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MR. FARMER: Ready? Alright. I'd like to welcome all of you all to the Trademark Public Advisory Committee Public Meeting and this will be -- this is the first time that our meetings are not only open to the public, it's been that way for a while, but they're being web cast and hopefully that will go technologically well. And I know that everyone on TPAC is really excited that we can be so transparent and be able to make this available to folks interested in what we're doing, presumably, around the world.

A few quick comments before I turn things over to Lynne Beresford for some comments and that is in addition to being web cast we have the ability to receive questions and for those of you who are watching remotely, you can send your questions or your comments for that matter to askTPAC@uspto.gov. Again, that's askTPAC@uspto.gov.

Now this is a bit of a shake down cruise
for us and so I don't know that we will actually
be able to receive and process those questions
during this meeting today. My hope is that we
will grow that ability in the future, but TPAC
will look at all of the questions and comments
that are submitted and for those that are
questions, we will try to get those processed. We
don't yet know what sort of volume we're going to
see as far as those questions are concerned and so
that too will be a bit of a shake down cruise for
us but we do wish to be available to folks in that
matter.

As far as questions or concerning
comments, this is the pecking order that I intend
to follow with the meeting and that is after brief
presentations by whoever is speaking we will have
questions and comments from members of TPAC and we
see that as the primary purpose of our meeting
today, to have an interactive discussion with
people.

After we exhaust any questions or
comments that TPAC members have, we're going to --
if we have time available in that part of the agenda, take any questions or comments from those who have come here to attend the meeting who are in the audience.

And after that, if we do receive them, not sure they'll be brought in, we would process and either just send in by email but again, I don't know that they're going to be brought in to us so we'll probably be handling those after the fact.

Also, a quick comment on documents posted on our website. That's another thing that we are striving to do differently, in that, what we have asked on TPAC is for anyone who will be giving a presentation to us at this public meeting to provide to us at least two weeks in advance the written materials that they'll be providing so that TPAC members have the ability to study those so that we can be more effective as TPAC members at our meeting.

And the folks at the office have done a wonderful job in obliging on providing those and
we really appreciate in receiving those in advance
and those are actually posted on our website right
now. And for those of you watching from
cyberspace, if you want to see the documents that
have been provided, you just go to the USPTO
website into the TPAC area and you will see those
there. I believe there are four documents there.

Because of that, there will be a little
different dynamic at this meeting than at previous
TPAC Public Meetings in the past. We're not going
to entirely eliminate the ability of folks who are
coming to present to us to give us some opening
remarks, but we really are trying to change the
emphasis where we are provided information in
advance, the information is made available to the
public in advance, we promise to study it, and
thus we can really use more of our scarce public
time in order to have interactive conversations
and discussions with folks because we think that
will advance the issues a bit more.

So with that being said, I'd like to
turn things over to Lynne Beresford, the
Commissioner of Trademarks, to make a few opening remarks; Lynne.

MS. BERESFORD: Thank you very much, John. First of all, welcome to all of you and welcome to our public for our first ever web cast. Second, I have had some guidance from the folks that ran the web cast at the Patent Meeting and that is please when you are speaking, as a TPAC member or as an audience member, please speak into the mic.

If you don't do that your voice is liable to disappear and you will be someone that can't be heard by the folks that have tuned in to the web cast. So please be conscience of turning your microphone on and speaking into it.

I'm just going to give a brief overview of the news as we see it right now that might be of interest to TPAC that is not in the documents that we shared and put on the website. Of course, I have to say we're meeting our pendency goals. This is something of great interest to everyone. Our first action pendency is 2.8 months and our
final action pendency is a little over 14 months, including suspended and inter partes cases.

Perhaps the more interesting news right now is economic news. The office sees a continuing downward trend in the filing of Trademark applications. You may remember that in fiscal year 2008 we had 401,000, slightly more than 401,000 applications. Trademarks believe that we were going to have a decrease in filings in FY2009, the year that we're in now, and so we forecast 390,000 level of filing.

We have since, again, predicted a decrease in filings. We did this because at the end of January we learned that the gross domestic product, the GDP, had declined by 3.8 percent and GDP is a leading indicator for Trademark filings. So at this point we have revised our filing estimates for fiscal year 2009 to 363,000 classes.

Of course, when we revise a filing estimate, the other thing that we have to revise is our income estimate because the two are inextricably linked. However, even with our lower
estimated fee revenue, we expect, the Trademark Organization expects to end the year with a surplus.

We came into the year with a sizeable surplus and we will believe that we will -- we are in very good economic shape to weather the economic storm that we're currently in.

In addition, the office has a relatively lean examining core. The examining core has been shrinking in size for the last three years and I believe it's the right size core for the work we have to do.

However, having said that, we are taking what we think are steps to conserve the resources of the office and to ensure that we're doing the right thing, whatever the economy may do.

Let me give you some examples. We recently caped the examining attorney production bonus at outstanding; we didn't end the bonus but we caped it at a much lower level because management believes we no longer need to incentivize super high production.
In addition, we've canceled some travel,
we've canceled our off site management
conference, and done a few other things in order
to conserve fee revenue.

We didn't have to do this in terms of
conserving fee revenue, we think we have enough
money; we could have done these things. But in
terms of the long term outlook, we think it's very
important for us to manage conservative -- manage
our resources very conservatively at this point.
So we're taking those proactive steps.

On to another topic; next week we're
going to have customer service training. I'm a
big believer in excellence and good quality and so
one of the things we're going to do is have
customer service training for all Trademark
employees, including our examiners, our folks in
TAC, everyone. And this training will be targeted
to the particular areas that are being trained.

We've heard some complaints about
unreturned phone calls and we're hoping that this
customer service training will help us be better
in that area.

We're also having, in conjunction with
the training, a first ever Trademark open house.
All units within Trademarks will have a booth and
employees can come and meet the folks that work in
Trademarks. It might not fit into their daily
routine due to the size of the office and due to
our workload, lots of people don't know what other
parts of the office do and we hope this will help
bridge that gap.

Now let me turn to legislative updates
that concern Trademarks. As you know we have a
Trademark work at home program, a geographic
pilot. We have approximately 20 people working
remotely. And as you also may recall last year
there was S-1000 which contained language to allow
the USPTO the discretion to reimburse for travel
expenses when employees voluntarily move out of
the area and their official duty station changes.

At the end of the session, of course,
all bills died. But we have learned the key
players and both the House and the Senate want to
see telework legislation passed. It makes good
business sense to have telework.

And so telework legislation, we think,
is slated to be introduced in the Senate sometime
shortly after President's Day, probably in March.
And we are being told that the sponsors of the
legislation will be Senators Akaka, Voinovich, and
Landrieu. The language in the bill will be
similar to that in section 10 of S-1000.

In the international affairs area, the
down round of negotiations on ACTA, that's the
Anti Counterfeiting Trade Agreement, has -- took
place in Paris in December. ACTA is an effort to
combat global infringement of IPR, particularly in
the context of counterfeiting and pirating, by
increasing international cooperation. It's
reported that steady progress has been made on
ACTA. We had a Trademark Trilateral meeting and
agreements have been made to expand the number of
folks that can join our trilateral id list. So we
will soon be adding some other countries id's to
that list.
The Singapore Treaty of -- on the law of Trademarks will enter into force on March 16th. I'm very happy about that. I think it is yet another treaty that is aimed at simplifying the life of Trademark owners and making it easier to obtain and maintain Trademark rights throughout the world.

On the China front, the Joint Committee on Commerce and Trade, the JCCT, IPR working group, resumed meetings in September. This last -- the last IPR working group was held in December of 2006, just prior to the filing of the WTO case against China.

In October, under Secretary Dudas, visited China and signed an MOU in the field of Trademarks with the State Administration for Industry and Commerce and we will be working with SAIC to develop a yearly work plan of cooperative programs.

We are currently working with the China Trademark Association. OIPPE is working with them to co-host a program on how to file a trademark in
the U.S. and in China. We expect the China Trademark Office will participate in this program.

Also on the international front, we recently hosted a Trademark Foreign Examiner-In-Residence training for the Brazilians and the Indians and we have 10 officials here whom we had for a two week training process that was very, very successful.

Finally, let me just close by saying I'm, of course, open -- I'll be here for the entire meeting. I'm open for questions if there are questions and we welcome TPAC's participation.

Your work is critical to helping the U.S. Remain a world leader in IP, so thank you very much all of you for your support.

MR. FARMER: Lynne, thanks for your comments. We will now turn over the floor to John Owens who is the CIO of the USPTO for some opening comments then we'll have some discussion. And John, I see I think I have the remote here. Do you need a remote for something?

MR. OWENS: I was not going to display
any slides today. I was going to -- as you stated
in the beginning, John, I figured people have read
the presentation. I was going to mostly answer
comments --

MR. FARMER: Okay.

MR. OWENS: -- about it. But I can give
a high level.

MR. FARMER: Maybe just a few opening
minutes and then we'll jump right in. Thanks,
John.

MR. OWENS: So to continue the
conversation we had last time about the current
state of affairs in the CIO Shop and supporting
the electronic infrastructure that all examination
for both Patents and Trademarks uses and the
neglect that it happened over previous years.

As a Roadmap of transformation was
created, late summer of last year, and was
implemented at the beginning of this fiscal year,
and there were nine major initiatives. Everything
from organizational strengthening and training the
CIO's, employees, and filling its ranks which were
down some hundred, a little less than a hundred
people, to restoring our confidence in our network
but replacing ten plus year old equipment, as well
as, ten plus year old hardware that supports some
of the systems. As well as doing things like
enhancing the help desk response and disaster
recovery.

So the four major goals of this effort
was to stabilize, consolidate, optimize, and
maintain our current environment and create a
solid infrastructure on which to build further
evolutions of the product that would support
Trademark and Patent processing.

So since the beginning of our fiscal
year, which starts in October, we have started 40
projects. We have installed an industry based
system development life cycle as defined by IEEE
and we are managing those projects under that
framework, just like there is a process to
evaluate a Trademark there needs to be a process
by which CIO can do their work and it's
repeatable.
And some of the major milestones that have been completed since then with the help of the CFO's office and procurement, we have established what's known as the PTO Net III contract to purchase and replace every last piece of telecom equipment in the building that supports our network, which was very old.

This was done in a very short amount of time. Usually a procurement of this size would take a year. It was done under six months and done with an incredible amount of cooperation.

That first order has been placed on that and we are going to proceed with replacing those portions of the network that fit our three year plan as described in the Roadmap. We have launched an automated information system, or AIS Swat Team that has started 11 out of the 20 evaluations that they were planned to do this year, some of which involved Trademark systems like TDR and TESS.

We have decided to upgrade our storage.

The storage was aging; 18 refrigerator sized racks
almost just slightly under a petabyte worth of storage will be replaced by a much more efficient four racks of refrigerator sized racks of equipment, freeing up space, power, and cooling issues that we are experiencing.

We had planned to move all of our data back up to Boyers, Pennsylvania, where we have our offsite. We hit a small snag there; we started moving equipment and realized the floor that was installed in the late 1950's couldn't support the weight so we had to upgrade the floor. It was kind of a gotcha we didn't know about. We do discover things. And we repaired that floor and are progressing now.

We're putting the data, as well as, the first failover system which was TRAM, which is a foundational system of Trademarks; was the first to be tested between the two buildings east and west here in Madison that fail over worked and for independent tests. And now we will move back to Pennsylvania as well. And we have upgraded 13 of our AIS's onto modern platforms and databases
because they were on older platforms that were no longer supported by the companies that produced them.

At a very high level, we have hit a couple of major snags. We have completed staffing, basically an accounting of our staffing skill, sat and realized that much of it was not up to par. I would like to instill what I had outside of this organization, which is a mandatory 40 hours of training a year.

And as part of that, we realized that we had a major gap in how the CIO manages contracts; everything from project management to task order management, and we have instilled a program by which we are training not only everyone in our organization and our customers that deal with us with how to do this work but also how to work inside of our systems development life cycle I spoke to earlier.

Also as part of this we've established a project tracking system using Microsoft Enterprise project management, which is open to folks at...
Trademark, as well as, our accounting system which is based on a product called EIS, so every transaction of money in and out of the CIO is now readily available to not only ourselves but our customers. So that level of transparency I thought was very important to bring since it had not been there in the past.

I could tell you that our morale improves. We were the first organization to meet our goal for the combined federal campaign, something in previous years the CIO had not met. For those of you that don't know it's charitable contributions by employees to what I would term as thousands of charities.

CIO in the previous years had not met their obligation. We not only met it this year, we exceeded it at 110 percent. We were the first organization to do so here and people don't give if their not happier. So this was definitely a sign.

Productivity has improved and we've even gone to the extent of now this month allowing our...
own people that have been providing telework for years to other organizations, like Trademark, to participate, a select number of them, to participate once a week. So that was also a big morale boost. Now you have to remember that well trained happy people do better work. So it is -- this plan was a holistic healing effort for the organization.

We have uncovered even more of the ties between systems that I had spoken to earlier. Last time we spoke I had a chart of how things were tied together; it was like a mish mash alliance. We continue to uncover more than that, but the AIS Swat Team is continuing to break apart those links and really determine why servers are configured the way they are and put their configuration into a configuration management service.

We are using the ITIL model for that effort and that's also an industry standard. And one of the major issues that we have found is our data center was at 96 percent of power and our
Our network was similarly at the upwards of above 90 percent utilization.

Now that may not sound troublesome but you have to understand that when hardware is turned down there's a big power spike and it's, you know, as things charge up, which means we couldn't turn on the data center all at the same time, and as load goes up power utilization goes up. So we are on a very scary edge there. We did not realize that that was the way it was.

We are working with our facilities and our CIO Shop to make changes to allow us to move systems -- leave the systems that need to be on fully redundant power and take systems off that don't need to be on standard power. Our network capacity is also being addressed in PTO Net III.

This does cause a little bit of a delay on some things, for example, the upgrade of the storage. There's literally not enough power to plug in those four new units to back things up. That backup takes weeks. A petabyte isn't something you like back up in a few minutes. And
because of that we are having a very careful choreography of what has to move into the data center, get plugged in, get turned on, and what needs to move out.

As we upgrade and we free up power, going from 18 very large servers, racks of servers, to four, that type of effort, of course, frees up power, frees up cooling. So it's a very important effort for us, for the infrastructure.

Last but not least, and I already mentioned that; let's see. Enterprise Architecture; we have made some changes in the Enterprise Architecture model from previous CIO's. I am fully embracing commercial off the shelf products for where they make sense unmodified, just configurable, commercial off the shelf products.

I'm also heavily embracing the use of multiple tools to do the job, so there is no longer a necessity to wait for one data storage system throughout the entire environment. That doesn't make sense to me; it's the right tool for
the right job, not the same tool for every job.

So as part of our Enterprise Architecture initiative, which is also a mandate from OMB, we are incorporating those changes and how we do business and business with our customers.

The most important change we've made of late, the Roadmap addresses how the organization is going to heal the infrastructure so we can carry forward. What it does not address, which is critical to the long term mission of the USPTO, as well as Trademarks, is how we are going to address the systems themselves. And we have recently started in the last couple of months, an effort called the SITP or Strategic Information Technology Plan.

