UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

OPEN SESSION

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ANDERSON COURT REPORTING
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MR. SAMUELS: Good morning. I'm going to call this meeting of the Trademark Public Advisory Committee to order. I want to welcome everybody. The first thing I wanted to do was to introduce the new members of the committee that were recently appointed to the positions by Secretary Gutierrez. We are very pleased to welcome to the committee Elizabeth Pearce, Jeff Storie, and Jim Johnson, and we look forward to their contributions to the work of the committee over the next several years. I also wanted to announce the resignation of Lorelei Ritchie de Larena who has left TPAC to accept a position at the PTO, so we certainly wish her well.

Since our last meeting, the annual report of the Trademark Public Advisory Committee was submitted to the President and to others and I'm sure copies are available. I know they are available on the PTO website for people to read. And I wanted to thank the members of the TPAC who
contributed to that report. I thought it was at the end an excellent work and it was the result of efforts of everybody.

Future meetings. I think we have already announced the next meeting of TPAC which I think is it early June, June 10 or thereabouts. We have gone to the practice now of setting the dates far advance, that is, a year in advance, so we can be assured of getting this room which I think works a lot better than the other room that we used to use. So I believe it's June 10, I will check that, and certainly at the end of the meeting I'll make an announcement.

I also should announce that we have a new representative here from NTEU 245. Could she introduce herself? 243, excuse me.

MS. BAYLOR: Tanya Baylor.

MR. SAMUELS: Welcome.

MS. BAYLOR: Thank you.

MR. SAMUELS: The first item on the agenda are the remarks by the Deputy Director Margaret Peterlin who has joined me here, and she
is going to provide us with a legislative update
and talk a little bit as well about some
international developments.

MS. PETERLIN: Thank you. Good morning
everyone and welcome to the first session of TPAC
for fiscal year 2008. I want to thank you, Jeff,
and everyone else for serving on this committee.
Today I want to just talk briefly about three
areas, Trademark's first-quarter results,
legislative updates for trademarks including
telework, patent modernization legislation sitting
in Congress, and some of the work that we're doing
in the Office of Policy and Enforcement areas to
help strengthen IP rights around the world.

As anyway, as you know last year first
action pendency of trademark applications was
reduced to the lowest level in 6 years, ending in
2.9 months, and the first quarter of fiscal year
2008 pendency was further reduced to 2.8 months.
Last year average total pendency was 15.1 months,
first quarter 14.7 months. Last year quality of
search and examination of trademarks with final
action quality rates exceeding 97 percent, the
first quarter shows us similar results.

I'm going to talk a little bit about
legislation. One of the things that we continue
to see here at the USPTO is that trademarks
continues to lead the agency and the agency
continues to lead the federal government and even
many private-sector agencies in the teleworking
program. We continually get requests from folks
from our trademark side of the house to come up to
the Hill and talk to people about the benefits of
teleworking and it is a very nice place for the
agency to be to be seen as a leader in the federal
government. I was called up to testify and it is
a rare and good occasion when the whole idea of
hauling you in front of Congress is so that they
can say be more like the USPTO rather than what's
wrong with you. So it is something that you will
hear about us. You will hear from us often. But
it is because it really is a wonderful opportunity
for the agency to sort of have an entrée with the
policymakers and then while we are there we can
say will you consider this change, we're having an
issue, will you trust us with fee-setting
authority. So it really helps in terms of the
agency's credibility. So I want to take a minute
to talk about the latest updates in the telework
area.

As some of you know Trademarks is
piloting a geographic expansion of our telework at
home program. This pilot allows participants to
work at home and live beyond the D.C. metro area.
Right now we have examining attorneys who are
voluntarily living as far away as Colorado and
Texas. There are some federal regulations that we
are seeking legislative changes for so that we
will be able to accommodate those who voluntarily
live outside of the region. There is a Senate
bill which is the Telework Enhancement Act which
is S-1000 which has a pilot authority for GSA, the
General Services Administration, to allow agencies
to pilot when and under what conditions the agency
when someone voluntarily chooses to live away from
the office the agency would bear the costs for
return. That language is in the Senate bill but it is not in a similar House bill.

GSA had indicated to us that if this legislation passes, it envisions granting the USPTO the discretion to reimburse for travel expenses when employees do voluntarily move out of the area. It is very nice in these conversations that we have already been able to talk to GSA and say once you get this authority we are the type of people that you hope you will consider partnering with in terms of setting up the pilot. And in January, so just last month, folks from Trademarks, I think it was Debbie Cone and others went up on the Hill to continue conversations to support this legislative change.

Patent modernization legislation. That is the accurate name of it, but there are actually pieces of the patent modernization bill that affect Trademarks so I just want to quickly mention them, but first I will bring you up to date on where we are legislatively. The bill has already passed out of the House. It passed out of
the Senate committee and Majority Leader Reid is saying that he is likely to schedule it either before President's Day recess or after President's Day recess. There is one very significant issue in the bill. The administration released a views letter yesterday opposing the bill in its entirety because of the damages provision which doesn't have an effect here on the Trademarks side. But we are hopeful that we can get to a resolution because there are some good things in the bill. One of the best things in the bill in terms of the Trademarks side of the house is clarification of the fee-setting authority for the USPTO. So despite the fact that we are a fee-based agency, there are times when we would like to be able to with the appropriate oversight lower fees sometimes, consolidate fees, put fees in different places and we were able in this discussion with the House and Senate to have this provision included through the sponsorship of Senator Coburn. One of the things that we were able to discuss is even though it is a patent
modernization bill, let's not just talk about patent fees because the fee issue applies equally to the patent side and the trademark side. So they did include in the patent modernization bill language regarding fee-setting authority generally for the office. So the bill other than your standard safeguards of rules through the APA, this bill actually adds two additional safeguards. The first would be that it would require us to consult with you before publishing any fee changes. So we would work with TPAC on the trademark side and PPAC on the patent side before any fee changes would be published. Then whichever body was looking at it would be able to comment on that proposed fee change, hold a public hearing about it and write a written report. Then the bill would also give Congress ample time to pass a motion of disapproval if they did not agree with the fee changes. And while we think that the fee-setting authority is important because it allows us to place fees more wisely especially on the patent side where -- fees have them at a
better place in then examination process than on
the trademark side, it would allow us to lower
some fees as appropriate. Even though we think
that that is very useful, we are always cautious
about runaway fee agencies, so we actually
encourage and support two additional layers of
oversight which most agencies who have fee-setting
authority do not have in place as well. So we
strongly support this provision and we strong
support it with the relationship with TPAC or PPAC
and the requirement to give Congress to approve or
disapprove.

The second has to do with greater
authority for the USPTO to accept late filings in
the case of unintentional delay. We don't think
that this would have any more than a minimal
impact or minimal effect on trademarks, but those
are the two pieces of the bill that would have any
effect. One of the things I would like to say is
when I was talking about telework is it is very
nice to be up on the Hill talking with folks about
this bill when the recognize the agency as the
source of expertise. So it has been very helpful when we say if you have questions about fee-setting authority, please pick up the phone and call our commissioner on either side and they will be happy to talk to you directly. And people do not always take you up on it, but they know you are not bluffing, and so that has been very helpful in terms of being able to get these types of provisions in the bill because there were not a lot of outside folks agitating for fee-setting authority though there was a lot of interest in ending fee diversion, so it is a bit of a separate issue.

And on the policy and enforcement side of the PTO, we continue to target IP trouble spots around the world. One recent example is the U.S. has been active in ongoing WTO session talks with Russia and is focused on regulatory changes with the Russian Federation. To that end I want to highlight an innovative program that we are putting together for 15 Russian customs officers later this year. The USPTO will host a 2-week
study tour of the U.S. In which the Russian
officials will visit the following places, our
headquarters here for 3 days for an overview of
U.S. IP laws and practices, Long Beach,
California, for 3 days to see warehouse and
seaport customs work, Laredo, Texas, for 2 days to
see land border customs, and JFK Airport for a
1-day tour on airport express consignment
environment. Then they will come back here for a
closeout session.

One of the things that we liked about
this program is that it really gives a chance for
the Russians to not just come in and see one piece
or have a bit of a tutorial, but it also has a lab
element to it so they really see how the entire
system stitches together. Then as a follow-up to
ensure the maximum impact of the training, these
Russian customs officers will be required to
produce an IP enforcement handbook within 6 months
of the tour. So we hope that you agree that that
sort of program improvement over time is what we
should be doing at the USPTO in terms of IP
This is a really easy summary to give, but in summary, Trademark continues to make strides in achieving greater efficiency while maintaining high quality. We think that Trademark is very effective in helping pass and influence useful legislation to benefit Trademark's operation and that they continue to work creatively to stop counterfeiting around the world. Later on this afternoon John is going to come around 1 o'clock and I know that there was some interest in the letter that Jeff sent and the report regarding some of the management decisions that are made and funds at the office and I know that he looks forward to addressing that with you later.

MR. SAMUELS: Do you want to take some questions?

MS. PETERLIN: Does anybody have some questions for Margaret? You mentioned the counterfeiting issue. Are there any developments to report with respect to the proposal to create a
new international anticounterfeiting treaty that
the USTR announced?

MS. PETERLIN: The pro-IP bill? ACTA.

MR. SAMUELS: ACTA. Thank you.

MS. PETERLIN: There's a -- going into
the bill out there that actually takes the Chris
Israel at DOC and memorializes it in the White
House. Currently the administration doesn't
support that for those who may be wondering where
that was.

But in ACTA I know that we are meeting
regularly with folks and I don't have a specific
update to report, but I know that we're meeting
regularly with folks and last time I talked to
someone when we had the SEIR folks here they were
telling me about the most recent negotiations in
Geneva that were going to happen 2 days later but
there's not really a real data point to update on.

MR. SAMUELS: Any other questions for
Margaret? As she alluded to with respect to the
letter that TPAC set to Director Dudas in
November, John will be coming later today to talk
about the letter. I met with John and with
Margaret and with Barry Hudson yesterday to
discuss our concerns in a little more detail and I
think John will be in a position this afternoon to
listen to everybody's concerns and to respond with
some ideas that he has. Thank you very much for
coming. Appreciate it.

MS. PETERLIN: Sure.

MR. SAMUELS: We'll now move on to our
review of trademark operations and call on Lynne.

MS. BERESFORD: Thank you. In the first
page is the one page that I often talk from about
performance results. I think Margaret touched on
some of them. Also of interest to you will be the
fact that our application filings is ahead of our
projection. We projected 6 percent. This is the
third line down. And we are actually running at
7.2 percent on application filings. Examiner
production is excellent at this point in time.
Even though our FTE are below last year's, we are
still producing at a really good rate. And
pendency continues to be acceptable in that first
action pendency is in the 3-month range and that pendingy that Trademark controls, that is the pendency excluding suspended and interparty proceedings in quarter one was at 12.8 months which is below the 13-month range that we usually talk about when we talk about 313. So in terms of our pendency goals, everything is where we want it to be and our challenge this year of course is going to be to manage to that pendency, not letting it get too low and not letting it go up again.

Two pages after that is a Trademark E downslide and I thought you guys would be very interested in seeing this because if you look at the two charts down on the bottom, this shows the percent of classes disposed for each type of filing. So we have paper files, TEAS filed, TEAS Plus filed, and requests for extension protection when filing. It shows the percentage of disposals for each one of these, but also underneath it shows you the actual average pendency when we register those files. You will note that for TEAS
Plus the average pendency is 10 months. So what we're seeing here is the real benefit, the efficiency gains of the TEAS Plus filing model. So I thought that would be of interest to you.

The next slide is graphic showing trademark application filings. Then several slides back we have a First Action Approval for Publication. Just keep paging back. First Action Approval for Publication is the title and I thought this would be of interest to you too because this shows the percentage of applications by type of filing that are complete and ready to be published when we receive them. If you look at it, paper filed is about 11 percent, TEAS filed are 15 percent, TEAS Plus is 31 percent. So TEAS Plus again, what an efficiency gain this has been for the office. It's voluntary, it's cheaper, and it's been a tremendous efficiency gain for us. Then of course on the end there and holding down the average is requests for extension from the Madrid System.

We then have a slide showing pendency
distribution. The pie chart shows the percentage
of files by month that are at the end of the
quarter, where they were in the zero to first
month, how many in the first to second month, et
cetera.

Then the next to last side, efficiency,
this is something because we are constantly
monitoring costs, we are very interested in this
particular slide. It shows at the end of the
first quarter of 2008 our actual expenses, how our
budget has been expended throughout the various
parts of the organization. As you see, the
Trademark organization as of the first quarter had
spent 44.5 percent of our trademark fees on the
operation and that's everything from preexam to
postregistration examination, the Commissioner's
Office, all the trademark examining operation.
TTAB is 4.1 percent, OCIO is about 30 percent. We
pay about 6 percent of the rent, 6.4 percent of
MDE, CFOCAO takes up another 6 percent, and then
we have the Director's Office, Policy, Public
Affairs, External Affairs, et cetera. So this is
where your Trademark dollars are going. As
always, our concern here in Trademarks is that we
lower those indirect overhead expenses and give
more service we think for the Trademark dollars
that we get as fees.

The last slide is for telework that
shows the number of people teleworking are Grades
13 and 14 examiners, the ones that are eligible to
telework, and our total employees who are
teleworking. It shows that both in percent of
eligible examining attorneys and percent of
eligible employees, 85 percent of them telework.
Our experience has been that that is about the
maximum, that there are just 15 percent who do not
want to go home and work, they want to come and
relate to the people who are in the office with
them. So that's it on our goals that we report
out.

Another couple of things to update you
on, with Grant Thornton as you know we are doing a
process review and an organizational assessment.
That continues. We are in the process of
finishing up the program control piece and the
legal policy piece and they're working on the
Office of Trademark Quality Review. This project
has been expensive but I think we have seen some
real improvements in our process and we have
turned over some rocks that have revealed some
real problems that we needed to solve. We are not
happy to find the problems, but we are happy to
have the opportunity to solve them.

One of the questions that the Grant
Thornton project has come up with and which I
would like all of you to think about is about OG
review. We have at least equivalents, two
full-time employees, who review the OG every week.
It is actually 20 people, but when you aggregate
their time it's two full-time employees. They
find all kinds of things in the OG. This is
prepublication. They find all kinds of things in
the OG, everything from classification mistakes to
marks that should never have gotten published, a
couple of those every once in a while, and all
kinds of typos and all kinds of other things. Our
question which we will take up I think at the next meeting because the at the next meeting I'm going to bring cost estimates and everything else, the question is should we be spending all this money on OG review? Is it worth it for what we're getting? At the next meeting we'll have a typical error lists and percentages of errors and really how much we're spending on OG review. Within the office we're talking about eliminating certain parts of OG review and maybe we won't be looking for those double periods anymore and those extra quotation marks and things like that which makes the OG look better when they're not there and makes your registration certificates -- because sometimes this is what goes on the registration certificates look better, but really is it that important that we do that? So that will be a question with some background information for the next meeting on this process.

We continue with exploring our proposal to eliminate automatic paper registration certificates. I learned this past week that we
have apparently cut a deal with our archive agency NARA and soon we will be able to not archive paper but archive electronic records. This will mean that we'll have to answer some other questions about paper records such as do we want to continue to support the paperbound volumes for instance, that lovely historical artifact that people still use, actually still use the bound volumes, but if we can archive everything electronically then do we need the bound volumes and that will be an upcoming question.

One of the things though about no paper registration certificates is we think it will take about 4 weeks off of our pendency by the time we implement this particular process because of all the little steps that go with paper registration certificates both historically and currently that we will be able to eliminate from our process. So we are seeing a real advantage in people getting their registrations eventually on the average maybe a month faster than they're getting them now which is not to be sneezed at.
The other thing we're doing is we're doing this with the patent side of the house, also exploring the idea of getting ride of paper issues of patents. This will save a lot of forests in the future because there is a lot of printing, lots more than we have, and we want to do an OG notice together. So we will be continuing to work on this and we will continue to update the committee on the questions and issues that arise.

We also continue working on full electronic workflow. Our FAST 1.14 which we originally were scheduled to deploy in April 2007 is now looking like it's going to deploy in April 2008 and we have a number of issues there, but we continue with small releases, David will talk about them in his presentation, moving incrementally toward full electronic processing.

As you looked at our statistics you saw that we are about 96 percent paper filing. It's interesting. I looked historically back and in 2005 we had about 14 percent paper filing. So since 2005 we have dropped that by almost 10
percent. It is quite impressive. We want to drop
it even lower and we are getting ready to start a
project, I should say Craig Morris is getting
ready to start a project, where he will be
identifying law firms and businesses that file a
lot of paper applications and he will be
contacting them and he will be going down there to
talk to them, going to their place of work
possibly and talk to them gently about the
advantages, we are not sending him out toting a
gun or anything, of electronic filing and give
them some hands-on help in an effort to reduce
even further the percentage of paper applications,
even enough it's a small percentage, still it's a
fairly large number, that are being filed.

Just a couple of quick hits. For those
of you who don't know, there are no longer going
to be trademark official notices in paper
"Official Gazette." That has ended. Also we have
in place last best place legislation was in the
last appropriations language I think, I think that
was where it was, continuing the ban on spending
appropriated funds for examination of applications
that had the term last best place in the
application. This is a little spat between the
State of Montana and a particular private filer
that continues to show up in our legislation. So
I think those are the quick hits from my office.
If there are questions, I would be happy to answer
them.

