AGENDA

Introduction by TPAC Chair

JOHN FARMER

Welcome and Brief Comments by USPTO Leadership

JOHN DOLL

Discussion Regarding the Future of the Trademark Fence Report from and Discussion With the USPTO Office of the Chief Financial Officer on the Status of the Trademark Fees Study

MARK OLECHOWSKI

MARK KRIEGER

ELIZABETH PEARCE - TPAC

Discussion with the Office of the Chief Information Officer about the Status of Ongoing Technological Remediation, Including Whether Roadmap Milestones Are Being Hit And Goals Being Accomplished

JOHN OWENS

Comments by and Questions for the Commissioner of Trademarks

LYNNE BERESFORD

Public Comments on Any Other Issues

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MR. FARMER: Good morning, everybody.

Welcome to the TPAC Public Meeting. Today is June 9, and my name is John Farmer, and I'm Chairman of TPAC, the Trademark Public Advisory Committee of the United States Patent and Trademark Office.

Thank you to our hosts at the USPTO for giving us a wonderful experience yesterday and today and by spending so much of their time to prepare us to try to serve them and to try to serve the Trademark community.

A couple of housekeeping matters before we get going. Today's meeting is being webcast just like the last meeting was webcast, and so we say hello to the folks that are watching back at home. There is an email address to which folks who are watching this live or actually perhaps even later can send questions or comments to TPAC, and that email address is asktpac@uspto.gov. It's TPAC's hope that that email address will not just be a one-day thing, but it will become an online
suggestion box for things that are appropriate for
TPAC that could be sent to TPAC. I don't think
we're quite there yet as far as having it so
presented on the TPAC portion of the USPTO
website, but we hope to get there.

Also it is my understanding just as with
the last meeting that this webcast will be posted
in archive fashion online on the TPAC portion of
the USPTO website, and so if for historical
reasons people want to go back and look at what
happened, it will be there and we on TPAC like
that because that promotes the sort of openness
that we'd like to have.

I wanted to let you know that today we
will be having mainly a dialogue with the folks
that will be visiting with us. One thing that
we've changed this year, we did it at the last
meeting and we'll be doing again at this one, is
that we are trying to study up in advance on TPAC
so that our time here in the public meeting can
mainly be interactions and discussions and
questions, and we'll hope to carry that forward
After folks make introductory comments on their sections of the agenda, the pecking order I'm going to follow as Chair in terms of taking questions or comments is first I'll turn to fellow members of TPAC, and then I'll turn to anyone else present here in the live audience since they've taken the trouble to come see us today. Then lastly if we have time, we will take any questions that have come in by email to the asktpac@uspto.gov website.

We have some agenda changes today, and that's going to make our meeting shorter, perhaps significantly shorter than we had planned. For those of you who have seen the agenda, perhaps seen it as it's posted on our website, we have decided to at least postpone for now discussion of IV and V. IV was going to be a discussion regarding the history of the funding of recessions and diversions by the Trademark operation vis-à-vis the Patent operation. And V was going to be a discussion of the extent to which the
Patent operation may have inadvertently or
otherwise loaned funds or otherwise subsidized the
Trademark operation particularly in 1999 and 2005.
We on TPAC received extensive and helpful
materials on those issues from the Office of the
Chief Financial Officer on Friday, and we're
thankful for those. Thank you for taking the time
to prepare those, we know that took a lot of
effort, and for your initial briefing to our
Finance Subcommittee and to TPAC. But as TPAC
considered that, TPAC's view was that we just
don't mentally have our arms around the details
and the numbers well enough to be able to ask the
sort of questions that we would like to be able to
ask, and so for that reason we think it's
premature to try to have that presentation today
because we're just not ready on the TPAC side and
so we're going to push that off for a future time.
Because of that as I mentioned, our meeting will
be a little bit shorter today.