Now what that does is it drives the business and technology to develop along with the customer a strategy, and that strategy be developed into a plan and that plan drive the budget. In years past, it was budget drove planning; that's backwards.
We need to have a good business technology strategy that we can combine into a plan and then plot for series of evolutionary steps over the next few years. And the SITP will be the end to end place where you will be able to find the Roadmap from both Trademarks, as well as CIO, on how the Trademark systems, the Patent systems, and the other systems in the agency will evolve over time.

And that has just started, that is in its infancy. It's unfortunate it hasn't existed since about the year 2000 here, and I do believe that it will be the crux of how we will manage the evolution of our systems in the future.

Now, part of the SITP will be the Roadmap because we do have to fix the foundation we're building the building on; it does no good to build a building on top of a crumbling foundation and the building happens to fall down. But it does lay out a very good solid strategy on how we will tell you about how we're going to evolve in the future. That's about the high level.
MR. FARMER: Okay. Thanks, John. I appreciate it. For those who don't know, TPAC divides itself into subcommittees and at sometimes within subcommittees we have champions and we do have a subcommittee that's focused on electronic issues and also on quality and our subcommittee for that is Makan Delrahaim who can't be here this morning, unfortunately, and Jeff Storie and Tim Lockhart. And so what I thought I'd actually do -- Jeff and Tim, I don't know if you all have any questions or comments you wanted to make first, if not I have some questions I can ask but I thought I would defer to you all first since you are the members of the subcommittee for that area.

MR. STORIE: Thank you John; both Johns. As I look at your staff, and currently your office is structured for 550 MTE's, right now your current staffing level is around 450; isn't that right?

MR. OWENS: Mm-hmm.

MR. STORIE: From what we've seen in the presentation you've got -- you're short 96 people...
that you would -- or so that you'd like to have
but out of that there's 50 or so of those that
have been identified as critical, as mission
critical.

Could you speak to, one, the importance
of those 50 spots in terms of your -- achieving
the goals that we're talking about in the Roadmap,
and two, the challenges that you're up against in
terms of finding those people and dealing with
those issues and procedures -- what's your
challenge and what the terms of being able to
being able to fill those spots in a timely manner?

MR. OWENS: Sure. It's important to
realize that, yes, my organization has 550
positions approximately, 450 which are filled, a
little over a hundred of those positions are not
technologists at all. My organization also houses
the Information Dissemination Organization so when
you call for a registered trademark or a
registered patent or you have -- need information
about a publication that you may purchase or a set
of data that you purchased, that comes from my
organization as well and that's mainly because the
Chief Information Officer Office is also in charge
of dissemination.

I have two main goals in my PAC. The
first is allow the processing of Patents and
Trademarks to continue; so examination is number
one. I have to, you know, support the system so
examination can go on.

The second one, number two, very close
behind, is the dissemination of information to the
public, and so about a hundred of my folks, a
little over a hundred of my folks, do that. We
keep about 350 people for the approximately 200
Automated Information Systems that we have here.
So that's not a lot. That's my first point.

Out of the 96 or so there are about 56
that I have identified and clearly gone through
with HR and scoped out their position descriptions
and what they do. It doesn't mean the others
aren't important, it just means that in the first
half of the year I've gotten half of them aligned
where we saw a skill gap. So let me tell you a
little bit about the skill gaps that I'm trying to fill.

Most of these are heavy technology positions. Whether they're expert project -- senior project managers or developers, which is a little unusual from what I understand in the federal government, but I've uncovered a couple of the things in my investigations that would lead me to need developers so I'm going to talk a little bit about that; approximately 14 of these positions are heavy developers, people that actually write code.

And it's really a pretty basic thing. I go to a contractor and I say here are my requirements, I need you to build me X. And it's true that in the past, and I think we as an organization, Trademarks as well as CIO, need to work on clarifying requirements and how those will be managed, but even if we wanted a Cadillac and we defined a Corolla and they delivered us a Corolla, well that's an issue and we need to address that and we are.
But the fact of the matter is that the Corolla that we got delivered falls apart. It's not of the right level of quality. And it's very difficult to take a deliverable and look at it and evaluate it if you don't have the skill set to actually build it yourself. You don't bring a software developer your car and ask it how the engine is running. You don't bring in a mechanic or a project manager with no ability to develop software and ask it was that a quality software deliverable? It's just you don't have the skill to make that determination.

So we are -- I am trying to hit a very heavy influx of technology oriented, technology skilled people. Software engineers, software developers, middle ware engineers, technologists that deal with establishing hardware, bringing in skills like using more modern web tool type style technologies, and so on.

So the orientation of the 56, though there are some project managers and some other basic necessities in there, in large part orient...
just toward heavy technologists, which we have
over the years removed from our environment. And
I think we need them back. I think for us to do a
good job and to measure the quality of the
products and services we deliver, we need someone
here that can look at that -- those deliverables
and say they are the correct deliverables, they
are of sufficient quality.

Now also linked to that we are modifying
contracts to make sure that the proper
deliverables are being made but the shear lack of
knowledge inside of CIO right now, which rests in
a very small number of remaining technologists, I
could count them on a hand, has to be changed.

Now as far as challenges in the area, I
think that as we have gone through the beginning
part of this year we have found a few good people
to hire, but certainly, and this is going to sound
a little odd, but company failures in the
surrounding area, as well as imminent lay offs
from industry, have provided us an opportunity to
hire now.
I don't want to say that that's good for anybody because I understand that it's not but it is an opportunity for us, though there are financial constraints, which I'm sure we'll go over later, about -- that are placed on our ability to hire. And those have to be weighed as well because I need to be able to pay the folks that I get. Does that answer your question?

MR. STORIE: Yes it does.

MR. OWENS: Probably a little too much.

MR. STORIE: Thank you John.

MR. LOCKHART: Well first of all, I just want to thank John and his colleagues for the hard work that they put in getting ready for this meeting. We had, I think, a great subcommittee meeting yesterday and I appreciate, John, you and your team coming in and briefing us at great length and great detail about all of he various initiatives that you've got going and I think that enabled us to get a much a better understanding of exactly what the problems are and as you acknowledged they certainly are daunting for a
number of historical reasons.

And we're so pleased with the progress that you've been making and we look forward to hearing your reports in the future about how that progress continues to go. With respect to the strategic IP plan, do you have a target date for releasing that?

MR. OWENS: The first draft crossed my desk this week and I certainly don't want to release it yet; it needs a little bit of work. The bulk of the work has to do with working with the business units to incorporate their needs and that should take several months. I don't have a final date.

I would like a rough draft sharable with the business units that don't have the sections and 6(a), 6(b), 6(c). 6(b) I believe is the section for Trademarks to be filled out. And that should probably take two or three months.

MR. LOCKHART: So we're at the end of February so you're thinking maybe May?

MR. OWENS: I would say mid summer would
probably be a better estimate by the time
everything goes through, but I'll be happy to
update you on that.

MR. LOCKHART: Okay; great. And did I
understand you to say that the strategic IP plan
will largely incorporate and replace what we're
calling now the Roadmap?

MR. OWENS: No the Roadmap will be a
cpart of the strategic plan; it's Chapter 5, I
believe.

MR. LOCKHART: Okay.

MR. OWENS: See, I see a nod in the back
there. And basically the difference is here's
what we're doing to maintain and fix the
infrastructure and then Chapter 6 is what are we
doing to enhance the end to end systems that are
used by examiners and the processing of Patents
and Trademarks.

MR. LOCKHART: Okay; great. So we'll be
working largely from the Roadmap from now until
you get the strategic IP plan out, correct?

MR. OWENS: Yes.
MR. LOCKHART: So we'll be looking at the milestones that are in the Roadmap and once the strategic IP plan comes out that will contain the milestones going forward and sort of have target actions and dates setting --

MR. OWENS: And costs.

MR. LOCKHART: And costs; okay.

MR. OWENS: It's going to be used -- again, it's developing the strategy and then from that strategy the schedule and then the budget. I mean not doing it in reverse.

MR. LOCKHART: Okay.

MR. OWENS: First the plan, then the budget.

MR. LOCKHART: Okay. Well we look forward to seeing that document. I'm sure that will be viable just as the Roadmap has been viable to us; and I'm sure to you and your team.

MR. OWENS: Oh, yes.

MR. LOCKHART: Thank you again.

MR. OWENS: Thank you.

MR. STORIE: John, one more thing. In
looking at the approach that you've taken, which
we applaud, because our concerns after having --
after the analysis, or after I guess the
assessment of the system that we learned of in
August, we were all very surprised to find the
deficiencies that we have had -- hardware and the
physical infrastructure. But it's also become
painfully clear that we've had a problem as well
in the overall ability of the OCIO Shop to be able
to handle the systems we have and to continue the
operations of the Trademark side.

This organization takes great pride in
what -- accomplished -- and what has gone on these
last few years and the service levels that we
retain on the Trademark side but we're also
incredibly dependent upon the IT structure in
order to deliver those things.

The efficiencies we have been able to
achieve have been two fold; the quality of our
workforce, the quality of the examiner core
combined with this increase in technology and
we're all real nervous that we're going to come to
a place where we're going to start losing the
edge, we're going to start losing it because we're
now going past -- we're, I guess crossing those
lines that say we can't keep this up anymore.
We're at critical max essentially.

I know that being a shop that's
independent, in a sense, of the Trademark
Operation and the Patent Operation, you sit in the
middle and both of these operations are your
customers. And as I look at the list, you had set
your goals on really a, sort of a four part list
to stabilize, to consolidate, to optimize, and
then the last one is maintain and enhance. To me,
that sort of becomes a list of five because
maintain and enhance -- enhance is the thing that
the business side -- we tend to look at first
because we're always looking at how do we improve
what we're doing. We're on this path to end to
end electronic examination so we're trying to --
and so I realize that from your perspective you're
stuck with this --

MR. OWENS: Legacy System.
MR. STORIE: Yeah, this Legacy System says I've got to fix what I've got before I can do an awful lot of things but we still have some pressure to continue our excellence, to continue this path. Can you talk a little bit about the approach that we want to take? I know in your program you talk about the -- we've talked about the idea of collaboration with the business unit and how you see that as being part of this program.

Those first four parts we've got to do in order to make this thing work and to maintain what we have. At the same time, we've also got to come into a new era of collaboration where we know that the office on this side feels like they're able to go to their supplier, the OCIO, and get the stuff that they actually need and to be able to have the kind of input into that process. And I know we've talked a little bit about the different views but I'd love to have you just address this question of how are we going to achieve collaboration?
MR. OWENS: Okay. It certainly isn't, you know, if I didn't have that Legacy System to deal with and in the situation that it's in, this would be a much different conversation there certainly. My background, where I came from, the way I've been running this organization since I got here is much more of a service.

I provide a service to the -- both Trademarks and the Patent Examining Core. And that service is the support of the technology that allows us to process Trademarks and Patents. And the reason I think I am partially independent, and as the CIO Act was set up after -- Cohen, is because the specialty of the creation and maintenance of software is just that, a specialty.

And though I will tell you I will never be the expert in patent examination or trademark examination, it is important that I have a very strong relationship with my customer and a very collaborative relationship with my customer to allow me to do the job efficiently and effectively.
So you're right. The Roadmap, as I said, the SITP covers the enhancements and the future progress. The Roadmap, in and of itself, in there says no new projects until mid year 2010. Because some of the infrastructure is so fragile in its current state, building a new floor on a building where the foundation is literally crumbling is not an effective use of money and any new enhancements would of course increase the load on that structure, then it can't support it.

I am at my peak now with over safe zoned with networking, over safe zoned with power. I have problems with cooling; I mean the fundamentals, physical fundamentals of maintaining and operating a data center and environment. But I'm also at those very basic fundamentals with software and systems that haven't been properly maintained, that are in technologies that quite honestly haven't been supported by their manufacturers, if they still exist, in years.

So continuing to enhance them does scare me a lot because even if I could enhance them, the
load that would place on the overall system, because we don't fully have documented how they're tied together, is not predictable. And because it's not predictable, and I am at such a peak load, my nature to meet my number one goal of continuing examination is don't put extra load on it until I can figure out how it works.

Now, the Roadmap lays out a year and a half worth of time that I needed to do that and already I've made some discoveries as we talked about before. So you're right. There are five goals; the enhanced one is combined in the fifth because there are some enhancements that I need to do to gain efficiency.

But I didn't want to call it out separately because I'm not doing a lot of it because of the risk I just described. But the SITP does talk about that evolution, those enhancements, and the improvements that the customer, Trademarks for example, would like to make to the systems, that I would like to see to the systems.
Because had this been a different conversation where the Legacy System was strong and it was not in such dire need of work, we would be having a conversation about what priorities would the businesses opposed to the outside like to see built and then I would build them. And that's where I'd like to get to. It's going to take a little time to get there. We have to start off slow, we have to fix where we are, but that will come. And the SITP is an effort that was already started so we can plan now because as you know in the federal government the budgeting and planning cycle is almost two years ahead of where you actually get something done.

So we're at the right place. We know some of the basics that need to get done. We have evaluated several of our current systems and we are proposing to the business -- this is the stuff we need to change to the infrastructure, now what do you need to change the environment to enhance those systems. And then we will build them starting, you know, next year.
So let's talk a little bit about collaboration. In a service oriented environment, and we are a service to our customers, I think the customer has to take a very strong position in helping this organization, not only to find what the environment needs, but also how those things get developed and work collaboratively with us to get that done.

Now that relationship is being talked about; that relationship is being talked about. Lynne brought it to management counsel and I thank Lynne for doing that. We are talking about that actively right now. How are those relationships and that relationship between the CIO and all of the other business units, not just Trademark being, you know, how is that going to be defined. What role and responsibility are we going to have between the different organizations? And I think we all have our own opinion.

However, I think it was clear yesterday in our conversation that having a process that everyone sticks to, having a plan that we mutually
work together on, and having a collaborative environment that draws a business unit at expert with a heavy technology background onto our team of technology, soon to be, I'm building, technology experts is key.

Now the details of that has not been decided; who will control what and so on. But we are in a very difficult time because there is a serious need, and I understand that need, from both the public and Trademarks to enhance the systems; but that has to be weighed and balanced with the fact that those enhancements can cause failures and have. And that's a difficult position to be in.

MR. STORIE: Okay. Thank you very much.

MR. LOCKHART: I just have one follow up, John, because I want to make sure I understand how the two documents play together and what your proposed schedule looks like. So except for any what I call relatively minor upgrades that might be covered by the Roadmap, basically then if you're rolling out the SITP mid summer and you're
talking about then making upgrades based upon the
SITP starting in the middle of 2010, we're
probably looking at something around 16 to 18
months before your office would be in a position
to start doing some what I call significant
upgrades to curve Trademark electronic processing;
is that right?

MR. OWENS: From today?

MR. LOCKHART: Yeah.

MR. OWENS: Yes. That's pretty close.

MR. LOCKHART: Okay; great. I just
wanted to make sure I understood what your -- what
the schedule is.

MR. OWENS: The Roadmap said mid year
2010, which is about, well, a year from now, we
would actually start doing projects. So somewhere
around the 16 month mark before delivery of some
type of product isn't inaccurate. That's probably
in the ball park, of course, I don't have any
final schedules or anything else.

MR. LOCKHART: No, I mean, are you
talking fiscal year or calendar year to 2010?
MR. OWENS: Oh, I talk fiscal.

MR. LOCKHART: Fiscal; okay.

MR. OWENS: Yeah, everything in the government's fiscal. They taught me that early on.

MR. LOCKHART: Okay; gotcha.