MS. PETERLIN: When you are reporting
back in more detail on the OG review issue, do you
also provide us with information on what the
remedies and processes would be if there were no
review and the mistake were substantive rather
than a typo? In other words, what would happen
next if and when a party discovered that what was
published be it class or what have you was
incorrect?

MS. BERESFORD: If we publish furniture
for furniture for furniture, then it's an issue,
yes. That is the type of thing that's
occasionally caught on OG review, that is kind of
an extreme example, but that's fine. No problem.
We will definitely do that. Other questions?

MR. SAMUELS: Other questions?

MR. TEPPER: I would just like to make a statement, Lynne. I would like to commend the Trademark Office because of your tremendous improvement in productivity and pendency, you're keeping quality high and you've got your home work program which is I guess a best practice within the federal government and I'd just like to commend you for another fantastic year.

MS. BERESFORD: Thanks very much.

MR. TEPPER: Lynne, just a quick question. I amplify Jan's comments. It's a very impressive set of numbers. I am really struck by the increase in the efficiency measure, the percentage to which costs of handling the applications have decreased 37-1/2 percent down, is that a seasonal number?

MS. BERESFORD: That is artificially lower. We found some files that should have been abandoned last year but for reasons that we haven't been able to identify in our program they
weren't not abandoned, it was a couple- thousand files, and that artificially drove that number down. I think our efficiency number is continuing to drop, but that is artificial. I would like to claim it, but --

MR. TEPPER: As that number decreases I guess in looking at the overall breakdown of our spending on trademarks, obviously with any of those savings I hope that we can find ways to reinvest those in the operation and just wanted to be mindful of that.

MS. BERESFORD: Thank you.

MR. SAMUELS: I have a couple of questions. With respect to eliminating the paper registration certificates, if somebody wanted a paper certificate would they be able to obtain one?

MS. BERESFORD: Yes. In part of our discussions right now, Jeff, is how we actually propose setting that up, would that be something where if when you filed your application you checked a box and said I want a registration
certificate at the end of the process? Would it be a form online that somewhere during the process you could send the form and say I want a paper registration certificate? Or would be just be to order them from the people who produce copies for the office? You order your certificate, I want a formal certificate, and they send you the registration, probably on 8-1/2-by-11 paper because we're going to change our paper size if we have the opportunity to do that rather than buying the very expensive special-sized paper we use now, but allow you to order it that way. Those are all part of the discussion of how we would set this up which we wanted to have kind of fleshed out before we put out the Federal Register notice.

MR. SAMUELS: With respect to full electronic processing, I think especially for the benefit of the new members but perhaps some of the old including me, what part of the process currently is not fully electronically processed?

MS. BERESFORD: Certainly postregistration. I think we just finished IT
this year. Postregistration is not,
preexamination is not, the petitions process is
not, OTPC which we're not sure we need to, but in
terms of the process itself, it is examination is
fully electronic, LIE is fully electronic, ITU not
fully electronic, pub and issue not fully
electronic, and then postregistration is not fully
electronic. So the four areas are pub and issue,
exam. I can go through it and identify them, pub
and issue, preexam, postregistration, are not
fully electronic. And petitions, yes.

MR. SAMUELS: One of the reasons I asked
the question is I know that you're starting to
begin the process believe it or not or thinking of
initiatives for 2010.

MS. BERESFORD: Right.

MR. SAMUELS: I think perhaps it would
be a good idea for the members of TPAC, given the
list of those areas that you are not fully
automated or automated at all now, to have some
ideas to try to prioritize those aspects of the
registration process, that perhaps this is a good
opportunity to do this. One of the reasons why we set the meeting when we did set this meeting was to give us an opportunity to have input before the train leaves the station with respect to initiatives for 2010. So if anybody has ideas just off the top of their head, they are certainly welcome to express those, but if not, I think maybe over the next couple of weeks if you want to give it some more considered thought, you can send in your comments to Lynne or maybe to Karen or to whomever with respect to what we see as maybe the higher priorities among those various aspects that you mentioned. Maury?

MR. TEPPER: Jeff, I'm glad you raised that. I think it would be helpful to see that list and of course to comment on it. I am struck by the fact that I think this was part of the original bargain of what was the first 21st Century Strategic Plan. We are coming up on a decade into the 21st century and still have not delivered on that part of the problem or at least the bargain when the PTO came up with the
strategic plan. So I think there is cause for
certainty in terms of the ability of the office to
meet some of its efficiency targets. Obviously
first action pendency, a lot of these measures are
doing great, but I think it would be time well
spent to look at the extent to which that system
does not yet exist internally.

MS. DEUTSCH: I was just going to say in
terms of feedback from the TPAC, I didn't know
whether Lynne you and your staff have given some
thought about prioritizing these areas and whether
that was ripe for sharing or not.

MS. BERESFORD: We have in fact given
some thought to how we would prioritize these
areas, but I think what I would like to do is
perhaps send something out to TPAC members to
define each of these areas because I might know
what they mean, but not everybody who is a Public
Advisory Committee member will know the difference
between pub and issue and preexam and what they
do. So a little discussion about what they do,
because if you're going to make a decision about
prioritizing, it is helpful to actually know what folks are doing. And also with that some comments on how we would prioritize and how we see them within the office.

These are line functions. This is moving the trademark application through the process and then of course through postregistration which is very much a part of our process. So they are all important, they all affect how we do things, but in terms of prioritizing them it would be very helpful to have Public Advisory Committee impact.

MR. SAMUELS: Elizabeth?

MS. PEARCE: Just one thing I'd like to throw in. If you could tell us where the low-hanging fruit is, which ones are closest to being able to go fully electronic, if possible to polish those off a little more quickly and then tackle the more difficult ones.

MS. BERESFORD: I'm not sure about the low-hanging fruit. Believe me, we have been on the process since before the year 2000 and the
original plan was to have all the trademark
electronic processing fully done by 2003.
Obviously, we haven't quite met that deadline, so
now the deadline has moved a number of times since
then. The problem with such long IT projects, and
I'm sure David would echo this sentiment, is many
things change over the process of 7 or 8 years.
Technology changes, your process changes to some
extent because the law changes or the rules change
or other things happen. So it makes it much more
complex when it's drawn out over so many years,
but I will be very happy to prepare something and
we'd be very happy to hear from TPAC about these
issues.

MS. DEUTSCH: I don't know if you have
any cost projections yet even if preliminary
attached to each of these buckets. But again in
assessing priority, one of the things is the speed
with which the changes can be made, but the other
is the costs of those changes and helping us weigh
in on the planning.

MR. SAMUELS: David, did you want to
weigh in?

MR. SAMS: Yes. I'm going to talk about it a little bit in a couple minutes, but there seems to be more of an opportunity. Another part is we are looking at the initial planning for those four modules that Lynne mentioned and getting a prioritization or a high-level estimate is very useful. But one of the other things that Lynne is looking into that has been very helpful for us is looking at the number of applications and how they go through her organization because not every application touches every shop and it's going to be useful on a priority-setting basis to know what percentage of applications would hit each of these areas and that might be useful in helping set priorities as well.

MR. SAMUELS: Lynne?

MS. BERESFORD: Yes. What David is talking about is one of the measures that we have had for many years is applications managed electronically which means applications that are acceptable electronically and for trademarks it's
been 99 percent now for a number of years. We are not necessarily happy with having a measure that is at this point relatively stable so we have decided that the measure we want to replace that with and we're working on doing that is a measure that looks at the percentage of applications that come through the process fully electronically. So obviously if they go to the petition process they can't be done electronically. If they go through parts of preexam, we have a preexam that does the paper applications but also does some of the work on electronic applications, they can't be fully electronic.

So we are trying to come up with a measure that actually looks at the percentage of our applications where we never have to have a paper filed or sent on those applications. We think this is a measure that will be meaningful for us, it will be way lower than 99 percent, but it will be I think a very meaningful measure and we're working on figure out how to get that measure.
MR. SAMUELS: David?

MR. SAMS: I think this is a very positive statement showing the quality in trademarks. Most managers would be very happy with having a measure that you consistently hit and Lynne has been a frontrunner in looking for how to improve the organization on metrics and measures and I think this is a very positive thing her organization is doing.

MR. SAMUELS: We certainly second that.

Two other areas, Lynne. What's the story on Madrid? Do you see an increase in use both from the U.S. and from non-U.S. Trademark owners on Madrid?

MS. BERESFORD: Here comes the statistics.

MR. SAMUELS: Here comes Sharon to the rescue.

MS. BERESFORD: Thank you, Sharon. I will have a copy made for everybody on the Public Advisory Committee so that you can see how this is going.

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I would have said without looking at this we have had a gradual increase, but what it shows is that in total international applications, that's U.S. filers, in 2004 we started that year with 1,574, 2005 it went up to 2,772, then to 3,131 in 2006, and 3,629 in 2007. So one way of looking at it is it's doubled since 2004. Another way is it's gone from 1,500 to 3,600, approximately. So I'd call that a gradual increase.

In terms of the requests for extension of protection coming into the agency from foreign filers, we started 2004 with 4,700, again we have had increases every year, and in 2007 it was 15,352. When you talk about the 400,000 classes that we have filed here, this is still a relatively tiny, tiny portion of what comes into the office, but it is growing, and I will have somebody make copies for everybody so you will have this information.

MR. SAMUELS: Do you know where do we stand vis-à-vis the other countries being
designated?

MS. BERESFORD: The last I looked we were third.

MR. SAMUELS: Third?

MS. BERESFORD: Yes.

MR. SAMUELS: I know we don't have anything on the agenda for international discussion. Is there anything going on, Amy, with respect to Madrid at WIPO?

MS. COTTEN: There will be a working group meeting in May 4 through 10 on the Madrid system and we will be hopefully be talking about an Australian proposals to increase the level of services provided by all offices. Presumably, if all offices are doing roughly the same thing, processing, handling these applications in much the same way, then it is easier to harmonize the system and hopefully improve the system down the line. If everybody is doing different things, it is much harder to get everybody to agree. So we're going to slowly work on increasing the levels of communication between applicants and
national offices where there are none now. So that's the first thing that we're going to try to do, just to get more notices being sent electronically or otherwise by the national office either to WIPO where it is in the international register or to the applicant directly and we'll see what we come up with. But there is going to be a bit of a fight because there's certainly a lot of countries that don't want to do more than they have to. They only charge the standard fee and they don't want to put more services out there than actually -- fees for. So that could mean that there is a push by some countries that everyone should charge an individual fee and that might mean higher fees for everybody, but presumably as we have heard from many user groups, more services they are happy to pay for so that's what we've been hearing from user groups. I don't know if national offices are really keen on doing that, we'll find out in these discussions, but we are hopeful that we can get real movement to improve the system for users even if the national
offices are kicking and screaming, but we'll see what happens there.

MR. SAMUELS: Thank you. The last question I had for you, Lynne, and this may be jumping ahead, I was looking at the CFO's report and looking at I guess it's page 10 of tab 6 that talks about the awards through December 2007 and shows that we had planned 1.2 million and actual is about almost 3 million. I'm sure Howard is happy about that, but I just wondered what accounts for that rather discrepancy.

MS. BERESFORD: I think we had a change in mood of our 11s and 12s onto the same award scheme that the 13s and 14s were on, and I think Ron might touch on this when he talks about the PAP negotiations. The award scheme and the PAPs are separate and in effort to improve production we moved the 11s and 12s after negotiating of course onto the award scheme that the 13s and 14s have. We did see an increase in production, but also an increase in awards.

MR. SAMUELS: Are there any other
questions for Lynne? Ron, you're going to talk about PAP negotiations?

MR. WILLIAMS: I was going to mention it.

MR. SAMUELS: Are you the lead negotiator?

MR. WILLIAMS: No, sir. Good morning. As Lynne said, we are at the table with NTEU 245 regarding the PAP for the 11s and 12s. Unfortunately, we were not able to reach agreement. Currently we are at the federal services impact at this time and we submitted final briefs on January 30 and we hope to hear from them real soon regarding the ultimate plan. There seem to be I think two major issues that could not agree upon. I think that if we had agreed upon the ramp-up period for the new examining attorneys.

MR. SAMUELS: I'm sorry, say that again.

MR. WILLIAMS: The ramp-up period. We have a 12-week training program and in the past we have given examiners a period where they have a reduced production initially and we were unable to
reach agreement with NTEU 245 regarding how long
that period would be.

The other issue that was outstanding was
the issue of the balance disposal transfers.
Currently 13s and 14s can transfer so many balance
disposals from one quarter to the next quarter if
they take a large amount of leave and because the
11s and 12s do not have -- authority we had some
concerns about whether or not it would be
appropriate to give them the same opportunity to
balance disposals. Those seem to be the two major
issues that we were unable to reach agreement on.

MR. SAMUELS: So in other words, to even
out their balance of disposals that they were
going to take 2 weeks off during one quarter?

MR. WILLIAMS: Right. Right.

MR. SAMUELS: They'd be able to move
some balance disposals from previous?

MR. WILLIAMS: Yes, that is correct. I
don't want to go back to the table, but I think
those are the basic issues in terms of the
performance plans regarding 245.
Like Lynne said, we did however agree to put them on the same awards structure as the GS-13s and 14s up to the $5,000 bonus if they produce enough balance disposals in any given quarter. So that may account for some of the increase in the awards. For NTEU 243 we have implemented some new performance appraisal plans and awards structures in some of their units that also provides them the opportunity to get larger awards as well. Are there any questions on the patent negotiations?

Moving on to staffing, you have heard Lynne talk about the fact that we have achieved pendency with about 2.8 at the end of the first quarter and she mentioned that we are in a maintaining mode as opposed to a driving-down mode that we have been in for the past several years. Two things that we've done that may seem somewhat contradictory, one, we are hiring 15 examiners starting February 19 and we're hiring, but our belief is that these examiners will come on board in February, they will be trained and will have
very little impact on production this year. So we are actually hiring them for 2009 as applications continue to increase, that even though we are hiring them this year, they will have little impact on production for this year.

The other thing that we have done for the second quarter is that we have eliminated overtime. This is the first time we have eliminated overtime in many, many years. Again we are not trying to drive down pendency as much as we have been in the past so we are trying to maintain production at an acceptable level. We think we have the correct amount of examiners on board that will enable us to maintain that pendency in the 2.5- to 2.3-month range for the year.

Another part of the overtime was that we always say that we can count on overtime when we need an extra push, but it has been very hard for us to verify how much we actually get for overtime because when we decreased overtime last fiscal year from 32 hours a pay period down to 12, we did
not see a big difference in the production overall from the examiners. So by eliminating overtime for at least this quarter, it will give us a better I think of what we're actually getting for overtime. If we need to bring back overtime, we have the money available to do that and we are constantly monitoring that situation and if we need to bring it back we will bring it back in order to maintain that pendency in the proper range.

Another thing that is affecting the need to hire is that attritions are slightly higher than we had planned for the year. We had projected to have about 20 attritions for the year, and I think we have already had 20 attritions. In fact, I think we've had 21 because I noticed someone else was leaving. So we have had more attritions than we had even anticipated having throughout the fiscal year. So I think that pretty much is our reasoning for why we're hiring, and at the same time we have eliminated the overtime. Any questions on that?
Moving to the Human Capital Strategic Plan. Back in the fall of last year the Trademark Office developed the Human Capital Strategic Plan which grew out of the Human Capital Survey and identified certain areas that we felt we needed to focus on. If you look under tab 4, I have included a copy of the Strategic Plan that we came up with that lists our goals that we are looking to achieve this year as well as it identified several teams that have been established to help us work toward achieving those goals. I would say that we on many of the teams we have union representatives who are participating and helping us achieve the goals and objectives that we have set forth.

One of the areas where it was indicated that needed improvement was internal communications between management and employees. One of the first initiatives we've done is we've come up with an e-magazine which I gave you a copy of. It's paper, but this is actually published electronically. The first issue went out last
week and we've gotten very good reviews about the
magazine. It is strictly about Trademark
employees, about what we're doing in Trademark,
and I think the young lady who did it has done a
very nice job in pulling the articles together and
putting the magazine together. We do not have a
set schedule for when that's going to come out,
but we anticipate every 2 to 3 months and
hopefully it will continue to be of the same high
caliber of the initial one. We do have a naming
contest going on right now, so if you have a
suggestion on what we should name it, we will be
more than willing. You can send it in through the
suggestion box and we will consider it along with
all the others. For those of you who have been
around a while, back in the late 1980s or early
1990s we had a "Tower Bell" that came out in the
South Tower that was a forerunner to the
e-magazine.

Lynne also mentioned the organizational
assessments in terms of being completed. I don't
know if she mentioned that as part of the
assessment, each unit they go into they develop procedural manuals, they develop process guides, and they also conduct work observations to substantiate the production and quality standards that we have set for the various units. One unit that was first impacted were the legal instruments examiners wherein we have reorganized them into a separate structure and we've come up with a new performance appraisal plan and at the same time a new awards structure where they can get a bonus of up to 10 percent of their salary if they have the right amount of production and quality, and that is one of the first units to do that in Trademark. I will say on average the awards last year under the new plan were about 1 percent higher than they had been in the previous years and we did have some LIEs, legal instrument examiners, that did get the full top award last year.

