supplies, we had the infrastructure in place, but it was still -- that was -- it was a -- it -- the transition at the very beginning was tough but then people got adjusted, and then for the more
recent classes, both last month and in October, we do think we've learned and done a better job of getting our people onboard and training in a remote environment and we continue to learn and -- you know, and --

MS. WALTON: Yes.

MR. GOODER: -- update how we're doing this.

MS. WALTON: Okay. That's great to hear. Thank you.

MR. GOODER: Yes, these are --

MS. WALTON: (inaudible).

MR. GOODER: -- (inaudible) on, too.

There's a challenge. I want to kind of particularly call out the class that started in October who was intended to start in May, and they were asked to just kind of hold and while we figured out what was going on and watch what was happening in the economy and they, to their credit, really did. I know it was a frustrating time for them, as it was for everybody trying to figure out what was happening, but they held in
and --

MS. WALTON: Yes.

MR. GOODER: -- started in October and they're now well on their way, so.

MS. WALTON: Good.

MS. FREDERICKS: Dan, this is Jomarie Fredericks with TPAC. You know, in some of our earlier discussions we heard that recently the USPTO is allowing entrance, basically, to the building again, and with vaccination, or without masks, or I'm not sure of the details, but I just wondered, not just in terms of the onboarding of the new employees, but when you entered the -- existing employees, the long-term employees, do you see any interest or when do you anticipate allowing them back into the office?

MR. VAVONESE: Well, we already are in a current phase where employees can request to come into the office to work, you know that we have a process in place that we're in a Phase I out of three phases, and we will be, over the summer be evaluating going to the next phases, but in
concert with the larger guidelines that have been coming out, we'll be working closely with the Department of Commerce on this, so I can't give you a timeframe, but we are looking very closely and following all the guidelines, you know, government, at local, national to -- and we will be following all of those in that transition back to for the employees that do want to come back into the office versus the employees that are already permanently teleworking.

MS. FREDERICKS: Thank you.

MR. GOODER: Okay. No other questions.

Thanks, Dan. All right. Now, I want to turn it over to Amy Cotton who will talk a bit first about the Trademark Modernization Act and then we'll move to the register protection topic. Amy?

MS. COTTON: Thanks, Dave. Good afternoon, everybody. Can we go to the next slide, please? Really excited to let you know that the Notice of Proposed Rulemaking issued on the 18th, just a few days ago, the comment period is 60 days. Written comments will be due to
regulations.gov by July 19th to lay out what's in
the roundtable -- I'm sorry -- what's in the rule
package. We're holding two public roundtables on:
One on June 1st and one on June 14th.

This is going to be very much like the
roundtable that we held a few months ago. If
you've subscribed to our alert system, a trademark
alert went out with links to our updated TMA
webpage and a link to the roundtable event
webpages. You can go to those event pages and
sign up for speaking slots so you can make some
informal comments or ask questions, and we'll be
there to answer.

I wanted to just point out one thing.
Anything that is provided to us in the roundtable
is considered informal. The formal rulemaking
process is through regulations.gov, and anything
submitted there in writing will be part of the
written record and to which we have to respond in
the final rule, so I would urge formal comments to
go to regulations.gov, but if you want to hear
more about what's in the rule package, listen
today and listen for a more deep dive at the
roundtable.

So here is the listing of the things
that are in rule package. The letters of protest,
the response times, new ex parte, non-use
proceeding of procedures, attorney recognition for
representation and court orders concerning
registrations.

Next slide, please. One more? I'm
going to actually skip the letter of protest
because in the rule package there is just one tiny
provision on the rule. The determinations on
letters of protest are final and nonreviewable.
I've actually mounted the Trademark Modernization
Act statute. The procedures have all been laid
out in an earlier rule package that it was
implemented earlier this year.

With regard to the second big piece of
the TMA, the flexible response period, there are
three actual options in the rule package. The
first option appears in the text in the rule text,
but the other two are in the explanatory text, so
I just wanted to highlight that there are three from which you can choose which one you like or maybe there's one that you've had -- is not in there that you like, but certainly pick one of those and let us know what you think about it.

All of these options would apply both in examination and in the post-registration examination procedures. The shortened options won't apply to Section 66(a) Madrid applications, just to Section 1 and Section 44. The first option is pretty simple. It's a three-month response period with one extension. The second option is a two-phase examination option. This is a little bit more complicated, but we were looking for ways to create efficiencies in examination and so we were considering whether we could bifurcate examination between formalities and substantive.

So on a bifurcated examination system, we would have the first phase of the examination on formalities with a 2-month respond period that could be extendable in 2-month increments up to the full 6 months, then the 2nd phase would be
substantive. There we would have a three-month response period extendable up to the full six months as well.

Now if you can add, you realize that that now is a 12-month response period all told if all extensions are done, but the idea being that we could move applications through the system on smaller issues more efficiently, and that might help us deal with some of the surge in filings that we're seeing.

The third option, we call it the Patent Model, so here it's the initial response period would be two months, but then it could be extended in increments up to the full six months. The extension fees we get progressively higher for each month that you extend it, and so that pretty much matches on the patent side.

Moving on to the third big bucket in the TMA, the non-use cancellation mechanisms. The next slide. These are the new proceedings available. One is called expungement; one is called reexamination. On the expungement and the
reexamination procedures, those are procedures before the director. They are not before the Trademark Trial and Appeal Board.

We, but also, though, have a new claim for non-use at the Trademark Trial and Appeal Board for expungement. This is in addition to the non-use claims that are already available. It does not supplant any existing claims.

For expungement, these would be targeted to marks in Section 1, 44 and 66 registrations that have never been used. The petition may be filed between 3 and 10 years after registration.

For reexamination, these are targeted to Section 1 registrations that were not in use as of the relevant date. The relevant dates for a 1(a) application would be the filing date. The relevant date for a 1(b) application would be the later of the filing date of the AAU or the expiration of time to file the SOU.

For reexamination, the petition may be filed in the first five years of the registration, but after that, no more reexamination petitions
can be filed against the registration. To the extent that you wanted to challenge a registration after these windows of time, you would have to go back to the Trademark Trial and Appeal Board.

Next slide. So any person may file these petitions with no standing requirement. The petition has to be filed though a USPTO.gov account through TEAS. The petitioner must provide the domicile so we can determine if the petitioner is foreign domiciled, and then they would need to have the designation of a U.S. Attorney to file the petition.

At the time of filing, a courtesy email notice will go out to the registrant and the register unto attorney of record that the filing happened and any evidence, and the filing will be uploaded into the TOCR (phonetic) system for folks for public viewing.

Next slide, please. So in the petition the petitioner has to provide a verified statement of containing information about the reasonable investigation and their evidence of non-use. So
the reasonable investigation, here are the sources
that we think would be important. Certainly this
is not exhaustive. There are certainly other
sources that can be looked at.

But a reasonable investigation must be
appropriately comprehensive, a search that's
likely to reveal use of the mark in commerce. The
sources must be reasonably accessible, and the
ones that can be publicly disclosed, and certainly
the reasonableness of the search will be
determined case by case. So we want to know what
you searched, how you searched it, and when you
searched it.

Next slide. So in the petition the
evidence provided must establish a prima facie
case for a proceeding to be instituted. We will
decide -- the director is the gatekeeper and the
director decides whether the prima facie case is
made based on the evidence and information
provided in the petition as well as the USPTO's
electronic record of the involved registration.
So we're looking at our records as well as what
comes in in the petition.

The Director can institute a proceeding without a petition if the Director has that evidence establishing a prima facie case. So for example, a Director could -- the Director could institute a proceeding on different goods and services in that same registration that's already the subject of a petition-initiated procedure, and then we can consolidate review of the proceedings on that same registration.

If a prima facia case is made, the director must institute proceedings, and once the proceedings are instituted, an office action will issue and direct the registrant to respond within two months with proof of use of the mark on the challenged good and services.

Next slide, please. The registrant is subject to our rules on electronic correspondence, domicile address and representation if foreign domiciled. The registrant has three options for a response, provide us evidence of use. That'd be great. And the other options, of course, are
providing evidence supporting excusable non-use, but that's only in expungement, and it's only applicable to Section 44, 66 registrants Madrid and Paris.

The third option is deletion of the goods and services. The registrant can delete in the response and the effects will be immediate. The registrant can delete through a Section 7 amendment to the registration, but we need to be notified about that in the response, and the registrant could voluntarily surrender the entire registration; again we would need to be notified in the response to the office action. If any one of these is sufficient and acceptable, then the proceedings will terminate at that time and no further movement of the proceeding.

Next slide, please. In the case of a non-response, failure to respond will result in the immediate cancellation in whole or in part, so the goods or services that were -- upon which the proceeding was instituted, those will be cancelled. If there is remaining goods and
services that were not part of the proceeding, those will remain intact. If the response is unacceptable or incomplete, we will issue a final action and there is a two-month response period.

The next slide. The registrant must respond at that point with a request for reconsideration, and a notice of -- I'm sorry -- an appeal to the Board. If the request for a consideration contains acceptable proof of use, again we will terminate proceedings and no cancellation will happen. Otherwise the examiner's decision to cancel would be appealed to the TTAB.

Next slide. Estoppel. So goods and services for which the use in commerce has already been established, they may not be subject to further expungement or reexamination proceedings. This however does not estop further Board proceedings so to the extent that goods and services acceptable -- proof of use is offered and accepted in an expungement or reexamination proceeding that would not prevent a petitioner
from going to proceedings for non-use at the TTAB.

Also in the rule package, I wanted to highlight that we're amending the rule to identify expungement and reexamination proceedings among those for which suspension of action by the authors of the TTAB is authorized, so our normal suspension rules will be in place for expungement and reexamination.

Next slide. Actually, the next two slides. Another piece of --

MS. NATLAND: Amy? Sorry --

MS. COTTON: Yes?

MS. NATLAND: -- before we move on, just a really quick question before we move on from expungement, the excusable non-use exception, so-to-speak, for 44(e) and 66(a), is there a reason why that there were some treaty -- okay --

MS. COTTON: Treaty?

MS. NATLAND: -- (inaudible) -- which one? I'm just -- I don't want to put you on the spot, but --

MS. COTTON: The Paris Convention and
the TRIPS Agreement is essentially what they require us to provide for excusable non-use, and the statute itself actually provides for that, the TMA statute, so we are providing that to those -- it's a treaty entitlement for those Paris and Madrid filers.

MS. NATLAND: Interesting. Now, is that -- does that also go the other way when we're in foreign countries where the registration is attacked for non-use? Is that also available?

MS. COTTON: If they are members of the same treaties, yes, theoretically, but I can't speak to their implementation of it -- or whether they can get (inaudible)

MS. NATLAND: I haven't ever heard of that, but okay. Let's see (inaudible) if it's reciprocal.

MS. COTTON: Great.

MS. NATLAND: Okay. Thank you.

MS. COTTON: Supposed to be.

MS. NATLAND: Okay, didn't know.

MS. COTTON: Okay. So there is a piece
in this rule package that is related to our
register protection initiative and I wanted to
highlight that. Under our current rules,
recognition ends when an application is abandoned
or registration expires or is cancelled or when
the applicant or registrant revokes the attorney
appointment or the attorney withdraws from
representation. That is our current rule.

Under the proposed rules, what we're
putting out for public comment is a proposal that
recognition should continue when, for example, an
application abandons, or post-registration
documents are filed and accepted or a registration
expires or is cancelled. In addition, a change of
ownership would not result in a change of attorney
recognition unless a proper revocation withdrawal
is filed.