MR. FARMER: John, I have a few follow up questions that I can roll through quickly if it's okay with you. I'm not as deep into it as Jeff and Tim are but my basic understanding when we were looking at the Roadmap from the beginning was that it was roughly a five year remediation process, probably about 200 million dollars.

What I would like to ask is, is it still looking like it's five years in total time and I want to figure out where we are in that snack, in other words, when did that five year clock really sort of start running and do you still see it as five years at that point and thus when will we be looking at as a wrap up date?

MR. OWENS: So you -- there's a bunch of things that have to be taken into account. The
plan started fiscal year October '09; that's when
it started. It was a five year, 200 million
dollar plan. It hasn't changed significantly;
we've discovered some things, we've had to adjust
some time tables. We still think it could be done
in that time if the funding is available and I'll
let the CFO talk to that but that's language that
I've learned to use; if funding is available.

Now, if funding is not available,
obviously I have to slow things down. That's just
a fact of doing business though, each in our own
businesses. You'd like to be able to spend money
on things but if you're not driving revenue then
you'd have to make hard choices.

And so is the plan still accurate as far
as the cost, given any major change in the
economy, which I cannot predict, or the original
time table, if funded at the level that we asked
for, yes, we're still on track. Will outside
economic factors influence our funding and, or the
economy possibly driving up and down costs of
actual physical hardware and, or costs of
contracting services? Yes; those I cannot predict. Does that make sense?

MR. FARMER: Yeah, that does. How are you all, as an overall view, doing on hitting the benchmarks in the Roadmap as you go along? Are you pretty much hitting them on time or are you running a little behind schedule?

MR. OWENS: Out of the nine initiatives, I would say that six are right on where we wanted. Seventh is not far behind and two are a little lagging, but not more than a month or so. Most of that is due to discovery, for example, as I talked about before, we're moving up to Boyers all the data. Well, we get the hardware there, we start putting it in place and the floor starts to crack. Okay; you know, we didn't know the floor was bad. No one knew that the struts were put in in the 1950's; they had rusted out and, you know, because on a raised floor, you know, there's metal posts that connect to the actual mountain, the physical granite mountain, and through moisture and everything else, they have corroded. So that,
you know, things like that.

Power; we didn't realize that we were at
96 percent power. There is no monitoring of power
in our current environment. We're changing that.
Had there been consolidated monitoring we would
have known that but that discovery causes us a
delay in moving equipment in and out as we need to
turn it on and off, instead of just at once
throwing in all of the new equipment side by side
with the old, moving the systems and data over,
and pulling out the old equipment.

We didn't realize we were going to have
to do that. But we are well along the way on the
bulk of the initiatives we have going. We report
to management counsel here regularly. Deputies
get even more regular bi-weekly notification and a
monthly presentation on our, I believe Debbie,
that's still going on; a presentation on how
things are going. And I think it's, you know, out
of the nine, I'll be quite honest, we've had nine
initiatives, it's not surprising to me out of the
nine a couple of them are lagging behind. In
fact, you know, it's not surprising at all.

So -- but I think we're pretty much on
track right at the moment. My biggest worry is
that balance of needing to do features and
functionality at the same time as we're replacing
infrastructure and, of course, now funding, you
know, that's actually -- funding is number one.
If you're asking me what keeps me up at night,
funding would be it.

MR. FARMER: Sure, well, that's on
everyone's mind now a days given the state of the
economy.

MR. LOCKHART: John, excuse me just a
minute. In yesterday's subcommittee meeting we
asked John and his team to give us in writing, you
know, mile stone by mile stone exactly where they
are, what they've completed, what they're still
working on, if any of the dates have changed, that
kind of thing and you should be getting that
within the next several days, of course, I
forwarded it along to the rest of the committee.

MR. FARMER: That's fine; yeah.
Sometimes my questions -- I appreciate that, Tim, are aimed more towards helping the Trademark community that may be watching at home so to speak to see where we are as far as things are concerned.

John, one thing that's a big desire of TPAC is to eventually get the Trademark application process entirely electronic soup to nuts because to the outside who prosecutes applications, it looks all electronic, but I understand it's really not in all details and we can't really get there right now because the system has to be remediated first, and we certainly understand that.

And I was curious as to whether you had any thoughts as to whether when the remediation is done, whether the system will then be able to allow us to go to total soup to nuts electronic application processing and if you had any forecast as to around when we might be able to get to the date when we could start moving to that.

MR. OWENS: Well, I think the date to
start new development, baring any financial
canges, is still mid year, fiscal year, 2010. As
we have evaluated the AIS, let's take TDR for
eample, we've evaluated that system, we have
found that it has some serious issues, needed, you
know, have crashed several times a day. We have
already taken immediate action to resolve those
crashes, but the enhancements that are needed need
to be discussed.

The SITP will layout much better for
you, so I don't want to talk about schedule and
time wise, but the SITP will really outline the
Roadmap to get to end to end processing.

This Roadmap is to fix the
infrastructure. That lays the foundation to build
the building, or fix the foundation of the
building. The actual plan to get to end to end
electronic processing, I would hope to give you an
update on when the SITP is available and I've
already had the time to talk to Trademarks to get
their influence into that plan. Like I said, it
just started so we need a little bit of time.
It is my goal to get that processing completed. End to end processing of both Trademarks and Patents is, I believe, critical to gain efficiency for the future. But again, you won't see any significant effort until mid fiscal year 2010, as long as the financials don't delay that too much.

MR. FARMER: Got it. I realize that you have a real complex juggling act right now given what you've got -- and that you're so close to capacity in certain areas.

Do you anticipate that your going to have to have some times in the future where we just shut the system down for an extended period of time in order to make some switch overs because certainly, you know, the Trademark community, you know, there's last minute-itis out there with some clients, waiting on, responding to office actions, and just sometimes we attorneys can be guilty of that too.

And I wanted to look ahead to see if you see any of those coming and if so, how much
warning you think you might be able to give the
community so that we can try to get the word out
so that hopefully folks won't plan to be on it the
last minute during those times.

MR. OWENS: You know we actually had a
conversation about that. I know Debbie and Lynne
were in my office the other day along with Patents
and I was going over what are all of the details
that not only notify the unions because examiners
have to do work but also notify the public. There
will be some outages. We're hoping to put them on
weekends. I'm hoping to give somewhere between 60
and 30 days notice of those actions. And we are
working collaboratively together on those. We are
putting together a pretty comprehensive schedule
right now, particularly for the network
replacement.

Most of the computer hardware I can get
stood up side by side, tested out, and then do a
switch over in my normal maintenance publicly
announced maintenance windows.

But for replacing major network
components in the data center, which is one of the first places, as well as the firewalls that touch the outside, those will need to be done over an extended period of time and I'm not talking weeks, what I'm talking is, you know, we'll have a schedule that says we're going to replace the phone and a few pieces of equipment and we're going to be done over an entire weekend. And we are trying to hit the weekend time frame for our maintenance schedule.

MR. FARMER: Okay. That's very helpful. I have two other questions.

MR. OWENS: Sure.

MR. FARMER: One, as you know, Trademarks is really pushing the Trademark Work at Home Program and we think that's been really successful. How do you see the Roadmap facilitating the ability of that program to strengthen and grow?

MR. OWENS: Well I'd say the number one -- so it's all about the weakest link in the chain and we talk about that in technology a lot. So if
you have a chain with, you know, a number of
links, the weakest one breaks first and if you fix
that one then the next one will break.

The first weak link in the telework
chain and the complaints we here most often from
teleworkers is the slowness of the system, which
is directly related to our aging network and the
amount of load on that network.

Now we are taking practical efforts to
stopping non-business oriented load on that
network and we're working with employee relations
for the entire agency in general to reduce the
amount of load on the network of non-business
load. In the mean time --

MR. FARMER: What does that mean, non-business? Is this just casual web surfing
sort of stuff or --

MR. OWENS: Yeah. Some of it's a little
more than casual, you know, people like to stream
music and listen -- watch videos and so on. So we
are being -- we are taking efforts to get that
done right now; that will free up some space.
We also looked at the trend of how much load placed on the systems and network by hiring examiners or moving examiners offsite. This has a lot to do with Patent hiring and I believe we can squeak by with the changes that we are planning to do with the points of failure in the network that we have by this replacement effort that we have going on.

So as PTO Net III evolves, because we have PTO Net II, and I replaced the switches in the critical areas where the load is bottlenecked, as well as on the edge, the firewalls and the servers; they are to handle the increased load. We will be okay. With the number of hires and the number of folks we want to put offsite to at least maintain the quota, the status quota they have today.

Now, they'd like to see that improve. And over time, as we enhance and develop the network end to end and finish installing PTO Net III, which has a -- the bulk of it'll be done in two years, but the complete, you know, program is
three years long, things will be much better.

To the desktop it'll be, you know, 10 megabit to a gigabit and that's, you know, quite a, you know, it's a hundred -- increase in bandwidth, as well as going completely fiber on our backend which is much larger bandwidth than most of our system has today.

MR. FARMER: The take away -- tell me if I got that -- get this right from that is that there's no doubt that once the remediation is complete that the tele-home -- the Trademark Work at Home Program will work just fine, it's just a matter of how quickly it improves as you roll out the changes that you have. So it's just a question of how quickly we get there.

MR. OWENS: The purchase of bandwidth to our major provider right up to the entire infrastructure will be completely modern. There won't be a business on the planet that's not experimenting with something that's not released to the general public that will have a better infrastructure than we do.
I'm hoping at that point the complaints I get are because local ISPs are bogging down and not me. But right now I can't say that. There is a lot of bottlenecks here in the agency.

MR. FARMER: Sure. I appreciate that.

Last one I have and that is you talk about how we are just so close to capacity in some areas such as power and I think network capacity may have been the other one. What sort of threat does that present to the system and it's availability and it's ability to come back? Is it just that things might slow down and not work well or does it present a more serious kind of threat that things could actually crash and stay crashed for a long period of time?

MR. OWENS: I can't say that that threat is not there. I mean we've experienced it in the past.

MR. FARMER: Mm-hmm.

MR. OWENS: So as far as power goes we did have a power problem last year which brought down the systems, both Patents and Trademarks, for
several days. I mean that did happen and it was what caused us to look back and perform an independent verification validation of the power system.

So that threat is there and it's real. It happened. I can't tell you that it's not. What I can tell you now is we've not only conducted that study and understand how the power is laid out but we also have a short, medium, and long term mitigation plan.

And you know, that will free up some power, remove some systems that don't need to be on completely redundant power because we have -- not only do we have coming into here two different power grids, but we have a power generator for the entire data center and a backup power generator for the entire data center. So that's a lot of redundancy.

We are looking at ways of splitting it, you know, maybe using two power generators in the two network grids and temporarily living with a couple of trailers with backup power generators on
them and so on.

And we are working to re-commission the data center to evaluate the cooling and the rest of the power and change that configuration, of course, that takes a little bit of time because when you talk about power you talk about talking to the city and then, you know, getting the right engineers involved and so on and so forth, plus we rent this building so we have to get those folks involved. But that is actually progressing well. In the mean time, we've shut down every system we don't need to have. We've turned off a bunch of the unneeded development environments and we are working to replace power hungry equipment such as those 18 racks of hard drives.

Hard drives are mechanical and not only do they produce a lot of heat, they suck a lot of power because they have motors in them. And like I said, we've gone from 18 racks, and we're trying to get down to 4, that will save us a significant amount of power.

Now, we try to live at 70 percent power
utilization to handle spikes and just like the
network, which we also would like to be around the
70 percent, you have to plan for the spikes. So
what that means for power is we have to turn on
tings slow and monitor our usage because if the
systems went down and we had to power them up, we
would take a much longer time to power them up
because we would spike the power to hunger at 100
percent, throw breakers, and then things would
 crash again. So that's delicate, but not
unmanageable.

The network, however, does regularly hit
100 percent utilization because it's a constant --
it's like going out to the internet, sometimes you
hit a webpage and it's really fast and other times
someone in your neighborhood's downloading
something and it's slow.

Because it's a shared resource, the
network's a shared resource, we do regularly hit
100 percent which means that people both internal
and external, whether they're at home or at work
doing their job, will get slowness and that's just
a fact. Sometimes they'll do a search or
something and it'll come back with an 404 error on
the web or, you know, some error in the system
because we've lost packets and so on. So that
does happen; that is something we're working on
today.

MR. FARMER: But that wouldn't crash the
system; that just makes availability an issue.
The power sounds like the crash the system thing.

MR. OWENS: If the system -- there are a
few systems that are tied together in such a way
that if they lose network connectivity they will
cease to work until they're rebooted or touched.
TESS is one of those today. If it gets locked up,
it will crash. So that is possible.

MR. FARMER: Okay. We have about 10
minutes remaining. I wanted to throw it in the
floor to questions from other TPAC members and
then we'll throw it up even broader than that if
we can. Mary, you had a question?

MS. DENISON: Yes; as a user of the
USPTO website from the outside, you had mentioned
that sometimes you reach 100 percent. From my experience, you reach 100 percent on the search feature everyday and it's a common complaint among the Trademark Bar that you have to try to get into the search system five, ten times during peak hours and I don't know if there's anything -- I understand that you have major problems and you're trying to fix them, but if there's any way you could do anything about this particular issue, it is a source of great frustration to the outside Trademark.

MR. OWENS: You're talking about TESS?

MS. DENISON: Yes.

MR. FARMER: Yeah, and I think what you're probably talking about is around 10 in the morning, Eastern Time, and in California it --

MS. DENISON: When California comes on --

MR. FARMER: Right. So to 10 to 2, I think is a big zone.

MS. DENISON: Yeah.

MR. OWENS: That would be one o'clock
our time. It's very funny. We did several weeks
worth of analysis on TESS and one of the things we
got was a usage report and it seems at about one
o'clock, our time, there's this massive spike. It
is -- you could set your watch by it. I don't
know why but it's just a trend. And we have
certain spikes during the day, TESS crashes five
to six times a day.

    Now, that's not the situation we want to
be in. We looked at that system. The search
product that's on that system hasn't been
upgraded, there's three or four versions new. I
have my Director of Engineering sitting behind me.
We have put together a plan -- or behind you --
put together a plan of how we are addressing that
issue.

    We are actively working with the two
vendors that provide us software that we utilize
both for search and as well as routing of
information inside that system to make immediate
patches to improve it's stability.

    So when you look at the AIS
stabilization work, their first goal is document the current system because we don't have a clear understanding all the time of how it's put together, document it's failures, do the analysis on it, look at low performance, you know, what's breaking with it, what bugs do we know. Immediate resolution of anything like, you know, what we consider "life threatening," and critical, and this was one of them that was on the list. And we've made some of those changes but we've found other issues.

And last but not least, develop a future plan for how we're going to fix this thing permanently to gain complete, 110 percent, redundancy; fix the broken link in that chain.

Now, it just so happens that as we fix links we've noticed that well the next link might break. So I ask you for your patience. I'd like to have, you know, the pixie dust or magic wand to just fix it all at once but a lot of these are literally -- we've sent a task team down for several weeks, make fixes, make patches, make
plans, and then something else breaks, and then we go there. And we are doing that continuously. TESS will improve. I think it's getting a little bit better but it's going to take some time before you actually see improvement because as we go and fix, some other things will break.

MS. DENISON: Thank you.

MR. FARMER: Jackie?

MS. LEIMER: This is Jackie Leimer -- I just have a quick follow up to that. Did you say TESS goes down five or six times a day?