Another housekeeping measure especially
for the folks listening in at home, one thing that
we're trying to do on TPAC and we're changing ourselves so we don't yet do a perfect job is to try to give the office plenty of time to prepare for our meeting and then allow us plenty of time to prepare for what they wish to present and to allow the public plenty of time to see what's coming so that everyone can be better prepared. This is a very expensive meeting you have. We have a lot of very valuable people in the room whose time is worth a great deal and we don't want to waste your time. I've sat down and chatted with John Doll and we worked out what we think will be a good way to make certain going forward that this will all be a smooth sailing ship, and that is TPAC has committed that we will get our proposed agendas and schedules because we have more than just this public meeting when we come up here, we have subcommittee meetings and so forth and so on. At least 4 weeks in advance of our public meetings, and that in turn the office will have any written materials that they intend to submit to us at least 2 weeks in advance of the
meeting so we'll have time to study them. And then also so that we can put up on the TPAC portion of the USPTO website any of the public materials. Sometimes there are materials that are confidential because they may address for example personnel matters or budgets that are still in process within the Executive Branch and obviously we can't discuss those in public session or post them, but for all other materials and any materials that would be utilized at a public meeting, we can get those up on the website. We hope that will also serve the public because I realize a lot of time folks have to decide whether it's worth their while to come here perhaps to comment or to even listen in on the webcast and that will allow them to make those decisions and also to better understand what is going on with TPAC. So we hope that that build a stronger TPAC-USPTO relationship as we go forward and we thank Mr. Doll and the office for working that out with us.

Having said all that, I'm going to turn
things over to Acting Director John Doll to give
whatever introductory comments he'd like to give.

MR. DOLL: Thank you, John. It's a
pleasure to be here today and I want to thank TPAC
and the public for taking the time out of your day
to work with us and talk to us today. It's a
pleasure.

It's a pleasure for me because as John
said I'm the Acting Director and I've spent almost
all of my 35 years in the USPTO on the Patent side
of the house, so this is a great opportunity for
me to get to know TPAC, to get to know some of the
Trademark users, and to appreciate exactly how
important the work is you do every day. It's
interesting that I know a couple of you already.
I was talking to Jeff right before the meeting and
it seems Jeff grew up less than 100 miles from
where I grew up in Ohio, so we've fellow Buckeyes
so we have a bond there. James Conley and I have
known each other for a really long time, way back
when James was running biotech conferences at the
Kellogg School, and so that was a great
opportunity for me. I also had the opportunity recently to meet Jackie Leimer. "Intellectual Property" magazine had their annual awards ceremony and they asked me to do a presentation, and it was an honor for me to present Jackie with the Outstanding IP Attorney of the Year Award at that awards ceremony, and I want to thank you for saving me when my presentation went terribly wrong. Jackie jumped up and saved me. But I also want to say thank you very much to Jackie and to James because I understand this may be your last term, so we really do appreciate everything that you've done, we appreciate all of the hard work and the expertise that you've brought to TPAC. If possible I'd like to twist your arms to see if you would reconsider, but Jackie has said don't even talk to me. I have other things to do in my life right now. But again thank you very much. I appreciate the opportunity to talk to TPAC.

What I'd like to do is I'd like to talk about three topics today. I'd like to focus first on the general direction of the USPTO during our
transition as we're waiting for new political
leadership when we get our new undersecretary.
I'd also like to talk about some of the noteworthy
developments that Trademarks has been doing
throughout the year so far. Then I want to do a
quick legislative update on the 111th Congress to
give you an idea where things are in the Congress.

But more importantly, I'm willing to
talk about anything that you would like to talk
about. I'm willing to discuss anything or answer
any questions that you would like. So feel free
to interrupt me at any point in time and ask me
questions if you would prefer I talk about
something different. I'm always willing to do
that also, and it actually be more interesting and
exciting than what I'm going to talk about.

I'll start with the direction of the PTO
because I think everybody here recognizes that we
don't have political leadership at this time and
we are waiting for a nomination. The White House
and the President will hopefully soon be
nominating an undersecretary for the Patent and
Trademark Office. What happens at that point is that the Senate Judiciary has to confirm the new designee, the new nominee, and right now the Senate Judiciary Committee I think everybody understands is extremely busy right now with the Supreme Court nomination, so that might slow us up just a little bit. But the general process is that a confirmation once someone is named takes somewhere between several weeks to possibly months depending. So when the August recess pending, it is possible that we may not get our leadership until sometime in September depending on how quickly Justice Sotomayor goes through the process and how quickly we get our undersecretary named and confirmed. It's an exciting time for us and we are looking forward to welcoming the new undersecretary.