The idea behind this is we need to make
these changes to our rules to make them more
consistent with our current practice for
applications and registrations, and we want --
we're doing this because we also need to
facilitate role-based access tour log-in program
so to the extent that USPTO.gov has -- our log-in
project has three phrases. The final phase is
called Role-based Access, and the idea there being
that only those who are authorized to touch a file
can touch a file.

In order to facilitate implementation of
that, we need to continue representation,
recognition of representation for attorneys so
that they continue to be able to touch the files
that they have been representing applicants or
registrants on. If we follow our current rules
and your recognition terminated, you would no
longer be able to touch those files and file a
maintenance document without going through and
establishing recognition again, so we want to
tweak our rules to make them actually consistent
with our practice.

I also want to highlight that we're
proposing a rule to clarify attorney obligations
when withdrawing from representation, and to
differentiate the ground under which the attorney
may request withdraw versus those situations where
the attorney must request withdrawal, and this
puts us more consistent with our rule of
professional conduct.

Lastly just very quickly, we're also
adding a proposed rule to codify (phonetic)
USPTO's longstanding procedures concerning action
on court orders, cancelling or effecting a
registration. The USPTO requires a submission of
a certified copy of the court order and normally
does not act on such orders until the case is
finally determined, and so we're just making the
rule consistent with our practice that appears in
the TMEP, so just wanted to clarify that.

So we're looking forward to doing a
deeper dive on the rule package and a roundtable
and hearing from you, your questions, and your
thoughts on it, and hopefully that will help us to
put together a final rule that everybody loves and
that we can implement by December 27th at least to
expungement and reexamination. The rule is
proposing to extend the implementation, the
deadline for response period for six months.

So the idea for the implementing the new flexible response periods would be instead of rushing to try to get everybody's docketing system in place by December, we give another six months so that we could work on our docketing system and you could work on your docketing system, so just wanted to flag that as well. So that's all I have right now on TMA.

MR. GOODER: Thanks, Amy. One point I want to make also is that when you -- you mentioned this a bit as when you look at and read the draft rule, you'll notice a number of optional provisions, and that was a real shift into how we wanted to do this so that -- the first thing is we went out early to get as much public comment, generally speaking, as we could that helped us in writing the rule in a way that was hopefully responsive already, and then with the other options in it, that we think would help us provide a rule that in the end, like you say is, as everybody is as happy with as can be, and so
you'll see options in there that are -- you may kind of wonder, and that's why that those are in there.

Any questions from the TPAC on the TMA?

So many acronyms.

Amy, you've done a brilliant job. Okay.

MS. COTTON: Hush (phonetic).

MR. GOODER: Now, let's get the topic of protecting our register better. The sort of preliminary comment I want to make before Amy takes you through sort of things what we're doing, what we're changing, some successes we've had, et cetera, is this. I came from a background of having to deal with area (inaudible) counterfeiting in, hmm, 40, 50 countries, give or take. And when you deal with that kind of thing day in and day out, you start to look at things a little bit differently, and when we all started looking at all the various sort of bad-faith things going on, scams, et cetera, it struck me that a lot of this conduct is exactly the same as counterfeiting. It adapts to challenges. They
move quickly.

And it's not just -- it's not just a scam. It's not just this or that. It's stuff that actually affects the integrity of the register, and I think outside partitioners, everyone at the office, we all take a little pride in the register being as good as it can be, but it also impacts businesses, and anybody who works with companies or is in a company understands how a trademark register that isn't accurate or that it's full of dead wood or full of problematic filings has a real adverse effect on it.

So as this became a bigger and bigger deal as we were watching it, and we were watching it evolve through the pandemic, you saw a ton of things explode in lots of areas, and we saw bad actors increasing in our system, too, so that's why it's become such a big deal to all of us, and I think to the -- everybody out in the trademark community as well. So with that, I will turn it over to Amy because I want everyone to really understand what we're doing and where that's
headed, and literally some of the kind of things that we're facing. Amy?

MS. COTTON: Thanks, Dave. Next slide, please. So the USPTO examining attorneys have historically not investigated fraud, but instead we relied generally on USPTO procedures that were based on this presumption of good faith, that all of our applicants were in good faith. The issue of fraud then was left to interparty's proceedings at the Board or the Courts where discovery was available and evidentiary rules applied, but we know that stakeholders are no longer in a position to file opposition to cancellations against the increasing volume of potentially fraudulent submissions, and now the fraud that we're seeing, fake signatures, unauthorized practice of law, misuse of real attorney information, they're really less suited to interparty's proceedings.

So hearing from our stakeholders, we pivoted from our past policy and we're now taking action to address fraud in examination. Initially, though, it made the most sense, from a
resource perspective, to use our, you know, examining attorneys to investigate suspicious behavior appearing in trademark filings, and so we gave guidance to our examiners to issue requests for information from applicants if something looks fishy, but maybe the specimen of use for the applicant or the attorney name or the address, they're not really on their face fake, but, you know, we sort of gave discretion to our examiners to look a little deeper when something, some spidey (phonetic) sense was going off.

We didn't' make that investigation mandatory because in every case that added scrutiny adds up. It adds up to pendency and it impacts all the applicants' abilities to receive timely registrations and not just the bad faith hope. And, but more importantly, individual examining of the attorneys are not really in a position to spot filing trends. Fake specimens, they come in in large waves of virtually identical specimens in different applications listing different owners, and because those owners differ
than these applications aren't grouped together as co-pendings which are groups of applications assigned to one examining attorney for consistent handling.

So these waves are harder and harder to detect by individual examining attorneys. And because of the time it takes to investigate such matters as fake addresses or specimens that appear legitimate but turn out fake, Trademarks is no longer in a position to really rely solely on our examining attorneys to fight fraud. So, you know, due to this increased volume of applications and the need to keep examining attorneys focused on their production goals and pendency, Trademarks has been moving more towards reliance on pursuing administrative sanctions to enforce USPTO's rules of practice.

So here are some schemes that we're seeing, false use claims applicants -- and you know this one -- applicants or registrants claiming use of amor agon (phonetic) goods and services for which they cannot establish use in
commerce. We have filing forms where applicants that submit fake or doctored specimens that don't demonstrate use in commerce. We've seen U.S. Counsel circumvention. These are false attorney names or false U.S. addresses. We've got real U.S. Attorney names and credentials, but the attorney is actually unaware that their name and credentials is being used.

We've seen offers to rent U.S. Attorneys' bar credentials to circumvent the U.S. Counsel rule. We've seen the unauthorized practice of law. U.S. and foreign non-attorney filing firms are engaging in unauthorized practice. They're providing advice and appearing in submissions, but we have seen forged signatures on submissions as well.

We've seen trafficking in applications or registrations highjacked through unauthorized changes of correspondence address in our records, brands that are imposter brands. Somebody applies for a famous mark and everything looks the same as the company's name except one little email address
is different.

We've seen applicants stockpiling registrations for their own use on ecommerce platforms where they're offering to sell those to third parties for the same purpose, and of course the scam solicitations. They appear to originate from the USPTO. They use our information to dupe applicants or registrants into paying for services they don't need.

Next slide, please. So there are three buckets, three avenues for sanctions against bad actors after investigation that we have at our disposal, and one, the criminal provision, so every declaration of use assigned under penalty of perjury, 18 U.S.C. 1001, law enforcement has that mandate. Second, we've got USPTO rule of professional conduct.

When attorneys are engaging in misconduct, those are handled by your Office of Enrollment and Discipline. The last bucket is rules of practice and the website terms of use, and these are under the authority of the
The commissioner for trademarks.

Next slide, please. The commissioner of trademarks has the authority to manage and direct all aspects of the activity of the USPTO net effect, the administration of trademark operations. That's pretty good. We like that.

Okay. The commissioner for trademarks has the ability impose sanction on parties who file submissions in trademark matters in violation of our rules of practice and our terms of use for our websites. So we are now leveraging that authority in a way that we really haven't done before to get at this issue.

Next slide, please. So how do we know when we've got fraud on our hands and then how do we handle it? The trigger for an investigation might be an examining attorney who reports a possible fraudulent activity in applications to us. USPTO data analytics might discover suspicious filing trends, those waves of applications.

Law enforcement investigating criminal
behavior, they'll talk to us about those investigations. We might see something in the media about fraudulent behavior affecting U.S. Applicants, and we hear from our customers through the Trademark Assistance Center, through the scams' mailbox, or the TM policy mailbox, and we also hear through the letter of protest procedure from our customers.

Next slide. When we discover a scheme, we identify all the affected applications and sequester any unassigned applications in the holding dockets. So we try to keep them -- cordon them off from action until we can figure out what we're going to do with these. We will find the affected applications. Maybe there's a common email address that we see, a common USPTO.gov account used, a common credit card. Whatever it is, we'll find the affected applications and pull them aside.

We collect evidence. We will try to figure out what are the rule violations that we're seeing, and once we establish that, it depends on
the nature of the rule violation. We may direct examining attorneys to issue the appropriate refusals or requests for information. We can direct all of our examiners to handle these or we have some work project examining attorneys that are specifically dedicated to this that we can use, or we might issue a show/cause order. That show/cause order will direct the offending party to explain the conduct. They will identify potential sanctions and we will set a deadline for response.

Next slide. When the response comes in, or if the response comes in, then we figure out what we're going to do. In most cases if there's no response or we don't like what they said to us, it doesn't really advance their cause, we will issue a final order for sanctions. Those sanctions will include striking a submission, terminating the proceeding, which could be abandoning the application, precluding parties from submitting further documents on their own behalf or the behalf of others, referring
practitioners to OED, or termination of the USPTO.gov accounts which they were -- the bad actions were happening. So those are all the different sanctions that might appear in a final order for sanctions.

Next slide. Now if an attorney is involved with any of these activities or rule violations, or apparent rule violations, we can refer those representatives to the Office of Enrollment and Discipline for investigation and possible discipline. They have the ability to actually refer -- they have reciprocal discipline that's already with many state bar associations that they can actually refer the attorney to the state bars.

Well, for cases that involve criminal activity, we'll go to law enforcement to the Department of Commerce, Office of Inspector General, we'll consult with them, and they then liaise with other law enforcement agencies.

Next slide. Two recent orders for sanctions that I wanted to draw to your attention,
and, you know, you can go to this link on our website and find all of the orders for sanctions that we've issued. With regard to Mr. Xue Chaoxing, in late November of 2020, we identified one application for a well-known mark and it was filed in the name of the legitimate owner, but the correspondence address was a third party.

We identified it in several other examples, and then in March we became aware of about 11 additional ones filed in rapid succession, each filed by the USPTO.gov account associated with an individual in China known to be involved in other improper activity before the office, so we issued a show/cause order to this individual and requested an explanation.

He responded and admitted to the unauthorized practice of law. He admitted to a great many things including sharing his log-in information with his subordinates, and based on this information, we issued the order for sanctions, precluding him from making further submissions, and we locked his account. We also
can tell from his response that there may be U.S. Attorneys involved with his activities, so we're continuing to investigate and expect further actions to be taken.

With regard to a Vietnamese individual Mr. Ngo, we became aware that he was filing dozens of changes of correspondence, address, and trademark registrations primarily owned by banking institutions. It reached about 300 different instances of changes of correspondence address that we had to reverse every time he did it.

We locked his account, but he would create new accounts to continue filing, and we received responses from him, but they didn't make much sense. He appears to be operating under the belief that he owns most of the banks of the world. So we issued the order for sanction, and we removed his authority to represent himself before the office.