MR. OWENS: Yes.

MS. LEIMER: And so is some of the time that we can't get in it's down time, not over --

MR. OWENS: It crashes; it's not planned for down time. The load goes up such that the --

ceases to function --

MS. LEIMER: Right.

MR. OWENS: -- the searches don't happen, and the system gets in a loop in which

case it --

MS. LEIMER: Well, we non-technical
types have ourselves assumed it was just too many
people at one time. But if it's crashed six
times, it seems to me there may be a benefit in
communicating to the users to, you know, for
quicker results to get in, use before nine and use
between two and three. That may help and if it
avoids crashes, it just sounds like you are in a
cycle of spending a lot of your resources fixing
crashes and we've got a lot of frustration.

If there's a way around that -- I know
my team, I think would enjoy seeing communication
and they would redo their days if they knew at
three o'clock in the afternoon that's a better
time, they'd go in there then. It's all trial and
error right now for us and it does -- I shared
that with Mary, it's quite frustrating.

MR. OWENS: I mean I'd be happy to post
what we think the high times are but as soon as we
post something to that, high times would move. I
mean that's -- I'm willing and open to do that.

We have some predictability in knowing
when some of the peaks are which are obvious, but
you have to understand that a posting that says, you know, could everyone, you know, avoid the one o'clock Eastern hour --

MS. LEIMER: And I wouldn't suggest doing it that way. I'd say the hours between X and X may be better to get in, there'll be less users. We get those kinds of postings from all other providers, even our own -- system would post that because we have a European team that's using it from these hours -- work up into that.

MR. OWENS: I'd be happy --

MS. LEIMER: I would put it in the positive not the negative though. That's my suggestion.

MR. OWENS: I think we can do that.

There's no reason not to be able to do that so I think that's a reasonable request. Though the problem will be if people decide to all shift, you know, to a similar time. It's really the system's capability. It's that --

MS. LEIMER: Understood.

MR. OWENS: It's that, you know, getting
the Corolla and driving it off of the lot and then
time pieces start falling off as you drive down the
road. The system shouldn't have been developed
that way; it shouldn't have been architected that
way, it shouldn't have been delivered that way and
it should have been caught in testing.
And to do that we really have to focus
on bringing in the technologists to make sure that
the quality of product we're getting delivered
meets the expectation of the customer. And that's
really why I'm focused. I'm more than happy to
post that type of thing but it's really about, as
far as this conversation is, what I want to convey
is you really have to understand it's about fixing
the problems as they --

MS. LEIMER: Thank you. And we really
appreciate your efforts.

MR. OWENS: Thank you.

MR. FARMER: Any other questions or
comments from TPAC members? Any questions or
comments from any other folks here, USPTO
officials, or anyone else? Yes; ma'am.
MS. SALA-KING: Do I come up here?

Okay.

COURT REPORTER: And please identify yourself.

MS. SALA-KING: Michelle Sala-King; International Trademark Association. I have two questions for you. First is just following up on Jackie and Mary's comment. We get a lot of comments about TESS being down and I wondered if there was a way that you could have, you know, a notice that the system's at, you know, 90 percent capacity right now. There are ways that you could put little, you know, website analytic right on the system. And I know other vendors do that type of thing so that's one question.

And then the second is, I noticed the voicemail system is down. There's a -- right at the top of the USPTO website right now it says that the voicemail system will be down for the next like 10 hours and I was wondering if you could just speak a little bit to that. I don't know if -- maybe that's not your jurisdiction, but
MR. OWENS: The voicemail system is mine.

SPEAKER: --

MR. OWENS: Oh, so that's -- yeah. We had scheduled maintenance that -- we're putting in a redundant voicemail system this weekend. I don't believe it's down right at this moment but it will be down.

MS. SALA-KING: Yeah, Friday night to like --

MR. OWENS: Friday night --

MS. SALA-KING: -- Saturday --

MR. OWENS: Right.

MS. SALA-KING: -- afternoon or something.

MR. OWENS: So that's -- yes, that's planned maintenance.

MS. SALA-KING: Okay.

MR. OWENS: Okay. So yes, that's right.

So let's talk about monitoring in any organization, any technology -- monitoring
technology organization, you'd like to have the appropriate monitoring so when you know a system has crashed. Unfortunately, that monitoring has to be engineered into the system and many of our systems do not have that.

When TESS locks up we don't notice until the system actually fails. Now as part of our remediation plan we are putting gin the appropriate monitoring. If I had an automated way to let you know, trust me I would. But the system's just not had that in it at all times and sometimes that monitoring process will say well look, TESS is up, it's running, it's just locked in an endless loop going nowhere. So that is something that we are looking at as well, holistically for the whole organization.

We're not only -- we are not only -- do not have a central system to monitor things like power and cooling in the data center -- which is kind of fundamental in my opinion.

But no, not all of our systems have that type of monitoring built in but it is a tenant of
my organization to make, you know, that I am
proliferating through my organization to build
that type of monitoring capability into our
systems.

MR. FARMER: You had a follow up?

MS. SALA-KING: Yeah, I just have one
follow up about the -- sorry. Just one more
follow up about the voicemail. I was just
curious. It seems like the whole system will be
down. Is there -- that was troubling to me and I
-- receive some comments about the voicemail
system being down so it's sort of a black hole
because if someone calls they aren't able to leave
a message. Is there any way to have sort of a,
you know, a catch all mailbox that we catch, you
know, that's sort of like a backup --

MS. FARMER: Ma'am.

MS. SALA-KING: -- "voicemail" system
because people leave messages for people and --

MR. FARMER: Ma'am, it sounds like
you're saying this is not just a recent thing,
it's a recurring thing that you've run into in the
past, is that right?

MS. SALA-KING: Well --

SPEAKER: No.

MS. SALA-KING: -- not necessarily but

the system does go down and this is a planned

outage. But I just wondered if there was a catch

all way that someone could leave a message so

essentially if you want to leave a message you

can't because --

MR. FARMER: Right; but my question was

it's not just something recent as in only today,

it's happened several times in the past? Is that

what you're saying?

MS. SALA-KING: There have been problems

in the past --

MR. FARMER: Okay.

MS. SALA-KING: -- with voicemail, yeah.

MR. FARMER: Okay; all right. Thanks.

MR. OWENS: So part of what we're doing

this weekend is part of the overall look at making

the systems redundant. Right now today our

voicemail system is a single unit. It may have a
couple of machines but they're all tied together in a single unit. When it fails, it fails and we have had in the past failures.

What we're trying to do today is build in some redundancy so we could have a backup into the future. But to do that you have to take the system down, you have to add the new hardware, you have to change the configuration, you have to test it, and you have to install it. So in fact, what we are doing this weekend is entirely to avoid this problem in the future.

But you have to pay the toll at some point, I mean to make the system redundant we will have take things out, switch out hardware, add hardware, and so on. So as much as I hated not having the ability, which I physically do not have, to have a temporary system to gather these messages, in fact, what we are doing is to allow that into the future.

MR. FARMER: Okay. Thank you, John.

I'm going cut things off here on our OCIO presentation just so we can stay on schedule and
so, John, thank you very much for your presentation and thank you for reaching out to me earlier. I appreciate that and thank you for working closely with Jeff and with Tim. I know they really appreciated that. We're going to take about a four minute break and then we'll come back and we'll chat with the OCFO folks then.

(Recess)

MR. FARMER: All right. Time waits for no man and so we won't wait for time. Our next segment is going to be a discussion with the office of the Chief Financial Officer and I'm going to guess that -- Mark, are you going to be speaking on behalf of the OCFO?

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Okay. So we have Mark Olechowski and Mark, I turn the floor over to you.

Thanks for coming today.

MR. OLECHOWSKI: Thanks, Mr. Farmer. I appreciate the opportunity, as always, to --

MR. FARMER: Please call me John or I've got to bring my dad, one of the two.
MR. OLECHOWSKI: I'll try to remember.

I told you there's too many Johns around the Patent and Trademark Office so you've got to at least use the second name as well; but thanks, John.

I appreciate the opportunity to come talk to TPAC every quarter and we also appreciate the opportunity and the availability you've made for your subcommittee to spend some more time with us to try, I think as James told us yesterday, to help translate the things we do on a daily basis that may seem overly familiar to us to try to put it in a little bit different terminology and everything else so that it's clearer, more understandable, to the rest of your committee.

So we appreciate the opportunity to have them on board with us and we'll do our best to spend some more time with them and allow them to help us get you the information you need.

So today I just want to talk about three things that you've asked us to comment on. One of them being the Trademark Fee Study, which is in
progress; all be it not going as quickly, I think, as anybody would like it to but it's certainly going and I'll have Mark Krieger, my Director of Finance, if there's any specific questions about that we can address those. There's a couple questions on cost allocation methodology and we'll want to address those that are on the agenda.

And then finally, spend some time, I think, talking about where we are in 2010 budget and what the plans are for 2011 and how the TPAC can help us out getting that thing going as we approach the 2011 process.

The Trademark Fee Cost Analysis was something that we undertook for a couple reasons. One, if you'd look at the couple of slides that we presented on it, we had an audit done in accordance with OMG Circular 825 that one of the findings was that the USPTO should conduct a bi-annual fee study of cost related to user fees in accordance with 825 requirements for both the Patents and Trademarks side of our business lines.

We also believe that it's just good
business sense if in fact the Trademark
Organization, along with all of their
stakeholders, desires to look at their fee
structure and make possible changes in the
upcoming months or years. It just makes good
business sense to know what those costs are so
that we can have an engaging conversation on what
the fees should be whether they're to recover
costs or whether they're to effect behavior. But
I think everybody would agree that it just makes
sense to know what the costs are and so we're all
doing that.

And also, of course, you're specific
request to get this done at our last meeting. Do
I have the clicker for that or do you just want to
move ahead to slide -- it would be my slide four.

SPEAKER: --

MR. FARMER: Do you need this?

SPEAKER: Yeah --

MR. OLECHOWSKI: Assuming I know how to
use it; which way am I pointing?

SPEAKER: I think you're pointing over
there --

MR. OLECHOWSKI: There we go. So

anyway, we formulated I think a pretty strong

project team made up of folks from Trademarks, my

Finance group, and then people from Corporate

Planning.

Both the team members from Finance and

Corporate Planning are members of the team that

also participated in the Patent Fee Studies we've

done over the past years so they bring a lot of

not only experience in doing it, but a lot of

lessons learned that we learned the hard way by

working with Patents in preparation for issuing a

couple fee packages. So we've been able to

implement some lessons learned for the Trademark

Fee Study; we hope will make the process a little

bit easier to accomplish, but a very strong team.

The next two slides are what it was at

the -- two weeks ago, John, when you asked us to

publish our slides. That was the -- our working

group had gotten together for the very first time

and come up with a draft schedule of events and

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activities that we thought we needed to get done

to accomplish the task at hand.

The very same day that we sent our
slides off to you, the working group continued in
that time period and we've received comments from
the Trademarks Organization again, so we do have
additional comments and additional changes to make
to the schedule.

I committed to Elizabeth yesterday to
keep her informed on any changes to the schedule
and the scope of work and everything else, so I
think in the coming week or so we'll have an
adjusted schedule with the better defined
activities and a better defined date for each of
those activities. Now Mark, is there anything you
want to comment on in terms of the methodology
we're using or the conduct of the study?

MR. FARMER: If you could also introduce
yourself for the folks at home.

MR. KRIEGER: Sorry about that. My name
is Mark Krieger. I'm the Director of Finance.

There are some things we need to talk about with
the Trademarks team and we are meeting with them on Tuesdays, every Tuesday, and for the duration of the Fee Study.

And we're going through the basic steps of validation of the Trademark Fee Model, the Trademark Model, and we did the same thing with the Patents Organization.

It was very successful to start from that angle; to go back to basics, figure out the mappings, and make sure they're on cue. We planned to do that and we -- on Tuesday we're going to meet and finalize the schedule. And that's the plan we have for now.

MR. OLECHOWSKI: Thanks, Mark. The next topic we'd like to talk about and was placed on the agenda is some questions that have arisen over the cost allocation between some final reports that came out since TPAC last met between final '07 costs for the Trademarks Organization and the final '08 costs for the Trademarks Organization. I did want to put up our, you know, busy slide for you just to remind everybody that the basic
premise that we used to allocate costs at the PTO is to collect those costs and then decide through the Model and through certain drivers and allocation methodology how they get split to both the Patents and Trademarks business line.

So I can certainly go over this in any amount of detail you'd like to. It's more as a reminder to everybody that we have a system that does our cost allocation methodology and it's really based on collecting costs from all of the business units, whether that be time or contracts, driven to all of the various activities and then allocated there through the Patent and Trademark lines.

So there's a specific question that was raised about that the percentage of cost allocated to the Trademarks Organization, and the CFO and CAO business units, had risen at some percentage, 17 and 6 percent.

But I'd like to put that -- those numbers in context to give you an idea that we actually believe -- and the numbers, I think
indicate that, that your concern that you've
expressed certainly over the TPAC meetings that
I've been to, that as the Patent Organization has
grown, what is happening to the Trademark
allocation. And so the numbers do show that in
between FY07 and FY08 the actual cost to the
Trademark Organization has gone down by almost 13
million dollars.

It's also, the numbers show that the
indirect share that the Trademarks Organization is
absorbing has gone down by about 11 percent. The
Patent direct costs are up by almost 140 million
dollars.

So I think at a more global view of
what's happening with the cost allocation, those
dials on that dashboard are all going in the right
direction. I think we're seeing that. I think
the Model's proving that out.

Certainly the question of why the CFO
costs and CAO costs, which I'll address in a
minute, we can certainly have that discussion, but
what we're talking about is a cost shift of about
a million dollars into Trademarks over 200 million
dollar budget when, in fact, their costs are going
down, their indirect share is going down, and they
think, like I said, the dials on that dashboard
are all going in the right direction in light of
the growth to Patents Office.

So a couple things have changed between
FY07 and FY08 which I think account for the
specific cost -- percentage of cost increases to
the CFO and CAO Organization. The biggest thing
that we did between FY07 and FY08, which I think
we tried to explain in greater detail to the
subcommittee yesterday, was we instituted a very,
very large change to the time and attendance
system. We implemented what we call the ACR, the
Account Code Restructuring Program.

The Account Code Restructuring Program,
which took affect the very first day of FY08,
eliminated between eight and 10,000 time codes
that had existed for many, many, many years and
substituted those or replaced those with what we
call PPAs, Program Project and Activity Codes.
Those PPAs allow business units to more accurately charge their time to the receiving customer where that activity is being charged.

So for instance, in the Office of Finance, in FY07 we had about 80 time codes that we were using that mapped 56 different activities. In FY08 we only have 12 time codes that map to 12 activities in the Office of Finance. We're more accurate -- we're able to more accurately charge our time to the business units.

However, as we explained to the subcommittee yesterday, in the Office of Finance, for instance, we have one activity which is called Reporting -- or Managing, Reporting Financial Information, Mark's -- one of Mark's, in fact two of Mark's groups, one is our ABI group, one is our Financial Reporting Division; those activities, for the most part, cannot be charged to specific business units.

When Mark's group does all of the financial statements, all of the internal control we've used, all of the collection of information
for our financial statement audits, we can't
charge those to any particular business unit.

