

UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, February 20, 2009

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

2 (9:30 a.m.)

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

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

22 Now this is a bit of a shake down cruise

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

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

21 After we exhaust any questions or
22 comments that TPAC members have, we're going to --

1 if we have time available in that part of the
2 agenda, take any questions or comments from those
3 who have come here to attend the meeting who are
4 in the audience.

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

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

21 And the folks at the office have done a
22 wonderful job in obliging on providing those and

1 we really appreciate in receiving those in advance
2 and those are actually posted on our website right
3 now. And for those of you watching from
4 cyberspace, if you want to see the documents that
5 have been provided, you just go to the USPTO
6 website into the TPAC area and you will see those
7 there. I believe there are four documents there.

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

21 So with that being said, I'd like to
22 turn things over to Lynne Beresford, the

1 Commissioner of Trademarks, to make a few opening
2 remarks; Lynne.

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

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

16 I'm just going to give a brief overview
17 of the news as we see it right now that might be
18 of interest to TPAC that is not in the documents
19 that we shared and put on the website. Of course,
20 I have to say we're meeting our pendency goals.
21 This is something of great interest to everyone.
22 Our first action pendency is 2.8 months and our

1 final action pendency is a little over 14 months,
2 including suspended and inter partes cases.

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

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

19 Of course, when we revise a filing
20 estimate, the other thing that we have to revise
21 is our income estimate because the two are
22 inextricably linked. However, even with our lower

1 estimated fee revenue, we expect, the Trademark
2 Organization expects to end the year with a
3 surplus.

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

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

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

17 Let me give you some examples. We
18 recently capped the examining attorney production
19 bonus at outstanding; we didn't end the bonus but
20 we capped it at a much lower level because
21 management believes we no longer need to
22 incentivize super high production.

1 In addition, we've canceled some travel,
2 we've canceled our off sight management
3 conference, and done a few other things in order
4 to conserve fee revenue.

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

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

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

1 in that area.

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

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

20 At the end of the session, of course,
21 all bills died. But we have learned the key
22 players and both the House and the Senate want to

1 see telework legislation passed. It makes good
2 business sense to have telework.

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

10 In the international affairs area, the
11 fourth round of negotiations on ACTA, that's the
12 Anti Counterfeiting Trade Agreement, has -- took
13 place in Paris in December. ACTA is an effort to
14 combat global infringement of IPR, particularly in
15 the context of counterfeiting and pirating, by
16 increasing international cooperation. It's
17 reported that steady progress has been made on
18 ACTA. We had a Trademark Trilateral meeting and
19 agreements have been made to expand the number of
20 folks that can join our trilateral id list. So we
21 will soon be adding some other countries id's to
22 that list.

1 The Singapore Treaty of -- on the law of
2 Trademarks will enter into force on March 16th.
3 I'm very happy about that. I think it is yet
4 another treaty that is aimed at simplifying the
5 life of Trademark owners and making it easier to
6 obtain and maintain Trademark rights throughout
7 the world.

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

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

20 We are currently working with the China
21 Trademark Association. OIPPE is working with them
22 to co-host a program on how to file a trademark in

1 the U.S. and in China. We expect the China
2 Trademark Office will participate in this program.

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

9 Finally, let me just close by saying
10 I'm, of course, open -- I'll be here for the
11 entire meeting. I'm open for questions if there
12 are questions and we welcome TPAC's participation.
13 Your work is critical to helping the U.S. Remain
14 a world leader in IP, so thank you very much all
15 of you for your support.

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

22 MR. OWENS: I was not going to display

1 any slides today. I was going to -- as you stated
2 in the beginning, John, I figured people have read
3 the presentation. I was going to mostly answer
4 comments --

5 MR. FARMER: Okay.

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

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

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

17 As a Roadmap of transformation was
18 created, late summer of last year, and was
19 implemented at the beginning of this fiscal year,
20 and there were nine major initiatives. Everything
21 from organizational strengthening and training the
22 CIO's, employees, and filling its ranks which were

1 down some hundred, a little less than a hundred
2 people, to restoring our confidence in our network
3 but replacing ten plus year old equipment, as well
4 as, ten plus year old hardware that supports some
5 of the systems. As well as doing things like
6 enhancing the help desk response and disaster
7 recovery.