While we're doing that rather than just sitting around and marking time, we are taking some steps and initiatives. We are trying to move forward to put in place several things so that when the undersecretary does get here that that
person can hit the ground running. One of the
things that we're doing is we're working on
creating a 5-year strategic plan framework, and
what we're trying to do is to set forth all of the
information, all of the current goals and
functions of the organization and looking at
ourselves to see where we think we may have some
gaps so that we can put together exactly what
information the new undersecretary would need to
give us their strategic direction, to understand
exactly where we are and what we've been trying to
do. This is going to be an important process.
It'll be an important opportunity for TPAC and for
PPAC to weigh in and give us your direction and
your ideas as to what you would to see the Patent
Office be in 5 years, what direction you'd like to
see us work toward. There will also be a formal
invitation for the public to give input. We are
very interested in the user community and in our
Political Advisory Committee. So it will be a
great opportunity to put all that information
together for the new undersecretary when they get
here to give them again a sense of direction, not
to preempt what they're going to do or their
strategic vision, but to give them an opportunity
to understand what TPAC, what PPAC, what the users
have actually given us as suggestions. So that
will be an exciting opportunity and it will be an
interesting opportunity for us to put that
information together and to brief the new
undersecretary.

The new administration though has been
very clear and they've given all the executive
agencies what I think is very clear direction.
They would like to have open, transparent and a
collaborative government. They've been clear that
they want us to move in that direction of working
with our user groups and meeting their needs and
actually addressing exactly the issues and the
opportunities that you would like to see us have.
Commerce Secretary Locke has also been very clear
and has repeatedly made it clear that he expects
all of the agencies under the Department of
Commerce to push their limits and to push
themselves to make sure that the services and the
products that we do produce meet the needs of our
customers and that we set stretch goals for
ourselves and that we push ourselves in new
directions and further than we ever have before.
So it's not only my obligation as I see it, but
it's the obligation of everybody at the USPTO to
ensure that we are transparent and that we do work
toward that open and collaborative government, and
I think meetings like this with the public is a
great opportunity for us to move in that
direction.

As an example of what the Trademark
users would be interested in, I know that
Trademarks and TPAC, they're working very hard
together on transparency. They're working in the
Praise and Complaint Department and I give them a
lot of credit for that because Trademarks has
always listened to the users and made a real
effort to comply with what they could do. TPAC
and the office is also working on frequent
revisions and updates to the "Trademark Manual of
Examining Procedure," the "Trademark Trial and Board of Appeals Manual of Procedures," to ensure that they're not only updated frequently, but they're also readily available and that they're easily available across the net for all users. So it's crucial to the POT and to Trademarks especially that we listen to the customers not only on the big issues whether that be legislation, but also on the small things that make their day-to-day practice better and what we can do to get that feedback and then implement that into our day-to-day operations. So I appreciate TPAC and I appreciate John challenging us and continually pushing us to reach out to make sure that we're transparent and we're serving the needs of the community.

When I look at the developments in Trademarks, clearly the flagship event this year for the USPTO has been the Trademark Expo, the 2009 National Trademark Expo, which was held on May 8 and 9. It attracted over 7,000 visitors to our campus. It was a 2-day event. It was a
wonderful example of how the USPTO in a very
cost-effective manner is able to reach out to the
public and assist the public in the education that
they're continually trying to provide especially
on issues as important as counterfeiting and on
piracy and to show the people that intellectual
property really is fun. I'm always amazed at the
dedication and the creativity of USPTO employees
and how hard they work to pull off an event, and
this year's event everybody simply outdid
themselves. It was a phenomenal event. There
were numerous exhibitors, educational seminars,
children's programs, and they worked with
corporate America to bring in more Trademark
characters than we've ever had before. It's
always fun to look out of your window and see
Popeye, Olive Oyl, Curious George, Dennis the
Menace, and the Pillsbury Dough Boy, and 20 other
costume trademarked characters roaming around the
campus, so that that was always a lot of fun.
There was a lot of local support also. The City
of Alexandria sent Vice Mayor Pepper over and she
addressed the crowd. Congressman Jim Moran, the
PTO is in his district, gave a keynote address and
presented Trademarks with a plaque of the
Congressional Record where he had read into the
Congressional Record the Trademark Expo, so that
was quite an honor to have him here also.