    We don't come in one day and say okay,
today we're going to do the financial statements
for the Trademark Organization and tomorrow we're
going to do the financial statements for the
Office of External Affairs. We do it as an entire
agency. And so those costs, when Mark collects
then through the web TA system, need to be driven
to the Patent and Trademarks Organization.

    The one change we did make in that
particular organization was we split that cost
evenly across all of the business units. So those
costs then need to be allocated down to the Patent
and Trademark line. So while I would say that the
CFO share of costs to the Trademark Organization
went up by $700,000 and the CAO share went up by
$400,000, I would attribute that more to, or more
accurate representation of the work being done,
rather than any increase in the amount of services
or the increase in amount of costs. It's really a
factor of better capturing of those costs and a
better allocation to the business line.

There was a question also on policy offices and I don't want to, once again, get into too much detail with you but the way the waterfall works, and as costs have driven to Patent and Trademarks, right before it's driven to the Patent and Trademarks line, there's a three way split between Patents, Trademarks, and our policy organizations. Our policy organizations are the Under Secretary's Office, the Office of External Affairs, Public Affairs, and the Office of General Counsel.

So every time, for instance, once again, if I and the CFO's Office are working on a contract or an interagency agreement for External Affairs and I charge a dollar to External Affairs through a PPA code, that cost is tracked as a CFO cost into EA, or into policy, and then that split, 78, 22, so every dollar I charge to policy, Trademarks absorbs 22 percent or 22 cents on that dollar. So once again, it's a function of a better methodology and a better PPA code structure.
that we have now that we can charge, whether it be
the Finance Organization, whether it be my
Corporate Planning Group who does budgeting,
whether it does my procurement group, I can charge
to specific business lines but they still need to
be driven to Patents and Trademarks through a
variety of drivers and allocation methodology.

Are there any questions on -- and as I
mentioned to the subcommittee yesterday, we can
provide any amount of information, any amount of
detail that John, you and your group would feel
comfortable with.

We look forward to interacting a little
bit more on this topic with both James and
Elizabeth but if there's any follow on questions
that we can answer, we'll be glad to take those
and forward them to the group for their review.

MR. FARMER: All right.

MS. BERESFORD: Yes, I have a question
about a couple of things you've said, Mark. You
said that in the areas that are rolling up
activity, budgeting, et cetera, for the entire
USPTO, you drive the costs equally to each unit because you're doing them all together at the same time; you don't do Patents and you don't do Trademarks.

And that would seem to indicate that you spend an equal, since this is supposed to be activity based, it would seem to indicate that you think you spend, your office spends an equal amount of time on the Patent budget, the OIPPE budget, the Trademark budget, that it's an equal amount of time and yet there's great, many more complexities in some of those budgets than in others. So it doesn't seem to be that an equal split actually reflects the activity in the office. That would be my first comment.

And secondly, you said there was really -- Trademarks' share went up 16.9 percent but there was no really increase in the amount of services, which I agree with, there wasn't, there was just an increase in the costs.

If we have activity based costing and our costs go up 16.9 percent, there should have
been, in my view, an increase in the activity that
was directed toward Trademarks. So I'm not clear
about how this activity based costing methodology
is being used in CFO. Thank you.

MR. OLECHOWSKI: Okay. Thank you, Lynne, for your questions. So let me try to
address the first one where you indicate that if
the costs are being driven equally, and I have my
Director of Finance, Mark Krieger, here next to me
and he can help me out here. He used to also be
in our ABI Division.

When we talk about having PPA codes for
particular activities, we -- for instance in
budgeting, you're right. We do have to break up
costs and there are certain budgets that take more
time than others but I have a PPA code that allows
me to charge to particular business units.

So if in procurement, I have different
PPAs that allow me to charge to different business
units when I work on those particular contracts, I
have one for Patents and one for Trademarks, those
are very easy to do.
If my folks are working on a Patents' contract or they're working on a Trademarks' contract, we charge directly to those PPA codes, they're charged directly to those business units. When we work on CIO contracts, I have a PPA code for that, or External Affairs, or policy. We charge directly to those.

So I think, maybe Lynne, I've missed -- either misinterpreted your question or you've misinterpreted my answer. While we do split the -- what I mean when we split those equally, we have the ability to charge to those particular business units, then you're right, they do have to be driven to the -- ultimately to the Patents and Trademarks business line.

So if I cannot directly charge my activities to a particular business line with those PPA codes, and in fact now in procurement I'm charging 94 percent of my time right to a business unit, then I have a leftover pot of charges that I do need to drive and those are split equally.
So it's -- we can certainly provide, and I know we have and if it helps we can get it through the subcommittee for the TPAC, we do have, like I said, those allocation methodologies that are reviewed not only within our own organization but through the ABI Steering Committee; any questions of that sort, any questions on drivers, any questions on costs allocation methodology is brought to the ABI Steering Committee where they're resolved.

With respect to your second question, I apologize if I wasn't clear in my answer. I thought I was and so I apologize for that. The Trademark share of the CFO and CAO costs did increase between 2007 and 2008; that is not at issue.

And I also stated that the level of service we agree probably did not change. What changed was our ability to more accurately reflect the time we're spending doing those activities. So in fact, if -- as you claim that the service did not change between '07 and '08, what changed
was our ability to more accurately capture the
time we're spending and that time is allocated
through the methodology that we talked about to
the Patents and Trademarks Organization.

So I don't think you can take the
numbers in isolation and simply say that the
Trademarks share of costs went up by so many
thousands of dollars and relate that to an
increase or decrease in the amount of service. I
think what you have to look at first is where the
costs accurately captured, were they driven in a
reasonable manner, and are they allocated
properly. And if there's still a question on
that, as always, we certainly will bring any of
those questions up to the Steering Committee for
review and modifications to the Model.

I think we've been open to all sorts of
changes and all sorts of questions and we have
made modifications to the Model as they've come up
over the years. So -- and we'll certainly look at
this, Lynne, and we'll bring these questions up to
the ABI Steering Committee the next couple times
they meet and we'll see what their resolution is.

But I'm comfortable with the allocation methodology that we used both in '07 and the changes we made through '08 and where they are now. But we're certainly open to review of those and making any changes that need to be made.

MS. PEARCE: Hi. I had one point that I thought might be -- but it sort of pulls together what the two of you were talking about. To use your procurement example, Mark --

MR. FARMER: Elizabeth, for the folks listening at home, could you introduce yourself? As a matter of fact, before you do I'll do it for you.

MS. PEARCE: Okay.

MR. FARMER: For the folks listening at home, I mentioned we have subcommittees earlier. We have a Budget and Finance Subcommittee within TPAC and it's composed of Elizabeth Pearce, on my left, and James Conley, who's seated right next to Mark over there, and Elizabeth, I'll give the floor back to you for a question.
MS. PEARCE: I try to absorb all of these numbers. I'm not so much a numbers person but you said for instance in your procurement contracts you've got about 94 percent that you can charge directly to the particular business units and there's 6 percent that's left, that gets charged equally. Does it make more sense to charge that on the allocation model that you were talking about before, 22 percent to Trademarks, for instance, just because that seems to have been the number that you were -- it was sort of a median that you were working from. Does that make more sense?

MR. OLECHOWSKI: Well I -- maybe I confused -- I wasn't clear in my answer. The 22 percent, Elizabeth, the 22, 78 percent is the policy split. So any dollar that flows into policy from any organization, unless it's directly charged, is split 78, 22 percent. So Mark, I don't know if I make -- being clear in the way I'm answering that or --

MR. KRIEGER: I think you are. The one
thing for procurement, for example, that there's
-- that's a -- Mark is right. Almost everything
is directly charged to a business line. There is
some leftover stuff, for example, manage the
purchase card program. Now, that's the latest
improvement.

We can get the number of transactions by
business line and now drive that. But before, we
did it in equal share because we found that, in
general, it's an equal share of transactions. Is
that clear?

MS. PEARCE: So it's sort of on a case
by case basis then as to what the split of the
leftover would be?

MR. KRIEGER: In this case --

MS. PEARCE: In this particular case?

MR. KRIEGER: -- yes, for the remaining
-- and again, you're talking very small dollars,
but yes.

MS. PEARCE: Okay.

MR. OLECHOWSKI: But I would say case by
case basis, Elizabeth, it's in every case. Every
cost has to be driven somehow and so as we talked
about yesterday, we have, you know, a list of
many, many different drivers to drive those costs,
you know, from when they're realized to ultimately
the Patent and Trademark Organization.

So yes, it is case by case but it's
every case. Every cost needs to be driven back to
Patents and Trademarks. And each one -- some
share the same drivers, some have different
drivers, some have very unique drivers.

Obviously the ideal thing to do is to
know that you're working directly on a Patent or a
Trademark issue, whether that be in John's
organization -- I'm working on TICRS, I'm working
on TRAM, I'm working on PALM. I charge directly
to Patents. If we're working on a Patent or
Trademark contract, absolutely, we want to charge
directly to Patents and Trademarks.

But there are other items that we cannot
do that; we can't, the financial statement audits
for instance, we cannot charge directly to a
business line so there has to be some mechanism to
drive those costs to Patents and Trademarks.

MS. BERESFORD: Yes, I have a follow up.

One of the issues that we also raised was that, and perhaps this is one that will be a little easier for folks to understand, is that Trademarks had a 6 percent increase in its costs from the CAO between 2007 and 2008.

And one of the reasons this is a -- is surprising to us is because most of what the CAO does, it appears is driven by the number of folks in the organization, they do hiring and 52s, performance actions, the sort of things that are related directly to the number of employees. In 2008, Patents hired 1,200 folks. Trademarks hired 37 people and actually got smaller.

So the increase, if the activity, if the CAO costs are being driven by activity based costing in CAO, it would appear that the number for Trademarks, the percentage of Trademark, should be going down because our use of CAO appears to be decreasing as we have fewer folks in the organization.
So again, in talking about activity based costing, Trademarks takes a very practical look at what activities could we be causing in CAO that would cause our costs to increase and since CAO is pretty much employee number driven, we were quite curious about that change in our costs.

Thank you.

MR. KRIEGER: I'll take that question.

Remember now CAO consists of OCS, okay, and OCR.

MR. OLECHOWSKI: You may want to explain this.

MR. KRIEGER: I'm sorry; Office of Civil Rights, Office of Corporate Services, as well as OHR, Office of Human Resources. So Civil Rights is almost like procurement, where they drive directly to a PPA, to a business line. Okay.

So that pretty much is direct, okay. It is activity based because it's whoever is getting the value of the service. OCS is driver based.

One of the big items there, we did see a large increase for Trademarks and it's the number of file repository -- what was the drive number?
SPEAKER: Internal.

MR. KRIEGER: Internal file repository.

And we saw a decrease in the number of files requested for Trademarks but we saw a larger decrease for Patents, and therefore, that was the big activity for OCS and a large portion of that was driven to Trademarks. Now to address your question about the number of hires, remember --

MR. FARMER: Mark, I didn't catch -- I think you said first that there was one thing for Trademarks that just increased and I just didn't catch that before you went onto the second thing where you said Trademarks went up a bit and Patents went down a bit.

MR. KRIEGER: Yes, the -- what actually increased for Trademarks, directly, was the provide file repository services, internal; that's the actual activity. Now we would probably have to get someone here from OCS to explain what comprises that and the function achieved.

MS. BERESFORD: That's ordering files from the warehouse.

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MR. KRIEGER: Okay.

MR. OLECHOWSKI: Correct. And that --

John, that's one of the things. We talk about having a driver where, you know, our first choice or anybody's first choice would be to directly charge something to Patents and Trademarks.

If we're unable to do that, we want to have drivers that are based on usage that are easily captured. So if somebody's going to request files, if they're going to do queries into a system, if they're going to take up storage space on a computer where we can better measure that, then those are also very desirable drivers to do that. So in answer to Lynne's question, I think that certainly at face value, you can look at an increase and say why did that happen if Patents is growing.

I think you need to look at, you know, the down -- the details behind that and I think as Mark mentioned, there are other organizations within the CAO that we have to drive costs back to Patents and Trademarks.
I would also indicate that Patents does have an awful lot of HR services that they conduct on their own and they have contracts to provide that services so they are doing a lion's share of their own recruiting and everything else and those costs are captured inside of Patents. So if they have a contract out to have HR help, if they bring in people to, you know, get announcements out, to process the paperwork, and help recruit and everything else, that cost will not be shown in the CAO office. I think John's probably talked about at certain times where some of his costs are hidden a little bit because Patents has an IT group as well that is doing some work and so it complicates matters when you can't just look at a single number and see that if a cost went up or down there's some digging that needs to be done and we're certainly, as always, willing to dig down into those numbers and provide a better explanation.

I would also remind folks that
Trademarks does absorb a share of all of the other corporate organizations, the CIO, the CFO, the EA, and everything else, so when HR provides services to them, Trademarks absorbs a share of those costs as well.

MS. PEARCE: Lynne, it's my understanding that part of the reason you're pulling so many files out of storage is because of scanning them and putting them online for the sake of the Trademark community which I cannot thank you for enough. I'm sure all of the other Trademark practitioners here, equally delighted with that program. In that case, how close to the end of that project are you, in which case you could expect to see some of your costs go down?

MS. BERESFORD: We will in fact finish that project in the next few months. We only have -- we have less than 30,000 files left to scan. I think that it's important to note that the costs we're talking about here is the cost of the warehouse space, which, I believe, that's what this driver represents, the cost of warehouse space.
space. And it's based on file ordering rather than square footage or anything. So we do expect a drop in the amount of Trademarks' share of this particular cost.

I think it's interesting that our -- the thing that caused our cost to rise 6 percent is ordering files, for their cost for CAO services rose 6 percent because of file ordering, something that's been ongoing for a number of years. It's interesting to me that -- it appears to me that the driver isn't -- that something is not quite right there, but we'll look into it.

MR. KRIEGER: That wasn't the only cost, there was others as well.

MS. COHN: What were they? What were some of those other costs? Could you elaborate a little bit?

MR. KRIEGER: When we talked about -- the perfect example that Mark just described was if Mr. Owens is looking for somebody to work on TESS, okay, that's a -- and they need to hire somebody, that's going to come out of the CAO
budget to hire somebody for CIO. That's going to
directly affect Trademark system. That's an
example of when a service is being provided by
CAO, for CIO, who's then going to work on a
Trademark system.

MS. COHN: Thank -- let me introduce
myself; Debbie Cohn from Trademarks. Mark, I
understand what you're saying and of course that's
ture if CIO is hiring somebody to work on
Trademark systems, then CIO has to recruit and
hire. But in fact, did that happen to raise costs
in Trademarks in FY08?

MR. OLECHOWSKI: Debbie, I think that,
as I tried to explain, I don't think that it's --
to look at a single number for such a complex
system, that you can make generalities in terms of
I hired a single CIO person or anything else. I
think it's a very complex answer and it has to do
with all of these things.

It has to do -- probably the biggest
change is the change in the PPA codes where we're
now more accurately charging both the CFO time,
the CIO time. All of the business units have more specific PPAs that they can charge to to more accurately manage their time.

So that was a huge change between '07 and '08 and I know you were personally involved in that because you were the acting CAO at the time we implemented that. So that is probably the largest change factor between '07 and '08. It's also very complicated to compare sometimes between '07 and '08, as I mentioned, because we used to have many, many, many codes that we've done our best to map those codes to the new activities so that we can have some history. But as I mentioned, that's not always perfect. I mentioned in the Office of Finance we used to have 80 codes and 56 activities. We now have 12 codes and 12 activities.