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

14 So since the beginning of our fiscal
15 year, which starts in October, we have started 40
16 projects. We have installed an industry based
17 system development life cycle as defined by IEEE
18 and we are managing those projects under that
19 framework, just like there is a process to
20 evaluate a Trademark there needs to be a process
21 by which CIO can do their work and it's
22 repeatable.

1 And some of the major mile stones that
2 have been completed since then with the help of
3 the CFO's office and procurement, we have
4 established what's known as the PTO Net III
5 contract to purchase and replace every last piece
6 of telecom equipment in the building that supports
7 our network, which was very old.

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

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

21 We have decided to upgrade our storage.
22 The storage was aging; 18 refrigerator sized racks

1 almost just slightly under a petabyte worth of
2 storage will be replaced by a much more efficient
3 four racks of refrigerator sized racks of
4 equipment, freeing up space, power, and cooling
5 issues that we are experiencing.

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

15 We're putting the data, as well as, the
16 first failover system which was TRAM, which is a
17 foundational system of Trademarks; was the first
18 to be tested between the two buildings east and
19 west here in Madison that fail over worked and for
20 independent tests. And now we will move back to
21 Pennsylvania as well. And we have upgraded 13 of
22 our AIS's onto modern platforms and databases

1 because they were on older platforms that were no
2 longer supported by the companies that produced
3 them.

4 At a very high level, we have hit a
5 couple of major snags. We have completed
6 staffing, basically an accounting of our staffing
7 skill, sat and realized that much of it was not up
8 to par. I would like to instill what I had
9 outside of this organization, which is a mandatory
10 40 hours of training a year.

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

20 Also as part of this we've established a
21 project tracking system using Microsoft Enterprise
22 project management, which is open to folks at

1 Trademark, as well as, our accounting system which
2 is based on a product called EIS, so every
3 transaction of money in and out of the CIO is now
4 readily available to not only ourselves but our
5 customers. So that level of transparency I
6 thought was very important to bring since it had
7 not been there in the past.

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

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

21 Productivity has improved and we've even
22 gone to the extent of now this month allowing our

1 own people that have been providing telework for
2 years to other organizations, like Trademark, to
3 participate, a select number of them, to
4 participate once a week. So that was also a big
5 morale boost. Now you have to remember that well
6 trained happy people do better work. So it is --
7 this plan was a holistic healing effort for the
8 organization.

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

19 We are using the ITIL model for that
20 effort and that's also an industry standard. And
21 one of the major issues that we have found is our
22 data center was at 96 percent of power and our

1 network was similarly at the upwards of above 90
2 percent utilization.

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

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

17 This does cause a little bit of a delay
18 on some things, for example, the upgrade of the
19 storage. There's literally not enough power to
20 plug in those four new units to back things up.
21 That back up takes weeks. A petabyte isn't
22 something you like back up in a few minutes. And

1 because of that we are having a very careful
2 choreography of what has to move into the data
3 center, get plugged in, get turned on, and what
4 needs to move out.

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

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

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

1 the right job, not the same tool for every job.

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

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

17 Now what that does is it drives the
18 business and technology to develop along with the
19 customer a strategy, and that strategy be
20 developed into a plan and that plan drive the
21 budget. In years past, it was budget drove
22 planning; that's backwards.

1 We need to have a good business
2 technology strategy that we can combine into a
3 plan and then plot for series of evolutionary
4 steps over the next few years. And the SITP will
5 be the end to end place where you will be able to
6 find the Roadmap from both Trademarks, as well as
7 CIO, on how the Trademark systems, the Patent
8 systems, and the other systems in the agency will
9 evolve over time.

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

15 Now, part of the SITP will be the
16 Roadmap because we do have to fix the foundation
17 we're building the building on; it does no good to
18 build a building on top of a crumbling foundation
19 and the building happens to fall down. But it
20 does lay out a very good solid strategy on how we
21 will tell you about how we're going to evolve in
22 the future. That's about the high level.