We're working to block or revert any changes made by him and OCIO is locking all of his accounts and trying to stop additional accounts
from being formed. So we are seriously working on addressing these issues through the commissioner for trademarks authority to make sure that the operation and administration of the trademark system goes smoothly, so this is new territory for us, and we're really excited about it. It's a lot of resources, and it will take some time to really get our people going.

It's a big machine that we're trying to get moving here, but we're really optimistic that this will address some of the business models that we're seeing that are not conducive to a register with integrity. So that's -- I'm happy to take any questions on that.

MR. GOODER: Thanks, Amy. And one thing I'll point out is these so-called imposter applications that Amy was talking about or the gentleman in Vietnam who was basically hijacking existing filings, and these are two (inaudible) -- you know, you deal with counterfeit, you watch it evolve or -- well, these are new this year that have never been seen before, so any questions from
the TPAC about register protection?

MS. KOVALCIK: To start --

MS. COTTON: Sorry.

UNIDENTIFIED SPEAKER: Sorry. Go ahead.

MS. KOVALCIK: I'd just like to applaud you for taking these steps and going after these actions that are having quite a big effect, and I was just wondering if for the benefit of everyone participating with this meeting if you could remind us the best way to communicate to you if we become aware of an application that is filed by an improper person or missing credentials or something that would be ripe for this type of investigation. How is it best to communicate to the office?

MS. COTTON: There's a couple of ways. One of the best ways is a letter of protest because that's something that to the extent that you've got, you know, relevant evidence that you can give us that we can put in front of an examiner, that's really helpful. But to the extent that's not available, we have the TM scans
at USPTO.gov mailbox that you can use to submit
information to us as well. So those are a couple
of different ways that we can get information, and
I bet Dave would love a call, so I bet you could
call him.

MS. KOVALCIK: Thanks, Amy.

MS. FREDERICKS: Amy, this is Jomarie
Fredericks with TPAC. Do you anticipate -- I
mean, some of this requires different skillsets
that I think a lot of examiners probably have, and
I also think that these types of scams are
probably not going to lessen as we go forward. I
think they'll increase. Do you anticipate in
hiring additional personnel or personnel with
maybe different skillsets to at some point
basically specialize in dealing with these things?

MS. COTTON: Yes.

MS. FREDERICKS: Thanks.

MR. GOODER: Yes. Yes, a really good
point, Jomarie, because it does, and if you think
about this as brand protection, it does need
different kinds of skillsets. You know, you got
to a lot of really smart people, but you do need that skillset, that expertise, frankly that ability to think in different kinds of -- you know, be able to think about it from the mind of somebody who's essentially conducting a criminal act, and, you know, that's just not -- that's not been something that's -- you know, is part of our general wheelhouse.

To some extent, but not too (inaudible) now, so we're looking at beefing up our investigative resources, but the time to do it, to make sure there's dedicated resource to do it; like I think a lot of brand owners utilize when they start dealing with any counterfeiting, it becomes a sort of a side job for people who are doing other things in the organization and the trademark team or maybe it's brand security or premises security, and then as the problem gets worse and worse, you hit a point where you say we've got to have dedicated resources for this, and that's where we are, and that's what we're doing.
MS. FREDERICKS: Thank you. I recently participated in a USPTO webinar that was sort of -- spent some time on how to spot a fake specimen, so I know you're doing a lot of training with your examiners already. It was really interesting. Some of them were easy to spot, and a lot of them really weren't, and so they showed some of the techniques that they use to try to ferret these out. It's well done. Thank you. Thank you, (inaudible).

MR. GOODER: Good to hear.

MS. NATLAND: Hey, Amy, it's Susan Natland from TPAC. I also want to commend you on all of your efforts with the TMA and with these other actions to attack the scams. One thing I know we touched on before is how the PTO is publicizing its efforts and, you know, with respect to the types of things that can happen to you if you do involve yourself, like the criminal sanctions getting reported to the office of OED (phonetic). I'm just curious as to what efforts are being made in addition to posting that orders
for sanctions that you mentioned to publicize what
the USPTO -- without obviously giving away any
trade secrets, but just as more of a deterrent, an
educational platform to people to know there are
going to be ramifications if they do participate
in these types of activities?

MS. COTTON: Dave, you want to take that
one?

MR. GOODER: Sure. Yes, the short
answer to the question is we're increasing the
publicity around it in a couple of ways. One, to
make sure that when the sanctions are issued or
with things like that, the people know about it,
and they know what the bad conduct was. There is
a case that got resolved down in South Carolina
against a lot being entrepreneurial, let's say,
who had, you know, scammed a lot of people for a
lot of money, and so we're able to put him on the
website, but we're going to be more so doing it
via social media, things like that.

The other thing that was -- we beefed up
a lot is helping an owner of an application that's
involved in the -- have more guidance on what they
could do, what should they check; if they get
scammed what do they do. It's one thing to report
it to law enforcement and things like that which
is great, but what do you actually do with your
application if you think you've been the victim of
it, things like that. And literally, it's a topic
that we all talk about everywhere we're talking,
but we want to get a much bigger communication
effort for exactly the reason you're talking about
for the deterrent effect.

And also so our customers know that
there is something going on. It's one of those
frustrating things to read something somewhere
then, and the people being interviewed are
basically talking about it, but they are not
really talking about it in its current state.
They're kind of using their impressions, and we
want to correct some of that, and make sure people
really know what's happening.

Good question. Thank you.

MS. BALD: Quick question. This is
Stephanie Bald from TPAC. Going off of what Jomarie said, it's really just another side of what she commented about different personnel.

What about IT-type resources that can help you? I assume your IT systems aren't built for this. They're built to file and prosecute trademarks.

I'm wondering if that is another area where you're looking into ways to use technology to do those work (phonetic).

MR. GOODER: We sort of (inaudible) there, too. You're right, you know, that we occupy -- or we all as a trademark ecosystem have a database that's always been open. Ever since the act was created, it's been an open kind of system, and that we just can't have it that way anymore, but what's the good news of that is the PT over the years has built a very robust ability to analyze what it does, and it enables the investigators, et cetera, to really dig into things, but what we're needing to add is more of the kind of IT that helps with law enforcement activity.
I mean, it's essentially that kind of thing, right? You're tracking trends, you're tracking how connected these things are. If you want to read something that's absolutely kind of amazing from a scam perspective, you know, look further through reports that have come out of Pakistan recently from an investigation there. It is an organized, sophisticated, connected crime group. It is not a bunch of mom-and-pop hackers or mom-and-pop scammers that thought this was a good idea, and the numbers don't show it either, so that kind of thought where it is being required. The other thing is there are a couple of tools being developed that one is already fairly far along and being actually used to some extent that tracks duplicate specimens.

So if you load a specimen, and it can find everywhere that that appears, and which helps you see where a pattern has evolved of activity. Now, maybe it's legitimate use of multiple stuff and then -- but this will help, and to Amy's
point, one examiner isn't going to necessarily see that. The other area we're trying to look into whether there's enough sophistication yet is just looking at stuff in as for digital manipulation, that kind of thing, and it's one thing to do them one at a time.

When you're getting 60-70,000 applications a month, it's a different kind of task, but that's on the list as well. Greg may have some comments about some of this, too, because a lot of this falls into his area if he oversees IT, et cetera, so -- but, yes, given our volumes we have, we have to do it that way.

MS. BALD: Yes, it just it reminds me of how, you know, pretty much every major corporation has a corporate security group. What's the trademark office's corporate security group, and how do you get all the people from all these, you know, to find out what's the flow from the examiners to that group, the investigators to law enforcement? It's a whole new ballgame and it just seems like, you know, fixing it in a couple
areas, it has to be this comprehensive approach
with (inaudible) to have confidence what's the
problem.

MR. GOODER: Yes, and it is actually, so
call it Brand Security, call it Brand Protection,
call it whatever kind of group you want to. That
is Amy's group. And then they work immediately
with the legal department, Office of General
Counsel, and the solicitor's office who are
dealing with the law enforcement side of it, and
then dealing with Jamie Holcomb's group on the
tech side, and Office of Governmental Affairs.

I mean, it is just -- the new general
counsels are guiding Dave Berdan (phonetic). Dave
also comes from a consumer products background and
has dealt with the same things, so we look at this
exactly the same way that we did in our companies,
and that's how we are organizing, pulling things
together, so it is a team.

It is a brand protection by a security
team because the brand in many ways is the PTO,
and -- or the USPTO -- and, you know, the customer
being the victim of it is our customer, so it's
just tracked in so many ways, but you raise a good
issue which is you can't just be a little
department and solve the problem. It's too big,
and it's too expense -- Amy, do you want to add
anything to that or --

MS. BALD: I know that Amy does
everything, but Amy is doing the TMA, who's doing
this, just seems like it really is going to take a
lot of resources.

MS. COTTON: It does, and then if, you
know, everybody had their day job and now you're
adding, you know, this on top of it, so we're
trying to figure out to get -- you know, create,
you know, a unit that can handle this, and then,
you know, standard operating procedures, and like
I said, it's a machine that we're creating, and,
you know, it's taking a little while to get it
going which is why you're just hearing about it
now even though we've been doing this for a long
time.

It's just a matter of trying to get all
of ducks in a row so that we have our story

together to tell you what we're doing, and of
course, you know, there's always that law
enforcement angle, so you can't share too much
because of that, so that that's factoring in.

But, yes, we're excited about the progress that
we're making and we're really trying to pick up
some steam and momentum, but it is amazing how
many steps it takes and how many people are
involved just to take down one account. It's
amazing. But you all know that because you do
brand protection; this is new for me, so.

MR. GOODER: Amy will be happy when the
TMA is put to bed and running smoothly and she can
check that off of her list, so. Any other
questions on this? If not, we'll roll to IT
Modernization, and Greg Dodson. Anything
(inaudible)? Okay. Greg, it's all yours.

MR. DODSON: Thank you, David, and just
to piggyback on that. I am extraordinarily
excited because the first thing you have to do is
admit you have a problem, and in the past we
didn't admit that we had a problem, and now we're admitting it; we recognize it. I think truly the only way to solve this problem is through automation and through machines.

Humans are fallible and these problems are getting tougher and tougher, and unless we address them in a truly 360-degree kind of a way, we will never actually -- we'll always be two steps behind the bad guys, so we have got to get out in front of them and I very much applaud what Amy is doing and what Dave is doing to admit that we've got a problem and try to get us past this.

So with that, I will thank the Commissioner once again for his welcome. I am Greg Dodson. I am the deputy commissioner for trademark administration, and I'm going to talk to you today as I always do on information technology modernization and what it means for the organizations, so next slide please.

All right. So new ways of working. I want to say up front that it's an exciting time in the IT business. I think I'm going on my fifth
year in the USPTO, and I think we've got the best relationship with the chief information officer that I've seen since I've been here, and I applaud Jamie Holcombe, the CIO, Debbie Stevens, the deputy CIO, and the entire CIO team for recognizing where we are in the process, what we need to do to get ahead, and realizing that this isn't a bunch of tribes all trying to get there in their own different way, but this is a collaborative effort and we need to get there, so I'm just excited about that.

David mentioned -- the Commissioner mentioned that we had to take a bit of a strategic pause for this little thing called COVID-19. We're kind of working our way out of that now which is really exciting. I'm extraordinarily thankful to the CFO Jay Hoffman and his team for recognizing that we need a little bit of additional help financially to get back on track. You know, if you were training for the Boston Marathon last spring anticipating being able to run it in April and you had to take some time out
from your training regimen and you were planning on doing it again in October of this year, you don't just go right back out and run 26 miles right away.