On the legislative front, everything has
been very busy also, and of special interest to
all of our employees and especially Trademarks
because of the high percentage of people that they
have hotelling or teleworking. Senate Bill 707,
the Trademark Enactment Act of 2009, has been
extremely important. There appears to be some
real momentum this year. It's an opportunity for
Congress to move forward. They introduced the
bill in March. It contains language that would
allow GSA to permit the USPTO discretion in paying
travel for our employees who choose to live
outside the Alexandria area. It gives them the
opportunity to move away. It also gives the
office that financial opportunity and the
discretion to choose whether to pay or not when
employees have to come back to the campus. There was a second amendment offered to that legislation during the markup on May 20 that specifically stated that the PTO would set up an advisory committee. That would be a committee of management and labor that would review the policies and procedures of this new discretion if we get it. This is a great opportunity for management to work with our unions, and I want to compliment Howard and NTEU because they've been tremendous supporters of this legislation. It's been a pleasure working with them and having their support when we go to the Hill to go with a union as strong and as large as NTEU and to have their support. So thank you for that, Howard.

This amendment was also recently added to the Patent Reform Bill and that I hope will also give it some additional momentum. Key players in both the House and the Senate have made it clear that they would like to see this bill passed. The Obama Administration has made it very clear that they think telework and hotelling is an
option that they would like to advance and they
would like to move as quickly and as efficiently
as possible to make that an option for federal
employees. There are a vast majority of reasons
to make this work and the Obama Administration has
been very good about focusing on the improvement
of morale and on the green effects and on the
energy conservation of hotelling and teleworking.
So we're very hopeful that Congress will be able
to pass this bill this year and it will give the
USPTO and it will give us an opportunity not only
to attract and retain the best people we have, but
also to make the USPTO a premiere telework
organization in the federal government. Patent
reform which is not as interesting to the
Trademark people as it is to the Patent people,
but it still does affect, it's an extremely
important piece of legislation, that again is
moving through the 111th Congress. On April 2 the
Senate Judiciary Committee completed their markup
of Senate Bill 515 of the Patent Reform Act.
There is a companion bill, HR 1260, that has not
yet seen any action. We think they possibly may be waiting for the Senate to move and to take a floor vote and then possibly to merge the two bills because there are some differences between the two bills. But the bill includes some interesting language and it includes compromise language on assessment of damages in infringement cases. If you're following the bill, I think you'll understand that the lack of consensus on that language was probably what doomed the bill in the last Congress. So we're looking for some kind of consensus language that might give it the opportunity to take the report language that actually moves toward a gatekeeper approach which might appease both sides and bring them both to the table on Patent reform legislation. As I mentioned earlier, the bill also includes the provision for the USPTO telework of hotel pilot. There is also language with fee-setting authority that would be very helpful for the USPTO when we're facing some of the downturns that we're facing right now with Trademark filings and Patent
filings being down as much as they are. The bill also creates a postgrant review process for Patents. It changes the interparty's reexamination process in Patents to give a possible option to the very expensive litigation through the court system to make the PTO much more of a player when we talk about the validity of patents.

One of biggest differences that I notice when I look at the bill is that the bill doesn't contain any language with respect to inequitable conduct, and that certainly was a point of discussion in the 110th Congress. So it will be interesting to see what happens, and if not, if the language could be introduced because that's one of the major issues in patent prosecution as to whether or not the attorneys have the opportunity to be as open and submit as much information as they can without that threat of inequitable conduct always hanging over their heads. So that will be interesting to see what happens.
The best, the most definite thing that I can say about the patent bill right now is that there's a lot of uncertainty around the patent bill. So we'll be interested because the overall goals I think are great. When you talk about improving patent quality, when you talk about reducing litigation costs, when you talk about international harmonization, there are all goals that we all appreciate and that we all would like to work toward. What we'd like to do is to see the diverse parties that are working with the bill and on the bill right now come together and actually move this very important legislation forward. So that will be an exciting time in Congress and it will be interesting to see if we can get some major movement before that August recess.