Well certainly we want to make sure that we can, for historical sake and for trending data, you know, make those connections in a map. But they've become very difficult to do with -- when you started out with, you know, some 8 to 10,000
codes and you're trying to map those to all of the activities.

So the combination of a PPA change, the combination of cost drivers by, whether they be direct charges or by usage, whether they be by the other activities that are done by the CFO and CAO organization, they have all added up over those two years to an increase in the Trademark share.

But I would also remind you that that share is -- the increase is just such a small, small percentage of the overall Trademark budget when I think, in fact, the bigger picture to look at is does the dashboard show that as the Patent Office grows that the Trademark share is being reduced, and I think we're seeing that and I think we'll continue to monitor that. We'll certainly continue to answer any specific questions. I guess I'd just like to leave you with it's just not a simple answer and I think as your folks know and our folks know, to dive down deep into it does take some time and effort and we're willing to do that. And certainly if there are follow up
questions from this, we'll provide them both to
the Trademarks Organization and to the TPAC in
general.

MS. COHN: Mark, thank you for that
explanation and I do understand and appreciate,
you know, what's transpired over the past year or
so. I guess what we, and Trademarks, and I'm sure
TPAC, ultimately want is to all be able to
understand what the various components of these
numbers are and I was simply responding to Mark's
discussion of the file ordering services as being
the one thing that he named as responsible for the
increase in the CAO costs.

And then when you went on to say that
there were other items responsible, I think we
need to know what some of those other, or all of
those other items are so we can take a look. But
I do understand it's a very complex multi-step
process so hopefully we'll work on that together.

MR. OLECHOWSKI: Thanks, Debbie. And I
mean I'll take an action here. We'll take this
question and we'll take our response to it through
the ABI Steering Committee and get their comments, solicit their input. If there's changes that need to be made to either the drivers or the allocation methodology, we'll be absolutely happy to do that.

MR. FARMER: Do other members of TPAC have questions?

MR. CONLEY: This is James Conley from North Western University and I do have, actually, a couple of questions that more or less follow up on the dialogue that Elizabeth and I had in the subcommittee yesterday. So I'll address these to Mark.

And the first one is that there's an important difference between the 2007, 2008 year that Debbie already pointed to. In the 2008 year, you actually are using the PPA codes, right?

MR. OLECHOWSKI: Correct.

MR. CONLEY: So in 2007 you were not?

MR. OLECHOWSKI: Not the codes we have today; but that is correct.

MR. CONLEY: Right. You're using some other code?
MR. OLECHOWSKI: Yes.

MR. CONLEY: And the purpose of going to the 2008 code is to have more accuracy, more transparency in exactly how the costs are being allocated; is that more or less correct?

MR. OLECHOWSKI: Correct.

MR. CONLEY: So it could be hypothetically, in 2007, I'm not saying this exactly, that the actual -- the smaller share that the Trademarks paid in 2007 of CAO and CFO, that might not have been as accurate as it is in 2008; assuming all other things being held equal?

MR. OLECHOWSKI: I would say in general, yes. But I would hesitate to say specifically yes, even though I'd like to say oh yeah, that's the answer James. I agree that it's true; you would think that if we had more accurate codes then we have a better representation of the costs driven to both Patents and Trademarks. I agree.

MR. CONLEY: Granted that's a lose hypothetical, which I never allow my students to
make, but I'm going to do it myself. The second question is there is always, especially in this economic climate, going to be tension about how these codes are defined and how the drivers are defined, and in fact, the presence of attention for me of someone who sits on TPAC is a welcome thing. This is never clear where it's implemented in any organization so the presence of the struggle is just evidence of the fact that we're trying to get this right and I'm delighted to see it actually.

The question really is, is there a third party coming in to sort of review this and understand and give both sides some inside on whether or not the PPA code, and the way that costs are being driven, and the overall activity based costing system is being administered is best practice?

MR. OLECHOWSKI: James, that's correct. And we mentioned and I know the Trademarks Organization has been involved in this. The PTO has contracted with an outside company to come in
and take a look at our ABI System. The statement of work was generated -- a collaborative effort between Patents, Trademarks, and the CFO Organization. The selection of the contractor was done in a collaborative effort among those organizations as well and I believe they showed up on --

SPEAKER: Tuesday.

MR. OLECHOWSKI: -- Tuesday of this week. So they're just beginning their review.

Mark, the name of the company again?

MR. KRIEGER: Philbara.

MR. OLECHOWSKI: Philbara. So we can certainly provide the TPAC with the statement of work that was generated so that you have an idea what the scope of effort's going to be.

MS. PEARCE: This is Elizabeth again. I have one quick scheduling question for Mark and Mark. I appreciate enormously the detailed schedule that you've given us for the Trademark Fee Cost Analysis and I understand, of course, that there's still more refining that needs to be
done. We typically will have our next TPAC meeting in Alexandria in mid June. Early June or mid June, John?

MR. FARMER: Probably around that time, although to jump in with you, I think I saw, Mark, in your materials that there may be a window of opportunity for TPAC to comment on the in process 011 budget this summer and so we'd also, in addition to trying to hit what I think Elizabeth is going to say in terms of the Fee Study, that's another thing that we'd like to be in the right time zone for.

MS. PEARCE: Yeah, we'd like to coordinate that. It looks like we're going to be far enough along, possibly, on at least phase one of the Fee Study, to be able to get some input and a status report from you guys. So we would like to be able to coordinate that.

I know that you're going to get me a revised schedule within the next week or so but that's something that we would like to be able to do, is to be able to take a substantive look on
the progress that's been made at our next meeting,
along with some budget numbers.

Just so you guys -- we're giving you a
heads up. And we're not hard and fast about a
date. I mean, that's part of why we seek guidance
from you about when the best time for us to come
would be. Early June, mid June, late June, and I
don't think that we have any strong feelings about
that; we just want to make our time as productive
as possible.

MR. FARMER: Yeah, I think the main
thing there is just the earlier we can figure it
out, the early it is people can start planning for
it and so, you know, that's always helpful.

MR. OLECHOWSKI: I roger that,
Elizabeth. What we'll do is, because I understand
it's difficult to bring the entire TPAC together
and schedules to mesh and everything else, so we
will endeavor to keep you informed of the progress
on not only the Fee Study, but on any ABI changes
or budget issues as we progress week by week so
that at some time here in the next month or so you
can lock down better the next TPAC meeting.

MR. FARMER: Mark, just to be clear, could we -- we'll leave the ball in your court and if you could just come back, and you can go through James and Elizabeth since I know they're your usual points of contact and just say we're looking at it and maybe this particular week in June looks like a good one to A, catch the Fee Study at a good time and B, would provide a time when we'd be able to take a peak at the 011 budget and provide any input that we may have. So if we could leave that ball in your court, we'd appreciate it.

MR. OLECHOWSKI: Yes, sir.

MR. FARMER: Okay, thanks. I appreciate it.

MR. CONLEY: Just one last question, John. There's going to be a written deliverable for this ABI study? I'm sure that's in the --

MR. OLECHOWSKI: Yes.

MR. CONLEY: Yeah, great. Thank you.

MR. FARMER: Are there questions from

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other members of TPAC for Mark and the OCFO folks?

Are there any questions from the other folks in attendance today for Mark and the OCFO folks? We may have cut you off earlier, was there anything else that you all were looking to say today that we didn't give you the chance to?

MR. OLECHOWSKI: I certainly don't want to -- I know you have a very tight schedule. If I could make a couple of comments on 2010 and 2011, because you specifically asked about it, John, that we --

MR. FARMER: We have about five more minutes for this segment.

MR. OLECHOWSKI: I'll try to be brief then. In 2010, as I mentioned last time, because of the election it's a different process to develop the 2010 budget. It's gotten, in fact, more unique here at the PTO because we are a fee funded agency. OMB has given us a little bit of leeway in terms of what our deliverables are. The rest of the federal government, if their appropriated bureau has submitted to OMB
their full budgets this past week, what we were able to talk to OMB about was just delivering some top line numbers to them because there is so much fluctuation in our forecast for, not only the remainder of 2009, but certainly as we begin 2010, that they've given us a little bit more time to actually develop the written text of the budget. So we provided OMB just last night our current estimates of where we think we'll in 2010 last night.

And then the budget will actually be due -- the President will submit the budget in late March or early April to Congress. So we will continue to keep the Budget Committee informed on the progress on that. 2011 is -- it just seems to roll back to back to back.

The process for developing a budget in the federal government really is to issue some guidance here at the PTO to all of the business units, grab all of their input back at a certain time, develop the budget, get it back out to everybody so they can review it.
I left -- I put up here the rough timeline, Mr. Farmer, because I know you're interested in having an impact on the budget and then we have had some discussions on conference calls in the past. A time to have a great impact on the budget is when we develop the guidance. So if the TPAC has visions for not only the Trademarks Organization, but the PTO in general, where they want to be in the future, that -- the time to provide us that information is when we're developing that budget guidance for all of our business units. So I would suggest as a group that if you could provide us those kind of visionary statements that you want to see where PTO can be in 11, 12, 13, and beyond, that we can incorporate that into our guidance.

We send that guidance out to our business units and they develop initiatives for getting us along the way to fulfilling that vision. So we'll be issuing guidance, as I say up on the slide, sometime in the April timeframe.

While that's a nominal timeframe, that
might also be altered by when we get an Under Secretary, an Under Secretary that comes in, we'll certainly have his or her ideas of where the office needs to be and we'll certainly have great input into that guidance.

It would still be our desire to stick to that timeline and I'm sure when we do have an Under Secretary we'll have an opportunity to brief him on the budget process and what we would like from them. But in general, in the April timeframe we issue guidance and we get stuff back from our business units in June and at that time we can certainly share all of the initiatives that the business units have given us, hopefully prior to your TPAC meeting to give you a chance to absorb them and answer any questions about what's been submitted by the business units. So 2010 and 2011 if there's any questions I'd be glad to try to answer them for you.

MR. FARMER: Hey Mark, I appreciate that. Looking at your slide, it says brief TPAC on the status of fiscal year 2011 budget requests
in July. I'm wondering if that might not be the
time for us to have our next public meeting
because we I really envision is that we would see
a draft budget and, you know, what the allocations
roughly look like and that would be -- we would
say well why is the Trademark share of such and
such, such and such, a percentage and it sounds
like you might be around that stage at that time.

MR. OLECHOWSKI: If we were to follow
this timeline, John, and get guidance out, get
initiatives back from the business units in June,
the July timeframe -- we could certainly brief you
on the status of those initiatives.

I'm not so sure that the PTO would have
finished its entire deliberation process of having
all of the, as we do now, having all of the
deputies review all those initiatives,
prioritizing them, and everything. The ultimate
deliverable for the process, the very first
deliverable outside the agency is to OMB in
September. So we usually take the summer time,
get the initiatives back in the June-ish timeframe
and then take July and August to prioritize them and everything.

So while I fully understand what you would like to do, I guess I'd like a little bit of time to mesh the schedule with your desires and try to make sure that we can provide you a timeframe for you to have an impact on that process but also maybe get some of the preliminaries done with some of the initiatives and the prioritization that the deputies would do.

So if I could just at least take an action to go back and refine the schedule and get back to you, sir, about what the best time would be for the TPAC team.

MR. FARMER: Sure, I appreciate that.

As a matter of fact, looking at your slide more, I see that later you have a submitted draft of the FY 2011 budget request all business units for review and that's in August and that may actually be a time for TPAC to look at the same time.

So I could see that we might get together in June, in person, for Fee Study
purposes and plus we don't want to go too long
between public meetings. And then at that time we
can certainly decide when we'd meet again. I
guess we haven't actually fixed whether we'll meet
three or four times a year, that's a bit flexible
too. But we'll aim roughly for June. We'll nail
down that date with you and then we'll figure out
things from there; just as a rough plan, not
setting anything in stone yet.

MR. OLECHOWSKI: We can do that and
we'll do our best. We'll keep the Budget
Committee informed of where we are, provide them
all of the information as well, and then come up
with the best date.

MR. FARMER: Sounds good. Ready for
break time? Okay. Let's take a five minute
break, then when we'll come back we will chat with
judge -- our Chief Judge David Sams about TTAB
things.

(Recess)

MR. FARMER: Let's go ahead and get
started so that we can try to finish at a decent
time. A bit of a programming note, I think that we will probably run a little long today and while I'm usually the stickler on time, I anticipate it may be more like 12:15 before we finish and the reason being is that we will certainly open it up to public comments on any other issues as we planned on the agenda. But I already know of two things that are going to take some time and that is Lynne is going to give us a little presentation then on possible changes in the appearance of registration certificates and I've also promised Howard Friedman, our Examining Attorney Union Representative, some time on the floor to make some comments given the recent economic situation and I'm sure Lynne will have some comments too. I mean I could go on forever about that but that is going to cause us to go past noon so I'll just give you that programming note. That being said, for about the next half an hour we are going to chat about some TTAB stuff and we're fortunate to have the Chief Judge of the TTAB, David Sams, with us; and so I'm going to turn the
floor over to David for a few introductory
comments and we'll go from there. Thanks for
coming, Judge Sams.

    MR. SAMS: My pleasure, John. Thank
you. I don't intend to give an extensive
commentary to begin. I perceive this segment of
the program to be a discussion for members of the
TPAC on some issues effecting TTAB and our --
we've been fortunate enough to work closely over
the last months since the last meeting with the
subcommittee, providing information to the
subcommittee on issues of interest to the TPAC.
And we will be discussing those in greater detail
at this meeting.

    I could say just as a preliminary
matter, things are I think going very well. The
TTAB right now -- our first quarter numbers were
in. We were very pleased to see that we are well
under our production goals, our pendency goals for
this year.

    In the last couple of reports that I've
made to the committee, we have been a little short
of making the goals that we had set for ourselves, but this year by -- of a great deal of effort and some very hard work by our Judges, our Interlocutory Attorneys, and our paralegals, we have managed to stay, as I say, well under our 12 week decision goal on both final decisions and on motions, contested motions. So with that, I think I will just turn this over to the subcommittee members, perhaps, if John is in agreement with that.

MR. FARMER: Absolutely.

MS. DENISON: I'm Mary Boney Denison from Manelli, Denison, and Selter. And I wanted to start off by thanking Chief Judge Sams for his assistance to the subcommittee. We're very appreciative of all of the efforts that you have made and we would like to, the subcommittee would like to commend the TTAB for the significant progress that they have made in speeding up the decision process.

The Trademark Bar has always wants faster decisions and we're getting them now. So
we're very happy about that and we commend the TTAB for their efforts. There are two particular initiatives that we're interested in hearing about today from Judge Sams, if possible.

One is called the ACR, Accelerated Case Resolution, and the other is the Performance Appraisal Plan called a PAP for interlocutory attorneys, both of which we hope will impact the speed with which the TTAB is able to issue decisions.

We have been doing an informal gathering of information on the satisfaction level of the Bar, with the speed of the TTAB, and to date I would say that the data we've gathered has been inconclusive. And so what we're going to do is we're working with the TTAB to, and the various Bar Associations, IP Bar Associations, to put together an informal survey to gather more data on more specific data on the TTAB and we may also include some examination issues in the same survey. So Judge Sams, would you be able to talk about the ACR process and the interlocutory
attorney PAP?