1 MR. FARMER: Okay. Thanks, John. I
2 appreciate it. For those who don't know, TPAC
3 divides itself into subcommittees and at sometimes
4 within subcommittees we have champions and we do
5 have a subcommittee that's focused on electronic
6 issues and also on quality and our subcommittee
7 for that is Makan Delrahaim who can't be here this
8 morning, unfortunately, and Jeff Storie and Tim
9 Lockhart. And so what I thought I'd actually do
10 -- Jeff and Tim, I don't know if you all have any
11 questions or comments you wanted to make first, if
12 not I have some questions I can ask but I thought
13 I would defer to you all first since you are the
14 members of the subcommittee for that area.

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

20 MR. OWENS: Mm-hmm.

21 MR. STORIE: From what we've seen in the
22 presentation you've got -- you're short 96 people

1 that you would -- or so that you'd like to have
2 but out of that there's 50 or so of those that
3 have been identified as critical, as mission
4 critical.

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

13 MR. OWENS: Sure. It's important to
14 realize that, yes, my organization has 550
15 positions approximately, 450 which are filled, a
16 little over a hundred of those positions are not
17 technologists at all. My organization also houses
18 the Information Dissemination Organization so when
19 you call for a registered trademark or a
20 registered patent or you have -- need information
21 about a publication that you may purchase or a set
22 of data that you purchased, that comes from my

1 organization as well and that's mainly because the
2 Chief Information Officer Office is also in charge
3 of dissemination.

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

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

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

1 little bit about the skill gaps that I'm trying to
2 fill.

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

13 And it's really a pretty basic thing. I
14 go to a contractor and I say here are my
15 requirements, I need you to build me X. And it's
16 true that in the past, and I think we as an
17 organization, Trademarks as well as CIO, need to
18 work on clarifying requirements and how those will
19 be managed, but even if we wanted a Cadillac and
20 we defined a Corolla and they delivered us a
21 Corolla, well that's an issue and we need to
22 address that and we are.

1 But the fact of the matter is that the
2 Corolla that we got delivered falls apart. It's
3 not of the right level of quality. And it's very
4 difficult to take a deliverable and look at it and
5 evaluate it if you don't have the skill set to
6 actually build it yourself. You don't bring a
7 software developer your car and ask it how the
8 engine is running. You don't bring in a mechanic
9 or a project manager with no ability to develop
10 software and ask it was that a quality software
11 deliverable? It's just you don't have the skill
12 to make that determination.

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

20 So the orientation of the 56, though
21 there are some project managers and some other
22 basic necessities in there, in large part orient

1 just toward heavy technologists, which we have
2 over the years removed from our environment. And
3 I think we need them back. I think for us to do a
4 good job and to measure the quality of the
5 products and services we deliver, we need someone
6 here that can look at that -- those deliverables
7 and say they are the correct deliverables, they
8 are of sufficient quality.

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

15 Now as far as challenges in the area, I
16 think that as we have gone through the beginning
17 part of this year we have found a few good people
18 to hire, but certainly, and this is going to sound
19 a little odd, but company failures in the
20 surrounding area, as well as imminent lay offs
21 from industry, have provided us an opportunity to
22 hire now.

1 I don't want to say that that's good for
2 anybody because I understand that it's not but it
3 is an opportunity for us, though there are
4 financial constraints, which I'm sure we'll go
5 over later, about -- that are placed on our
6 ability to hire. And those have to be weighed as
7 well because I need to be able to pay the folks
8 that I get. Does that answer your question?

9 MR. STORIE: Yes it does.

10 MR. OWENS: Probably a little too much.

11 MR. STORIE: Thank you John.

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

1 number of historical reasons.

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

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

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

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

22 MR. OWENS: I would say mid summer would

1 probably be a better estimate by the time
2 everything goes through, but I'll be happy to
3 update you on that.

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

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

11 MR. LOCKHART: Okay.

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

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

22 MR. OWENS: Yes.

1 MR. LOCKHART: So we'll be looking at
2 the mile stones that are in the Roadmap and once
3 the strategic IP plan comes out that will contain
4 the mile stones going forward and sort of have
5 target actions and dates setting --

6 MR. OWENS: And costs.

7 MR. LOCKHART: And costs; okay.

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

12 MR. LOCKHART: Okay.

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

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

19 MR. OWENS: Oh, yes.

20 MR. LOCKHART: Thank you again.

21 MR. OWENS: Thank you.

22 MR. STORIE: John, one more thing. In

1 looking at the approach that you've taken, which
2 we applaud, because our concerns after having --
3 after the analysis, or after I guess the
4 assessment of the system that we learned of in
5 August, we were all very surprised to find the
6 deficiencies that we have had -- hardware and the
7 physical infrastructure. But it's also become
8 painfully clear that we've had a problem as well
9 in the overall ability of the OCIO Shop to be able
10 to handle the systems we have and to continue the
11 operations of the Trademark side.