Again in closing I would like to thank John and TPAC for giving me the opportunity to address you and to address some of my concerns. If there are any questions, I would be happy to answer them. If there aren't any questions, I
look forward to the rest of the session this morning. So again thank you, and thank you, John.

MR. FARMER: Thanks, John. Why don't we go on to the next item on the agenda then, and that is the discussion regarding the future of the Trademark fence. When we had items IV and V on the agenda, I was intending for III to be a much more extensive discussion, but my feeling is that it will probably be more brief. I realize that talking about the Trademark fence may sound like inside baseball to a lot of folks especially those who are listening in on the webcast, so I thought I'd tell them what it is. There's a provision in the United States Code, it's in 35 U.S.C. Section 42, subsection C, again that's 35, 42, subsection C, that addresses how Trademark fees may be spent within the USPTO, and it says the following, "All fees available to the Director under Section 31 of the Trademark Act of 1946 shall be used only for the processing of Trademark registrations and for other activities, services and materials relating to Trademarks and to cover a proportionate share..."
of the administrative costs of the Patent and Trademark Office." I look at the Trademark fence as sort of recognizing a roommate analogy, and that is, in the USPTO you have a Trademark operation and a Patent operation and while we both deal in intellectual property, we both really do or each do separate and distinct things, and yet like roommates might share a house or an apartment and they have to find a way to equitably divide up the resources and expenses of the facility and that that takes some vigilance and some goodwill and some negotiation to make certain that works well, the same thing applies here at the Trademark Office because the fence commands that Trademark funds be used to pay for the Trademark operation and for the reasonable share of the overhead that's attributable to the Trademark operation.

The reason why I bring this topic up is because we all know that we're in difficult times financially right now. Everyone is struggling. I know that private industry is struggling. Some of our TPAC members, especially that are in-house and
their companies have given us reports of the
rather painful cuts and steps they've had to take,
and we know that the PTO also has had to do some
rather extensive things also to make certain that
it responsibly weathers the economic storm because
the PTO is a fee-based organization. The PTO has
to live off the fees that it brings in and when
fees are down that means belts get tightened.

We understand on TPAC that one thing
that has just been floated with contacts with
Congress is the possibility of perhaps doing
something with the Trademark fence as an option if
additional monies are needed on the Patent side of
the house down the road. We on TPAC also have
noted that the International Trademark
Association, INTA, has taken a position with
Congress that it would like to see the Trademark
fence remain as it is in tact. So without going
deeply into things and without asking the
leadership to divulge anything that would be
confidential within the Executive Branch because
they have to keep budgetary processes that are not
yet final and published confidential and we
respect that, I thought we would just ask Mr. Doll
to give some high-level comments on the Trademark
fence and the thoughts that the current leadership
has regarding that since it's been out there in
the public. So John I'll turn things over to you,
and thanks for addressing it.

MR. DOLL: Thank you, John. It's very
easy for me to be totally open and transparent
here because I can tell you everything that I know
about the Trademark fence. The Trademark fence is
very clearly the law. John set forth the
statutory language, and the office respects that
law. I think it's also the will of the Trademark
users, and I respect that. It's much like the
greater intellectual property community that we
serve. The greater intellectual property
community has been very vocal and very vocal in
the Patent reform legislation that no fees that
are appropriated or collected by the USPTO should
be used for other than USPTO functions. It's the
same thing with Trademarks. When a trademark user
pays a fee, they expect that fee to be applied to
trademark services or products. We respect that.
I think that's the way that we should do business.
I think it's true with respect to the greater
intellectual property community with the USPTO
funds. It's also true with Trademark funds. It's
ture with Patent funds, and I respect that.

When we went to Congress and we went to
the Department of Commerce and we went to OMB and
we went to Congress, we gave Congress options
because we have a problem. We have a serious
problem with Trademark filings being down and
Patent filings down not quite as much, but having
more of a financial impact simply because of the
volume, that we have a concern. We have a concern
that we have a budget shortfall that may be very
serious. We'll be talking about that later in the
session. So how do we adjust? How do we make it
through the year? Because the thing that the
USPTO does not want to do is ever have to make the
decision on whether or not to furlough examiners
or to RIF examiners whether they be Trademark or
Patent examiners.