You have heard a lot about the TWAH program, the geographical expansion, the pilot has I think done a summary and they are going to provide recommendations to the management team.
later this week and I think they are going to recommend a slight expansion in that. The other area in which we are looking to improve in the TWAH area is the collaboration tools that we use that will increase the interaction between the folks in the office and out of the office. I think one of the shortfalls of the work at home is people lose that contact with the people in the office and don't feel a part of it so we are trying to come up with collaboration tools wherein we can interact with those individuals on a daily basis. We are giving them multimedia communications systems where they can have video cameras of one or two people and you can actually see the person you're talking to and it also has instant messaging. Another thing that we have been is we have been webcasting our meetings and at our last all employees meeting we actually had about 260 people signed on through the webcast and we had another 200 to 250 in the room, so we think we had about 500 people out of about 700 total employees who either were at the all-hands meeting.
or actually saw it through the webcast and that
again has received lots of positive comments from
the employees. I will answer any questions that
you have.

MR. SAMUELS: Does anybody have any
questions for Ron? Yes, Howard?

MR. FRIEDMAN: I wanted to make two
comments. I didn't want to break Ron's momentum
so I let him go through with the entire
presentation, but now I'll break the momentum. On
overtime, generally as a union you have no problem
with more hiring because it means more members,
but I did want to put the union's viewpoint out
there. We have always been staunch advocates
particularly when overtime has been reduced or
eliminated in not hiring and reinstituting
overtime for the people who are here. So I wanted
to make sure TPAC was aware of our position, we
would have preferred that overtime remain and pay
the people who are already here to do more work
rather than bring on more people. And to the
extent TPAC wants to comment on that, obviously
feel free.

With the PAP we were very disappointed not to get an agreement before the panel member -- Ron had talked about the 12-week training period and had also talked about the 14-week ramp-up period where you go through a reduced production period. One of the primary reasons we were very disappointed not to come to an agreement with the office is that we've consistently taken the position from the beginning of negotiations until our briefs were filed earlier this week or I should say last week that all we were ever asking for for the first 26 weeks that someone walks through the door is that they be treated exactly the same way they've been treated for the last 8 years where you go through a training period for 12 weeks and you go through a reduced-production cycle for 14 weeks, and we happen to believe by having those tools available, that is one of the primary reasons why every quarter Lynne stands before this committee and talks about how we meet our goals, and that is also why at least one if
not most of the committee members commend Lynne
and the Trademark Office for meeting its
production and quality goals, it is because people
get the type of training during those 26 weeks
that they are on board to become even better and
more productive examiners during the next 2, 3, or
however many years they are an examiner. So all
we were ever asking for our examiners to be
treated exactly the same way they have been
treated since 1999. Thank you.

MR. SAMUELS: Anything else? No?

Lynne?

MS. BERESFORD: I forgot to mention the
very important upcoming event, the Trademark Expo.
For those of with a member of Trademark facts
about the office, you may remember the Trademark
Expo from years ago when we would have it down at
the main building. I’m sure you remember.

MR. SAMUELS: My kids loved it, yes.

MS. BERESFORD: For those who want to
wear the Michelin tire costume or Tony the Tiger
or be a bunch of grapes for Fruit of the Loom, all
of us have fond memories of the costume-wearing aspects of Expo and all that kind of stuff which made it a lot of fun for kids. We are going to be reviving Expo. It is coming back and it is going to be here on campus on April 10, 11, and 12. We already have a pretty stellar list of participants from the private sector who will be having booths and hopefully costume characters and inflatables and all that kind of stuff. So just to let you know we will be sponsoring Expo Lives and it will be here on April 10, 11, and 12. Thank you.

MR. SAMUELS: Thank you. Is there anything else for Ron or Lynne? We are falling a little bit behind.

MS. PETERLIN: On ACTA, I just got an email from someone in Dubai and I apologize for stumbling, but the reason why I didn't have anything to report is because now I am being reminded clearly there still is nothing significant. The latest is the USTR was in Geneva last week to have informal discussions E.U. members. They are not yet ready to enter into
negotiations. Also there is no text yet. While
many countries were interested, the countries who
are still on board are the same six, Canada,
Mexico, E.U., New Zealand, South Korea, and
Switzerland.

   MS. COTTEN: You don't have a mandate to
   negotiate yet?

   MS. PETERLIN: Right.

   MS. COTTEN: And that's why they are
   still in prenegotiations.

   MS. PETERLIN: Right. Just so you know
   and that's why I was like I don't really think
   there's anything to say, but no text with people
   still feeling good about talking at some point is
   sort of where that is. So I consider that an
   nonupdate.

   MR. SAMUELS: Thank you. A real-time
   update. Thank you. We appreciate it. Jan?

   MR. LEICHLEITER: Just one more question
   that perhaps could be addressed to Margaret. The
   program to introduce Russian authorities to
customs is a great program. Do you have any plans
or does anyone have any plans to expand that
program to other countries, for example, China,
Dubai, or Ukraine?

MS. PETERLIN: I know that the Global IP
Academy has regular programs, I don't know if
someone else here can speak about them, with
customs officials, but I think this is one we were
trying to do a different type of program.

MS. COTTEN: We've done study tours
before particularly with Middle Eastern countries
taking them up and down the East Coast and to
various ports. It is difficult. We were very
fortunate to get the Russian customs officials to
agree to this. It's been very difficult to get to
the customs folks and the judiciary in the midst
of all their WTO accession talks and in the midst
of part four of the civil code discussions going
on. So we were very pleased to be able to do this
with Russia. We have been targeting them
specifically and because of the accession talks,
we have been in a better position to be able to
get them to agree because we have been having
pretty good relations. As for China, we have been
doing a lot of in-country work in China.

      MS. PETERLIN: Are you familiar with our
IP --

      MR. LEHRER: Yes.

      MS. COTTEN: We've doing much more work
in- country with customs officials and have not
brought them here. There has been a reticence to
do that on the Chinese side, but we certainly are
exploring it. We are really targeting the BRIC
countries, Brazil, Russia, India, and China, with
programs like this, trying to being them here to
this space for training programs on customs and
enforcement in particular and doing these study
tours as well and I think we are going to expand
them. But it is a significant chunk of time and
money to bring these folks here and then trot them
all around the country so it is not something we
can do lightly but I think it's an innovative
program that really lets them see what we do here
and maybe be able to take that home so I think we
will be doing more of that.
We have been doing it with the Middle East quite a bit, not necessarily customs specific, but judiciary focused with the Middle East. Looking to see if we can get China to do something like this, that would be great. I don't know how open they are to it right now with our WTO case against them on copyright and trademark enforcement. That sort of put a damper on bilateral relations. But we are interested in exploring those sorts of innovative programs because I think you get more bang for the buck when you really engage them and let them see how it works rather than just lecturing.

MR. SAMUELS: Thank you, Amy. Jeff?

MR. STORIE: To that same point, Commerce has training headed up by Donda Keefer who is an attorney in D.C. who is doing exactly the same thing.

MR. SAMUELS: Ayala?

MS. DEUTSCH: I was just wondering, Amy, as part of that program where either costs or politics are such that a trip in person isn't in
the near future, whether there is any component of
this program that deals with translating and
providing written materials to customs offices in
other countries that may be helpful. I know with
respect to China that we had what at least
appeared to be receptiveness to our translation of
our typically U.S.- training materials into
Mandarin and making that available to China
customs and I'm just wondering whether that is
also a component of the program or whether it's
focused on some sort of interactive training.

MS. COTTEN: I think it depends on the
country. Whenever we produce any documents for
China, they ask for it to be translated before we
even hand it over. So they are very much
interested in shifting the costs to us on that.
With Russia, they don't necessarily want us to do
the translation for them, they would rather do it
themselves. Take what you will from that. I
don't know. But certainly in creating our
training plan for doing down in the future through
the -- programs, that is something to take into
account, creating standard modules that can be
translated easily into another language and as we
expand here and think about how we want to
proceed, certainly that is something I think that
will be considered and we'll take that back for
our folks as we move down the road.

MS. PETERLIN: Generally on the training
front we asked Lois and her group to come up with
a strategic plan for the entire organization
because we had a lot of history doing one-of
programs and what we said is let's take a step
back and talk to the folks who are doing some of
the training and folks who are providing the
sessions to support and say what type of modules
work in what countries as they're emerging based
on either political will or their economy is
growing. So we just got that plan I think a week
and a half ago and we're going to bring that to
the Management Council and say what is the best
way to roll out these programs based on their
acceptance in certain countries so we feel like we
have enough experience now that we can start to be
more sophisticated with how we target and what programs we offer like do you to three judges programs and then a customs, do you do two judges programs, wait 6 months and do a refresher? Like how is that information best absorbed. So any ideas that you have on that would be very helpful because literally after the first major stage of her team developing a plan and about to analyze it at the executive level to figure out the best way to do these.

MS. DEUTSCH: I would say the experience of the NBA in China is that although they can't take the place of in-person interaction and training, that the written materials are useful in a couple of respects. I think first of all just the vastness of the size of the force is such that if you have something that can be distributed more widely than the people who are going to attend your events, I think that's very useful. I also think we found that there is maybe a greater comfort level in written materials that are contained and can be signed off on by the powers
that be rather than a live event where they are
maybe less able to control the exchange and what's
covered. So although you have to jump through
some hoops such as translation costs involved to
get what it is you're distributing, I actually do
think there is some usefulness particularly in
China with respect to those kinds of materials. I
don't think it takes the place of interactive
training events, but I do think we found in that
particular market that it's pretty useful.

MS. PETERLIN: We're also looking more
at distance learning which is something that
haven't necessarily been good at in the past and
is also more economical. And it would have some
of the advantages as you were saying, we could get
it preapproved or translated.

MR. SAMUELS: We are running a little
bit behind schedule so I want to move us along.
The next item on the agenda is the report of the
Chief Information Officer David Freeland. I know
a number of us were at a meeting yesterday with
David and his staff and I know some people from
the CFO's office as well with respect to issues
relating to cost allocation and I know we all
found that very useful. Welcome again, David.

MR. FREELAND: Thank you. I wasn't
going to talk very much about yesterday's
presentation other than I do think that us
bringing a series of these types of big issues
coming in and talking about it just to make sure
that we all have a common understanding of some of
the issues that we're facing, on budgets and cost
allocation they are clearly a very important
factor in our jobs and where we're trying to do
and trying to improve here and we definitely are
looking for input from the TPAC on suggestions on
how we can improve the information that we're
providing to you and providing to the Trademark
organization also for improving business decisions
that we're making. I do believe that we're
heading on the right path right now, that we
significantly have improved the types of
information that we're gathering and starting to
do the reports on. I think in some cases it's
very positive some of the information we're
finding, in other cases it's not so positive, but
it's very useful in seeing how the monies are
being spent. I believe that that information can
be used to make better business decisions as we
move forward. I do not want to get the process
criticized for some of the information that we're
finding. I think overall that it's a very
positive that we're moving toward.

On the presentation that you have in
your handouts, I have made a couple of changes in
the way that we have been presenting information.
I'm hoping it's a little bit more useful to you.
If not, I would like your feedback. Instead of
tables with numbers, I was trying to look at maybe
some charts and some of the comparators or
relative values between years might be more useful
and jump out.

On slide 2, what we have is TDR,
tradeups, TARR and TICRS just showing the average
monthly filings or requests of service for each of
those areas. We went to an average monthly
because we were including FY 08 and we only had
the first quarter's data in there, so we had to
have a meaningful comparator between 2006, 2007,
and 2008, and we had to knock that down to a
monthly average. At the end of the fiscal year
we'll convert those to annualized numbers and
report on that. But it is interesting that
tradeups is relatively flat so far, but TDR, TARR,
and TICRS to somewhat lesser degree are showing
relative increases on an average monthly basis on
usage and requests.

On the next slide, we have the TEAS
system and so far it seems to be relatively on
track. We do project or Trademark does project
total TEAS filings for fiscal year and right now
we're showing an increase in the overall filings
through TEAS for this fiscal year in 2008. On the
Madrid charts, I do apologize that there is a
mistake. We were sort of rushing getting this
through the new look. If you can extend on the
projected for 2008 in Madrid on the hatched box,
moving that up to 16,250, we just made a mistake on
the chart. The Madrid filings I think as Lynne reported earlier are higher than what they had been in the past and I think we had a flat number, but they are actually higher. It's at 16,250 is what we're projecting for this fiscal year.

On the search transactions at the bottom on an average per month we're seeing that the number of searches going through the systems are on the rise too. I think in the future I'm going to add another chart that shows maybe the last 12 to 18 months of searches. I just found it interesting that the search patterns are very cyclical. There is a 3-month cycle on searches and I think it coincides with our work patterns within the office. You can see the numbers where it drops down real lot, ramps up and then drops low, and ramps up. It is an interesting opportunity for us to make sure that we have the right capacity planning on time. I think we are going to be as efficient as we need to be or should be. We need to be a little bit more flexible in dynamically reallocating resources
because I don't want to have dedicated resources
on months that are relatively low in usage. Why
have them just sitting there if there is a way to
dynamically reallocate those to maybe another
system with higher utilization for that month and
then reallocate. We're just trying to look at and
see this information to make better decisions on
how we apply our resources on a monthly basis.

MS. BERESFORD: David, I have a question
about the search transactions. Is this internal
searching, is this external searching, or is this
combined?

MR. FREELAND: This is total searches
that go through X-Search through the BRS system,
so I believe that would be a total.

MS. BERESFORD: So it's internal?

MR. FREELAND: Yes, internal through
BRS.

MR. SAMUELS: So this doesn't include
tests?

MR. FREELAND: I don't believe it does.

We would be tracking that right now through
document requests through TICRS or through TARR on
the number of requests for different types of
documents and images that are pulling up, but if
there are other systems that we need to be pulling
in and showing the charts, we can do that as well.

MR. SAMUELS: Does anybody have any
thoughts on that? Should we have a separate chart
for tests?

MS. PEARCE: I think that's not a bad
idea. It's interesting to me being a new member.
I am delighted. I use the system electronically
as much as I do and we use TEAS Plus and all that
sort of thing so I feel at least I can't be
embarrassed being here. But I would be interested
in knowing the test statistics. I use it a lot
for various things, sometimes ownership searches
and that sort of thing which I think it does
relatively well particularly now that they've
combined some of the assignment functions. So
from the outside I would be interested in that.

MR. FREELAND: I think it's always a
good idea to pull in and look at the impact of the
outside usage on our system so I think we're going
to look at not just tests, but we'll probably be
looking at any other public access to websites or
any other means of getting electronic access to
our information and maybe have a slide just for
public access to information and maybe there will
be something in there that's of use and we can
develop that over time. So we will try to get
that pulled together for the next TPAC.

MR. SAMUELS: Thank you.

MR. FREELAND: Slide 4 shows relative
spending over the last several fiscal years. One
change I would make on this slide is that in FY 08
there should be a stacked bar at 24 million 397 is
what we've already obligated for this fiscal year
due to the projects and I have a slide that shows
that later on in the presentation.

The projection of our total budget at
68.9 million is based on what our original budget
projection was. I know that our organizations
both Trademark and OCA are constantly looking at
that with the CFO's shop and I believe, Lynne, you
mentioned that you think that it might be somewhat less this fiscal year, 62 or 64 I think is what I heard you say yesterday. So I think if we can work with Karen just to go through that to make sure that we're in synch on what we're projecting if that's okay.

MS. BERESFORD: I think I looked at a budget projection and it as 66 million, so I don't know. This is a different number and we will have to look at these numbers with the CFO's shop.

MR. FREELAND: I just want to make sure that we're all in synch on that.

On slide 5 I just wanted to reaffirm what the IT priorities are for the Trademark organization. Clearly TRAM is one of the systems that we're working on and improvements are coming out or are already coming out, TICRS as well, X-Search, FAST, as you all have heard, you know important the FAST system is to electronic processing so there is quite a bit of activity there, and on the TEAS. With the FAST system and having such a long-lived history, maybe an
interesting history, I think it would benefit from
the type of scrutiny that we just did with cost
allocation and drivers, that perhaps at the next
TPAC session if it's agreeable we might come with
a full history of FAST and how it started, where
we are today, and then what the plan is on moving
forward. I think that might be useful.

MR. SAMUELS: Will you be proceeding
simultaneously on all of these initiatives?

MR. FREELAND: Yes. These are
concurrent initiatives that we have several
activities working on this fiscal year, but FAST
is a very big effort with a large number of
modules and it needs to be broken up into multiple
phases as are each of the others and we tried to
intermit those phases and we have some lessons
learned on intermixing of phases and resources on
both sides in trying to get them out so I think
that will come out as part of the lessons learned
too.

MR. SAMUELS: Are these going to be
carried over into 2009?
MR. FREELAND: On the next couple of slides we can show accomplishments and what the plan currently is. In the first quarter of 2008 in November we did release TEAS 4.1, new forms and new functionality there. We have also on TICRS the color specimens was added in 1.7 in November. In December we had 4.1(a) on TEAS, and the forms paragraph editor was added.

MS. BERESFORD: May I just say something? The TEAS 4.1 was the new Section 7 request form and a new response to a suspension inquiry or letter of suspension. The December release of the Trademark electronic TEAS 4.1(a) was a server upgrade and miscellaneous wording changes, so that is what encompassed in these particular releases.

MR. FREELAND: With 4.1(a) it was a system upgrade. Primarily we have security requirements for all of our systems so it as a Federal Information Security Management Act compliance update that we had to apply to the system at that point.
In January 2008 another version or update to TICRS was adding documents. Another major effort was a migration from the TWAH environment and on the CITRIX, over to the ERA environment for the work-at-home program and supporting of them. So far, my understanding is that service has been very stable and good. We haven't seen any issues to be honest on that, and there has been a significant reduction in the number of outages. Any improvements are always a good thing, so I think this was a very positive change.