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

18 The efficiencies we have been able to
19 achieve have been two fold; the quality of our
20 workforce, the quality of the examiner core
21 combined with this increase in technology and
22 we're all real nervous that we're going to come to

1 a place where we're going to start losing the
2 edge, we're going to start losing it because we're
3 now going past -- we're, I guess crossing those
4 lines that say we can't keep this up anymore.
5 We're at critical max essentially.

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

22 MR. OWENS: Legacy System.

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

11 Those first four parts we've got to do
12 in order to make this thing work and to maintain
13 what we have. At the same time, we've also got to
14 come into a new era of collaboration where we know
15 that the office on this side feels like they're
16 able to go to their supplier, the OCIO, and get
17 the stuff that they actually need and to be able
18 to have the kind of input into that process. And
19 I know we've talked a little bit about the
20 different views but I'd love to have you just
21 address this question of how are we going to
22 achieve collaboration?

1 MR. OWENS: Okay. It certainly isn't,
2 you know, if I didn't have that Legacy System to
3 deal with and in the situation that it's in, this
4 would be a much different conversation there
5 certainly. My background, where I came from, the
6 way I've been running this organization since I
7 got here is much more of a service.

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

16 And though I will tell you I will never
17 be the expert in patent examination or trademark
18 examination, it is important that I have a very
19 strong relationship with my customer and a very
20 collaborative relationship with my customer to
21 allow me to do the job efficiently and
22 effectively.

1 So you're right. The Roadmap, as I
2 said, the SITP covers the enhancements and the
3 future progress. The Roadmap, in and of itself,
4 in there says no new projects until mid year 2010.
5 Because some of the infrastructure is so fragile
6 in its current state, building a new floor on a
7 building where the foundation is literally
8 crumbling is not an effective use of money and any
9 new enhancements would of course increase the load
10 on that structure, then it can't support it.

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

21 So continuing to enhance them does scare
22 me a lot because even if I could enhance them, the

1 load that that would place on the overall system,
2 because we don't fully have documented how they're
3 tied together, is not predictable. And because
4 it's not predictable, and I am at such a peak
5 load, my nature to meet my number one goal of
6 continuing examination is don't put extra load on
7 it until I can figure out how it works.

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

15 But I didn't want to call it out
16 separately because I'm not doing a lot of it
17 because of the risk I just described. But the
18 SITP does talk about that evolution, those
19 enhancements, and the improvements that the
20 customer, Trademarks for example, would like to
21 make to the systems, that I would like to see to
22 the systems.

1 Because had this been a different
2 conversation where the Legacy System was strong
3 and it was not in such dire need of work, we would
4 be having a conversation about what priorities
5 would the businesses opposed to the outside like
6 to see built and then I would build them. And
7 that's where I'd like to get to. It's going to
8 take a little time to get there. We have to start
9 off slow, we have to fix where we are, but that
10 will come. And the SITP is an effort that was
11 already started so we can plan now because as you
12 know in the federal government the budgeting and
13 planning cycle is almost two years ahead of where
14 you actually get something done.

15 So we're at the right place. We know
16 some of the basics that need to get done. We have
17 evaluated several of our current systems and we
18 are proposing to the business -- this is the stuff
19 we need to change to the infrastructure, now what
20 do you need to change the environment to enhance
21 those systems. And then we will build them
22 starting, you know, next year.

1 So let's talk a little bit about
2 collaboration. In a service oriented environment,
3 and we are a service to our customers, I think the
4 customer has to take a very strong position in
5 helping this organization, not only to find what
6 the environment needs, but also how those things
7 get developed and work collaboratively with us to
8 get that done.

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

20 However, I think it was clear yesterday
21 in our conversation that having a process that
22 everyone sticks to, having a plan that we mutually

1 work together on, and having a collaborative
2 environment that draws a business unit at expert
3 with a heavy technology background onto our team
4 of technology, soon to be, I'm building,
5 technology experts is key.