So what we did is we had an opportunity to list options, things that we could do, things that we could do to address the current problem because in a respectful and a mindful manner, you don't go to your boss and say I have a problem without the potential solutions. So we listed nine total solutions, nine ways that we thought we could address this problem, and we wanted to encompass every aspect that we had available to us and every option. We listed everything from fee changes, regulatory fee changes, to supplemental appropriations, to OPM fence money, not fence money, transfer money that we pay for postretirement employees. We talked about changing fee structures, regulatory and statutory. We did every option, and that included the Trademark fence.

I think we accurately and correctly portrayed to DOC, to OMB, the concerns of the Trademark community because the leadership at the USPTO shares those concerns. Trademark fees that
are paid for Trademark services and products should be used for Trademark services and products. We felt obligated to list every option so that anybody that reviewed our legislative options or out considerations couldn't say that we didn't list everything. But as I said, we clearly set forth what the pros and what the cons were for each one of those.

The administration does not have a position right now. Without political leadership at the PTO it's a little more difficult to get that administrative position. We did submit a paper to OMB, we submitted to DOC as I said earlier, that listed nine options, and we called them legislative options because the majority of them would take a legislative change to enact. That included the Trademark fence. We recently received that list back from OMB. It was sent back to our Acting CFO Mark Olechowski, and they said nice laundry list. What would you like to do? Which ones do you want to pursue? What are your preferences? At that point in time what they
directed us to do is to work with OMB to come up with what we think would be viable, real options or alternatives to address the funding problem. We will be working with DOC. We haven't started that process yet. I think it will be a little slower than normal because we don't have political leadership. It will be interesting to see how long it takes to get political leadership, but we will start talking. Again I can be open and very transparent and say we don't have a preference at this point in time. We have a list of nine options. I want to make sure you understand that we clearly understand there are pros and cons to each one of them, but I fully understand, respect and support the position that a Trademark user or a Patent user when they pay money to the USPTO fully expect that money to be used and applied to the goods and services that they expect. I'd be happy to answer any questions about that or to try to say it a different way, but I respect the law. Some of the speeding laws I don't agree with, but the Trademark fence law I fully agree with. The
policeman that just gave me a ticket last week, he appreciated my respect for the speeding laws.

MR. FARMER: John, I have a quick question. There is a change that your administration will have to make the call as to what you recommend just because we don't yet have a nominee to be the next Director. Then there's going to be a confirmation process, and as you pointed out earlier, the folks on Capitol Hill are a little busy right now with another confirmation process. Do you have any view that you can offer to the public as to whether the fence is an option that's favored or disfavored by the present leadership as far as a way to address funding issues on the Patent side of the house?

MR. DOLL: One of the things that I should have mentioned that I didn't mention earlier is that in our recent visits to the Hill, the Hill has been very supportive about what can we do to help you. So I think when we do come up with an administration position we will have support on the Hill to move forward. But
currently I don't have a position. The leadership of the USPTO has not formulated what we think are the best or the priority options on that list. We simply listed every option that we thought we had available to us. What we will do now is starting to go through the pros and cons of each one and to prioritize what we think might be the best options or the quickest options to address the issues that we have.

I don't believe there is a vehicle right now for us to make any changes in 2009. I don't think there is any way that Congress has the option to give us relief in 2009 without introducing a special bill which I wouldn't expect to happen unless the funding drops dramatically. So sometime between now and 2010 we will come up with the help of DOC a prioritization of that list, but right now I really don't have a priority.

MR. FARMER: I have a few comments. Before I make them, do any other TPAC members have any comments or questions they wanted to ask on
None of this will be news to John, but just for the benefit of the folks visiting today and listening at home, I think the following is the sense of TPAC regarding the fence. And just so everyone knows that TPAC is not sitting idly by, I thought I'd just express that and then I'll ask my fellow members of TPAC whether they want to amend anything I have to say. That is, I think it's the sense of TPAC that the fence should remain as is. We are empathetic and sympathetic to the funding issues that are facing both sides of the office including the Patent operation, but we think the fence remains crucial. And we believe that even a provision that would allow for loans to be taken from the Patent operation to the Trademark operation would be a crack in a dam that would ultimately threaten the integrity of the dam and potentially bring everything down especially if any loan was going to be without interest. So it's the sense of TPAC that even that sort of action would be something that we would advise.
against.