Another item in January was the bulk data downloads. In the past it had been a purchase service where we were providing subscription fees and prior to January there were 13 subscribers to bulk data downloads. Ten of the 13 have switched over to using the free downloads now. I am not sure what the other three are going to do at this point, but they have until March I think is when their subscription runs out to make a choice on how they're going to handle that.
Since the new product went out we've had 14 new subscribers going to the free downloads. We have increased the number of people who are getting the bulk data downloads and as far as meeting our information dissemination requirements, I think this has been a very positive thing for the office.

MS. BERESFORD: This was a project that we started because we wanted to have fewer people hitting our system causing us problems because they were using robots to download data out of our SURF (?) system. They crashed the system and do other bad things like slow it down. So we really wanted to go to free data for anybody who wants it in bulk. It was relatively inexpensive to do this and I think as David says, it has been very successful. The more we can give it away, the fewer problems we have with our other systems being up and running. Thank you.

MR. FREELAND: Another very positive part of that free bulk mechanism that we're using here, it is a registration system where people
come in and they're registered users so they're
allowed to freely bring down whatever they want.

But if we ever did have issues with hitting it too
hard or whatever, we have numbers and contacts to
talk to them to see if there is a better way for
them to maybe get access to that information, but
we have not had any issue here. It's just been a
very positive effort I think on our part and on
the public and I think we have been meeting their
needs there.

On the second-quarter initiatives on
slide 8, clearly we are continuing to move with
TDR, X-Search, and additional TEAS forms. We have
a scheduled in February for TEAS 4.2, the Section
7 request for amendment form or correction or
registration certificate form. Lynne is going to
have to help me on this one part that has to do
with 66(a) entitled to claim priority under the
Paris Convention. Apparently there is a response
to action form associated with that that is also
going to be included in TEAS 4.2.

In March we're looking again at TICRS
updates on fax images. Speaking of faxes, in
general I would like to be reducing the receipt of
fax information coming into the office because we
have so many other vehicles whether it's through
PDF or electronic imaging or scanning and sending,
are there any thoughts from the TPAC organization
on how fax and how essential it is to the
operations of the public on us being receiving
submissions in fax form? Because often times with
information dissemination we had been getting
requests for copies of certified materials or
assignments or whatever in fax form and we're
looking to move to either electronic submissions
or just moving away from the fax as a general
vehicle for receiving. We're just exploring that
right now. Are there any thoughts on that?

MS. BERESFORD: David, we looked at our
fax and I think Tom can probably speak to his more
accurately than me, but I know patents is
interested in getting rid of having the ability to
fax papers to the office. Trademark looked at our
fax program thinking we would probably join
Patent. But what we determined is we spent such a small amount of money on faxes, 1,500 a year or something like that, or 15,000 on tax receipts, and in certain instances it is such a help to the folks that need the fax us something right then and there, for some reason or other they can't attach it to an electronic document. But since you have raised the issue, I promise that on the next Public Advisory Committee we will bring the information forward so you can actually see what we spend on faxing, where the faxes coming from, and what it's used for. It's a very small program within Trademark. Patent has a much more robust fax issue than we have, so I am more than happy to bring the facts to the Public Advisory Committee so we'll do that next time.

MR. FREELAND: I know that in our documents in the assignments and information dissemination group in my shop we receive requests for certified copies or for assignment submissions and they come in through three different vehicles right now and faxes are the least reliable of all
of those vehicles. The clarity on the request is
sometimes smudged, often times there are blank
pages, they were inserted into the machine
incorrectly, sometimes they're just solid black
pages. When the filer or the requester sends
them, they believe it has gone through
successfully and sometimes when we get those, you
can't tell who it came from so there is no contact
information. So we're just looking at ways of
trying to improve that service and we can talk
about that more.

MR. SAMUELS: Elizabeth?

MS. PEARCE: Just quickly from somebody
from the outside, and I prefer not to use faxes
but have done it, there are times when all the
people who know how to use the scanners in my
department and not available. Or, and this
happened recently, the email system will crash.
If an examiner calls for instance and they've got
a problem or I think I needed to sign something
for an extension of time for a subsidiary, it was
a strange and unusual thing, but there were
problems with getting the emails to go through on some end. It's not a huge expense just as a safety valve sometimes, it is useful to those of us who are quasi-dinosaurs. So at any rate, there is some compassion on that.  

MR. FREELAND: That's useful information. Thank you.  

Looking into April on slide 9, we have FAST 1.14. I am happy to say we did have some issues with the current release, but yesterday on 1.14 I think we are ready now to go into user acceptance testing so hopefully we can get that tested, accepted and keep it moving and then we'll continue on with the rest of FAST. Again, at the next TPAC session I think we will have a little bit more elaborate history of all of the FAST releases.  

MS. BERESFORD: And just for everyone's information, FAST 1.14 makes our tag 4 paragraphs available online. So when we're talking about incremental steps here, we're really talking about incremental steps. This is something that we want
to do because it will allow us to look at how many
of each -- paragraph are used to do quality review
across the whole organization to see how are we
doing with a particular 2D situation or 2E
situation. So we see the tag 4 paragraphs as
something that we'll really be able to use to help
the organization to focus more on its quality in
examination. But it is a really small part and
when we're talking electronic processing this
where we are really talking about a tiny increment
of the processing here. So when we talk about
incremental steps we are really meaning really
incremental steps.

MR. FRIEDMAN: Also for informational
purposes I think it is important for TPAC to know
that we have an arrangement with the office and we
have about 10 or 15 beta testers testing 1.14. So
the union is working with the office to make sure
that when it is pulled out to everybody it would
be in the finest shape possible and the beta
testing will continue when the next rollout
occurs.
MR. FREELAND: In May we're looking at 1.15 going out and that's providing examining attorneys improved capability of processing office actions using full text search functions. In June we're looking at another release of TEAS for a new electronic form, postpublication amendments, and there is some increased online filing capabilities also in that system. And TEASi, improvements to the Madrid protocol forms offered through TEASi. In July 2008 the release is currently scheduled for FAST 2.2 which is for intent to use. This is another that we have significant delays on and definitely would benefit from the review and discussion ongoing through that.

On slide 11 it's talking about other initiatives that we have within the office such as business continuity and disaster recovery where we are currently at there. We have some of the equipment up in Boyers right now where we are copying all of the work-at-home people when they have online storage that when they sign on into our systems here they have their network attached
storage that is virtual storage that is attached
to their virtual desktop. That storage is being
backed up into Boyers right now so that we have
access to all of the information in their work
that they are using as part of their jobs. We're
also looking at moving additional storage up there
for the rest of our systems on the critical
systems to have a hot electronic capability for
recovery. Also we have ClearPath machines that we
have here for disaster recovery for the Trademark
systems. We are intending to move that up to
Boyers at the end of this fiscal year so that we
will have the ability to recover that hardware
because that's a one-of-a-kind here, the ClearPath
system, and we bought a second one just to have
for disaster recovery and it would be better to
have it physically located at a different site.
So we're going to do that by the end of this year.

There are other efforts on the on the
business continuity disaster recovery that we are
still looking at. We went out with a couple of
reviews of our requirements for a second site and
we came up with a review of our initial process. Last summer or last year we went through an effort of looking for a second site. San Antonio, Texas, is where the bidding process went through. There were some flaws in that bidding process. As we went through that process, we came out with only one really viable bid technically, but financially it was just outrageous. It was like $80 million. Because we have to obligate all funds up front, we would have had to obligate a 10-year in the first year and it would have come with like $80 million to do all the build-out which is completely outrageous. So we backed off and asked did we have a seriously flawed system, this process was it wrong? We went through and brought in some experts on data center designs and build-outs and did a review of the solicitation for offers, the technical requirements. We wanted them to come back with a good, better, best type scenario for a data center design and compare the SFO that was in the original. The bottom line is we were requesting things in the SFO that were beyond best
in some cases. There are things that we were looking at where if good is going to be adequate and allows us to do an incremental update over time and we're truly fine, then we should be going in with good. If it turns out that you can't do those incremental updates and there is a compelling need for a higher-performance data center, then we have the information to make those choices. It ranged in cost for building out a data center from about $22 million to $29 million, so significant increases. When you look at it from that standpoint, it is almost a 50-percent swing in cost depending on what options you put into a data center on building it out.

My intent is we validated the cost that it should be. We looked at the costs that were coming in on that $80 million total bid and all the leases. They were wanting not the $28 to $29 million that this review thought it should be, they were looking at it like $40-something-million for the build-out, so it was not a good offer and we didn't really even seriously consider
it and stepped away. So now we are going through
and starting that process again to develop a
better contract vehicle, do lessons learned from
that process, and take another run at trying to
get a better product.

Another area that we thought we made a
mistake on on that initial bid is we were trying
to stay off of the first floor for flood plain
reasons but found that that was preventing most
people from bidding old grocery stores or old
warehouse type situations because they thought
that that precluded them from bidding. It didn't.
There are ways to use those facilities very
easily. We're having to change the wording and I
think coming in with a warehouse type situation or
an old grocery store would have been a much more
cost-effective solution for us, so we're pursuing
those options.

On the public website USPTO redesign,
we've awarded that contract for that. We're
moving forward. There are two phases planned for
that right now. The first phrase is looking at a
refresh of the look and feel for how the public
would see the website, but phase two is also
looking at more of the underlying infrastructure
improvements to our website and the data that's
there. I believe we are also looking at the
Spanish translation or Spanish access to the
website that would be available at that point in
phase two. USPTO data access, we have had as I am
sure you are well aware issues with data access
and data mining issues. We had TDR and patents
and public pair (?) were on the same server at one
point. Access or data mining through the patent
system was causing horrible response times for
performance on TDR. We split those two systems.
There were some suggestions internal that it might
have been the instability of the TDR system that
was causing all the issues. It was quickly proven
that that wasn't the case because the problems did
not follow TDR, they followed the public pair and
the primary issue was just the sheer volume of
individuals, robots actually, that were coming
into the operation and just pounding us on data
access. Literally millions of requests were coming from single points on a daily basis and our systems just couldn't keep up with that load on those systems. So we ended up as a stopgap having to implement the capture system which has pros and cons. The pro side is it allows individuals who need to get in and get access to the information a way of doing it without being impacted. The negative side is you have to contend with those two characters that are on a fuzzy background when on the best of days I have a difficult time reading those things. We are going through looking at improvements to that system. There are ways to be able to detect on a request coming in whether it's from a robot or whether it's from an individual. You can tell by frequency of hits, the amount of data that goes to a site. There are ways to do it. And there are ways then to redirect the requests from automated sites to go to a different server to process those requests than for individuals. So one of the things that we're going to be looking at doing is if we can
redirect automated requests to a server that has a better governance model to regulate the data input requests so it doesn't kill it, that would be a positive, while we allow individuals to go through the system with fewer restrictions or fewer barriers to them to easy access the information I think are ways that we are looking at pursuing that there.

The last thing on there was staffing. We have almost all of our positions filled for the Trademark side that are dedicated to development, so quite a few, 22 out of the 23.

MR. SAMUELS: What's your FTE in your shop?

MR. FREELAND: My total FTEs is 550 and I think we have spots for 526, so I think this is a little fuzzy right now. We have the budget for 550. A lot of that is associated with the business continuity disaster recovery, the different number there. Out of that, 140 roughly are for information dissemination that are not really part of your traditional IT organization.
So as far as IT shop, below 400, about 380, is the number that we have.

MR. SAMUELS: Does that include contractors?

MR. FREELAND: No. Contracts that are a large number that are attached on top of that and across my organization we're probably looking at about 7- to 800 additional contractors depending on the area and information dissemination has a large number of contract labor, our operational areas do too, as does system development which is almost entirely contracted out.

MR. SAMUELS: So you have about a thousand people who are working some aspect of information systems both government employees and contractors?

MR. FREELAND: I think that's a rough number, but, yes, I think it's close to that.

MR. SAMUELS: And how many on a percentage or actual number basis are being devoted to trademarks?

MR. FREELAND: I don't have that number
off the top of my head. I could probably get it before the end of the day just to show you how the compensation budget breaks out between trademarks and patents, and I can look at the contractors too I think. I'll see if I can get that pulled together for you today.

MR. SAMUELS: Just looking at the issue of costs, I was looking at again the CFO's report, page 7 I think of whatever the tab is, tab 6, shows that for the first quarter 2008, a little over $25 million trademark fees go into the CIO's office. I'm just wondering, because extrapolating from that, we're well over $100 million and I thought the budget is $66 million. What accounts for the heavy expenditures in the first quarter?

MR. FREELAND: Typically that's going to be for the application and development projects that we have kicked off at the first part of this year. That means that we've obligated the funds for the rest of the year, so there are forward obligations.

MR. SAMUELS: So it's just typical?
MR. FREELAND: Yes.

MR. OLECHOWSKI: If I could add one thing, one of the things we've been working with not only at the CIO's shop but with all the business units is to fully fund the contract through a 12-month period of performance so that's accounted for a lot of Dave's obligations through the first quarter and a half as we have been fully funding his contract so that at the end of the year we're not shortchanging or anything else.

MR. SAMUELS: Does anybody have any questions for David?

MR. STORIE: I don't know if this would be helpful for anybody else on the committee, but based on our subcommittee assignments, I'm going to be spending a fair amount of time looking at quality and automation. As a user, I only have access for the most part and understanding of those public-facing programs and so it would be helpful to me, and I run a risk by asking a systems for this kind of information, but if we could get a flowchart that would give us sense
about the interrelationship between the modules
that you guys develop and maintain and which way
they face, who has access to them. Then I think
it would also help us understand the challenges
that you face in interface and in terms of being
able to move us from partially automated to fully
automated in terms of the areas that we just
talked about earlier, so if I could get that maybe
at a very high level.

MR. FREELAND: Those are great charts, I
love those charts, but they do need to be raised
up a level. I think just to make sure I
understand what you're asking for, we are going to
list then the different systems that we have and
then show how they are interrelated because there
will be interfaces between those systems and then
identify where the use of them comes from. Some
of them will be public facing, some of them will
be internal, so we can list all of those systems
out so you can have a general feel for all of the
automated systems that support the trademark
organization.
MR. STORIE: That would be very helpful to me personally so that I understand exactly where you guys are coming from.

MR. FREELAND: I think that that's a great set of information that we should have readily available and we'll pull that together for the entire TPAC.

MR. SAMUELS: Anything else? We are about a half-hour behind schedule and while I'm tempted to just plow through, I think it might be a good idea to just take maybe a 5- or 10-minute break to use the facilities, make phone calls or whatever needs to be done. So how about picking up at 11:10?

(Recess)

MR. SAMUELS: The next item on the agenda is the report of the Chief Financial Officer. We have the Deputy Chief Financial Officer with us again, Mark Ojechowski. Mark, welcome again.

MR. OLECHOWSKI: Thanks, Mr. Samuels. I do have a couple guests with me. At the last
meeting you met Carol Bryant. She is our chief
executioner. She is the director of the budget
execution staff in the Office of Corporate
Planning. And behind me in the red shirt is Mark
Krieger. Mark is our new Director of Finance, and
prior to Director of Finance he worked in our ABI
division. So he is certainly familiar with a lot
of the questions that TPAC normally has on cost
allocations and everything else and he has been a
great asset to our leadership team. Thank you.

Budget highlights. Slide 2. This is
the current status of both FY 2008 and 2009 and
what we plan on doing. You can see down bottom
the appropriation was passed. Right after
Christmas the president signed it giving the USPTO
access to $1.915 billion. We do anticipate
collecting around that amount. However, we
believe that trademarks is going to overcollect
and patents will slightly undercollect and we have
already started to engage Lynne and Karen and her
staff about keeping an eye on that and see what we
want to do and as the year progresses if it does
come to be that we're going to overcollect trademarks to see how we can best use that or fee changes or something like that, but we will monitor that closely. There is a significant change in the appropriation language in FY 2008 that Congress gave us that said if we collect over 1915 we can keep until expended up to $100 million above that. So essentially it ends diversion. Of course, the USPTO would like to permanently end diversion, but this is certainly a great new amendment for us, allowing us to keep up to $100 million should we actually collect that this year.

MR. SAMUELS: This is a follow-up to that. Last year I understand I think it was $12 million in trademark fees that were diverted to the treasury at the end that was overcollected and you didn't have the authority to keep.

MR. OLECHOWSKI: That's correct. That's unintended diversion.

MR. SAMUELS: That money goes to the general treasury?

MR. OLECHOWSKI: I don't know the name
of the account. It goes to our special account in
treasury and it's been collecting for years and
years and years. There's probably close to $500
or $600 million in that account that's unavailable
to us unless we get some sort of act of Congress.

MR. SAMUELS: It is available to anyone?
MR. OLECHOWSKI: Not without an act of
Congress.

MR. SAMUELS: So it's just sitting
there?
MR. OLECHOWSKI: Yes, sir, offsetting
the public debt.

MR. SAMUELS: I'm encouraged by the new
administrations language. The ability to keep the
additional $100 million if collected, are there
other steps that would be required for the PTO to
be able to spend or to utilize those funds?
MR. OLECHOWSKI: No, sir, just in the
same manner we do now. We tag every dollar that
comes in whether it be patent or trademarks and if
we did not spend it this year, it would remain the
right color of money that we could do with it the
next year or the year after. It is no year
dollars so it doesn't have a year attached to it.