MR. SAMS: Sure. I definitely can do that. Accelerating Case Resolution is really not an entirely -- oh, sorry. I'd be glad to do that. Accelerating Case Resolution is not an entirely new idea at the TTAB. It's just that we've never always labeled it that way.

Over the course of years and many years passed, occasionally we would have parties to litigation before the Board -- come to us and ask whether or not they could submit cross motions for summary judgment, avoid a trial, and have us treat that -- those submissions as the final record for purposes of issuing the final decision of the Board that was appealable. And we have done that. And that goes back many, many years.

We saw that model as possibly something that could be used more widely than it had been and over the last couple of years we have tried more and more to become active in suggesting to litigants before the Board that this might be something that would enable them to get a quicker
and cheaper resolution of the dispute that they were bringing to us.

There are many, many cases at the Board which are fairly straightforward and do not have too many issues that need a full trial of the sort that we sometimes see. So we have encouraged parties in cases, particular cases, to consider the idea of doing something in the nature of written submissions, like motions, affidavit submissions like motions for summary judgment. Some documentary submissions limit discovery and bring to us the case ready for determination in a much shorter time frame.

We have had the ability to suggest this in a context of the new discovery and settlement conferences that have occurred as a result of our new rules. And many of our interlocutory attorneys are talking with parties when they were asked to participate in these discovery and settlement conferences about this as a potential way of shortening the time it takes to get a decision.
So what we're planning to do is advertise to a greater extent, if possible, that this is an available means for getting a quicker and cheaper resolution of the case and perhaps even think about formalizing the process by which requests for this kind of procedure can be made with the TTAB and we will want to work with TPAC to get their input on how this kind of resolution might become more of the norm than it is now.

On the other point, Mary, that you mentioned, the Performance Appraisal Plan, we felt very good about being able to work out with our Interlocutory Attorney Staff and the Bargaining Unit Representatives a new Performance Appraisal Plan, which is a much more detailed plan than interlocutory attorneys have worked with in the past.

In the past it was more of a generic standard which was applied to the work they do. Now we have worked out a plan where there are production requirements and timeliness goals, which aligns more with our own TTAB goals and the
strategic goals of the agency.

My own view of it is that this is already showing good results in the fact that our first quarter statistics show a wonderful reduction in the time it's taking us to decide motions. And that's a great tribute to interlocutory staff to have worked very well for this plan and we are very appreciative of their efforts.

The idea of shortening TTAB time, you can look at it in a couple of ways. One is shortening the time it takes us to render a final decision or render a decision on motions. And we've been working hard in both of those categories. But the subcommittee's also talking about the possibility of maybe overhauling to a greater degree the overall time, under our current rules in practice, it takes to get a case through the system.

We want some input from the committee. We don't have any answers today. I can give you about whether that's a good idea, a bad idea, or
some modification of it might be good or bad. I think what we want is what the committee is prepared to help us get is the general views of the Bar and of Trademark owners as to what would be a possible change to our practice that would be in their best interest as far as getting cases through the TTAB. We're open to it. We want to hear what the community believes is the best approach and we will work toward that end.

MS. DENISON: Thank you.

MR. FARMER: Judge Sams, thank you for that. One thing I'm curious about -- I'm perhaps the guy who started this fire on TPAC as far as looking at this issue. And the reason why I wanted to look at it is, in some cases the -- going through the regular process, which would take I think over three years if you follow it through, works for folks. Sometimes it can provide the basis for strategic behavior, for example, you could be applying for a mark registration on a 1(b) basis and you may be looking to see how that fairs in the process.
before you really commit to it; someone can come
in, they can oppose it.

    If they really want to we all know that
you can drag that out a good bit and you might be
in the TTAB for four or five years, not through
any fault of the TTAB, it's just that sort of
strategic behavior is possible. And thus, I'm
wondering -- and this is not a question to answer
today, it's a thought to lay on the table for us
to think about in the future.

    I'm wondering if there may eventually be
an opportunity for two different tracks to be
available and either party would have the ability
to elect a fast track and if a party is afraid of
strategic behavior or they really have the need to
find out sooner rather than later, then a party
could say we're going to go on the faster track
but still have the slower track available for ones
where it suits the interest of all parties because
in some cases, due to expense reasons, due to
ongoing settlement negotiations that are
engendered by the opposition or the cancellation,
sometimes the fast track may not be appropriate.

I'm going to take a wild guess that as we look deeper into the opinions of the Trademark community, that you're probably going to find a real split of opinion and you're probably going to find some folks that say yeah, let's continue to make marginal improvements but I'm not looking to go to the rocket docket.

And you're probably going to find other folks who feel like, you know, I really get strategized, that may not be the right verb, or a verb, here, by the fact that things can be dragged out and it would be really good to be able to go into the faster option and not be held to the slower one.

And so I realize we can't solve all of that sitting here today but that's a thought that has been going through my head lately as far as a way to possibly still preserve the slower process for when it works but maybe look as to whether ACR or something else might provide a faster process for instances where it's needed to prevent abuse.
MR. SAMS: Thank you, John. I know that was a rhetorical question but I'm going to answer it to a certain extent, I think. Well, at least to the extent to saying that I'm also open to that kind of thing. Our ACR process, I should emphasize, is now undertaking only when both parties agree and you're positing at least a possibility where we might have another kind of procedure which would be at the option of one of the parties to take it down a more, let's say, a faster track. Again, I'm looking for input on that and the interest that might be among those that come and bring their cases before the Board to that possibility.

MR. FARMER: Sure. That sounds great and maybe that's one thing that we will be able to explore as we get a wider feeling for the sentiment of those in the Trademark community. And for those watching at home right now, I'll remind you that we have our e-mail box, askTPAC@uspto.gov, and so if any of you all have views on this, e-mail them in. We'd certainly be
glad to hear them. If it's okay with everyone I
was going to turn the floor over to James Johnson,
to Jim Johnson, right now because he wanted to
also chat a little bit about an issue.

MR. JOHNSON: Thank you; Jim Johnson of
Sutherland. Dave, I believe you've talked a
little bit about Medinol and your recent decision
and then we'll talk about how TPAC and the
Trademark community might look at addressing some
of those Medinol issues.

MR. SAMS: Yes, Jim. I don't have a
whole lot to say in the way of updating the line
of cases involving fraud on the USPTO that came
with and after the Medinol decision that the Board
rendered a few years back.

There is now pending before the Federal
Circuit a case in Re:Bose, which will we presume
address some of these issues and then the court
will have a statement about Medinol and its line
of cases, at least there's an opportunity for that
to happen and we'll see what they do. That case
has been briefed; it has not yet been set for our
oral argument, to my knowledge.

And within the Board itself, we have had only one decision of note that's precedential in the area of fraud and that one we issued at the end of January. It involved a case where there were two pleaded registrations by an opposer and each of those registrations was in two different classes, one goods, one services.

The party against whom these registrations had been asserted, the applicant in that case, counter claimed to cancel these two registrations on the grounds that although the mark -- registered mark was being used on the goods, it wasn't being used on the services in either -- with respect to either of the registrations. And we moved to cancel the registration, the multiple class registration in its entirety.

The significance of the holding was that although there was no doubt about the non use and the -- we found fraud as to the services class, there had been no allegation of any fraud as to
the goods class, and therefore, we found that the
registration deemed multi-class was going to
treated class by class and that we -- there was no
basis for concluding that there was fraud on the
PTO with respect to the goods, and therefore, that
part of the multiple class registration would not
be canceled on that ground. Beyond that we
haven't and further jurisprudence at this point.

MR. JOHNSON: Thank you, Dave, for that
explanation of Medinol and your recent decision.
The TPAC and the Trademark community appreciate
your guidance and the Board's guidance on this
very, very important issue.

It still remains to be seen and there's
still concern about being accused of fraud by the
U.S. Government for a misstatement in the
identification of goods. And if I were ever in
that position, I don't know if I would -- I would
have to decide whether I would want to report it
to my client or just make a run for it. That
would be a very serious, serious allegation and so
the question that we have on TPAC and from other
members of the Trademark community is whether the
characterization of that behavior, that mistake, as fraud is the appropriate description and
whether the remedy of canceling the registration is the appropriate remedy.

We, of course, all share in your desire and the Trademark Office's desire to promote the integrity of the register. No body -- I mean it helps everyone to assess the risk in adopting marks and to get a clearer picture of what the situation is. But there is a difference between a death penalty and a parking ticket and that's what we're wrestling with.

So what we hope to do is put together some options for looking at the issue to try to address -- to balance. Creating an incentive for people to correctly state what they're using the mark on, to be careful about that, but not creating a situation where the behavior may be mischaracterized or, you know, what is the gravity of this; how should that be addressed.

It's a very complex issue as many of
these issues are and so we're hoping to put
something together, talk about it with the
Trademark community, come back to you for some
tings to consider. It may be that the Bose
decision, as you mentioned, may resolve all of
these issues. I just wouldn't count on that. And
it still would be important to see that regardless
of what the Bose decision is, do we need
legislative or other redress if the Bose decision
doesn't handle it. And so we've got to -- I've
got to sit down and look at what the options are,
get it out to the community, get feedback, I
invite the people who are listening to this
program to give us input and guidance on this
issue; how should we address, how should we
resolve and balance the desire to have a register
that fully reflects accurately what's going on
with the Trademark, that discourages sloppiness
with regard to filing applications.
At the same time, provides the
appropriate remedy for people who make a mistake.
Is it as simple as you pay a fee for the cost of
amending the registration to make it -- to reflect
the truth or do you do something else? I don't
know. There's probably some mid ground or some
appropriate thing but that's what we're wrestling
with and we're hoping to make some significant
progress in the next few months and maybe by the
next meeting have some proposals for you, if not
before then, to consider, to think about, as what
the Board can do and what the Trademark Office can
do to address this increasingly important issue.

And would we have something different
between the handling current registrations and in
going forward; would there be a different process?
I don't know. But those are the kinds of things
that are going into our decision recommendation
process. I don't know if you have any further
comments but that's all I have.

MR. SAMS: The only comment I have to
that, Jim, is that we certainly appreciate the
concern level that -- is hard to miss the concern
level. But from the TTAB's point of view, what we
try to do is decide the cases that come before us
as best as we can based on the law as we understand it.

Now, the kinds of suggestions the subcommittee is talking about, maybe brainstorming, would be -- obviously we would have to -- it wouldn't necessarily by the Board that would be implementing whatever solutions, if any, would come from that process.

We would have to bring in the Examining Operation because that's probably where a lot of it would be discussed in greater detail as far as the procedures or practice that might result from the suggestion. But I think I speak for Trademark Examining, as well as the TTAB, that we're open to listen to whatever the TPAC comes up with as ideas or recommendations on that score.

MR. JOHNSON: David, we appreciate your willingness to listen, and Lynne Beresford's willingness, and Sharon Marsh, and all of that. Again, we share, we all share, the same goal, the dream of having the perfect register.

It's how to get there is the problem and
so -- and this is going to take a community
effort, I think, on all of our parts to reach --
to strike the right cord for this and it's a tough
issue but it's one we've got to tackle as people
that serve the Trademark community. Thank you.

MR. FARMER: Were there any other
questions or comments from TPAC members for Judge
Sams? Any from the other folks in attendance here
today? David, thanks for coming and also I
realize that TPAC is an activist organization now
and it maybe hasn't always been quite so much and
so thanks for working with us as we become a bit
more inquisitive and ordering than maybe we were
in the past. We really appreciate that.

With that we are finished with that part
of the agenda. We're into the public comment
section. What I would like to do is first turn
the floor over to Lynne who's going to make some
comments on possible registration stuff.

After that, I'm going to go to Howard
and probably back to Lynne to talk about some
budgetary stuff, and then after that I will
provide some time for any other issues to be raised if there's anyone who came today to raise an issue. And so Lynne, the floor is yours.

MS. BERESFORD: Thank you very much. And this is show and tell time. As you know, we've talked about having an E-certificate but with the issues that we have with our electronic systems that's temporarily on hold. However, part of the E-certificate idea was that we would get rid of the old fashioned certificate and come up with something that could be printed in house and could be ordered and would be suitable for framing.

So what we have in this folder that I'm passing out, and I hope this can be captured by the T.V. camera, is we have four mocked up certificates and we have inside the folder a little room for comment. And these certificates could be produced in house with printers that Trademarks already has, and they would be -- they meet the requirements for being sealed and they are -- they don't need a cover bind. Oh, you've
got them there? Good. They don't need a cover
bind and we think that they are suitable for --
some of them are quite attractive, but they don't
look like -- we're on to the next certificate if
you can get it on the -- okay; on the frame there.

We think they're quite attractive and
they are all examples of the kind of thing that we
would be looking at in the future. All right; and
each one of them has different formats, they all
have the -- they're all printed so that the
maintenance requirements are attached as the
statute requires; often they're on the back of the
page.

Each one of them has a certificate
number on every -- here, John, let me give these
to you. Each one of them has a certificate number
on every page so that you know what belongs to
what and each one of them has a page number on it.
So these are a beginning, a mock up, of what we
are thinking about when we go to the new
registration certificate, without the cover bind.

Again, they'll be cheaper because we
don't have to get them outside of the USPTO. They can be printed here on the printers; they'll be faster and easier for us to produce. And while we wait for the opportunity to have electronic certificates, we think these paper certificates are an interim step.

So I don't expect you to do your voting right now on the spot, but I hope all of you will take a look at these and make the decisions about what you think is the design, or what you would like changed about the design, what the design of the future would be. So thank you for your time on this matter and if there are comments from any of the TPAC members I'd be happy to hear them.

MR. LOCKHART: Lynne --

MR. FARMER: Lynne --

MR. LOCKHART: I just have -- I'm sorry.

MR. FARMER: Lynne, would it be appropriate to put these up in the TPAC portion of the website so that folks can take a look at them?

MS. BERESFORD: We'll talk about that.

I have to make sure -- I have to clear that with
our Office of General Counsel sitting back there
but we will -- if it's possible, if we can get an
okay on it, we'll certainly put them up on the
website. Again, there's nothing about these
certificates that can't be changed. We produced
them this way because the folks -- we tried to
think of different ways of presenting that would
get all of the necessary information on the
certificate in a way that was useful. So we've
sometimes moved class numbers around, and put the
reg. number in different places, and done other
things. Please take a look at these. Think about
what your clients might want and let us know what
you think.

MR. LOCKHART: I just have a question.
Do you have any idea of what the annual cost
savings would be?

MS. BERESFORD: I'll be happy to send it
to you. I don't know it off of the top of my
head. It's not a large amount, but as we go
towards electronic certificate, it becomes more
and more obvious that the ancient machines that we
have that do the sealing and the ribboning of the
cover bind, we don't really want -- they're all
old and they need to be replaced and we don't want
to get into the business of replacing them at this
point. So this is a step forward into getting us
to where we think we want to go in the future.

MR. FARMER: For the folks listening at
home, a messianic goal of TPAC is to while not
maybe messing with the initial three month
pendency to ultimately have registrations come out
as quickly as they can because we think that's
just good for the Trademark community. And one
thing that we've communicated to Lynne is that
maybe someday we will reach the point where a
registration is actually an electronic certificate
that issues immediately so you don't have that
time on the tail end with an option of receiving a
paper one should you choose to.

We're a long way away from that because
we have a lot of remediation has to be done to the
computer system beforehand and also there may be
other priorities that need to be ranked vis a vis
this. But just so the public knows where TPAC is going, that's a desire of ours. Did I see a question over there, Tim? No?