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

15 MR. STORIE: Okay. Thank you very much.

16 MR. LOCKHART: I just have one follow
17 up, John, because I want to make sure I understand
18 how the two documents play together and what your
19 proposed schedule looks like. So except for any
20 what I call relatively minor upgrades that might
21 be covered by the Roadmap, basically then if
22 you're rolling out the SITP mid summer and you're

1 talking about then making upgrades based upon the
2 SITP starting in the middle of 2010, we're
3 probably looking at something around 16 to 18
4 months before your office would be in a position
5 to start doing some what I call significant
6 upgrades to curve Trademark electronic processing;
7 is that right?

8 MR. OWENS: From today?

9 MR. LOCKHART: Yeah.

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

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

14 MR. OWENS: The Roadmap said mid year
15 2010, which is about, well, a year from now, we
16 would actually start doing projects. So somewhere
17 around the 16 month mark before delivery of some
18 type of product isn't inaccurate. That's probably
19 in the ball park, of course, I don't have any
20 final schedules or anything else.

21 MR. LOCKHART: No, I mean, are you
22 talking fiscal year or calendar year to 2010?

1 MR. OWENS: Oh, I talk fiscal.

2 MR. LOCKHART: Fiscal; okay.

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

6 MR. LOCKHART: Okay; gotcha.

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

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

21 MR. OWENS: So you -- there's a bunch of
22 things that have to be taken into account. The

1 plan started fiscal year October '09; that's when
2 it started. It was a five year, 200 million
3 dollar plan. It hasn't changed significantly;
4 we've discovered some things, we've had to adjust
5 some time tables. We still think it could be done
6 in that time if the funding is available and I'll
7 let the CFO talk to that but that's language that
8 I've learned to use; if funding is available.

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

15 And so is the plan still accurate as far
16 as the cost, given any major change in the
17 economy, which I cannot predict, or the original
18 time table, if funded at the level that we asked
19 for, yes, we're still on track. Will outside
20 economic factors influence our funding and, or the
21 economy possibly driving up and down costs of
22 actual physical hardware and, or costs of

1 contracting services? Yes; those I cannot
2 predict. Does that make sense?

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

8 MR. OWENS: Out of the nine initiatives,
9 I would say that six are right on where we wanted.
10 Seventh is not far behind and two are a little
11 lagging, but not more than a month or so. Most of
12 that is due to discovery, for example, as I talked
13 about before, we're moving up to Boyers all the
14 data. Well, we get the hardware there, we start
15 putting it in place and the floor starts to crack.
16 Okay; you know, we didn't know the floor was bad.

17 No one knew that the struts were put in
18 in the 1950's; they had rusted out and, you know,
19 because on a raised floor, you know, there's metal
20 posts that connect to the actual mountain, the
21 physical granite mountain, and through moisture
22 and everything else, they have corroded. So that,

1 you know, things like that.

2 Power; we didn't realize that we were at
3 96 percent power. There is no monitoring of power
4 in our current environment. We're changing that.
5 Had there been consolidated monitoring we would
6 have known that but that discovery causes us a
7 delay in moving equipment in and out as we need to
8 turn it on and off, instead of just at once
9 throwing in all of the new equipment side by side
10 with the old, moving the systems and data over,
11 and pulling out the old equipment.

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

1 fact, you know, it's not surprising at all.

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

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

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

22 MR. FARMER: That's fine; yeah.

1 Sometimes my questions -- I appreciate that, Tim,
2 are aimed more towards helping the Trademark
3 community that may be watching at home so to speak
4 to see where we are as far as things are
5 concerned.

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

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

22 MR. OWENS: Well, I think the date to

1 start new development, baring any financial
2 changes, is still mid year, fiscal year, 2010. As
3 we have evaluated the AIS, let's take TDR for
4 example, we've evaluated that system, we have
5 found that it has some serious issues, needed, you
6 know, have crashed several times a day. We have
7 already taken immediate action to resolve those
8 crashes, but the enhancements that are needed need
9 to be discussed.