MR. SAMUELS: Does the 2009 budget
request also have that provision?

MR. OLECHOWSKI: The request does, yes,
sir. Page 3. This is the 2008 administration and
this is the patent and trademark split into the
business unit. So how much of the patent and
trademark dollars will be budgeted to each of the
business units. It adds up to 100 percent going
down as opposed to the next chart which is going
to go across. I don't know if you have any
particular questions or comments on this. This is
the 2008 budget. It still adds up to 1915.

Just to comment on the 2008 budget, I
think during the last TPAC meeting, patent fees
were estimated to be significantly down through to
2008 because of the claims and continuation
package that was going into effect. The claims
and continuation package as most of you I'm sure
know has an injunction against it so we are
actually still collecting patent fees that we had
not anticipated collecting when we put the budget

together. The spend plans that are out to the

business units are somewhat less than 1915 so

we're monitoring that as we go along. We consider

that to be one-time dollars and not dollars that

will ultimately go into a business unit base

because once claims and continuation lawsuits are

exhausted, we will start not collecting, I guess

is the way to say it, those patent fees. Part of

deputies' meetings is we try to determine how much

money we're going to have, what to do with that

that is currently not allocated out to the

business units today.

Pages 4 and 5 are the pie charts that

show you the total dollar amounts of both the

patent and trademark business lines broken up by

the business units themselves.

Page 6 are 2008 operating plans. This

is the same dollar amount sliced a different

direction. It's the business units split into the

patent and trademark split to show you how much of

any particular business unit, what the patent and
Page 7. This actually came up in Mr. Freeland's presentation. This is the spending status through the first quarter 2007. I think, Mr. Samuels, as you mention of the fact that the CIO had the trademark share of that and I mentioned also that that's what we've been trying to do with not only the CIO contracts but all the business unit contracts. We want to fully fund those contracts on an annual basis, and I will make mention when we get another slide on the Fence Report that it's caused us to keep a very close eye on our spending as we go through the year because what we do not want to do is fund a contract for 8 months. We would rather do that for a whole year to keep the period of performance in tact so we can have year- to-year and annualized data on the expenses on those contracts.

MS. BERESFORD: I have a question about that because I note that the trademark share that has been funded is 42 percent but the patent share
is 19 percent for CIO in looking at these organizational dollars. I'm surprised patents is for the first quarter below 25 percent and yet it would seem that if we were fully funding all of our contracts for the year they would be above 25 percent too.

MR. FREELAND: I will certainly take an action to go back and dive into those numbers. It might also have to do with which projects are current authorized and currently be worked and obligated. I know that patents has the major one being PFW, but I would have to go back and dive into the numbers, Lynne, and I'll do that for you. It is just that. There is a base percentage below at the bottom of those two that are for those contracts that are getting renewed like help desk, handsets, telephones, those types of things that are part of that base cost. But trademarks has funded and initiated several projects at the beginning of this year. The PFW project was actually obligated and initiated in 2007 and so a lot of the funds that we're working from with
monies on that side are actually going against our 2007 obligations. So I just think that some additional information needs to go through that. That would be easy to grab and we'll do that and get back to everybody.

MS. BERESFORD: Yes, but I also know we have a lot of 2007 funds that are being used to fund OCIO endeavors at this point so, yes, I will be curious to see where that money really is going.

MR. OLECHOWSKI: We'll provide the breakdown to everybody. Page 8 is the pie chart, the graphic in which we're depicting the same information for both trademark spending and patent spending through the first quarter. Remember that's 2008 dollars.

Slide 10 is actually a new slide that just indicates through the first quarter how trademarks is spending according to the plan. The planned expenditures are slightly under $25 million. The compensation dollars is almost exactly to plan being spent. Noncomp is somewhat
under. I guess Karen probably has a few more
details on that. It could have things to do with
preobligating contracts and spending 2007 dollars.

But once again you can't just take the number at
face value, you have to do a little digging in to
determine why, but essentially compensation is
certainly spending right on track.

MR. SAMUELS: I'm looking at this and
looking at contractual services seems inconsistent
with what we had discussed earlier where you
seemed to suggest that you have to fund in the
first quarter contracts at a higher rate than if
you had a pro rata application, yet in contractual
services you show you plan 2.4 and an actual of
516. Do they relate to different things or is
there some disconnect here?

MR. OLECHOWSKI: Karen you can help me
out here. These are trademark contracts whereas
the other thing was the CIO contract. Karen and I
have had this conversation, I know we don't like
to pre-ob.

MR. SAMUELS: Karen, could you come to
the table?

MS. STROHECKER: Without actually having the reports right in front of me, my suspicion on this is that we had planned what we would actually need to fund 2008 contract requirements but in fact we had forward funded those same contracts using 2007 money in the fourth quarter. So we have covered out first-quarter budget obligation requirement with 2007 funds that were available to us.

MR. OLECHOWSKI: I think in general we're trying to get away from pre-ob being a significant amount of the contracts and we've been able to do that in past years because we've had dollars left over at the end of the year so we forward fund through a portion of the year. What we're trying to do is get the annual funding locked into the budgets and then fund those on an annual basis. If the contract goes from January to January, yet in August or September we throw money on it for the next year, it doesn't allow us do at least as detailed financial analysis as we
would like to do to know what we're going to spend it on annual and then it just snowballs. At the end of the next year now you've pre-obbed but you had money in your base to fund it on an annual basis and so it just keeps going. I think trademarks has done that, we've done that, I mean the PTO, and we're trying to get away from that. We'd rather not pre-ob as much as we have in the past. We'd rather have annualized money in everybody's base so we can fund those things for a 12-month period, but what also what we're trying to do and where pre-ob can help us is if the contracts are from 1 October to whenever, we never have the money on 1 October since we have to generate fees. So what we're trying to do is we may have 12 months of funding, so we'll pre-ob money onto it to get the contract started in 1 January, so it has been a ongoing couple-year effort to do that but I think we're still seeing some residual of that.

MS. STROHECKER: In fact, given the downside that Mark just discussed, the upside is
when you're operating under an continuing
resolution and you don't have any idea of how long
that will last, it's actually somewhat
advantageous to at least have those substantial
contract amounts obligated at the start of the
year using prior year monies so that you can
actually continue to fund operations under a
limited CR spending level.

MR. OLECHOWSKI: What we've tried to do
with the CIO contracts is take them so that, I
will use some rough numbers, a quarter of them
start every quarter so that they're not all
bunched up on any one particular quarter, that the
start of the period of performance is spread out
over the year so that as we generate fees and we
renew contracts and we repeat them, it's a more
smooth evolution through the year of expenses.

MR. SAMUELS: David?

MR. FREELAND: Maybe it was stated, but
if you look at the slide on 10, the 22693, that
compares to slide 7, the 22693, just for the
trademarks portion. This doesn't include anything
from any of the other organizations.

MR. OLECHOWSKI: Slide 11, this is the Fence Report I guess we call it for the first quarter of the fiscal year and I the point I want to make here we with the Office of Finance and Carol's group generate this every day and this is what we use to monitor the spending across PTOs. So as requisitions come through our shop we know exactly how much money is available to use before we obligate it. You can see that at the end of the first quarter we had about $9 million available and what I was mentioning before I alluded to it is this is why we have to pay so close attention and it is one of the down sides of fully funding contracts. So as not only the CIO contracts but the CFO and trademarks and patents come in, we have been trying to fully fund those on an annual basis, but like I said, the flip side of that is it's really used up a lot of the fees we were generating throughout the first quarter and even now. So we do do that. When a contract or requisition or anything comes through Carol's
shop, they look at this and determine if they can
actually obligate those funds and we have had
conversations with the business units to hold
things until a day or two or three where we
generate more fees. So another challenge through
the first quarter is also our continuing
resolution. Our continuing resolution really
handcuffed us this year. The first part of the
language to spend on last year's seasonal rate and
the seasonal rate was very low because we had
pre-opped contracts the year before so we didn't
spend much money in the first quarter. We were
limited to the amount we had spent the year
before. We actually asked OMB to go to a daily
rate which is essentially how much money we think
we will collect through the whole year divided by
the first quarter and that freed up some spending
room for us. We also carried over last year $28
million that we had not carried over in the past.
In the past we would pre-ob or try to spend it as
we could. We actually carried over around $28
million which gave us a little bit of maneuvering
room and we plan on doing that at the end of 2008 as well. We have had a CR 12 out of the last 13 years and I imagine we'll probably have another one.

MR. LEICHLEITER: Just a question on that. You have total expenses of 618067 on this chart on page 11. It looks like you have actual collections through December 31 of 56929 which is a shortfall. Do you anticipate that shortfall continuing through the rest of the year?

MR. OLECHOWSKI: I'm sorry, sir? You're correct. Actual collections through December was 569, but we also have other income. Part of the carryover was trademarks. We split the parking and all the other things would come in. So this actually shows trademarks having a surplus on this particular day a snapshot of $2.7 million.

MR. LEICHLEITER: My question was, in your total expenses versus your actual collections there's a shortfall. If you look at the collections and you anticipate that shortfall continuing for the rest of the year, in other
words, you're going to have to use your carryover for the rest of the year.

MR. OLECHOWSKI: No, sir. Especially on the patent side there's a seasonal effect more to patents I think than trademarks and we were down in the first quarter on patent collections we think for a couple of reasons. One certainly was we instituted the CPI in fees on September 30. I think we mentioned this at the last TPAC, we got about $30 or $40 million in bulk maintenance fees which we would have received in 2008, but we got them in 2007, so our 2008 fees are slightly down. But I mentioned also that we started to talk to the trademark organization and we believe that trademarks is going to overcollect to what they say, but we're starting to pick up every day. We monitor and every day and we're starting to pick up our fees and overcome our funding of our contracts. We expect to have a surplus at the end of the year and we monitor that like I said on a daily basis.

MR. SAMUELS: I think the answer to the
question then is the other income is prorated so
they're going to get that $7 million.

MR. OLECHOWSKI: And that shouldn't
change. Obviously the carryover is a set number
and that's not going to change. We'll collect
some parking fees and reimbursables and things,
but that's a small amount as we go forward. I
think the answer to your question is, no, we
expect at the end of the year to have both patents
and trademarks in a surplus and then we'll have to
work with our deputies and management counsel to
determine if we're going to carry over, if we're
going to fund projects, whatever Lynne decides to
do with the trademark dollars and we'll work
through that.

MR. SAMUELS: Ayala?

MS. DEUTSCH: Are there ever any
cash-flow issues in terms of the money coming from
collections and the money coming from other income
in meeting the expense obligations or is there not
really?

MR. OLECHOWSKI: No, I think doing it
very carefully we know on a daily minute-by-minute dollars how many dollars we're taking in and Carol's group and Mark's group we pay attention to how much money is in there. All the requisitions flow through our shop and so we keep a close eye on that. We had to keep a very close eye on it through the first quarter. I don't think we're out of the woods yet because like I said we've obligated a lot of dollars in an attempt to annualize contracts. But I think it would be safe to say we're getting out of the woods. Payroll and PTO is around $40 million. Obviously we wouldn't have been able to make payroll on this date, but it was probably 2 weeks later. A round number I keep in my head is about $4 million for trademarks and $35 for patents to make payroll.

MR. SAMUELS: Howard.

MR. FRIEDMAN: Mark, the managers are interested in this. Is there any consideration to reducing parking fees in view of the fact that there is a carryover? The office was kind enough to do that a year or two ago.
MR. OLECHOWSKI: We just went through an analysis on parking fees and we think it's about right with the maintenance we have to do and the contracts we have, so I don't think there's a plan yet to decrease parking fees. Is Jonathan here? Jonathan Rupp is in my office and in Carol's office our trademark examiner who did the study on parking fees and I think our CFO reported out to the management council. I think we are about right. We have done some things in the parking garages, put some speed bumps in, put some mirrors in to make it safer and do lighting. But if that comes up and we're overcollecting on parking we will lower them as quickly as we'd raise them if it were the other direction, but it is something we keep an eye on.

MR. LEICHLEITER: Can you give us an example of what unliquidated commitments are in the budget there?

MS. BRYANT: They are documents that are in the pipeline that are with our contracting office that have not yet been awarded to a
contractor. Technically they do not count against us by OMB, Office of Management and Budget. However, we count them against ourselves because we know that they are with contracting officers and they could push a button at any moment and be awarded. So they're our safety net if you will.

MR. LEICHLEITER: So in other words they're contracts that you fully expect to be awarded during the fiscal year?

MS. BRYANT: That's correct. In fact, I expect them to be awarded anytime between an hour to 2 weeks from now. So that money on that line item is my safety net. I count it against the bottom line. When I find that things are a little too close for my comfort, I will go to the Office of Procurement and work with them to see about how long I think it is until the documents are going to be awarded to see which items maybe they can hold off a couple of days, and I have a very close relationship with them.

MR. OLECHOWSKI: We just put out a dictate that they couldn't award any contract
through the first quarter without first coming to see Carol which normally as we get through the year would happen, but they actually had to, and maybe it was just the thing we had to do because we were monitoring things so closely between the CR and our fees.

Page 12. I'm sure everybody on TPAC is certainly familiar with this, but this is the plan performance with the enactment of the 2008 budget between the number of applications and how many first actions are going to be complete -- the actual amount of work that the trademark organization is going to get done this year, these are the budgeted numbers for performance.

Page 13 is an accounting document that has all yea dollars in it, so it's not just 2007 or 2008, it's all year dollars that are actually expended through the first quarter of 2008 and it's just an indication to our accounting group of how many dollars is spent by each business unit, but it's just one of our accounting documents. I think it's called the statement of net -- is that
what it is?

MR. KRIEGER: Yes.

MR. OLECHOWSKI: And really it's just to make sure that we're spending and counting our revenue because all of our dollars are no year dollars, we get to keep them until expended.

MR. SAMUELS: Have you benchmarked your allocated indirect or overhead against other fully fee funded agencies? There are several I believe.

MR. OLECHOWSKI: No, sir, not that I know of.

MR. SAMUELS: Would it be worthwhile to engage in that exercise, because it seems to me and so I think the sense of the TPAC is a lot of the trademark fees are going, over one-third, to allocated indirect overhead and it might be an exercise at least for us to see how that compares with other agencies in the government that are 100-percent fully fee funded.

MR. OLECHOWSKI: We could go look at that. We can go down that path. It think it would be certainly worthwhile to see how we're
doing.

MR. SAMUELS: Going back to the fact
that if you collect over $100 million more than
what's appropriated and you can still spend that.
Let's say one year you overcollect $50 million and
the next year you overcollect $70 million. Can
you keep that money in your account even though if
you add it all up together it's going to be over
the $100 million? It's a $100 million a fiscal
year, not a total?

MR. OLECHOWSKI: Yes, sir. They totally
changed the law which is why we'd like to get out
of the annual appropriation process, but that's
another subject for somebody.

MS. BERESFORD: I just want to say
something about slide 13. If you look at the
total of expenditures and expenses and revenues,
you note that the $400 million in $48 in million
in trademarks, is that what we're looking at here?
So we're talking about 12.2 percent of the total,
trademarks is, and I note if you look at the
allocated indirect, for instance, patents is
paying about 17 percent, we're paying about twice that out of our budget. So these are the kinds of things, and I think Jeff's idea is a good one, when you're talking about economies of scale and all that kind of thing it raises questions about what the benefits are here for the trademark organization because it appears that our share of everything is quite substantially more than the patent side of the house -- quite a substantially larger percentage. Thanks.

MR. OLECHOWSKI: Page 14. The president's budget was released Monday, yesterday, so this is now public. I'm glad to see everybody has a copy of it in their desk. I appreciate that. We've worked hard with all the business units to put the budget together. A couple of the highlights, changes between 2008 and 2009, it's an increase of about 8.3 percent and that's an 8.7 percent increase in patents and about a 5.3 percent increase in trademarks for a total of 8.3, an increase of almost $160 million over the 2008 enacted appropriation.
Some of the changes just at the high level, $115 million of that is the adjustments to base which is inflation, annualization, retirement and health benefit costs, increases of pay raises. We had some program growth mostly on the patent side. $30.9 million is the FY 2009 cost of hiring 1,200 patent examiners. Of course, the annualization of those examiners would be in next year and so part of the $115 million is the annualization for the previous year's examiners. There is a small increase to support some trademark workload and staff increases. Then the $35 million, the two most significant parts of that is our OPM transfer. The USPTO if you call is one of the only two federal agencies that pays this bill. OPM pays the bill for all the other federal agencies, but transfer money to OPM for postretirement and health insurance benefits. And the other is about $12 million. Our South Tower contingent of people is relocating at the end of this year and the beginning of 2009. We also in the budget identified some cost-saving measures to
reduce the amount of spending because originally patent fees were down. There is a small trademark share of that as we made program cuts. It is pure patent dollars if the cut is right out of patents, but if we were reducing the program dollar level in a support organization, there is also a trademark share. So when we were trying to reduce the amount of patent spending, trademarks went down slightly as well just because they absorb a share of those programs that would not be funded.

Slides 15 and 16 are the same splits that you've seen for 2008. The first one of course is business unit split into patents and trademarks for the 2009 budget, and then the same for slide 16. It's the patent and trademark dollars split into the business units. Both still add up to the budgeted number of two-thousand-and-seventy-four billion dollars.