We've got some work that we have to do. We stopped for a year, a little bit over a year, actually, and it took -- it's taking us a while to kind of get back in the groove, and Jay and his team are helping us with a little bit of that federal green to kind of get over that hump by allowing us to bring some more teams on to try to do the best that we possibly can to get there.

And then of course the leadership of Drew Hirshfeld and Coke Stewart in the front office who recognizes well that we had to take a delay, and they are doing everything they can to kind of help push us along, and if there's speedbumps in the way or if there's sand in the gears, they're doing everything they possibly can to get us there, so it really is a good time to be in the IT modernization business, and I was in the Air Force purple represented joint. I got a
purple dot up here, and it is a joint issue for us
to be able to make this happen.

So let me kind of pick up where we were
last year -- or last year; actually I guess it was
last year. But the last meeting that we had and
just kind of walk through some of the highlights
of what we've been doing. So when I briefed you
the last time, we were just kind of getting the
teams onboard. They were learning how to get to
their virtual offices and how to virtually badge
in and do the other stuff, just the onboarding
things that we had to work through.

I'm happy to report that those teams are
now established, developmental efforts are
ongoing. We're going to talk about a few of those
as we go through this, and we're starting to see
some progress, especially in the areas that are
really kind of exciting to me because they're the
innovation areas, the entrepreneurial areas like
artificial intelligence and robotics processing
and things of that nature which are cool and neat
and stuff that you can kind of get your head
around and are going to take us, I think, into the next step as Dave was talking from a trademark branding perspective.

So I talked to you the last time about the centers and have -- we have broken out the way we were going to do development in the centers, and so I'm going to kind of walk through the six that we have, but I really want to foot stomp one thing because I think this kind of, at least on the trademark side of the house, glues it all together.

In the summer of 2019, a gentleman that I work with, Glen Brown (phonetic) and I worked with David's predecessor to try to bring an organization into play that was going to help the trademark business kind of focus IT efforts in the way that it needed to be done, and we kind of hitched-on to this topic or that's kind of been the name of the group director for information technology.

For those of you that have been hanging around the trademark business for a while, you
know that the way we kind of established the law,
this was with group directors, and then we had
subordinate organizations to them. So we kind of,
you know, imitated that and we created a group
director for information technology and we started
that process in the summer of 2019. Happy to
report that just last month, in April, we finally
got the last parts of that into place and we're
now able to officially announce that that
organization is established.

That organization has a development
team, a testing team, a product ownership team, a
future-looking team. It really is for those of
you that understand the way that IT works on the
patent side, our very, very big brother, they have
an organization called the Office of Patent
Information Management, and we kind of took a look
at them and kind of leveraged some of the work
that they did and did some best practices and some
other things, shrunk that down by about 90 percent
because we're 10 percent the size of the patent
organization, and said, here we go.
And we threw these folks into the breach, and we're really starting to see with the work that that dedicated team is doing and then the folks that Jamie and his team and the CIO are putting together were able to start to make some really cool thing happen, so let me kind of talk to you about what we're doing.

So from the external center perspective, you know, we've done a lot of stability work. We've gotten -- you know, for those of you that have been watching this operation for a number of years, our systems considered legacy. Some of them like me, we call them -- I call them classic because legacy has a bad connotation to them, so I like to call them classic capabilities, but, you know, we allowed them to atrophy because we had this vision of bringing a capability on, and it made perfect sense financially, and from a human perspective to not put a lot of money into our legacy/classic capabilities.

When the previous program kind of washed away, we had a lot of work that we needed to do
just to be able to survive, and so we've been putting a lot of money and a lot of effort into this, and so from the external perspective we've had a lot of components that have gotten their releases done from a stability perspective. We deployed features into our TEAS project.

Many of you have heard that we're working on an ID verification capability. We're going through that, that the software was deployed. We're now going through some basic usability testing. We're going to follow that up with some basic beta testing, a very closed data to make sure that the system works and then we're going to present that to the world.

TSDR capability that a lot of people use, we're enhancing our cyber security, because as you know those of you that remember about a year and a half ago we had some real issues with data miners and when they got into the system and really started to pull that thing down, that had ramifications across the entire enterprise.

Everybody essentially goes to the same
database; they just go to it in different ways. And when TSDR got hammered by the data miners, it brought down the entire search platform that we had and we were struggling there for a while. So working with Don Watson on the cyber security side and the CIO, we've done some really good, structured work to try to bring that capability into play.

On the examination side, I extol the virtues of Peter Bowdrie (phonetic) every time I get a chance to talk about this. Peter is just a wonderful attorney. He's been here for a long time. He knows how to do this work and he's running this department for us. So thank you to Dan Vavonese for continuing to allow us to leverage the capability that Peter brings. But Peter is doing a lot of good work for us today.

We deployed overnight a stability fix to FAST 1 one which I got to admit kind of caught us a little bit by surprise. I thought about changing it from was deployed on May 21st. I'm kind of looking at this somewhat jokingly, and now
I'm looking at May 21st, 2022, is when we're going to deploy it. It's not really, but the point is, is that sometimes we struggle. Why does that happen? That happens because we're really trying to fix old stuff and we're doing the best that we possibly can.

We work through it, but, you know, our poor examining attorneys over the course of the last couple of the days have really kind of been in a bad place with some of the work that we're doing, and we're really struggling to try to get there, but, you know, the intentions are sound, the work is good. It's just a tough act right now. We got that out there and we think we're kind -- we've kind of nipped it in the bud for the rest of the day.

DevSecOps, you're going to hear a lot more about that concept when Jamie's team talks this afternoon, but we've got that working on the next Gen exam capability and we're trying to get that pipeline squared away and we're doing a pretty good job with getting that done.
Our international team working with our new contract staff has established some microservices; don't want to try to unpack that for you on this meeting, but, you know, cloud microservices is a way to kind of deploy things in a much quicker way to try to bring capability, a strategy to task right off the bat, and that's what we're trying to do here with international, and we're receiving a lot of -- frankly we're receiving a lot of good -- getting good vibes from way over there in Geneva from the International Bureau and a lot of our Madrid customers who are seeing the results of these labors, and so we're really excited about that.

Next slide, please, if I may. TTAB. Don't want to steal any of Chief Judge Rogers' thunder here, but he's got a wonderful Judge who works as his lead product owner for the TTAB. They're doing some fantastic work. You can see that they just completed a two-year stabilization project. That was a huge undertaking for the TTAB, and kudos to them for getting that done.
We're working on their TTAB center which is as you know what this is all composed around and integrating that Notice of Opposition form right there, and then finally to kind of ducktail with what Amy's doing on the TMA, there's a lot of work that has to go on the TTAB side of the house, so we're working at that as well.

One of the most interesting areas of endeavor that we have within our centers, data and analytics. You know, if you're not data driven these days, you're probably missing something.

This is a really, really interesting area of responsibility for us and our lead product origin is all -- is doing some really, really good work down in that shop. You can see the three of the four legacy systems have now been retired and decommissioned, so that's good work.

We're reducing the number of legacy reports. You can see 400 legacy reports. I'm sure we didn't have 400 customers out there that took every one of those reports, but Jim's looking at this. He's decomposing this, distilling this
process, and now we're down to a hundred. We're working to get that into our enterprise down in warehouse, but they're doing some really, really good in there, and you're going to see the results of that both in a production capability and in our ability to display in a very understandable form the way our process is working, and you don't need somebody explain it to you. It'll be right there and it'll be readily apparent to you.

And the -- to help with the legal policy office, the form paragraph search application that supports that analysis, so we're working at that, and then finally underpinning all of this is our content management system. I'm sure many of you have heard about TRM (phonetic). We've been talking about TRM for probably close to a decade and a half now, and we're continuing to work on building the TRM systems which is Trademark Records Management. We're working to get that.

With Jamie's help, we're working to move that over to the Cloud, create a very cyber hardening structure around there to be able to
keep the bad guys out and we're looking -- that
thing is looking really, really, really positive
as we're going forward with this. And so that's
that.

All right. Next slide, please. I
covered three bullets in one conversation. Okay,
so exciting stuff, RPAs, Robotic Process
Automation. Think Pac-Man chugging through stuff,
things that people don't want to do. RPAs that's
what we're working on. We've got one to help --
kind of to help Dan's team, Dan Vavonese's team,
with the auto suspension modifies our business
logic and trade-ups.

We're working on the Trademark
Assistance Center so when you pick up a phone to
talk to a live support agent -- maybe before
you've done that, you've gone through the chatbot
and chatbot has kind of helped you answer some of
the questions, and so you can get to the real
meaty issues that you need to work with the
trademark assistance experts with as opposed to
just asking very basic questions, and one of the
other really interesting RPAs that we've got going on are pseudo marks; you know what those are. But it's aligning the workflow and automating the workflow as we're looking at pseudo marks to kind of help alleviate that process upfront and smooth flow the work that the examination support unit does. I said that I would talk -- that's all that we've done since the past. Let me talk to you real quickly about what we're going to do in the future here on the external side.

I mentioned that we're going to do the beta testing next for the ID verification. For those that use TESS, and I know there's a number of you out there, we're working on replacing that architecture and throwing it over to the Cloud, which is going to make it more resilient, more robust, you're going to get better response times, and we're working on the syntax capability there to make the search function a little bit easier. The ID manual, the public one, we're continuing the synonym work and we're also going
to throw that one out to the Cloud, so that's a wonderful thing. On the exam side, more on the intercomponent that we're doing. We're continuing to work on the user interface so that when the examination team opens up the system it makes much more sense to them. It's far more user friendly and is far easier to navigate, and our editing tool, our trade-ups capability, we're continuing the enhancements to support that.

Many of you know for many years we've had two trade-up systems, the blue trade-up system, then a yellow trade-up. Some of the capabilities overlapped in a Venn-diagram kind of way, other of the capabilities didn't. We're working to bring that all in to get to one trade-ups capability. We're continuing to work on our -- or I'm sorry -- our international component. We've got some fiber weight work to do in there, and so we're working on that compliance. We're going to continue to work with TTAB which I'll let Judge Rogers talk about.

On the CMS side, I mentioned that we're
going -- you know, the Cloud, that work continues. That work gets ever more and more robust as we go into the future, and finally on the DNA side, as we continue to find these reports and these little modules of work that we're doing out there, we're shoving those over into the enterprise down in warehouse to try to support it in one place so that we don't have a bunch of pockets of expertise that exists out there.

Finally for our novice filers, I would encourage you to take a look at our trademarks basic page. Tonya Amos (phonetic), her team down in the electronic filing work has made some significant changes to our webpages, made them far more user friendly. They speak English now, Frank, which is really nice, too, so take a look at those; we think you'll enjoy those. And our next step is to do the Madrid work and also bring petitions into a place that makes it a little bit more enjoyable for the work that you're doing.

And with that, I will open the floor up for questions.
MR. GOODER: There was never much going on is there? Any questions from the TPAC? Our next session is with Jamie Holcombe, OCIO, but we're scheduled I think, Chris, up for a break?

CHAIRMAN KELLY: That's correct.

MR. GOODER: (inaudible).

CHAIRMAN KELLY: Ten minutes. So we can reconvene at 2:53 if that works for everyone.

MR. GOODER: Yes, sure does.

CHAIRMAN KELLY: Great. See you in 10.