MR. LOCKHART: I just had one question which Lynne answered so -- and Lynne, I think the certificates look great.

MR. FARMER: All right. Well we --

MS. BERESFORD: Thank you -- sorry.

MR. FARMER: -- certainly --

MS. BERESFORD: Thank you very much.

And I just want to let people know we have 70 people on the web cast at this point, so a lot of it -- we're all rock stars.

MR. LOCKHART: Lynne, I just have one question. I know you don't have the figures right now, but is there a difference in price in one of the formats? If you could find out, that would be good, you know, because if they're all the same, of course, we'd go with cheaper. But anyway, if you could find that out that would be great.

MS. BERESFORD: No problem. I don't think any of these costs any more than any others
but I'll check. Thank you.

MR. FARMER: Having covered that issue,
I'm now going to turn the floor over to Howard
Friedman. Howard, if you'd introduce yourself for
the folks at home so you can make a few comments.

MR. FRIEDMAN: Sure. Howard Friedman,
President of NTEU 245. And Lynne, I think it's
great that the entire Friedman family is watching
from home. Good morning. I have a few remarks
and I hope that a lot, or some of what I say,
turns out to be wrong. I would like nothing
better than to be wrong with regard to the
discussion that's going to take place today.

I also want to profess my remarks by
saying I admire Lynne greatly, I admire Debbie
greatly, and the Trademark management, and so of
course, sometimes business diverts from personal,
and of course, this isn't personal, this is
business.

I wanted to address the issue of whether
the office is, to use Lynne's phrase, managing
conservatively enough during this, I think we
would all agree, severe economic downturn. I
think I and our union bring some credibility to
this discussion for a number of reasons.

I think one, as Lynne would probably
agree, our union has often supported the office
even when other unions of the PTO have not
supported the office. And that is always a
difficult thing to do because you generally want
to work together with all of the unions but we
have taken a stand in the past different from
other unions when we think it's in our best
interest and in the office's best interest.

I think one example, again, from a
credibility viewpoint going back nine or ten
years, is when our union supported interest in the
office and people on the outside having the office
become a government corporation and at that point
in time we were actually willing, under certain
limited circumstances to give up our Title 5
rights, which unions generally don't do in the
federal government.

So I think that provides some
credibility. More recently, two days ago, all of
the unions, including our union, attended a
function that was held on campus by the office
where we brought people up from the hill to
discuss telework legislation and we have been
working very closely with the office on the
telework legislation and supported exactly what
the office wanted to do last year and I suspect we
will be on the same level and the same floors and
be in agreement on that particular issue this
year.

That said, we have a huge problem that
requires immediate action. We believe the
downward spiral in the economy has resulted in
less Trademark applications being filed, and all
of us, I think, expect matters to get worse and
last for some time.

We are very concerned about maintaining
an inventory of new cases. Let me emphasize that
we don't have a problem with what Lynne and the
office did when it came to the reduction of our
bonuses, even though it clearly means a lot less
money for a lot of our people.
This was made clear to me and our
Executive Board at a meeting with our Bargaining
Unit yesterday. Our attorneys are more than
willing to have some skin in the game and help out
the office in any way they can. The problem is we
believe the office has not gone far enough and
needs to take additional steps immediately to make
sure our new case inventory does not become
further depleted.
We have a problem, our Executive Board
has a problem, and the people we represent have a
problem, with the projections the office has used.
We believe they have underestimated the problem.
There is also a credibility issue here, as
counted to us by our bargaining Unit yesterday.
Since a few short weeks ago when January 22, the
office went on record to say, you know, everything
was fine and our bonuses were not in jeopardy.
As was made clear to us yesterday when
we met with the Union, which fully supports
everything the Union has done on this matter, the
Unit's level of confidence in the office's projections and their management is pretty low right now.

Here are excerpts from an e-mail I received today from a Bargaining Unit member.

"Please emphasis to Lynne and the rest of management how important it is that they arrange a meeting face to face with the Examining Board and discuss the concerns we all have about the shrinking inventory of cases. I don't think management should be surprised by the concern and fear that Lynne's Fridays e-mail elicited.

Just three weeks prior to her e-mail she told us they were keeping a watch on things, that there was no need to change course in the immediate future. In fact, I recall when the word RIFF was mentioned in a question. Lynne particularly said they didn't want to discuss it because we weren't in that kind of situation. So to get an e-mail last Friday afternoon that is completely about face with no further communication from management, understandably
creates confusion, worry, and fear.

It is also important that management hold a meeting to allow people to discuss their concerns directly with those making the decisions and let us know, to the extent possible, the reasoning behind those decisions, because right now, it seems like management is hiding up in its ivory tower on the 10th floor.

If they insist on sticking to the "model," that they have personally invested in, then they should be held accountable by holding a meeting. It's too bad that though they are organizing extra details and have implemented the bonus cap, they haven't woken up to the fact that this "model" doesn't cover all matter of real world situations, including the one we find ourselves in.

Continuing on, I have to say that I am really disappointed that management won't even consider more adjustments or a temporary small reduction in production goals. Have we not as an agency met or exceeded all of our performance
goals? They have consistently told us what a
great job we are doing. I guess those were just
empty words. I really love my job and do the best
job I can, as so many of us here do. Given our
great performance over the last few years, it
seems only right that management risk, doing a
little bit more than necessary to get us all
through the lean times (eg: Reduce production or
more adjustments), rather than doing a little and
hoping that it's enough to get us through without
a RIFF.

Moreover, it seems like the agency would
be better off, rather than falling into a fire and
rehire pattern. Since last Friday when all of the
Bargaining Unit got notice, we have been working
very hard to offer solutions. We have offered
solutions regarding putting people on detail,
putting a lot of people on detail, doing it
immediately.

We have offered solutions when it comes
to coming up with quality bonuses that would
address during a down time of filings, how we can
improve quality, always something that would be of
interest to the Bar. We have put a number of
training initiatives on the table, we have
suggested a reduction of production, we have
suggested adjustments to production, we've put
every conceivable idea on the table.
  To date, other than the office's
reduction and production announcement last Friday
and the waiver of the first action requirement for
the year, to my knowledge, I don't think anything
else has been implemented by the office. The
consequences of failing to take additional and
immediate action now, as I think the letter very
eloquently stated, far out way, whatever the
office thinks it might gain by conducting business
as usual.

  When you get right down to it this isn't
about unions or management. It's simply about
making sure we do all we can now so that our good,
hardworking attorneys will continue to be able to
provide the kind of services all of you in the
room expect." Thank you, thanks John -- thanks
John, to John, and thanks to the rest of TPAC for giving us this time.

MR. FARMER: Thanks Howard. Now we'll turn the floor over to Lynne and then we'll see where we go from there.

MS. BERESFORD: Thank you John. Well, I think Howard has stated the concerns that he's hearing. They're also concerns that we have too, in some ways. First of all, let me say that on January 22nd when I addressed the all hands meeting, my understanding then, looking at what we knew about the gross domestic product and other things, was that we were on track. We got additional information on January 30th that there had been a 3.8 percent drop in the gross domestic product. That in fact was one of the things that determined that we would cut and cap the production bonus.

I certainly have no objection to having a meeting with examining attorneys. No one has -- it's been a very busy week, as one might imagine, and that hasn't been something that I've thought
about scheduling, but I don't have any problem with doing that.

And Howard's suggestions, among them a quality bonus, a decrease in the production goals, and some others, some training initiatives, etcetera, are certainly all on the table. And as Howard knows, we have met practically everyday this week with either Howard or the Executive Board of 245, or both, to discuss the various issues that are before us.

The issue of reducing production levels, reducing the required production, is simply a non-starter because we have set production levels, historically, to be what people should be doing in order to earn their paycheck. And reducing those levels of production, we think, would send a very bad message. We think it would be the equivalent of giving people more money -- the same amount of money for doing less work. As a manager, I can't -- I simply can't see that as an option.

Now, in terms of quality, I am always interested in improving quality and we have a
quality bonus in place and I've been very clear, and I've said this over the past several years, I'm more than willing to consider additional money for quality bonuses but only if I can be sure that I'm getting additional quality and that we're in fact raising the level of the quality of the work that's being done.

And although we have not had a lot of issues with quality, the Bar as in general, I'm not being specific, but in general, pretty happy with our quality. There is no question in my mind that there are a number of places we could improve quality and so that's something we want to explore. And we certainly have -- are having discussions within management about how one could structure a new quality bonus. But it's not so simple as we're going to give a bonus for quality.

First of all, you have to figure out what quality it is you're going to measure. Then you have to figure out how to get us significantly -- a statistically significant sample size for every individual whose quality you're looking at
and have someone look at that size of a sample of their work, and then you have to have the discussions with the Union about the quality measure and how to roll it out. So it's something we're already looking at but it's not something that will happen over night. But certainly, again, I'm always interested in improving quality.

I cannot -- I do not believe that we are in a crisis situation at this point. I simply don't believe that. We are looking at the size of our workforce, we're looking at the size of our inventory, which is a little lower than we'd like it, I think it's like 63,000 and we'd like it to be around 70,000. We don't see that as a good thing, but we don't see that as crisis at this point.

So we're taking a number of steps and it's been a week since the announcement was made; I don't think management has been slow in its reactions here. And again, I can only say that I'm more than willing to meet with examining attorneys to talk about this. And I guess that's
it; that's all I have to say. Thank you.

MR. FARMER: Questions or comments from other members of TPAC on this issue; any?

MS. PEARCE: I do have just one thing and I don't work for the Federal Government, Lynne, so I'm not an expert on this, but Howard did mention the possibility of detailing people. Is that something that's been discussed or is that a possibility also?

MS. BERESFORD: Yes, we have ongoing discussions. We have generally details where people go for three months or six months and work at the TTAB or in the General Counsel's Office or other places. We have a certain amount of those already in our model.

We are looking at other areas where people would -- and again, the work on the detail has to be worth while, it has to be attorney work, it has to be things that we think will enhance their ability to do their work as a Trademark Examining Attorney.

But on the flip side, we have a number
of areas of the office that are more than 
delighted to hear they might be able to have an 
examining attorney come and work as a detailee in 
their office because -- and I see Amy over there 
nodding from OIPPE, but also there are other areas 
in the office where they really are quite happy to 
hear they might be able to get a detailee when 
normally that wouldn't be in the cards. So yes, 
we are working on providing additional details for 
examining attorneys.

MS. LEIMER: Thank you. Jackie Leimer 
from Kraft Foods; I speak for myself, not for 
Kraft Foods. But I can say my views are informed 
by being an employee of Kraft Foods where just 
last week our CEO addressed our 100,000 person 
employee base on some of these very same points. 
You know, we're living in the most 
difficult times, hopefully, that any of us will 
ever see, that we'll never see anything worse than 
we are in right now in economic times.

And I appreciate what you have to do 
with respect to change quickly and be agile about
judgments you make and decisions you make because
the world is changing quickly around us and these
very same comments were made by our CEO last week
is that -- and you know, I think, personally, the
most important thing is for us, individually, as
consumers, as Americans, as employees, is to
maintain as much confidence that we can in the
organizations and institutions that are trying
very hard to solve this problem. And that
includes our government and our employers.

And confidence is earned by what I think
you're doing, which is being transparent, being
open. I certainly encourage that you meet with
employees and this is the way to maintain the
confidence. I have been on the TPAC for two
years; I've had an opportunity to observe, Lynne,
your management -- your management's team, and I
can tell you I have full confidence in what your
team has done in good times and I have that same
confidence that you will make the right judgments
in these very bad times. And I just wish you good
luck.
MS. BERESFORD: Thank you.

MR. FARMER: Thank you, Jackie. Members of TPAC, are there any other issues or comments you wanted to bring forward at this time on any issue?

MR. FRIEDMAN: Could I add a few comments, John?

MR. FARMER: Sure, Howard.

MR. FRIEDMAN: I think where we disagree on fundamentally is whether we're at crisis or near crisis. I think that's really where we disagree. And whether or not you're right and maybe I'm wrong, the bottom line is -- one of the bottom lines that I made in my comments have been what the person who had written us had said, which is they'd rather you take, perhaps, a little more action now and avert what we went through six years ago and take what the Bargaining Unit and I believe is to measure steps for the moment. We just feel more things need to be done. I think the other problem is, or additional problems that the Bargaining Unit and I are struggling with, is
under the best of circumstances the room or margin
for error is very slim.

This first action pendency has to be
between 2.5, 3.5 months, and at the end of January
I believe we were at 2.7 months. And it doesn't
take much of an economic cycle going south for
very long, particularly when you're already at 2.7
months and you have at least 380 attorneys, which
is about what where we were when we went through
the reduction -- force in 2002 to get into
trouble.

So whether it's a rhetorical or other
question, it's something that the Bargaining Unit
would still want to know is how much worse does
the office thinks it needs to get before it takes
additional action.

Another issue that was raised, a good
point yesterday at the -- at our particular
meeting, is would the office be willing, in
contact with the Union, to have a third party come
in and look at their forecasting models and
projections.
Now there was an excellent article two

days ago in CNN Money Magazine which was sent to

me by one of our Executive Board members. And I

know, Lynne, and Debbie, and the office want to
get the projections right, as do we, but in a

wonderful interview with a gentleman who

apparently is the world's top expert on

quantifying the forecasting skills of political

experts, he's made it very clear that most experts

are wrong, usually are, and barely beat out a

random forecast generation. And basically, he

finds that experts' predictions barely beat random
guesses; the statistical equivalent of a dart

throwing chimp.

I don't share, nor does our Bargaining

Unit, particularly in view of what took place six

or seven years ago and what representations were

made before Congress, we just don't share the

confidence that the projections and filings are in

line, that we're going to have enough inventory to

work on. It's as simple as that. We also feel,

as a result, that time is of the essence; that we
need to do something now. Thank you.

MR. FARMER: We could go back and forth forever since I gave Howard the first word, I'm going to give Lynne a brief last word and then we're going to move on.

MS. BERESFORD: Thank you. First of all we are, Howard, not standing by doing nothing. We have work projects and details, some of which will be announced either this afternoon or on Monday, that we're moving forward with. And we have been working closely with you and with the Executive Board and we'll continue to do so. I'm more than willing to talk about getting a third party in here to look at our model; that gets a little more complex in terms of procurement and things like that. But I do not have an alarmist view, and I know you don't agree with me on this and that's fine, but you can believe that I have the interests of every Trademark employee at heart.

MR. FARMER: For everyone in attendance here today, are there any questions or comments you wanted to bring up to TPAC? If there are none
then what I'd like to do is first I'd like to
thank all of the PTO folks who spend so much time
helping us out on TPAC.

We are an attention grabbing machine and
reach out and touch a lot of people and they
provide us with a lot of information very quickly
and we really appreciate that. We realize that's
probably taking some getting used to and we thank
them for the service; and Lynne, especially you.

You've been very helpful and I really
appreciate that and I have total confidence in
your leadership. You're doing a great job. And
I'd also like to thank all of the members of TPAC
for their hard work, including Howard. Folks are
putting in a lot of hours here. You all are just
seeing the tip of the iceberg and I really
appreciate the professional sacrifices that all of
them are making in order to make TPAC so
effective. So that's it; we're done.

MS. BERESFORD: Thank you.

(Whereupon at 12:18 p.m., the
PROCEEDINGS were adjourned.)

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