Then on page 17 is just performance data supporting the trademark portion of the budget. The number of applications, first actions, how much the trademark business line is going to get
done in 2009 with the budget submitted. In
general I would say business is good.
Applications continue to rise and performance
continues to be out the roof. Comments or
questions?

MR. SAMUELS: Any questions for Mark?
MR. TEPPER: As a follow-on to your
suggestion, actually, I think you raised the issue
of perhaps benchmarking other user fee funded
agencies in the way we deal with the allocation of
costs. You can see it most obviously in slide 7
and somewhat in 13 where you've got the vertical
breakdown in terms of the breakout of expenses.
In slide 7 actually we spend more on CIO than we
do on examination, 38 percent. Of course, patents
reinvests the 65 percent. I have asked the
question several times and we do get I think in
response a good explanation of the methods how we
apply drivers and that's a good, interesting, and
helpful discussion, but to get behind that
information it's difficult for us with the amount
of time we have here.
It may be in addition to benchmarking, it is good to know that we take the drivers very seriously, we have committees discussing them, nevertheless, when application of the drivers leads to a counterintuitive result or something that on its face just seems to be what you would not expect, rent allocation. Full-time employees, how much of the office space we take up since many of them work at home and I know there are costs attributed to that. Could we maybe get some summary or some analysis of why the drivers might lead us to those answers?

In particular, OCIO. The T system I know is complex, but it's a mature system. We've been talking about adding a few forms here and there but some of the bigger enhancements I would expect at this point we're more in a maintenance made and bringing some new releases out, but some of the more ambitious development projects that we would like to undertake and have been trying to fund just are not getting started.

I'm interested in if we could at least
explain once and for all why is it that right now when I file an application or whatever costs we submit in for trademark processing, of that dollar more money goes toward IT support, IT projects, than it does toward substantive examination, just so we have an understanding of that. I've done my best to understand drivers and look at the analysis. I still look at slides like this and it's not at all what one would expect understanding that we are 10 percent of the overall income here, 12 percent, our breakouts, our contributions, assuming there are some differences in what this office does than what the patent side of the business does, and perhaps these can't all be explained, but it would be helpful to maybe get at just if your group has done an analysis as to why we're getting those types of results consistently.

MR. OLECHOWSKI: Certainly, sir. I think this is the fourth time I've presented to the advisory committee and I have made the offer each and every time that we'd love to sit down you
guys. I know you're pressed for time and you only
have a certain amount of time to spend with us,
but we have the details behind each and every
number. Slide 7, I think I mentioned when we were
going through it, this is spending to date of FY
2008 dollars and it's really not an indication of
how much any particular dollar spent on a patent
or trademark or CIO, it's the amount of 2008
dollars that we've spent to date. But behind each
and every dollar, behind each and every driver,
behind each and every report we do, we do have all
the details. You mentioned rent. We have an
incredibly complex rent allocation methodology
which we have reviewed with not only trademarks
but all the other business units. We made some
small tweaks to it, but certainly if a person is
at home we don't count them as being part of
occupying space here. We've gotten to the point
where we're down to the tenths of square feet in
rent documentation. So the question is, and I
think it came up in David's briefing, how accurate
you are versus the cost of getting that accuracy.
If you could spare us some time, sir, we could put together some briefings, do them by conference call, do them when you come through here we'd love to do that. We can set that up and going over our ABI system to make sure and tie that to our finances and everything else so that there is a good understanding on our part so that you can either get a comfort level or not and then we'll dive into each and every one of the numbers and we'll be the first to raise our hand and if it's not right and if it's not correct and if there is a better way to do things we'll absolutely love to do that.

MR. TEPPER: You're probably prefer that than my asking the same questions --

MR. OLECHOWSKI: I keep coming back.

MS. DEUTSCH: Maybe there is some way not only on a one off but on a going forward basis to build that kind of a more detailed dialogue into some of the subcommittee meetings the day before the TPAC.

MR. SAMUELS: That's probably the
appropriate time. So whenever our next
subcommittee meeting would be, I think June
something or other, the 9th, that might be an
appropriate time to go through this exercise.

Looking at the 2009 budget versus the
2008, I see, David, you might be the only one
that's going to spend less. Is that right?

MR. FREELAND: That we're going to spend
less?

MR. SAMUELS: It looks you're going from
246 to 240.

MR. FREELAND: We have reduced our
operating budget by over $50 million annually from
what was originally planned and requested over the
last 2 years. My budget at this point based upon
the 2005 plan submission for 2007-2008 was well
above $300 million and now I've been pushing to
get the cuts and we're below $250 million on plan
to operate budget at this point and we're
continuing to move in that direction as we clean
up our budget and continue to strive for
efficiencies. So I'm not sure about the
organization. I am familiar with mine.

MR. SAMUELS: Howard?

MR. FRIEDMAN: Mark, in slide 14 you talked about $2.4 million being earmarked to trademarks for workload and staff increases. Then when you go to the budget document on page 28 it lists between 2009 until 2013 how much is earmarked projected-wise anyway for increase in trademark application filings. Can you give any insight as to what are the numbers for 2010 through 2013? There's a jump to $4 million and up to $13 and I don't mean for inflation, but do you have any idea what it applies to as far as staffing increases?

MR. SAMUELS: I was referring to the fiscal year 2009 budget request booklet and not the material in the binder. What page? You were on 28.

MR. FRIEDMAN: The material in the binder refers to $2.4 million for 2009 and if you go down to page 28 under initiatives you see where 1.744 is earmarked, so obviously from another line
item it's added to 17. But I guess I'm curious to
look at the 4 and the 6 and the 9 and the 13
million as to getting some more information as to
what's in those figures.

MR. OLECHOWSKI: If you go to page 11 in
the budget. On page 11 is the waterfall document,
but Howard, we get the initiatives from the
business units and they fill out a form with the
justification so that we have background and
justification for all the initiatives. But is
your question more what does the future hold in
2010 and beyond?

MR. FRIEDMAN: I guess I was curious for
2010 and beyond how did you derive those figures.
How much staffing were you projecting to add.

MR. OLECHOWSKI: We work with the
business units and Karen and her staff to project
out what we think filings are and applications
whether it be in patents or trademarks and try to
make sure that the budget covers the anticipated
workload and that's a much more complex process
than I thought it was in terms of the econometric
matters and what the dot-com industry is doing and
what the economy is doing and what the world is
doing. So those projections are our best estimate
about what we think the workload is going to be in
the out years and we do have some projections in
terms of both trademarks and patent FTEs are going
to be through 2010 to 2013. I'm not so sure if
that answers your question.

MR. FRIEDMAN: Is it possible to see
that information?

MR. OLECHOWSKI: It's normally in the
budget. We don't put it in, but absolutely we
have that information.

MR. SAMUELS: Is there anything else for
Mark? It is noon. Here's the quandary we're in.
Director Dudas is scheduled to be here at 1:00 and
I don't know what his schedule is like for the
balance of the afternoon but I don't want to risk
having him not be able to be with us this
afternoon. I know Sharon has indicated to me that
her presentation won't be too long. On the other
hand, I know people want to have an opportunity to
grab a bite to eat. So I'm open to suggestions as to how you would want to proceed. Sharon?

MS. MARSH: One option I think would be to break for lunch after John's presentation -- if there is still a little time I could do my piece. If not, if we run out of time, we could perhaps do it by email after the meeting.

MR. SAMUELS: I think we should have time because the public session right now is scheduled to conclude I think around 2:00 and we only have a real small matter to discuss in closed session. I know in talking to people over breakfast that people don't need to catch flights until 5:00 or thereabouts. So I think we would be in good shape if we hold over your presentation until the afternoon, so why don't we do that. We will recess now for lunch at come back at 1:00.

(Whereupon, at 12:03 p.m., a luncheon recess was taken.)
MR. SAMUELS:  Good afternoon.  I hope you all had a good lunch.  We are now joined by the Under Secretary and the Director of the USPTO Jon Dudas.  As you know, back in November TPAC submitted a letter to Jon in which we expressed some concerns with regard to some basic management and budgetary issues.  Jon was kind enough to meet with me yesterday to discuss in greater length and depth the nature of our concerns.  At the conclusion of our meeting I asked John if he would speak to the group as a whole to express his reaction to the letter and some thoughts and ideas that he may have and to respond to any questions that members of TPAC have as well.  Jon?

MR. DUDAS:  I'll open by saying I was going to make fun of his microphone because it looks a little old world, but I see how effective it is so I should hold my tongue on that.

I would like to actually start with we did have a brief meeting yesterday to talk a
little bit about the letter and about what the PTO is facing and also talk a little bit more about the context. So if you will indulge me for a moment, I had a number of prepared remarks that go into a various of things all of which are talking about what we're doing strategically in trademarks, all very important, but I guess I'd really like to talk a lot about what I see from a management perspective, what we see from a strategic perspective, and that launches right into the letter that you had written. I would ask again from TPAC I want to say thank you for the letter, than you for the report, thank you for the way you've been involved. The goal has been to get TPAC to be as involved as TPAC can possibly be to get the kind of expertise that you provide which is understanding the trademark world but also understanding other worlds in ways that you could help us. So the two probably best ways that we think are the most productive ways you can help us is talk to us about what we can do as a better job administrating, better job managing, what are
some of the best practices, you have, and some of
the best practices we have and we'll share. This
is an organization that really does want to dig
down deeper so we appreciate that.

The second thing is strategic planning
more generally. The other thing is under Lynne's
guidance and leadership and under the guidance and
leadership of the strategic planning in our
executive team we have had a wonderful set of
years. I want to show you this just because it
goes in the right direction. When we go up on the
Hill to try to get our budget, we just got a
budget the other way, it's $2 billion, a little
over $2 billion. What's significant about it is
it's the fifth year in a row that the president
has said the PTO should have all the resources
that they bring in and in the last 4 years
Congress has followed the lead. This is percent
of goals met. The reason I raise this is because
the diversion issue, administrative issues,
metrics, benchmarking, all those things have meant
that the goals that we report we have moved up
from 50 percent up to 90 percent. If this were a trademark-specific chart it would go up to 100. This one only goes through 2006 because we're watching user fees -- but we figured we could show you this as well. I'm sorry, 2007.

This is what's happening with goals in large part because of what we've been doing administratively with benchmarking, what we've been doing in terms of making sure we're getting things done. There's another chart I won't show you, but all of you have this mug and a pin. Did you get a pin? There's also a USPTO pin. That essentially was just one thing to say thank you to our employees because it's the second year in a row that trademarks broke every major record in the history of the trademark office. Some of those you would expect. We hired more people so production is going to go up. But to be able to increase production to the level it's been increased and increase quality and know that all that our examiners are doing and to know that we're the gold standard for the world really has
meant a lot. A lot of that has been because of strategic planning, because of metrics and benchmarking, and that is where we would like to bring you all in.

I think one of the most important questions that came up in the letter is how do we make certain that we are aligning the goals of the organization with the spending of the organization. I will go back again to give you a little bit more context. I certainly felt when I came in the office as deputy about 6 years ago that we had a problem within the USPTO and that was very easy for us to point at each other. It became quickly clear to me when I was invited to Congress that I didn't have that option. I couldn't say the patents organization is upset with the CAO, that this is not an effective way to do things. We really needed to change the way we were doing things, the way we benchmark, et cetera. We made management changes. We made strategic planning changes. We started instituting benchmarking in ways we haven't in the
past, but we haven't completed that.

When I first came in the office there were a couple reports that came down. One said for the last 30 years you've had some spending issues in CIO and I felt really fortunate that I could be there for a year and get that 30-year letter from that group of folks particularly. But at any rate, that was an important thing to get. And we also had gotten some other issues that had been raised with long-term planning. So what I am more excited about is that you're talking about how we can do those.

Some of the things that we're doing now, and not just looking into, we have been putting much more transparency into how we do things. In our CIO organization for instance what we're aiming toward, what we want to get to is eventually where every cost is associated with the business unit itself so that there's a charge-back type of a system. We're not there yet, but we want to get there. We are doing things in our CAO organization and in our CFO organization. I think
in our CFO organization, one of the things that I found troubling when I first came into the office is we had no internal auditing function whatsoever. I had worked at the Federal Reserve Bank as an internal auditor and recognize how much internal auditors are hated. But I also recognized how much value they brought to an organization. One of the things that troubled me always was when we looked at budget issues, I know how we handle this in the room, everybody around the room has the most important budget item and theirs is the single budget item that can't be cut. At one point we even talked about we can't give bonuses unless we can cut into our budget at the right time and actually we came around and found the cuts that we needed to find.

But the bottom line is what we have now I think in our CFO shop is a real ability to analyze all the different costs. We're testing new measures including efficiency measures that we need to perfect. We're doing a lot to bring that through. I think the specific question you had is
how do you make certain that trademarks is
spending trademark dollars and making sure that
there is an opportunity for the trademarks
organization to really measure what's happening.
When it gets down to the very specifics of how we
measure each of the different areas, what's direct
spending and what's indirect spending, how much
patents and trademarks has direct control over, I
have to admit, I just turn to our CFO and I turn
to patents and trademarks for that and primarily
to the CFO organization to talk about how do we
measure those things, how do we measure rent, how
do we do those kinds of things, and how we measure
drivers. It's a big issue for us even in the
office of intellectual property policy and
enforcement because how do you break that down --
our general programs?

What we're asking you to do and what I
think you've been doing over the last couple of
days is help us analyze all the proposals that we
have on improving the business models that we have
in place; our budget and cost management. We want
to continue to provide detailed cost information
on all the activities we're providing. We want to
be completely transparent, I think we are
transparent, but I've discovered that sometimes
when we're transparent we give too much
information so we need to be both transparent and
also be able to summarize very well and engage on
the specific issues.

We also had a discussion about 4 years
ago about what do we want to do, what kind of
agency and organization do we want to be. As you
probably know, the USPTO is a performance-based
organization. There is only one other one in
government and they really don't have the level of
independence that the PTO has. So we are
constantly in this discussion with the Department
of Commerce as to where do we fit in and we're
often talking about how we need to have certain
autonomy because we're a different agency.

We also in our own organization have
that discussion. About 4 years ago what we
discussed was, and I'll talk a little bit about
patents and bring it back to trademarks, was that we didn't really have the best organization in terms of what we were doing on IT because we had a CIO organization and then within the patent organization we had one that kind of mirrored a CIO organization. What we agreed upon as a management team was you know what we need to do is get the most effective CIO organization and bring Sierra back into that and that's the path that we've been on.

Since that time we've had people raise issues. The commissioner has raised should we have a CIO organization. This goes across the board, CAO, CIO, CFO, should we look at a model based on business unit and bring those organizations within? We're open to that on a strategic planning level but I have to say that quite honestly I don't think we've given nearly the chance to the model that we think is really going to work which is to have an effective CIO organization. We have done a lot. I think in the last year alone we had a 20-percent reduction in
the overall budget in CIO and a 10-percent increase in work. So in some of the broader issues I think we're seeing some real gains. We'll see another 10-percent increase in work next year and probably a 3-percent decrease in our operating budget.

What I think most important for me to make clear across the board is we are engaged in the kind of strategic planning group meetings that everything is on the table. What's the right approach, how should we do things. We definitely have a management team that can measure just about everything. So on two fronts, strategically and philosophically we're open to just about anything. From an administrative and management perspective, we are very focused on making sure that we can be as efficient, effective, and productive as possible. One of the paths that we're on right now is really the more we can do to offer flexibility and opportunity to examiners the more we see better satisfaction among examiners and the more we see even higher production. To me it's
like a low-fat cheesecake, people are happier,
more work is being done. I don't know how many
times you can get to that. But the bottom line is
one of the things that we'd like to reach out to
you is, and I know that it's been happening today,
I know it happened yesterday, I know there have
been several meetings, we really want to bring you
in as much as you're willing to come in and look
at what we're doing, look at what we're doing on
specific projects, look at what we're doing on how
we're benchmarking, and telling us what you think
will work and won't work. Our biggest successes I
think in a lot of ways in trademarks and in
patents have been because we've brought people in
to look at that. So we're open on every front.
But I'm happy to answer as many specific questions
as I can although you'll see my quickly turn to
Lynne or Barry as you get into some of the -- I
swore off -- after my internal accounting
experiences at the Federal Reserve Bank, I try to
be a more likable guy after that.

MR. SAMUELS: Any questions for Jon?
One question, Jon, and it relates to the letter. There are a couple of issues that are raised in the letter and some of them you touched on. No one is going to argue about a more effective, more effective operation, whether it's CIO or any other organization as well. But at least a lot of the concerns that prompted the letter had to do with more structural questions. The management structure of the PTO, that it be structured in such a way that in the view of the TPAC would provide the commissioner for trademarks or the commissioner for patents for that matter as well with the authority if you will to control their own budgets and make the decisions with respect to how trademark or patent fees are spent.

I think that's the fundamental question that the letter raises. I know we discussed it briefly yesterday and you had some ideas all the way from leaving things the way they are to making trademarks an independent agency. I don't know whether you want to elaborate on those ideas or whether members of the committee want to weigh in.
But it seems to me that's the fundamental question on the table and how far do we want to push it I guess is the question that I pose.

MR. DUDAS: I would say on a couple of fronts, one of the things we have to do is make sure we're all speaking exactly the same language. I know when I looked at the numbers that were in the letter, now again I need to know exactly do we define direct costs and indirect costs. Is rent a direct cost or an indirect cost? There are a number of things that I would have to turn to Barry and Lynne for that matter to talk about what matters as a direct and indirect costs. Because I think some of the costs as I understand it are costs that trademarks would direct but they wouldn't come in through the trademark organization. So that's one thing, particularly if the numbers we're talking about are below 50 percent or are more closer to two-thirds.