MR. GOODER: Thank you.

(Recess)

MR. HOLCOMBE: I guess I'm going to open by welcoming everyone to the next part of our great TPAC. I will be followed momentarily by Oz, but I must admit that I too am very happy with the collaboration that is ongoing between trademarks and the CIO's staff. It's amazing what can be done when people understand the mission and are focused on getting results.

So we didn't have the greatest deployment last night, but the team got together.
We were transferring and going from the old Visual Basic architecture and transferring into the new DOS net architecture. Well, that should've been done a long time ago, right? But it's done now. We had some problems, and I'm here to tell you we're getting those fixes out there right now, so I'm really happy and proud of the team.

And without further ado Oz is going to tell you about all the great stuff we're doing at CIO. Take it away Oz.

MR. TURAN: Thank you, Jamie. I appreciate that. Good afternoon everyone. I am Oz Turan. I'm the acting product line manager supporting trademark (inaudible) organization. So let's move onto the next slide, please. Next slide again.

All right. So at our last TPAC public meeting in March most of you may recall that the CIO discussed three of OCIO's top priorities for this year. And I'd like to start off with some updates on those priorities. The first listed priority you see here, cybersecurity, OCIO
continued to strengthen its cybersecurity posture. For example, we recently implemented malware scanning for all files that are received through TEASs, and TEASi filings. We've also implemented measures to protect against confederate threats and phishing attempts from outside bad actors. For example, we're now including warning banners on all inbound emails that help remind our employees to be extra careful about clicking any link or attachments from external sources.

And with respect to resiliency we've recently completed construction on the new primary data center in Manassas and that includes commissioning the power and the cooling systems. And the next step, of course, is to configure the space, the equipment, the network all of which is projected to be completed by this July. And as for moving to the Cloud, OCIO continues to mature its cloud processes. For example, we've recently established a cloud intake process which includes guidance and best practices that any of our
current IT systems can take advantage of and also, accelerate their own Cloud migration efforts.

And finally, OCIO recently achieved a significant milestone in that we successfully migrated MyUSPTO's disaster recovery infrastructure to the Cloud with automatic failover. So now, we have two blue/green production environment on our premise and those are basically mirrors of each other. But with the addition of disaster recovery up in the Cloud, and so we can move seamlessly between all three of those environments and, in short this is a great example of a successful hybrid cloud implementation.

Moving on to the next slide, some additional highlights. I'd like to touch on a few other highlights since the last TPAC meeting. Some of these updates, of course ado tying in with, and complement Greg Dodson's earlier comments today.

The first one here related to our budget formulation process, we just wrapped up our
FY22/23 budget validation and formulation cycle.

In our request, and hoping that it's approved, we plan to increase our capacity and resources to help accelerate some of our major modernization activities, such as replacing the TRAM system; replacing TEAS and TEASI, and also introducing new capabilities to support trademarks and examination processes using technologies such as AI and RPA.

And now, none of these are really new for us; it's just that as Greg mentioned due to prior budget reductions we've had to defer those plans largely and this helps us get back on track.

Next up, as Greg mentioned, we are currently supporting a closed group, usability testing on a new prototype for identity verification for TEAS and TEASI's filings. And so will allow us to collect valuable information and feedback which will further allow us to improve the customer experience at a later deployment.

Next up, we've recently surged up additional teams, Agile teams, to develop new IT capabilities, to support the Trademark
Modernization Act. These teams are also helping to tackle the trademark filing backlog by developing the AI and RPA technologies, as Greg mentioned earlier, to assist the examination processes.

The next bullet here, finally we continued to mature our Cloud and DevSecOps processes for both trademark and TTAB systems. To clarify, by DevSecOps pipelines, that stands for development, security, and operations. And that essentially automates how we deliver software into production from design and to delivery, but with security being baked in every step of the way. And cybersecurity is at the forefront throughout the entire process.

And so for example, the TTAB product with respect to Cloud, they're migrating their systems to the Cloud and the architecture that they're using is actually serving as an example, or as a template that other systems planning similar migrations can follow.

And finally, as Greg mentioned as well,
during his presentation the Trademark Exam Team finished building out its DevSecOps pipeline and so they can now build and deploy software into production with minimal external assistance. And so this includes automated testing, it includes cybersecurity scans and so with this pipeline in place it should allow for a significant boost in the team's throughput.

And so beyond those activities, at least at a high level, there are also many other activities we're involved in. We do continue to wrap up our stabilization efforts. We're continuing to reduce technical debt and we're also continuing to improve our technical infrastructure that will support how we develop and deploy software in the future. And so those are my highlights. Be happy to take any questions at this time.

MS. KOVALCIK: Hey Oz, this is Jen Kovalcik from TPAC. I'm curious, for the next budget cycle and planning purposes, is it primarily focused on continued stability and
enhancement of existing systems? Or within this
next budget year are you also planning to
introduce any new systems?

    MR. TURAN: Right. With the additional
funding we will be able to introduce new systems.
So while we have been trying to keep the lights
on, so to speak, with a significantly reduced
budget over the past couple of years, with some
additional resources, this will allow us to resume
our original plans to modernize. So while in some
cases, for example, TMA where it will be
implemented in some of the legacy systems, at the
same time we know we need to modernize these
systems. We want to get them up to the Cloud to
the extent that is possible and practical. And
so, again, with the additional funding we
definitely plan to modernize.

    MS. KOVALCIK: Do you envision moving
all databases into the Cloud or will those
continue to stay from the early (inaudible)?

    MR. TURAN: The degree to which
databases get moved to the Cloud is still
something that we're still in the planning stages. There are, certainly some constraints to consider in terms of cost effectiveness for each transaction, inputs and outputs. We want to make sure that whatever we do is cost effective but at the same time we want to ensure that it's also -- you know, makes sense from a supportability. But by and large the Cloud is a place where we want to encourage maximum adoptions, especially due to the maintainability.

But Jamie, anything further you'd like to add to that to make sure I hit the mark on that.

MR. HOLCOMBE: Oz, you're right on. The point about applicability out in the Cloud is, it's all different. What does that mean? The biggest fallacy that a lot of government agencies have is we move everything to the cloud it'll be cheaper; that's not so true. If you have a lot of chattiness between a client and a server, what you get is a lot of charges against your transactions. And that makes it more expensive to be housed out
in the Cloud. So it all depends upon the application. And of course, you could refactor and redesign applications to take advantage and make them less chatty; that's a good idea. But it all depends.

Storage costs are another big deal, right? And we have to get with commodity providers who provide the greatest quality and security. So it's not just cheap. It also has to be good. Thanks.

MR. TURAN: Thank you, Jamie.

MS. KOVALCIK: Thank you both.

CHAIRMAN KELLY: Any other questions from TPAC members?

Okay. Jamie, and Oz, thank you both very much. We appreciate it.

MR. HOLCOMBE: Thanks a lot. Have a great weekend.

CHAIRMAN KELLY: You too. Okay. Next, we will receive a legislative update from the acting director of the Office of Governmental Affairs, Kimberly Alton.
112

MS. FOLEY: Hi everyone. I'm actually
2 -- Kim is not able to join us today.
3 CHAIRMAN KELLY: Oh.
4 MS. FOLEY: So my name is Tammy Foley.
5 I'm an attorney with the Office of Governmental
6 Affairs, so I'll give you the update.
7 CHAIRMAN KELLY: Well, welcome Tammy.
8 MS. FOLEY: Thank you. Next slide, please? Okay. So first I just want to flag a key
9 piece of legislation that has been introduced so
10 far in this Congress. The first is, I'm not going
11 to read the entire title, I'll go with the short
12 vision, the Informed Consumers Act. This was a
13 bipartisan bill that was introduced in March that
14 seeks to combat the online sale of counterfeit
15 consumer products by ensuring transparency of high
16 volume, third-party sellers in these online retail
17 marketplaces. So it essentially directs the
18 online retail marketplaces to authenticate the
19 identity of the high volume third-party sellers,
20 which should, hopefully, deter the online sale of
21 counterfeit goods by anonymous sellers. The bill
will also ensure that consumers can see basic identification and contact information of these high volume third-party sellers.

The next bill is a bill that would provide the Customs and Border Patrol enhanced authority to share information on merchandise that is suspected of violating copyrights. In the end, the last bill that's on this slide, I think everyone has heard of so far is the Endless Frontier Act. This is a bipartisan bill that establishes federal programs that support manufacturing, telecommunications, and research and development in the United States, with the aim of increasing competitiveness with, and reducing reliance on China.

Among the several measures introduced in the bill, and the one that is of particular interest to the PTO is the establishment of regional technology hubs that are meant to spur innovation in the United States. The bill was reported favorably out of committee earlier this month and is currently on the Senate floor where,
as of my account this morning, there were 400 plus
amendments offered; included in those are the two
previous bills that I just talked about, the
informed act and the CBP bill. We're continuing
to monitor the amendments as they are introduced
up to - for any of them that touch on USPTO
equities.

And then, lastly, yesterday on the House
side there was a bipartisan bill that was
introduced that also combats the online sale of
counterfeit products. This is the Shop Safe Act I
think we discussed it when it was introduced at
the last Congress. We understand that it's been
amended slightly but it's - again, it's
incentivizes online platforms to adopt best
practices that will prevent third-party sellers
from listing counterfeit products for sale. The
bill incentivizes best products - our screening
and vetting sellers of products addresses repeat
counterfeit sellers and ensures that consumers
have relevant information to make informed
decisions.
Next slide, please. Oh, before I move on, are there any questions relating to the legislation?

Okay. And then finally, I just want -- a slide on a couple of hearings that have gone on. The first is, as I think you guys all know Mr. Don Graves was confirmed to be the Deputy Secretary of Commerce. He was voted out of the Senate on the 13th, and I believe he started on the 14th. So he had no downtime.

And then there was also a hearing for Ms. Leslie Kiernan to be the General Counsel for the Department of commerce. She was also reported favorably out of committee on May 12th, and we hope that she will come for a (inaudible).

And then finally, Secretary Raimondo testified on May 6th before the House Appropriations Committee on the president's budget. And she is scheduled to testify on the same before the Senate Appropriations, next week on May 26th.

And I believe that's all I have. Let me
check the next slide just to be sure. Yep. If anyone has any questions?

CHAIRMAN KELLY: Any questions from TPAC members? Okay. Tammy, thank you very much. We appreciate it.

MS. FOLEY: Thank you.

CHAIRMAN KELLY: Next is Helene Liwinski from the Office of Policy and International Affairs with a policy and international update.

MS. FERRITER: Hi. And before Helene gets started, my name is Karin Ferriter. I'm the deputy chief policy officer. I just wanted to convey the regards of the chief policy officer Mary Critharis. She had planned to be with this group today but she was unavoidably detained. She asked that we announce that we'll be hiring, or you'll be seeing, perhaps, two new faces. We are hiring two senior (inaudible) trademark attorneys (inaudible) focus on international and the (inaudible) domestic (inaudible). And so at the next meeting, hopefully, you'll be able to be introduced to them.
And with that, Helene, it's -- they're all yours.

MS. LIWINSKI: Good afternoon, everyone. I'm very happy to speak to you today on behalf -- on Mary's behalf. Next slide, please.

I have a lot to cover today so I will try not to rush through this too quickly. Next slide.

Starting with some updates on China. Following USPTO's January 2021 report on non-market factors impacts on filing with patents and trademarks in China the China National intellectual property administration launched a campaign to target bad faith trademark registrations. So this campaign explicitly targets what are called preemptive registration, which is a type of bad faith that is a grave concern to our U.S. brand owners.