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

14 This Roadmap is to fix the
15 infrastructure. That lays the foundation to build
16 the building, or fix the foundation of the
17 building. The actual plan to get to end to end
18 electronic processing, I would hope to give you an
19 update on when the SITP is available and I've
20 already had the time to talk to Trademarks to get
21 their influence into that plan. Like I said, it
22 just started so we need a little bit of time.

1 It is my goal to get that processing
2 completed. End to end processing of both
3 Trademarks and Patents is, I believe, critical to
4 gain efficiency for the future. But again, you
5 won't see any significant effort until mid fiscal
6 year 2010, as long as the financials don't delay
7 that too much.

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

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

21 And I wanted to look ahead to see if you
22 see any of those coming and if so, how much

1 warning you think you might be able to give the
2 community so that we can try to get the word out
3 so that hopefully folks wont plan to be on it the
4 last minute during those times.

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

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

22 But for replacing major network

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

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

13 MR. OWENS: Sure.

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

20 MR. OWENS: Well I'd say the number one
21 -- so it's all about the weakest link in the chain
22 and we talk about that in technology a lot. So if

1 you have a chain with, you know, a number of
2 links, the weakest one breaks first and if you fix
3 that one then the next one will break.

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

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

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

18 MR. OWENS: Yeah. Some of it's a little
19 more than casual, you know, people like to stream
20 music and listen -- watch videos and so on. So we
21 are being -- we are taking efforts to get that
22 done right now; that will free up some space.

1 We also looked at the trend of how much
2 load placed on the systems and network by hiring
3 examiners or moving examiners offsite. This has a
4 lot to do with Patent hiring and I believe we can
5 squeak by with the changes that we are planning to
6 do with the points of failure in the network that
7 we have by this replacement effort that we have
8 going on.

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

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

1 three years long, things will be much better.

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

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

16 MR. OWENS: The purchase of bandwidth to
17 our major provider right up to the entire
18 infrastructure will be completely modern. There
19 won't be a business on the planet that's not
20 experimenting with something that's not released
21 to the general public that will have a better
22 infrastructure than we do.

1 I'm hoping at that point the complaints
2 I get are because local ISPs are bogging down and
3 not me. But right now I can't say that. There is
4 a lot of bottlenecks here in the agency.

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

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

19 MR. FARMER: Mm-hmm.

20 MR. OWENS: So as far as power goes we
21 did have a power problem last year which brought
22 down the systems, both Patents and Trademarks, for

1 several days. I mean that did happen and it was
2 what caused us to look back and perform an
3 independent verification validation of the power
4 system.

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

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

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

1 them and so on.

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

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

22 Now, we try to live at 70 percent power

1 utilization to handle spikes and just like the
2 network, which we also would like to be around the
3 70 percent, you have to plan for the spikes. So
4 what that means for power is we have to turn on
5 things slow and monitor our usage because if the
6 systems went down and we had to power them up, we
7 would take a much longer time to power them up
8 because we would spike the power to hunger at 100
9 percent, throw breakers, and then things would
10 crash again. So that's delicate, but not
11 unmanageable.

12 The network, however, does regularly hit
13 100 percent utilization because it's a constant --
14 it's like going out to the internet, sometimes you
15 hit a webpage and it's really fast and other times
16 someone in your neighborhood's downloading
17 something and it's slow.

18 Because it's a shared resource, the
19 network's a shared resource, we do regularly hit
20 100 percent which means that people both internal
21 and external, whether they're at home or at work
22 doing their job, will get slowness and that's just

1 a fact. Sometimes they'll do a search or
2 something and it'll come back with at 404 error on
3 the web or, you know, some error in the system
4 because we've lost packets and so on. So that
5 does happen; that is something we're working on
6 today.

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

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

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

21 MS. DENISON: Yes; as a user of the
22 USPTO website from the outside, you had mentioned

1 that sometimes you reach 100 percent. From my
2 experience, you reach 100 percent on the search
3 feature everyday and it's a common complaint among
4 the Trademark Bar that you have to try to get into
5 the search system five, ten times during peak
6 hours and I don't know if there's anything -- I
7 understand that you have major problems and you're
8 trying to fix them, but if there's any way you
9 could do anything about this particular issue, it
10 is a source of great frustration to the outside
11 Trademark.