The other thing that we are constantly looking at is, again, how we are most efficient.
There are different extremes, actually there's probably even an extreme even beyond that, but let's say the issues are leave things exactly the way they are and not even try and improve efficiency. I should be run out on a rail if that's the case. And the other extreme would be make the trademark agency completely independent. There are policy reasons why that would be good, there are policy reasons why that would be bad. There are all kinds of issues beyond that. But just from an administrative I think that either side of those are probably not that realistic because we just have a team that's always going to try to become more efficient and I think it's probably not possible to split off our agency in any meaningful way at least not from what I've seen. We would like to even become a stronger PBO but I don't know that that's really possible right now. But we need to make sure we're talking about exactly the same thing.

The other thing I would say is just to give you my sense, I still feel strongly although
I'm open to what our management team has to say because that's the most important people here, the most important people here are all the employees, the people who will last no matter what administration is in and will be able to really make a lot of policy changes is our management team. So it matters a lot how our management team things on any of these administrative issues, management issues, and philosophical issues. But on that front I still remain committed to the idea that we are on the right path, that we can have a CIO organization that can have the right transparency. I think there's a lot of transparency there, the right CFO organization, the right CAO organization, that has the right level of transparency and a meaningful way to measure what they're contributing down to the trademark efficiency number. We don't have that now but I think that we will actually be more efficient along those lines.

One of the problems we're having a management council now, I don't know if Margaret
raised it, is we don't take full advantage of the efficiencies of scale even in ordering computers if we order the same computers across different -- that problem will get worse and not better if we start separating in a variety of different ways. If we have lots of budgets shops around, quite honestly I think it will lead more toward what I felt like I saw when I first came in the office which is not anybody working for the USPTO but a lot of people working for CAO, CFO, patents, trademarks. When we had a problem there was a lot of that's not my problem, that's this person's, et cetera. I think that that can be exacerbated even if you put more individual functions within there.

So I can tell you that's my personal philosophy that we're on the right track, that what we need to be able to do is measure within every business unit, never forget what we're here for, fundamentally it's to register or reject trademarks, to issue or reject patents, and then also what we do on an international front from a policy perspective and bring those numbers
throughout. So I am asking you to look at that
but I'm also saying that we're very open to
anything. But if you have questions, thoughts,
constructive criticism, and then unconstructive
criticism, in that order, I hope we run out of
time before the unconstructive criticism.

MR. SAMUELS: Maury then Howard.

MR. TEPPER: Jon, we very much
appreciate your being here and I think we all need
to applaud you for your openness and for the
progress that has been made in the office. The
chart speaks for itself, but there has been a real
change in the dynamic here. I think a lot of the
concern that you lay out, we share your
philosophy. The question is how best to get to
that point.

MR. DUDAS: Right.

MR. TEPPER: I hear and acknowledge the
difference of if we completely separate these
agencies, there is some duplication of effort and
there is some potential for waste or not
maximizing the synergies that we otherwise could
in a unified organization.

I would submit, and the issue we're trying to focus on too, that by creating too many I'll call them cost centers if you will or fee films (?) or whatever term you like to use, you can generate that division that also allows for some inefficiency.

MR. DUDAS: Right.

MR. TEPPER: Our goal in the letter is to encourage the office to look at a management structure that enables those with operational responsibility to know how best to invest the dollars in that operation. We have spent a lot of time talking and looking at the budget and trying to learn about concepts such as drivers but some of that impact really seems to be looking at how we're going to explain the balance sheet after the fact, at the end of the year to explain how things have been spent. Where we need to be focused, and I know your management team is working on this, but part of the letter is to come to a concept where we can put control beforehand of spending
and investment in the hands of the people who will
have operational authority and I think the fewer
of those you have in general the better or the
more one can become truly performance based.
Nothing in an organization this size is simple and
it's a lot easier to say and express the thought
than to actually think about how one makes that
happen.

MR. DUDAS: But it becomes simpler when
everybody knows what value they have to add and
they know exactly what they're doing. There was a
time in history where the office had one goal in
patents and it was to reduce pendency and
everybody knew exactly what they needed to do. It
had some other negative effects, but everybody
knew what it was. If you get the right goal
though and the right goal is what contribution do
you make to issuing patents or registering
trademarks or not at the front end, and I think
that's exactly where our management team is at
philosophically and now how do we get there
practically and how do we get there quickly
practically. You're right, it's hard to have
chance, but I think again I'll use CIO as an
example, what the goal to get into CIO is where
patents and trademarks say here are the
requirements I need and the CIO organization says
this is what it will cost and it will come out of
your budget and have a charge-back type of
mentality. But we don't have that now and that
leads to a lot of tension, and quite honestly,
I'll look to IT and this goes back 30 years but I
think it's a whole lot better now, also how much
expertise do we want in-house and how much do we
want outside. That's not a trademark-specific
issue, but it is a very serious issue particularly
in Washington. I never fully understood why
people were so worried about contractors and
consultants until I found out some of the games
that get played in Washington and so we need a
certain amount core expertise within.

In the ideal world again in my opinion,
the most efficient system is one where people can
provide services of what they're asked for that
are clearly more cost-effective, but we need to find out, you're right, from the front end what's the best way to get there. And including considering do we have the right model or don't we have the right model which I still feel that we do. I don't think we've gone far enough along to find out if we don't, but I will also say we're actively looking at what other models might make sense.

MR. SAMUELS: Howard?

MR. FRIEDMAN: Jon, I'd just mention that the happier the employees the more productive they are, so in that vein, any update on the administrative agency order for the loan repayment program?

MR. DUDAS: I don't have an update. I'll put Eleanor on the spot. I don't have an update on that, but I know that people are looking at it, that it's going through. And actually you and I talked about that probably about a week ago and I haven't found an update along those lines, but I don't know if there is anybody else in
trademarks that does have an update. I'm sorry that I don't have it. I'll get you an update.

MR. FRIEDMAN: Because if we sign off on it, I'm happy to carry you a big sign around -- on the Hill, the atrium, three times around here.

MR. SAMUELS: Ayala?

MS. DEUTSCH: I think I also support the philosophy of working together instead of at cross purposes, but I guess in listening to you summarize the pluses of some of the efficiency measures we're using, there's a tension here because what's a net efficiency upswing for the PTO is coming at a price for the trademark component in terms of efficiency. Your job on the Hill or otherwise is you get to give the good news that net efficiency measurements are up for the office, but since we are only advising one side of the equation, the question is how you balance the tension between net positive results but those positive results coming at the disproportionate expense of one part of the office?

MR. DUDAS: I guess the bottom line on
my front is I haven't seen that disproportionate
issue. There are different ways that things are
being allocated, how you go through that, I would
tell you that trademarks has a smaller budget than
patents, but if you were at a PPAC meeting people
are going to say these cost drivers have been
wrong. There are people who have raised that
issue. Our job is to make sure we get them
exactly right. So there is no question of that.

There have been some changes in cost
drivers and that's a worthwhile conversation to
have under any circumstance because we have to get
that right. And I would argue and I think I could
say this at PPAC as well that if you have to err,
don't err, how's that? Just leave it at that. If
there's a smaller budget versus a larger budget,
there is a disproportionate impact. But there are
still arguments underway. There's an argument
underway about whether or not trademarks is
allocated enough of the cost for what happens in
OIPPE. That's an argument, that there are some
who believe that there should be more of a cost,
that what our office of policy does often weighs
heavily on trademarks more than what it's being
allocated along those lines. We do have to get
that exactly right or as close to exactly right as
we can possibly get.

So I think that what we have to be able
to tease out, and it should be fairly easy to do
so it shouldn't be complicated, is if you see a
number change, why did it change? Did it change
because we measured it wrong in the first place or
did it change because it's disproportionately
causing the problem? What I look at is, I look at
overall that we're increasing productivity, we're
increasing production, we're increasing. I don't
want to say that we have to wait until we start
not doing well. That's the wrong way to do it.
We have to get every measure right. But that's
what I have yet to be convinced, but since you are
more convinced of that, I think I need to become
more focused on it.

MR. SAMUELS: Any other questions for

Jon?
MR. DUDAS: I just want to note for the record this is the first time that Howard had the easiest question and I still couldn't do it.

MR. SAMUELS: Is there anything else that you want to cover, Jon?

MR. DUDAS: No. Everything else was really going into more specifics about what we're doing. But again, I would ask that you continue doing exactly what you're doing which is asking, not just asking, getting involved in how we're measuring, what we're doing administratively, and also quite honestly, get involved very much so on what the strategic direction of the patent and trademark office should be. I would argue that there's been no other time that I've seen in the 12 years that I've been up in Washington that the patent and trademark office has had a better opportunity to really effect policy on an intellectual -- and quite honestly effect policy that happens within the office. So there's a lot going on on both the patent side and the trademark side where the U.S. Is clearly taking the lead
because of people in the office and it's a real
opportune time for people at TPAC to help us with
our strategic direction along those lines. We
need three times a week as senior executives to
talk just about strategic planning, not management
and administrative issues, so there's probably
nothing that you can tell us that we won't want to
review and we won't want to look into and probably
in a very timely fashion. Thanks a lot.

MR. SAMUELS: Thank you very much for
being here and for your time.

MR. DUDAS: Thanks. Appreciate it.

MR. SAMUELS: Thank you. We'll now move
on to the briefing on regulatory/legal matters and
Sharon Marsh.

MS. MARSH: I'm going to keep this brief
and start with a very quick overview of some
current issues regarding rule making, examination
policy and guidance, and training. Then after
that we have two issues that we would like to get
some feedback from the committee on and we'll
cover those issues as well.
We currently have three rule-making notices under development. The first one I think we had mentioned earlier, we are planning to make it a requirement for all applicants to provide a description of the mark in the application. We did a notice of proposed rule making last fall. We got a few comments and have prepared a final rule-making notice addressing those comments and moving forward with implementing the change. If you recall, this change was to improve our ability to apply design search codes to marks. If the applicant tells us what the mark is, it really aids our coders in deciding how to code the mark. This description we decided will not be printed on the registration certificate. We will continue current practice where in certain limited cases the examiner determines that you need a description of the mark on the registration certificate to understand the nature of the mark, but in normal cases the description will only be used for coding purposes and will not be printed.

The second rule-making notice is a
follow-up to our earlier notice regarding requests for reconsideration after final. If you recall, we were going to make those mandatory, mandatory use of TEAS required from those, and also that they be filed within 3 months after final. We got unanimous negative comments about that notice and so we decided to head in a different direction. So we're going to go forward with a notice of proposed rule making requirement if you request for reconsideration after final on paper, you will be charged an additional $50 processing fee. That would be the only change and we will see what the reaction is to that.

The third rule-making notice I think we might have mentioned at the last meeting also, the certificate of mailing procedure. We've decided that in order to encourage electronic filing of papers where there is a TEAS form available that if there is a TEAS form available you will be required -- not be required to use TEAS, but you will not be allowed to use the certificate of mailing procedure. In addition, since we issued
the requirements that express mail only be allowed
to be used when there isn't a TEAS form, we've
added seven or eight new TEAS forms, so we're
going to expand that rule as well.

The other thing, in the area of policy
and guidance as a result of some changes in
workload and staffing, we are moving forward with
some expansion of the TMAP. We have got a number
of teams working, cross-functional teams composed
of managing attorneys and training and quality
office attorneys and our legal policy attorneys.
We're going to cover areas such as trade dress
(?) service mark applications, certification
marks, Madrid protocol issues, 2(a) deceptiveness
issues. All these teams are working on looking
what's in the current TMAP and figuring out how we
need to expand and improve it. We continue with
training efforts. Our office of training and
quality issues tips. They have a periodic
publication called "Reminders" where we try to get
some examination issues discussed. I think Mr.
Samuels sent you, we have compiled a list of
training lectures that will occur during FY 2008 and sent those around. That's the quick overview of those issues.

We have two issues that we wanted to discuss with the group, two proposals that we're considering and wanted a little bit of feedback. The first is we have on an infrequent but regular basis applicants who file applications on TEAS, new applications, and within a very short time, a matter minutes, hours, at most a couple of days, discover that it was a huge mistake, that the partner had already filed the application the day before or that they had made a mistake in what the mark was and hit the send button before they noticed the mistake, et cetera. So our TEAS staff gets these very sad phone calls from somebody who just moments before has filed their TEAS application and they're just full of remorse and begging us for their money back. We have taken a very strict approach this far that if you file the application, it's filed, you can't change your mind. But we are discussing the possibility that
we might give a grace period. If you let us know within a certain amount of time, I think the current number of hours is 72, that you've changed your mind that we would cancel out the application and refund your money. It seems harmless enough. The complicating factor is that we are also considering uploading new application data more quickly so if the automation part of it can be worked out, we might be able to load TEAS applications onto the public databases pretty quickly, within a few hours after they're filed. So we would have a situation where this application might go up on the public database and a day or two later be taken down. So we're still kind of batting the idea around and trying to figure out if there's any negatives to that.

MS. PEARCE: -- and I know from a domain name perspective that the whole idea of a grace period for very similar reasons was started with good intentions and has turned into a complete disaster because the system has been abused. I couldn't tell you why somebody would want to game
the system except there always seem to be people who can figure out how to make money on it, whether it's blocking other people from being able to file, you could probably chart domain name filings and figure out what trademark filings might result from that, and because we've used the word robots for filings before because they figure out ways to do things electronically I would just be very careful. Whether or not it's a matter of making them submit a reason why the filing was done erroneously, that would certainly work for individual applications, it would be very difficult to do if you had made bulk filings which you then wanted to withdraw and get your money back. Seventy-two hours doesn't seem like much and I would never be able to do anything illegal or unethical with it, but there are people out there, a lot of them based in countries that have very little to do with the United States, who might try to do it and then that could cause once again electronic problems with your system if you got overloaded with people who were playing around
1 with it.
2 MR. SAMUELS: Ayala?
3 MS. DEUTSCH: I guess I have a couple of questions. One is if the grace period is that long, are there any costs the office is incurring in that 72 hours before you get the last-minute never mind? Because whether they are human resources costs or otherwise, you're not going to get those back when you refund the fee. So that would be one question I would have.
4 My other question is what about TEAS is prompting this grace period that was not necessary in paper applications. I understand hitting the send button too soon, but that's something you can figure out a lot more quickly than 72 hours. If it's just a matter of two people filing the same application because they didn't talk to each other, I'm wondering what's driving this assessment in the TEAS world that didn't drive it in the paper-filing world.
5 MS. MARSH: I think the same mistakes happened in the paper world but we just maintained
a very strict policy because in the paper world it
was a nightmare to try to pull an application out
of the system. The thinking is that with TEAS
it's been filed, it's sitting there in our
database, but to refund money would be the only
cost, the cost of filing the credit card refund or
depositing the check. The 72 hours is arbitrary
and we could change that. I think we've had a few
cases where the paralegal or the partner files the
application on Friday and they don't figure out
the mistake until Monday, just trying to cover the
most common types of errors.

MR. SAMUELS: Monday is a federal
holiday.

MS. PEARCE: Certainly in the domain
world, and there are different issues at play
there (off mike) during the grace period has been
a concern. I guess I would be more interested in
knowing even if it's from a narrative perspective
how many more of these sad stories you're hearing
have to do with the technology and people pushing
the wrong button or what have you as opposed to
rethinking or discovering the mistake. So I'm just wondering how much is new and how much isn't.

MS. MARSH: I don't think you can blame much if any of it on technology. The system has a lot of "Are you really ready to do this" like all the websites do. It's human error where people make mistakes.

MS. BERESFORD: That alternative that Sharon didn't mention but which is also a possibility here is even if we get the ability to automatically upload, we can just hold the applications for 24 hours or 48 hours. There is a tension here because our general practice is we want to get the information and make it public as soon as possible because that's certainly most helpful to trademark owners I think and people trying to clear rights. So if we put it out there immediately when we're in the position where if we institute this and you've done a search and you then have told your client you can't file this because of so and so, unless you go back you don't know it was withdrawn. And again we're talking I
think about relatively small numbers. They're very sad stories, and believe me I think the people who get these feel deeply for these folks because they're unhappy and they've made a mistake and it's just human error, but there are other things we could do.

If we had the ability to upload things almost immediately and make them public, to me that would be a big step forward for trademark owners because you just have more accurate information. But on the other hand, we could just hold it and say there's a 24-hour grace your period. If you change your mind, we'll withdraw it and nobody will be any the wiser. So that would be an alternative to this methodology. But really the question is this is a change from our paper practice and it's not being driven by technology except that it's easier to do with the technology. So that's really where the question is.

MS. BAYLOR: I wanted to say something.