And a preemptive registration, otherwise known as malicious squatting involves a bad faith filer beating the true owner of a trademark by filing an application with the CNIPA first. So
our IP attaché in Beijing, recently promoted to
the rank of IP counselor, reports that the plan
seeks to stop bad faith actors; including refusing
to approve assignments of trademarks when they are
made for profit. Those unfair (inaudible) would
know that an assignment has been made for profit.

So administrative penalties are featured
prominently, suggesting that this campaign could
significantly increase deterrents against bad
faith filers and their agents. Bad faith conduct
will also impact social credit scores. And of
significant note, the prohibition of subsidies for
trademark applications is explicitly part of the
campaign. But it's unclear whether the
prohibition is only for the tour of the campaign
or whether it's something that will continue
indefinitely.

So the measures of the campaign are in
effect as of April through October and the CNIPA
will evaluate the results at the end of the
calendar year. The (inaudible) would appreciate
stakeholder input or any observations that you
have, or any experiences or interactions with this
campaign, and ask that you provide us with any
feedback whether positive or negative. Next
slide, please?

Next, we have some updates with respect
to our work with the World Intellectual Property
organization in its administration of treaties and
participation in decision-making and negotiating
bodies. For example, we participated in the Nice
Committee of Experts hybrid meeting that took
place in April. France had submitted a proposal
to reclassify alcoholic beer from Class 032 to
Class 033, whereas non-alcoholic beer would
remain in Class 032.

Some U.S. stakeholders had indicated
they were opposed to the proposal so the USPTO
conducted outreach efforts of other stakeholders
and several foreign IP offices, facilitating a
successful challenge to the proposal. So at the
meeting, France withdrew the proposal due to lack
of support and beer will stay in Class 032
regardless of alcohol content.
Now also, at WIPO the 44th session of the Standing Committee on the Law of Trademarks, Industrial Designs and GIs took place earlier this week. The discussions on days 2 and 3 focused on the treatment of country names and geographical names of national significance, as well as GIs.

With respect to country names and geographical names of national significance, the U.S. continues to monitor three somewhat similar proposals relating to exam guidelines; an instrument addressing both examine unauthorized use, and guidance from WIPO in the domain name space. So these proposals have been in discussions for several sessions now, and the U.S. continues to have concerns as to several other delegations in the varying capacities. Also, member states continue to contribute to a questionnaire on nation brand protection. In discussions were initiated regarding possibly holding a further info session on nation brands at a future SCT session.

With respect to GIs, discussions were
held to identify consensus topics for information session at the next SCT, agreement was reached on two topics. One advocated for by the U.S. which involved examination of GIs, and a second on prevention, on bad faith use, and registration of GIs in the domain name system which was primarily advocated for by the EU.

The GI information session featuring the discussion of these topics will take place at the next session of the SCT. We already conducted three GI information sessions including a virtual one on the margins of last SCT, but we would like to continue having these info sessions; we are interested in seeking more information from other delegations about how they handle specific GI exam issues. Next slide, please.

May is the month of big meetings so we are also planning for the TM5 midterm meeting hosted by CNIPA this year. The TM5 partners will be meeting next week. We have already been busy exchanging views throughout the month about work on current and future projects. We received two
proposals for new projects co-led by EUIPO and CNIPA so we're looking forward to hearing more about those. They'll be discussed now and voted on at the annual meeting in November.

In addition, JPO, or Japan will -- is expected to host an experts meeting on artificial intelligence this summer, and we're excited to hear about the developments the partnership had as AI is becoming more and more relevant for each of our offices. Next slide. (Inaudible) Trademarks Team is also preparing for the ICANN71 meeting coming up in June. USPTO has been an active participant in ICANN since it began in '99 and provides IP advice to the U.S. Department of Commerce's National Telecommunications and Information Administration or NTIA, who is the USG lead on domain issues within ICANN. So USPTO's part of a larger interagency team when it comes to ICANN issues.

Within ICANN, OPIA is closely monitoring the development of a new framework that would provide timely access to the WHOIS registrant
data. And ICANN has nearly conducted its review 
of the Rights Protection Mechanisms, RPM, such as 
the Trademark Clearing House, claims notice, 
sunrise provisions applicable to gTLDs launched 
under the 2012 new gTLD programs.

The second part of the review expected 
to begin later this year will look at the Uniform 
Domain Name Dispute Resolution system -- 
Resolution Policy, I'm sorry, the UDRP. OPIA is 
actively involved in ongoing small working groups 
which look at whether acronyms of 
intergovernmental organizations, or IGOs should 
receive any special protection in the DNS, or the 
Domain Name System, and if so, how. Next slide, 
please.

Finally, just some highlights on some of 
the training that -- ongoing training that OPIA is 
doing. OPIA's trademark and GI training is 
conducted through our global and special property 
academy headed by Miriam DeChant. In previous 
briefings we've talked about how OPIA's training 
has not missed a beat in the virtual environment.
And while there are many drawbacks to conducting the virtual only training, I wanted to highlight a few cases where there have been some benefits, like reaching a larger audience.

So for example, a training conducted in March with the Association of Southeast Asian Nations focused on exam of nontraditional marks and included over 190 attendees from eight national offices. Also, in March the OPIA trademark team and the Trademark Office Classification policy and practice, in collaboration with WIPO, provided a Madrid protocol webinar to 348 program attendees about the USPTO classification and IT practice. And participants from that training included 39 foreign government officials from 25 countries, as well as practitioners and (inaudible).

With such bigger audiences, more frequent and consistent training has been possible. Since mid-2020 OPIA has conducting nearly monthly trainings with the IP office of Afghanistan, the attendees who have been staying
after regular work hours, we alternate topics depending on their needs. And we've received feedback from them that the training has influenced their practices and procedures. So conducting regular trainings has been instrumental in building relationships with this office as well as others and we've leveraged that for future work.

And I believe that's all I had. Any questions?

MS. BALD: Helene, thank you for that excellent presentation. Stephanie Bald from TPAC. I was very interested to hear about the campaign in China on bad faith filing in particular your mention of how there was going to be a prohibition on the subsidies. I know a lot of us believe that that is, at least in part, what's driving these astronomical filings. Could you explain a little more about what that means? Have the subsidies already been prohibited? Is it something that's happening in the future? I think we'd all like to hear about that if you could expand a little bit.
MS. LIWINSKI: Unfortunately, I don't have the details of the program and when the subsidies were scheduled to stop or what was triggered. But I can definitely get back to you with some additional information on that from the China team.

MS. BALD: Yeah, I was just wondering who -- isn't that like a local government? Is it a coordinated -- Amy's nodding her head.

(Inaudible) actually be executed.

So I will just ponder that and --

AMY: (inaudible) that.

MS. LIWINSKI: I will be happy to provide you with the answers to that. Apologies for not having that off the cuff.


Thank you.

CHAIRMAN KELLY: Any other questions from TPAC members?

Okay. Thank you very much.

MS. LIWINSKI: Thank you.

CHAIRMAN KELLY: We appreciate it.
Next up is Chief Judge Rogers with the TTAB update. Judge Rogers.

JUDGE ROGERS: I'll unmute myself.

Thank you. I guess we are in the lightning round of the TPAC meeting with the 10 minute presentations, so I will try to keep you on schedule, or get you on schedule. Next slide, please.

I just want to provide you a little bit of context because we've spoken - we've heard earlier today about the surge in trademarks and its impact on operations there. I wanted to talk about the search of the was already occurring in TTAB a few years ago to give you some context for what is happening now at TTAB. The surge that TTAB experienced a few years ago stemmed from those increasing levels of application filings that were going on for years and years. You've heard former Commissioner Denison talk about the fact that only had, I think, three down years in filings in the last, over 20 years and so every year that application filings were increasing,
even prior to the current search meant more work for TTAB. So in fiscal '17 and '18 and '19 we saw appeals being commenced at the TTAB climb by about 7 percent. Extensions of time to oppose by 7-1/2 percent oppositions almost 20 percent and cancellations almost over 31 percent. So these were pretty significant increases in terms of new cases being commenced at the TTAB, and had ramifications for the work that was being done by attorneys on motions and trial cases and by judges at the end of the process. Next slide, please.

Before I get into those ramifications on the attorneys and the judges and their respective chores, their respective responsibilities for handling cases, that are pending at the TTAB, I did want to point out that notwithstanding the surge in trademarks, we've actually seeing moderating filings over the last year and a half. Now, that may change and we may see this to be kind of a temporary lull compared to the earlier surge we saw in '17 to '19 and we may see another surge down the road based on the trademark surge.
But in between we saw appeals continue to increase last fiscal year, but extensions of time to oppose decline, so did oppositions. And while petitions to cancel also increased last year, the rate of increase was much lower than what had been true for the three previous years. So we did see kind of moderation and filings coming to the TTAB, all of fiscal '20. Next slide, please.

And so far, year to date, in fiscal '21 this decline that started last year has continued. So appeals are increasing, as could be expected based on the trademark search, but at a lower rate than they were increasing last year. And extensions, oppositions, and cancellations all are down your today compared to last year. Now, keep in mind, these are declines from what were historically high figures as recently as Fiscal '19, so there still large numbers for TTAB, but it does give us an opportunity to catch her breath. These declines have helped us catch up with the motion practice work that was resulting from that
search in trial cases, and with the disposition of
cases that have worked their way through TTAB
processes and a panel of judges. Next slide, please.

So the surge in the trial cases that we
saw that was happening in particular for about
three years there, resulted in a lot of motion
practice and it was kind of difficult for us to
predict during those three years, and has
historically been somewhat difficult for us to
predict how many motions are going to rise in the
trial cases that are commenced at the Board. As
many of you know, we have a high rate of default
in cancellation cases, particularly those
involving abandonment or nonuse claims so those
cases certainly don't result in motion practice.

But many oppositions and more protracted
petitions for cancellation do result in motion
practice. So the inventory and motions rose by 50
percent in fiscal '19 alone. And it meant that we
were struggling to meet our pendency goals in
terms of processing motions from fiscal '18
through the end of last fiscal year. However, interlocutory attorneys under the management of managing attorney Ken Solomon put in tremendous efforts over the last couple of years to try and get a handle on this; we've also hired into interlocutory attorneys.

And last fiscal year we had reduced the inventory of contested motions waiting for decision by 12 percent, and we had none over 12 weeks pendency at the end of the fiscal year. The significance of that is that our processing goals for contested motions is to get them decided on average, some take longer, some are quicker, but on average in 12 weeks or less. And this meant that we were able to start the current fiscal year with no cases pending for a period of time above our goal. So this year we've already reduced inventory another 15 percent, and we met the pendency goals in both quarters 1 and quarter 2. Next slide, please.

And this slide shows you the impact of the increasing number of trial cases that had come
into TTAB for about three years. On the number of cases going through the entire process and requiring disposition by a panel of judges on the merits. So it kind of took us by surprise. We never know how many cases are going to go through the entire process. Obviously settlement rates are very high, default rates are high and some cancellation cases, and trial cases. So were never quite sure how many cases are going to be fully litigated and require disposition on the merits. We know that a more substantial number of appeal cases are certainly going to go through the process and require disposition on the merits, but even those are less than 50 percent of what ever gets commenced at the Board.