12 MR. OWENS: You're talking about TESS?

13 MS. DENISON: Yes.

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

17 MS. DENISON: When California comes on
18 --

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

21 MS. DENISON: Yeah.

22 MR. OWENS: That would be one o'clock

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

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

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

22 So when you look at the AIS

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

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

16 Now, it just so happens that as we fix
17 links we've noticed that well the next link might
18 break. So I ask you for your patience. I'd like
19 to have, you know, the pixie dust or magic wand to
20 just fix it all at once but a lot of these are
21 literally -- we've sent a task team down for
22 several weeks, make fixes, make patches, make

1 plans, and then something else breaks, and then we
2 go there. And we are doing that continuously.
3 TESS will improve. I think it's getting a little
4 bit better but it's going to take some time before
5 you actually see improvement because as we go and
6 fix, some other things will break.

7 MS. DENISON: Thank you.

8 MR. FARMER: Jackie?

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

12 MR. OWENS: Yes.

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

15 MR. OWENS: It crashes; it's not planned
16 for down time. The load goes up such that the --
17 ceases to function --

18 MS. LEIMER: Right.

19 MR. OWENS: -- the searches don't
20 happen, and the system gets in a loop in which
21 case it --

22 MS. LEIMER: Well, we non-technical

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

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

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

21 We have some predictability in knowing
22 when some of the peaks are which are obvious, but

1 you have to understand that a posting that says,
2 you know, could everyone, you know, avoid the one
3 o'clock Eastern hour --

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

11 MR. OWENS: I'd be happy --

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

15 MR. OWENS: I think we can do that.
16 There's no reason not to be able to do that so I
17 think that's a reasonable request. Though the
18 problem will be if people decide to all shift, you
19 know, to a similar time. It's really the system's
20 capability. It's that --

21 MS. LEIMER: Understood.

22 MR. OWENS: It's that, you know, getting

1 the Corolla and driving it off of the lot and then
2 pieces start falling off as you drive down the
3 road. The system shouldn't have been developed
4 that way; it shouldn't have been architected that
5 way, it shouldn't have been delivered that way and
6 it should have been caught in testing.

7 And to do that we really have to focus
8 on bringing in the technologists to make sure that
9 the quality of product we're getting delivered
10 meets the expectation of the customer. And that's
11 really why I'm focused. I'm more than happy to
12 post that type of thing but it's really about, as
13 far as this conversation is, what I want to convey
14 is you really have to understand it's about fixing
15 the problems as they --

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

18 MR. OWENS: Thank you.

19 MR. FARMER: Any other questions or
20 comments from TPAC members? Any questions or
21 comments from any other folks here, USPTO
22 officials, or anyone else? Yes; ma'am.

1 MS. SALA-KING: Do I come up here?

2 Okay.

3 COURT REPORTER: And please identify
4 yourself.

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

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

1 --

2 MR. OWENS: The voicemail system is
3 mine.

4 SPEAKER: --

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

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

12 MR. OWENS: Friday night --

13 MS. SALA-KING: -- Saturday --

14 MR. OWENS: Right.

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

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

19 MS. SALA-KING: Okay.

20 MR. OWENS: Okay. So yes, that's right.
21 So let's talk about monitoring in any
22 organization, any technology -- monitoring

1 technology organization, you'd like to have the
2 appropriate monitoring so when you know a system
3 has crashed. Unfortunately, that monitoring has
4 to be engineered into the system and many of our
5 systems do not have that.

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

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

21 But no, not all of our systems have that
22 type of monitoring built in but it is a tenant of

1 my organization to make, you know, that I am
2 proliferating through my organization to build
3 that type of monitoring capability into our
4 systems.

5 MR. FARMER: You had a follow up?

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

17 MS. FARMER: Ma'am.

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

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

1 past, is that right?

2 MS. SALA-KING: Well --

3 SPEAKER: No.

4 MS. SALA-KING: -- not necessarily but
5 the system does go down and this is a planned
6 outage. But I just wondered if there was a catch
7 all way that someone could leave a message so
8 essentially if you want to leave a message you
9 can't because --

10 MR. FARMER: Right; but my question was
11 it's not just something recent as in only today,
12 it's happened several times in the past? Is that
13 what you're saying?