I actually work in the trademark assistance center
so actually deal with these customers firsthand. They are very, very irate when they submit an application and they call and they want the status and we're trying to retrieve the data and they say they just filed yesterday or over the weekend and the weekend had gone by. But if they realize they made an error, it is usually within minutes of them submitting the application. I would say 72 hours would really be a long time for someone to realize that an error was made and they want to withdraw their application or receive a refund. Normally when I'm dealing with customers they'll say that either the system froze up on them and it deleted their application or they didn't save it or they submitted the application and then they realized they put the description of goods inside their mark or it's minor errors and I think it's just from the lack of knowledge of understanding the TEAS applications versus the paper application. I actually went through the TEAS application on the website just to see what the external customer sees when they're on the website
versus the paper application and the paper
application, even though it's the same information
that is being requested, the paper application is
not as complex as the system. With the system you
really have to know what it is that you want to
submit and the reason for submitting. So I would
say 72 hours as far as the grace period would be a
little extreme. I think if they had 24 hours to
submit this request to say they want to withdraw
because they made an error, but right about now
they're pretty much aware that they're not going
to get refunds, not unless their application is
misassigned because they missed one of the major
requirements for the application. And we get the
sad stories and a couple of people crying and
things of that nature and we have to be really
stern where the office does not give refunds. I
usually just advise my customers if they're
first-time users I tell them to play with the
online application, go through the process into
which you need to enter to get to the next stage
but don't submit any money because if you don't
submit money then we're not going to take the
application and it's not going to go any further.
We're not able to take them by the hand to fill
the application out, but usually when they do that
and we provide them with a service request number,
they will call back with specific questions and
usually a positive response because they are more
familiar with the system. But I really would say
that 72 hours goes into them getting their money
back and we lose out on money because they're less
likely to actually go back and file the
application.

MR. SAMUELS: Elizabeth?

MS. PEARCE: What I'm concerned about
possibly would be a company or an applicant filing
let's say a dozen applications because they won't
think about it over the weekend.

MS. DEUTSCH: Placeholders.

MS. PEARCE: Placeholders. Somebody is
out of town so let's file all of these and then if
we can get under the window, we can cancel out the
ones that we don't need. If we do institute
something, and I like what Tom said about a
smaller window, could we do it on a trial basis
just to see how it goes? And then if that's
successful and the system doesn't get abused,
that's fine, but if it turns out there's something
out there that we never thought of, this whole
problem self-liquidates in 3 months.

MR. SAMUELS: Ayala?

MS. DEUTSCH: I would say a couple of
things. I think human error always exists, but
generally speaking, and I don't think it's
specific to the TEAS form, I think people are more
likely to overlook their mistakes on electronic
things than when you print out a hard copy and
look at it. So I actually think there is a fair
amount of human error going on here. It might not
be a technological flaw, but I think the use of
technology probably increases the human error and
those phone calls we're getting are the paralegals
who've printed out the application and look at it
and have a heart attack, so I think there is some
of that.
I also would say that I wouldn't be surprised to discover if you did implement something like this that you actually got more requests because I think there are a fair number of very experienced practitioners who said though they may be don't even bother calling at this point, and I think once you made this option available I suspect you'd have an awful lot of people, more than you're getting the phone calls, who would seek to take advantage of it. So I'd really think pretty long and hard about what that would entail if anything from a manpower standpoint even if it's reprocessing the wire transfers from the deposit account. I don't know what would be entailed, but I would think about potential volume here because my guess is it would go up if people knew this was something they could do.

MR. SAMUELS: Jim?

MR. JOHNSON: I think if we're going to implement such a process, there has to be some cost to the person who does it to cut back on
abuse. So I think the trademark office should figure out what the costs are and maybe even build in a little profit. That way people are a little less prone to make mistakes. If it's their mistake, there should be some cost associated with those mistakes and then that makes it less likely that you're going to have the kind of abuse we're concerned with. But I worry about what happens to the person who does a search on Friday and finds the mark there and you tell your client you can't use it, then they do a search on Monday and it's not there. I guess if you're going to take it out you would probably need to have some statement that says application expressly abandoned or something because otherwise you start to lose credibility and say how come I didn't find it as you point out.

MS. MARSH: Those are both very good comments, Jim. We have discussed those issues, the processing fee and some kind of place marker so that someone can go back and find out what happened to the applications. Those are both very
good comments. I think we should move on.

MR. SAMUELS: I think Lynne had a

comment.

MS. MARSH: I'm sorry.

MS. BEREFORD: Just one more comment. A

number of years ago it was costing $50 for a

refund so that's not inconsiderable, and then of

course there will be IT changes that will be

necessary in order to do this. So all of this is

part of what we have to think about if we're going

to do this, what the costs are, and we'll have to

look into that and report back. Thank you.

MR. SAMUELS: Would it be helpful to

have a show of hands of how many people think we

should go ahead with it under any circumstances?

MS. MARSH: Sure.

MR. SAMUELS: Philosophically how many

people on TPAC believe that this is a program that

the office should go ahead with in one form or

another?

MR. LEICHEITER: I think we should. I

think we could marry the point of the reprocessing
fee with holding it for 24 hours so that you don't
really publish it for that holding period.

MR. SAMUELS: Let me ask the question
the other way. How many people think we should
not go ahead with this under any circumstances?

MS. DEUTSCH: I come closer to that
answer. I would say with very careful exploration
there may be a little bit more room here, but if I
had to make a decision today, I'd vote that way.

MR. SAMUELS: We're roughly fifty-fifty,
so whatever guidance that provides you.

MS. MARSH: These comments have been
very useful. Thank you very much. In our last
few minutes we'll cover the last issue which is a
classification issue under the NEES agreement.
I'm going to ask our administrator for
classification Jesse Roberts to come up to the
table and quickly explain the matter to you.

MS. ROBERTS: Good afternoon. Did you
get any documents on this issue?

MR. SAMUELS: No.

MS. ROBERTS: Do I have to start from
scratch? We had a meeting of the working group under the NEES agreement in late November or early December. One of the proposals on the table was a very large proposal from the Norway. The proposal was to combine classes 29 and 30 into a single class and to combine classes 32 and 33. Twenty-nine and 30 are the two food classes, 32 and 33 are the two beverages classes. There was also a proposal to make some changes to class 5. There are some food products in class 5 and they were going to pull those into the food and beverages in class 5, they were going to pull those into the food and the beverage class, and there were also some cleanup things they were doing. The class 5 issue is really the minor issue at this point.

There was a lot of support for combining classes and 30. There was less support for combining classes 32 and 33. In order to do something like this -- 29 and 30, the food classes, and 32 and 33, the beverage classes. In order to do something like this, it is considered a transfer and in order to effect a transfer you
have to have a fourth-fifth's majority of the

countries that are present at the NEES meeting and

that's a very large majority. The goods classes,

29 and 30, came closer than the beverages classes,

but they both failed. Norway was encouraged to

come back with some comments that they made with

another proposal.

So it's not completely dead, we think

that they will come back, but some issues were

raised after the fact. We did talk about this

briefly in the office before I went over and

represented the U.S. position on this. The

general feeling was that these combinations would

make the NEES agreement more logical if that's

possible, it would be more efficient because

you're not doing those fine-line drawings

especially in the food area, and cost-effective as

well because you would be paying one fee for all

your foods, paying one fee for all your beverages.

We late got some feedback particularly

in the beverage area that this was a concern by

certain factions in the beverage industry. There
were some interesting comments made at the meeting itself that did make some sense of combining alcoholic and nonalcoholic beverages and that's essentially the difference between classes 32 and 33. Another issue is that beer although an alcoholic beverage is in class 32 and this would have eliminated that dichotomy and that's part of where the concern came in.

One of the issues that was raised by the industry that we did hear from is that in countries other than the United States, classification is often used to effect rights. If you have rights in class 29 for any goods in that class or class 33 for any goods in that class or any other international class for that matter you have protection against any other goods in those classes regardless of how unrelated those goods may be to yours. Perhaps there's not as much concern in the food classes because most foods are cited against each other, but there was more concern in the beverage class, that if you come in for bottled water in whatever the beverage class
would be, you could then block a later filing for whisky in the same class.

That's not a concern in the U.S. We don't do that. But given that our users use this system in other countries and could be affected by that, we wanted to get some feedback from TPAC. If this comes up again in whatever form it may in both the food area and the beverage area, just some input from you about the U.S. position on this. As I said, in the U.S. that's not a concern because we look to the goods themselves when determining likelihood of confusion, but we also understand that for our customers there's an impact in other countries because of the policies in the other country even though all the international agreements that we see say don't do that, don't use classification to determine substantive rights, but they do.

So that's what we're looking for for you. This may be short notice, but if you do have any feelings about it or any questions because I've explained it fairly quickly and it is a
fairly complicated proposal that was made, and the
impact of it is even more complicated, but if I
can answer any questions or if you have any
immediate feedback, we'd be glad to hear it or if
you want to think about it and get back to us or
bring it up at another meeting. There will not be
a meeting of the preparatory working group until
next October so we do have time, but documents
will be coming out over the summer and if this
Norway proposal does come back onto the table, we
want to have some idea of our basis for discussion
before we go back to the meeting next fall.

MS. DEUTSCH: Someone should relay this
to Jackie. She would be very useful.

MR. SAMUELS: Jim?

MR. JOHNSON: I can tell you that in the
beverage world, sometimes some of the agreements
are based on 32 versus 33. Even though the
dTrademark office my cite them against each other,
people have made decisions about coexistence based
on the classification process. So that is one
thought to think about, one issue to worry about.
MR. SAMUELS: Have you determined how much money you'd lose?

MS. ROBERTS: We're not quite as concerned about that because as soon as a goods class opens up we're going to fill it with other stuff. We're going to try to divide out 9, we're going to try to divide out 16, some of the other goods classes that are overloaded with things that don't relate to each other anymore. So for a period of time there might be some loss of revenue, but eventually I think we'll make it back because we'll use those classes for other very, very populated areas of goods.

MR. SAMUELS: Ayala?

MS. DEUTSCH: How would you deal with renewals?

MS. ROBERTS: The same way we deal with it now, whatever system you're registered under is the system that continues unless you choose to make a change.

MR. SAMUELS: I think Ayala's idea about getting Jackie's input is probably a very good one
since she's the one probably among TPAC who is
most effective. So we'll send her an email and
see what she has to say. In the mean time, we're
going to meet again in June so maybe we can put
this back on the agenda and that will give you
enough time to prepare something.

MS. DEUTSCH: I was going to ask if we
could have more specifically what the items under
consideration are in the various classes. That
might be useful.

MS. ROBERTS: Sure.

MR. SAMUELS: Anything else for Jesse or
for Sharon? Thank you. Now I think the last item
on the agenda is the report on the operations of
the trademark trial and appeal board. David Sams?

MR. SAMS: Thank you, Jeff. I will take
just a few minutes to give you an update on more
or less a quarterly report from the TTAB. First
in the area of workload pendency and personnel,
our filings for the first quarter of this fiscal
year are up a bit. We had 1,022 ex parte appeals
filed in the first quarter which is up 36 percent
over the first quarter last year which is explainable by the fact that the number of final refusals in the examining operation increased by 40 percent from 2006 to 2007 so that those applications are now more or less up in the appeal process. Oppositions, we had about 1,827. That's up 12 percent over the first quarter of last year. And we had 446 cancellations which again is about 12 percent over the first quarter of last year. So we have a lot of work to do.

Pendency. For the first quarter of fiscal year 2008 our average pendency for final decisions on the merits and contested motions was about 14.5 weeks from the date the cases become ready for final decision or the motions became ready for decision. That puts us a bit short of our goal for this year so far which is to decide cases on the merits for the year within 12 weeks of the date they're ready for decision. We do expect to make up, and in fact even this month have up some ground, and expect to do even more during this quarter and the following ones. But
to do that we have made some hires, and I will
announce those. We have an additional
interlocutory attorney who joined the board,
Jennifer Crisp. As was alluded to earlier today
by Jeff, we have a new TTAB member whom we poached
from this committee, Ms. Loreli Ritchie de Larena,
is going to be a TTAB judge effective in March of
this year. So that's where we stand in workload,
pendency, and personnel.

In the customer-services area we have
implemented at the very end of last fiscal year a
new customer-service center following the TAC, the
trademark assistance center model, and using the
technology that's used there, the USPTO customer
contact management system known affectionately as
UCCMS, and that allows us to route calls for the
most prompt and efficient service with very
important documentation for managers who are able
to monitor the system as well. So far we love it.
We're still in the training mode and still in
staffing up that group that's going to be doing
the customer contact but are confident this going
to result in quicker and better service with fewer
dropped calls and overall better service for TTAB.

Our e-filing is still on the upswing.

We are up to 98 percent of our extensions of time
filed electronically, about 88 percent of
oppositions and about 85 percent of our petitions
to cancel, and 75 percent of ex parte appeals. I
don't think that we've seen the end yet although
we may be approaching the end, we're not going to
get any higher than 98 percent or so for
extensions of time to oppose, but the others we
have a little bit more ground that we can cover.

One feature of the PTO website is the
FOIA reading room and I just want you to alert you
that we did have some changes made to that which
make searching TTAB decisions a lot easier than
they used to be. You can actually search text of
all of our decisions including those that are not
marked as precedential by using the search feature
which now appears on the FOIA website. It is
perhaps not so sophisticated as some of the legal-
services providers, but it does have some
capabilities for searching and it also covers all
of our decisions. So I would say that that is
something that we are very proud of in the
customer-service area of late.

I thought you might be interested in the
implementation of our new rules, and I will cover
that last here. As you know, we had several new
rules that went into effect in November and some
of them actually in August. Service process, we
have had a few little glitches not from our point
of view but from mistakes being made by those who
are getting caught by the new rule requiring
service by the opposor or by the cancellation
petitioner. Our filing form asks you to record
whether or not you have made proper service on the
defendant. We have had at least once case and
maybe even more than one in which somebody checked
it without having done the service which resulted
in the fact once we'd learned it of finding the
filing to be a nullity. We have also had some
cases that were filed on paper where there was a
failure to include a certificate of service when
in fact there actually had been service but again
we have decided that the rule is pretty clear on
this and that these will also not be entertained.
With all of these where there are oppositions, of
course the possibility of a petition to cancel
still exists so that it's not a complete disaster
for those who have run afoul of that new rule, but
I think generally speaking it's working well.

We have, I won't say it's a problem, but
one issue that we're going to be solving in the
near future. We have as you may remember a
consented motions form in our ESTA (?) electronic
filing system which automatically approves
contested motions and sets new dates for you when
you file it using that form. The form is set up
with the filing regime we had prior to November 1.
That is, if you file a new case after November 1
and our new rules apply, there are going to be
different dates that will be set up when you file
a consented motion for dates for changes in the
case. We are working on forms. We had hoped to
have the new ESTA form up by the time this went
into effect, we were not able to do that, but it will be in place I am told by April 30 so that if you file now a proceeding and then later want to file a consented motion to change dates and get extended dates, the new form will be able to accommodate that in the way that the old form has done for proceedings filed prior to November 1.

We have started participating in discovery conferences which was the most talked about part of our new rules package. Our interlocutories have begun to receive requests for participation in the discovery and settlement conferences that are required under the new rules. The interlocutories who have participated in these have been in charge of the discovery and settlement conferences between the parties. We have provided them with second chairs in the form of some of our judges who sit in on the conference and if asked will contribute. At some point the managing interlocutory attorney has also sat in on the conferences. So far I think in general we can say that although we've only had a handful of
them, we have been pretty successful with them. As you might suspect, several of them involved pro
se cases and we find this particularly useful and I think we will from here on because as you
probably know sometimes when proses get involved in litigation particularly complicated litigation,
procedures which they don't understand, it can be a problem. Having these conferences at the start
to explain what's going to be expected has been very helpful and I think from here on out will be
an important gain that we get from these kinds of conferences.

It also is a great chance to clarify the pleadings. In one of the cases we had there were some issues about the pleadings because a prose was involved and gave a chance for the board to get the issues focused in the pleadings properly.
In at least one case the interlocutory attorney found that there was a great chance that the case should be settled, there was no reason that it should go forward, sent the parties back to consider settlement, even suggesting a possibility
that an amendment to the identification of goods might help settle the case. It's this kind of focused early intervention that we really hoped would happen. It's a little early to say that it's going to happen a lot, but it's at least happened once or twice so far in the early days of the rules taking effect. So that's where we're headed. And also I want to point out that after each of these conferences we do issue an order that summarizes what happened so that it's pretty clear on the record what the responsibilities of the parties are from that point forward. Overall I'd say that using the conference has helped us so far to manage the case toward settlement and if that's not possible at least toward focusing some of the issues for trial and we look forward to having some more of these and possibly having the result that some of our cases don't get out of hand and don't grow to large records like they have done in the past.

That's all I have for you this afternoon. I'd be happy to take any questions you
MR. SAMUELS: Any questions for David?

Thank you. Before we go into closed session just for a minute, Lynne pointed out to me there was a loose end that relates to David Freeland's presentation. David, on page 14 of your tab 5 you have there are major issues to be resolved and I'm not sure we ever got to that for whatever reason. Did you want to discuss that?

MR. FREELAND: I'm very glad that Lynne brought that up because the word issues is actually an inappropriate word. It is really decisions to be made and it's not a concern, it is just these are two systems that are coming up and in March are due dates for the requirements to be nailed down and the projects to be funded for those two efforts. So it's just an upcoming major milestone for us for continuing efforts in those areas. That's what that's about. Thank you.

MR. SAMUELS: Anything else that we need to discuss in public session? If not, I'll just mention that I just checked my calendar and the
date of our next meeting is Tuesday, June 10,
which means that the subcommittees will be meeting
Monday afternoon June 9. So if you would put that
down on your calendars now I'd appreciate that.
If there's nothing else to discuss on the public
session, I will adjourn the meeting and we'll go
into closed session. So for those of you who
should not be here for the closed session, I would
ask you to leave.

(Whereupon, at 2:14 p.m., the
PROCEEDINGS were adjourned.)

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