So the number of cases, both appeals and trials combined that require disposition on the merits had actually gone down in '17 and '18, but because of those new cases coming in we had, particularly those trial cases, we had a trial cases as a percentage of all cases requiring disposition by a panel of judges increase in
fiscal '18 and '19 as high as up to 31 percent of all cases requiring disposition on the merits.
And that's a much higher than our historical figures which are normally down in the 22, 23 percent of all cases requiring disposition being trial cases.

So in fiscal '19 we had an almost 15 percent increase in cases requiring disposition on the merits. And again, just as with the attorneys not being able to meet the motion processing goal we were unable to meet our processing goals for overall pendency from the time cases are ready for decision until the judges get to issue those decisions. So what we did for the last fiscal year was decouple what had been two parts of one overarching pendency goal for final disposition of cases on the merits.

And we had had one goal for appeal on trial cases combined. We recognized that processing time for appeal cases is lower and faster and quicker than processing time for many trial cases, so we set goals for last year of
getting appeals decided within 12 weeks from the
time they're ready for decision; they've been
briefed, or argued, and trial cases in 12 weeks or
less. Again, these are figures on average. So we
were able to stabilize our inventory in fiscal '20
because we actually saw a decline in the number of
cases maturing to ready for decision which was a
welcome relief given the significant increase in
cases maturing to ready for decision in fiscal
'19.

And now, we are back to a more
historical level where about 22, 23 percent of the
cases requiring disposition on the merits are
trial cases. Next slide, please.

And the sum total of all of that
information that I've just given you is that for
the current fiscal year average pendency to
disposition of contested motions is about 10
weeks. That's the figure that we maintained each
of the first two quarters and through the
composite measure at the midpoint of the fiscal
year. We expect that will continue to mediate
throughout the rest of the year and we have this
docket of work well in hand. Appeal decision
pendency is well below our 12 weeks or less goal.
Trial decision pendency at 10 weeks as well below
our 15 or weeks lesson goal, and both of these -
all of these inventories are relatively stable.

However, were not going to change these
goals. You might think should we change these
goals, lower those goals given the average
dependencies that were now achieving. We think
not. We think that because of the pending
possible search of appeals and trial cases based
on the trademark search, based on the possibility
of us getting appeals from TMA expungement and
re-examination proceedings and various other
reasons we expect that this is a law before what
could be a storm. So we're going to keep our
goals the same. We have continued to hire
attorneys to try and drive down that motion
pendency goal even a little bit lower so that if a
surgeon does materialize we'll be able to
accommodate it; and we will be in a position
because of what's been planned in our budget to
hire judges if we need them in the next fiscal
year.

So that's where we stand with the
numbers. I will just mention a couple of other
things and try and get us back on track. One is
that we recently deployed a new form for those who
are interested in proposing that an issue to a
decision of the TTAB be redesignated from not a
precedent to a precedent. To date we have not
received any such nominations, but that form is
there and it's on our webpage. You can nominate a
decision that you think should be considered for
redesignation is a precedent anonymously. You can
give us contact information and then we'll be able
to discuss it with you and make sure we understand
why you think it should be redesignated as a
precedent and what part of the decision, whether
it's all of it, or part of it is the significant
part.

The reason we may need to talk with
people about these nominations, or we would at
least benefit from talking to people about these
nominations is that we have considered the
possibility of designating TTAB, and that may be
useful in a case where a decision has already
issued and somebody thinks it should be
redesignated as a precedent for a particular
reason. And we may agree, but we may think
there's another part of the case that is not quite
up to our standards or we would have done things a
little bit differently if we knew it was going to
be a precedent at the time we issued it.

So that's where we stand with precedence
and Judge Karen Kuhlke is our lead judge for
precedents; has done a wonderful job, as she does
every year, and we are at 25 precedents so far
this year, so were well on our way to meeting our
goal there.

And then the last thing I'll mention is
to follow up on Greg Dodson's discussion. We are
working very closely with Trademarks and the CIO
on next generation TTAB systems. As Greg pointed
out, we recently completed a two-year
stabilization effort for ESTA and TTABITS (phonetic) which is the internal version of TTABVUE. And some of those things you don't see, you don't experience but they're back end processing fixes and they make things more efficient for us and for our staff. But that stabilization effort is complete and so now we're really turning our attention to working with trademarks on the TMA stuff because we want to be able to take appeals from the new ex parte proceeding that stood as early as next year in trademarks seamlessly. And we are also setting the groundwork, laying the groundwork for the new TTAB center which will ultimately involved replacements for ESTA and TTABITS and TTABVUE.

So that's where TTAB stands. If there is time, Chris, I'm happy to take any questions.

CHAIRMAN KELLY: . Sure. Any questions for Judge Rogers?

MS. BALD: Judge Rogers, I have a couple of questions. I thought it was interesting to hear that things are moderating and it's good news
that you can catch your breath a little. I was wondering whether that was anticipated based on filings and kind of projecting out when they would hit the opposition stage or if you think the increase in TTAB's filing fees might have any impact on the filings both for extensions of time and also for notices of oppositions, and petitions to cancel?

JUDGE ROGERS: It's certainly possible. We did see when we first deployed that the impact of the fees is certainly one possibility. I'm not sure that in the long run it will permanently reduce the number of times that parties come to the Board for an appeal or trial case. We did see predictions that we would have fewer extensions of time to oppose when we first deployed the fees for the extensions.

However, they went down for a year, but then they went back up, and they increased again. So it's quite possible that some people have chosen not to file extensions of time to oppose, and we are okay with that if that means that
parties are discussing settlement sooner and not
taking as much time to decide whether to file an
opposition or not. If parties are settling their
cases and have, to some extent, encouraged a
greater discussion of settlement that's okay. We
don't want to force parties into filing notices of
opposition if they don't really think that they
are necessary. So the fees, you know, could have
a possible effect.

One thing that we were discussing
yesterday during the executive session --
Stephanie, you weren't with us yesterday -- but
was the possible impact of greater use of letters
of protest in regard to filings. And that,
perhaps, means that people are able to get the
office to pay closer attention to application
sooner, rather than waiting until it's time to
file an opposition. But to tell you the truth,
we've never had really great analytical tools for
figuring out when we can expect increases based on
increases in trademarks.

Obviously, those increases from '17 to
'19 in terms of new cases being commenced to TTAB was predictable based on the increases that have been going on for many years in trademarks. What was unpredictable about it was having so many trial cases go through the process and required disposition on the merits because that put a burden on the attorneys and the judges who were required to decide many more trial cases than was typical for TTAB for many years.

So we do hope to develop better analytical tools and one of the things that we have planned for and we will be hiring are some new analytical personnel devoted and working just for TTAB, we hope to come up with some models that will allow us to predict our workloads better and then have our hiring and staffing levels more attuned to the predictions. And so we will be hiring for a couple of positions in this area in the coming fiscal year.

MS. BALD: So my second question -- I think you've already answered it, probably the same answer, but I'm wondering how the change in
pendency of application going from pretty much a standard 3 months to first action to a 5.2 month to action is also -- it seems like that would shift your model in terms on where -- when the oppositions hit?

JUDGE ROGERS: Well, I don't know that that's true. I mean we certainly need to work closely with Trademarks as well on some of these analytics and we have done that in the past. And we do know for example that we are more likely to see oppositions than appeals when there's a surge in trademarks first, simply because if there are applications that are published for opposition very soon after they're filed they could be subject to extensions of time to oppose or oppositions, within months of them being filed. Whereas, an appeal is not likely to get to us until at least a year has passed and now, perhaps even longer given the --

MS. BALD: Right.

JUDGE ROGERS: -- The pendency times.

However, I think Dave -- Dan Vavonese and Dave
Gooder would point out that they still have an increasing number of examining attorneys who are doing a lot of work. They're not necessarily able to maintain historical pendency levels but given the amount of work that a large number of Trademark examining attorneys are doing they are still the opportunity for us to get a lot of appeals and to get a lot of trial cases, once that work that is being done becomes ripe for appeal, or ripe for publication and opposition. So I don't think we want to draw the conclusion that everything that's going on in Trademarks and everything that's going on here means we're on a, you know, a perpetual decline here because we've seen things go up and down over the years at TTAB, and I expect that they go up again.

The other issue that we have to keep in mind is that during the pandemic our attorneys and judges have been working around the clock, stuck in their homes like everybody else with few opportunities to take their annual leave and take vacations and so there's just been a lot more work
done by all of our people. And at some point, I'm expecting that they're going to start taking vacations and then we will probably see pendency levels rise a little bit closer to normal levels.

MS. BALD: Judge Rogers, I can't believe you let people take vacation.

JUDGE ROGERS: Little ones. Little ones, long weekends.

MS. BALD: Thank you, that really helps.

JUDGE ROGERS: Sure.

CHAIRMAN KELLY: Any other questions for Judge Rogers?

MS. KOVALCIK: Hi, Judge Rogers, this is Jen Kovalcik, at TPAC. I'm curious about the request to have a case designated as precedential. Could you walk us through that that process looks like if you were to receive a request and maybe what the timeline is or how it's evaluated?

JUDGE ROGERS: Well, we'll actually have to see how the timeline goes because we haven't gotten any nominations yet. Occasionally over the years we've gotten nominations in the
sense that somebody has sent an email in and
suggested that something be considered for
redesignation as precedent. And we've always been
willing to accept those. The reluctance we had to
actually redesignate decisions as precedential and
we've received these requests from outside
practitioners, but also from the trademark
examining operation which might see a decision in
an ex parte case that would provide useful
guidance for examining attorneys and they might
want to cite it in the TMEP.

So we've seen these, but what we
normally do when we designate a decision as
precedential is we work very closely with the
solicitors office and others including if they are
international issues, perhaps with OPIA to make
sure that we get the decisions as perfect as we
can get them before we make them -- designate them
as precedent and issue them. And the reason we do
that is because we may think that a decision in a
particular case or on a particular motion is
worthy of being designated as a precedent for
reason A or B, but once it's a precedent it can be sited for anything in that decision and will be cited for almost anything in that decision.

So we have to be very careful about whether everything in that decision is something that we want to -- expect could be cited back to our attorneys and judges in briefs. And so, we will look very closely at the nominations and we will discuss them in-house as we normally do. Our current clearance process involves review and the opportunity for comment by all of our judges if it's a final decision on the merits. All of our attorneys and judges if it's a decision on motion practice.

And we will have to build in a timeline when we receive nominations to redesignate already issued decisions that allows for that kind of consideration in house. And we also consult with the solicitors office and again, other business units within TTAB to make sure that this is a decision that the director would stand behind and that the Agency can stand behind.
We know from the Arthrex case and the hearing at the Supreme Court that it's very important to the federal circuit and potentially to the Supreme Court that the director have firm control over establishing office policy through precedential decisions. So we're going to have to look long and hard at these nominations, but we do expect to be able to get responses to those who nominate the decisions back to them pretty quickly. And also, we don't expect to receive a lot of nominations. So we're not going to be overwhelmed; we don't expect to be overwhelmed.

PTAB, last year, deployed the same form and they have not received a deluge of requests for redesignation of PTAB decisions. But the way it will work is the form will get filled out and it will be routed as an email to an inbox that I have access to, that Deputy Chief Judge Mark Thurman has access to and Lead Judge for Precedents Karen Kuhlke has access to. So we will, among the three of us, be monitoring these incoming nominations pretty closely and will be
very interested to see what we get.

MS. KOVALCIK: . If you do get them will it follow the same process as a newly issued decision or is there, perhaps, a smaller group that will be vetting those nominations?