14 MS. SALA-KING: There have been problems
15 in the past --

16 MR. FARMER: Okay.

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

18 MR. FARMER: Okay; all right. Thanks.

19 MR. OWENS: So part of what we're doing
20 this weekend is part of the overall look at making
21 the systems redundant. Right now today our
22 voicemail system is a single unit. It may have a

1 couple of machines but they're all tied together
2 in a single unit. When it fails, it fails and we
3 have had in the past failures.

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

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

20 MR. FARMER: Okay. Thank you, John.
21 I'm going cut things off here on our OCIO
22 presentation just so we can stay on schedule and

1 so, John, thank you very much for your
2 presentation and thank you for reaching out to me
3 earlier. I appreciate that and thank you for
4 working closely with Jeff and with Tim. I know
5 they really appreciated that. We're going to take
6 about a four minute break and then we'll come back
7 and we'll chat with the OCFO folks then.

8 (Recess)

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

15 MR. OLECHOWSKI: Yes, sir.

16 MR. FARMER: Okay. So we have Mark
17 Olechowski and Mark, I turn the floor over to you.
18 Thanks for coming today.

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

21 MR. FARMER: Please call me John or I've
22 got to bring my dad, one of the two.

1 MR. OLECHOWSKI: I'll try to remember.
2 I told you there's too many Johns around the
3 Patent and Trademark Office so you've got to at
4 least use the second name as well; but thanks,
5 John.

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

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

20 So today I just want to talk about three
21 things that you've asked us to comment on. One of
22 them being the Trademark Fee Study, which is in

1 progress; all be it not going as quickly, I think,
2 as anybody would like it to but it's certainly
3 going and I'll have Mark Krieger, my Director of
4 Finance, if there's any specific questions about
5 that we can address those. There's a couple
6 questions on cost allocation methodology and we'll
7 want to address those that are on the agenda.

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

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

22 We also believe that it's just good

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

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

17 SPEAKER: --

18 MR. FARMER: Do you need this?

19 SPEAKER: Yeah --

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

22 SPEAKER: I think you're pointing over

1 there --

2 MR. OLECHOWSKI: There we go. So
3 anyway, we formulated I think a pretty strong
4 project team made up of folks from Trademarks, my
5 Finance group, and then people from Corporate
6 Planning.

7 Both the team members from Finance and
8 Corporate Planning are members of the team that
9 also participated in the Patent Fee Studies we've
10 done over the past years so they bring a lot of
11 not only experience in doing it, but a lot of
12 lessons learned that we learned the hard way by
13 working with Patents in preparation for issuing a
14 couple fee packages. So we've been able to
15 implement some lessons learned for the Trademark
16 Fee Study; we hope will make the process a little
17 bit easier to accomplish, but a very strong team.

18 The next two slides are what it was at
19 the -- two weeks ago, John, when you asked us to
20 publish our slides. That was the -- our working
21 group had gotten together for the very first time
22 and come up with a draft schedule of events and

1 activities that we thought we needed to get done
2 to accomplish the task at hand.

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

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

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

20 MR. KRIEGER: Sorry about that. My name
21 is Mark Krieger. I'm the Director of Finance.
22 There are some things we need to talk about with

1 the Trademarks team and we are meeting with them
2 on Tuesdays, every Tuesday, and for the duration
3 of the Fee Study.

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

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

14 MR. OLECHOWSKI: Thanks, Mark. The next
15 topic we'd like to talk about and was placed on
16 the agenda is some questions that have arisen over
17 the cost allocation between some final reports
18 that came out since TPAC last met between final
19 '07 costs for the Trademarks Organization and the
20 final '08 costs for the Trademarks Organization.
21 I did want to put up our, you know, busy slide for
22 you just to remind everybody that the basic

1 premise that we used to allocate costs at the PTO
2 is to collect those costs and then decide through
3 the Model and through certain drivers and
4 allocation methodology how they get split to both
5 the Patents and Trademarks business line.

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

15 So there's a specific question that was
16 raised about that the percentage of cost allocated
17 to the Trademarks Organization, and the CFO and
18 CAO business units, had risen at some percentage,
19 17 and 6 percent.

20 But I'd like to put that -- those
21 numbers in context to give you an idea that we
22 actually believe -- and the numbers, I think