JUDGE ROGERS: . No. I expect that we will be following pretty much the same process. Again, when we have had questions about redesignating it, I could point you to -- and I'm happy to send you a list of four or five cases that were issued as not precedents, but they were redesignated over the years, sometimes within a few months after issuance, sometimes as late as maybe 18 months after issuance. But again, we want to make sure that anything we designate as a precedent, whether in whole or in part, is something that all of our attorneys and judges feel -- they would stand behind.

I don't want any decision to go out based on a smaller group review when it might not reflect the view of a super majority of attorneys and judges at the Board because I want to make
sure that anything that bears the designation of being a Board precedent is something that you all know the rest of us will apply in good faith in future cases that raise the same circumstances or in the same legal issues.

MS. KOVALCIK: Thank you so much. It's helpful to understand the process.

JUDGE ROGERS: Sure.

CHAIRMAN KELLY: Any other questions for Judge Rogers?

Okay. Judge Rogers, thank you. Very informative, as always.

JUDGE ROGERS: My pleasure.

CHAIRMAN KELLY: Next, we are going to hear from the Director of the Office of Equal Employment Opportunity and Diversity, Bismark Myrick, to speak about the USPTO's efforts in support of the presidential order on advancing racial equity. And USPTO affinity groups. So Director Myrick, welcome. We look forward to hearing from you.

MR. MYRICK: Well, good afternoon on
this Friday everyone. My name is Bismark Myrick and I work in a small office that part of the USPTO called the Office of Equal Employment Opportunity and Diversity. We have three major functions in our office and maybe before I go into those I should say that I like to remind groups like yours that in addition to being the place where you file your trademark applications or request a hearing before the PTAB, the USPTO is also a very large and complex employer. We have almost 13,000 employees and we employ some of the world's most sought after workers.

So I work in one of those offices that is designed to support the workforce at USPTO and the three programs that I'm principally responsible for are the programs that deal with internal employee complaints, a program that makes sure that our employees and applicants with disabilities have the accommodations that they need to manage a diverse workforce. And then, I take on a variety of affirmative responsibilities. By affirmative I just mean things that people
haven't specifically requested we undertake to
make sure that our work force is diverse and
inclusive.

One of our major efforts in that regard
is to make sure that our managers and supervisors
have the tools that they need to manage a diverse
workforce. I was delighted, however, when our
Director, our Acting Director asked me to lead the
Agency's implementation of Executive Order 13985.
Essentially the Executive Order has two principal
components. The first one is for the USPTO and
all federal executive branch agencies to undergo
an equity assessment. The administration to help
us, provided with a great tool that asks a variety
of different questions about the services that
USPTO provides. And the goal of that
questionnaire is to elicit areas where we can
improve our services and outreach to underserved
communities.

The second part of the Executive Order
is to then, turn that assessment -- the results of
that assessment into action. And so based upon
the equities assessments we will be identifying a number of areas that we will pursue in an effort to make our services more accessible. We can go to the next slide, please.

I was very lucky to have a prominent group helping me to steer this project forward. We created two teams within the USPTO. One team was led by Patent Administrative Judge Michael Kim, and another team was led by Nestor Ramirez, a group director also in the Patents Business Unit. Their role was to assist the various subcomponents of the USPTO with implementing, with using that equity assessment tool that I mentioned just a moment ago. We can go to the next slide.

So I'm delighted to tell you that we are working very diligently towards our first deadline which is June 15th. By June 15th we are to have reported out two or three broad areas when the USPTO plans to focus on improving equity. Right now, we have -- all of the various subcomponents of USPTO have undergone an internal equity assessment and right now our steering group,
steering committee is working on refining the
results of that equity assessment in an effort to
get approval of our chain of command here within
the USPTO and then over to the Department of
Commerce. We can go to the next slide.

While I have you on this great Friday
afternoon, I also wanted to share with you some
really important work underway at USPTO and that
is work with the employee organizations of the
USPTO. When I started here at PTO almost 17, 18
years ago we had three affinity groups or employee
organizations. Today we have 29 organizations,
more than 1 in 10 employees is a member of one of
those organizations and they are doing fantastic
work for us in efforts to help us recruit and
retain a diverse workforce.

Let me give you an example of one of the
great things that our affinity groups are doing.
We have the first government chapter of The
Society of Hispanic Professional Engineers. This
society helps us to recruit engineers from Puerto
Rico. And once our newly hired employees get here
and they fly into Dulles Airport members of our affinity group actually go out to Dulles Airport and pick them up. And they show them where to find a coat and where to find a place to live.

We have another affinity group called the Society of Ethiopian American Engineers and Scientists. This group asked me for assistance in putting together an IP primer on an afternoon during the spring, a Friday afternoon during the spring here in Washington. That was available to their broader community, Ethiopian community within the Washington metropolitan area. I did not think that anyone was going to show up on a spring Friday to listen to an IP primer. But boy was I surprised when our auditorium downstairs was full of Ethiopian Americans on a spring afternoon, Friday, full of people interested in hearing information about intellectual property protection.

It was interesting, we were able to film that with the broadcasting board of governors and that program was rebroadcast in Ethiopia where one
of our examiners received a telephone call from
his former professor, engineering professor in
Ethiopia who said that he saw him play a role in
the program taking part downstairs in our
auditorium. And I thought, wow, this is a
wonderful example of how we're leveraging the
diversity of our workforce to further the mission
of the USPTO.

There are literally hundreds of examples
of the work that these organizations are doing at
PTO. The most important one is to make sure that
every employee at PTO has a voluntary peer support
network that provides mentoring and assistance.
And with that, that concludes the information that
I planned to share with you. If there is time
available I'm happy to try to respond to
questions.

CHAIRMAN KELLY: Thank you very much.

(Audio missing between Track 3 and
4) Director Myrick?

MS. NATLAND: Hi (inaudible) from TPAC.

Very interesting, Director. I just have a
comment. I actually saw the clinical program at UCLA that is through the USPTO. I just have a suggestion to maybe consider if you haven't already, providing guidance to these schools in terms of students who are (inaudible) around and making sure that diversity and inclusion is one of the (inaudible) at UCLA, you know, it's application process to the (inaudible) clinic. And so that was just an idea I have for trickling this down to students and having that be a recruiting opportunity as well.

MR. MYRICK: Thank you.

CHAIRMAN KELLY: Any other questions or comments? Well, thank you very much, Director Myrick. We look forward to seeing you in the future keeping us abreast of your progress.

MR. MYRICK: Thank you.

CHAIRMAN KELLY: So that concludes our speakers. So I know that we have at least a couple of questions. Hold on here. Okay. The first one I think is really to OPIA, the Commissioner, sort of anyone.
And it is; as you may know the U.S. State Department has a growing backlog in authentication of documents for foreign filings, which is causing significant harm, including loss of IP rights because of failure to meet deadlines imposed by foreign offices and courts. Compounding this is a similar growing backlog at the USPTO in processing requests for certified documents which then need to be authenticated by the State Department.

What can the USPTO do to address these backlogs to speed up processing of these critical documents? Specifically, one, with respect to the backlog at State Department, how can the office use the interagency process to persuade the administration to prioritize authentications. And secondly, with respect to the USPTO backlog, what is the office's timeline to improve processing times for certified documents and which office is taking the lead?

MS. LIWINSKI: This is Helene Liwinski. If I can take the first part of the question. We
had heard about these delays and we understand how they are impacting your work. So we will be engaging with our colleagues at the State Department and we will provide more information as soon as we can on how we can address this issue.

Thank you.

CHAIRMAN KELLY: Any other comments?

MR. GOODER: . Yeah, and I'll just -- this is Dave. I'll just add to that as well that this has been obviously something that, I can't say for state but certainly at the -- at our place is highly impacted by the pandemic because it's a very manual process and it requires people to actually view these things, et cetera.

That said, I've already scheduled some time next week for us to push it to this -- especially with regard to what can we do with this and how can we push it at State so that they understand the issue. And that's not always easy because -- to do unless you've actually kind of really explained it to people about how this actually impacts. It's one thing to say it's
causing us to lose rights. But how it's happening will be useful to them, I think. And hopefully, they can make some changes. And we can certainly look at it from the PTO's end as well.

And then your question didn't say this, but I assume this is mostly with regard to -- maybe the TPAC members want to chime in on that; it's mostly with regard to certified trademark registrations, the litigation or that type of thing?

CHAIRMAN KELLY: I believe so.

MS. BALD: I think I can fill in. So I think there's two parts to it. Certified trademark registrations is directly the office, but I think it's in general also, difficulties with legalization. And so, to the extent OPIA is -- their purview is kind of working with stakeholders that are trying to enforce IP rights overseas. I think that is part of the concern as well. To the extent that clarifies things.

And then, I also wanted to just actually pose a question about that. I know it is -- that
it's within the State Department's purview. But is there a role for the legislative affairs? I don't know who was here. It wasn't Kim, Tammy. Is this one thing -- I mean, it is a serious issue and I'm hearing it as a TPAC member, stakeholders are coming to me and I think a lot of the other TPAC members have received similar requests and I'm just wondering who owns this, and how could -- how can we make some change?

MR. GOODER: Yes. I think that's a really good question is to go up there and -- that was kind of my question too, to be honest with you. So the -- what I've got set up for next week absolutely includes Governor Ferris, because it's -- the problem is it's -- there's a foreign component to this and as Helene pointed out it's an earlier it's not just an IT office issue, it's a national law issue about what's required so that you can bring that back to the U.S. And we kind of got the same thing. It's not something that PTO has control over other than the provision of the copies. But that doesn't mean that we can't
push forward to try to improve the situation, at least in the U.S. to speed it around.

I would say that if you do know, you need these things, generally speaking, right now you could -- so one of the documents that you could get on an expedited basis are trademark registrations. And something we used to do always and I encourage brand owners to do it is have 5, 10, 15 of them on hand. Some governments may object to the certification but at least you've got them if you know you're going into litigation get them early. I saw some information that the expedited turnaround time right now is about 28 days. So kind of for the time being turning a big ship takes a bit so just kind of plan that into your schedule.

CHAIRMAN KELLY: Any other comments? Okay. Helene, our second question is directed to you. Are any of the OPI events available as recorded videos, or upcoming events listed somewhere? If so, please provide weblinks.

MS. LIWINSKI: So the trainings that I
was describing in my presentation that we do with
the foreign offices; those are not recorded.
Those are just almost like an education sessions
that we hold with foreign governments talking
about our practices, talking about their practices
so those sessions are neither recorded, nor
archived, nor webcast anywhere. We do have some
resources on our GIPA, the Global Intellectual
Property Academy of (inaudible). We -- I believe
we're in the process of updating some of our
training materials just broadly on trademarks and
other forms of IP. And I can get you those
resources; would be happy to share those links
with you.

CHAIRMAN KELLY: Okay. And we also
received another question regarding using
artificial intelligence with examining specimens.
But Commissioner, I think you really touched on
that in your comments earlier when we were talking
about fraud and security.
I'm not aware of any other questions
from the public. Okay. So hearing none, then I
guess that concludes our meeting. Commissioner,
unless you would like to say anything or anybody
else, I think we're --

        MR. GOODER: No.

        CHAIRMAN KELLY: All right. Very good.

        MR. GOODER: I think we're good. Thank
you everyone.

        CHAIRMAN KELLY: Thank you everyone and
we look forward to seeing you at our next public
meeting which is scheduled for Friday, July 30th.

        Thank you all.

        (Whereupon, at 4:08 p.m., the
        PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

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My Commission Expires: August 31, 2021

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