TPAC has been in conversations with Mr. Doll and his office on this issue and we thank them for keeping us in the loop. Just so the folks at home know that we've been doing our job, we have sent letters formally explaining our position and also we sent a copy of one of those to Secretary Locke just so that the Executive Branch should be aware of our position. One of the reasons why TPAC takes this position is simply that the Trademark operation presently does have some money in the back, it does have a surplus, and that's a good thing to have and it's a testament to the wonderful management of the Trademark operation by Lynne Beresford and by her staff. But that's a bit of an insurance policy also in that Trademarks are experiencing a very tough time too and filings are down and they're doing everything they can to be very responsible in how they handle their dollars, and it's Trademark's fear that if that money was not available to the Trademark operation that folks
working in that operation would be at an increased
risk of a RFI especially the examining corps that
we think is doing a great job and there is a lot
of great human capital there that we just don't
really want to lose, and that thus is TPAC's
position.

In a second I'm going to ask from anyone
from the audience here has brought any comments or
questions, but first, John, if you have anything
you wanted to say in response to what I've said,
you're welcome to. You don't have to. Otherwise,
I'll throw things open to the floor.

MR. DOLL: There is one point that I
wanted to add before we answer any of the
questions. Some of the comments and some of the
concern that we get from outside the USPTO is the
USPTO is one government agency. Why don't you
solve your problem within the USPTO? So there's a
natural question, Why don't you just take your
money that you collect as the United States Patent
and Trademark Office, then use that to fund the
United States Patent and Trademark Office? That's
a valid concern if you don't understand that there
are Trademark functions and there are Patent
functions and they are separate and distinct and
the people that pay that money don't pay them for
the USPTO, they expect as I said earlier to get
Trademark products and services or Patent products
and services. So I think we've done a good job of
explaining that to people outside the USPTO. And
when we went to the Hill, again that's a natural
question that somebody would ask. We fund the
USPTO. Why don't you use the money that you have?
And I think we've done a very good job on the Hill
of explaining why these should be treated and
statutorily treated as two separate banks of
money.

MR. FARMER: Thanks, John, and we
appreciate that recognition and support that we
really are roommates who try to get along well
here. If there are any questions or comments from
members of the audience on this issue, I'm not
sure we'll stop at every point in the agenda, but
because of the significance of this I thought I'd
offer that opportunity if there are any.

Hearing none, let's roll right along then. So we're skipping IV and we're skipping V, and everyone is thinking about what they're going to be able to do with all the extra time they're going to have today that they didn't anticipate having.

Next we're going to turn things over for a brief check-in with the Office of Chief Financial Officer, Mark Olechowski on the status of the Trademark Fee Study, and Elizabeth Pearce on our committee has been the responsible for that, so I will turn it over to Mark with Elizabeth taking care of that part of the meeting.

MR. OLECHOWSKI: Thanks, Mr. Farmer. In the meantime let me introduce our presenter today Mark Krieger. As our Director of Finance, Mark has presented to the Public Advisory Committee before. Mark comes to us originally from the private sector where he was the CFO for a small company.

MR. FARMER: I think we may have the
report up.

MR. OLECHOWSKI: Mark started out after we hired him from being a CFO in the private sector in our Financial Reporting Division, he moved to our ABC Division, our Activity Based Costing Division, and within the last year or so we promoted him to our Director of Finance where he currently reports directly to the CFO.

MR. KRIEGER: I don't believe we have the presentation, but I can talk to it.

MR. FARMER: That's fine. We're just checking in on the status of it.

MR. KRIEGER: The Trademark fee cost analysis is a joint project that's being undertaken by the CFO's Office as well as the Trademark organization. As you know, cost is a very important factor when setting fees. It's not the only factor, but it's a very important one; other things are influencing behavior. The 2008 GAO financial report discusses the need for cost information and we need reliable cost information to make sure we recover the full cost of our
programs and to recover full cost of our fees.

There are three reasons why we did this fee study. The first is OMB Circular 825 which says we have to recover the full cost of our programs. The Trademark organization over the last handful of years has in fact recovered the cost in the aggregate. The statement and that cost that's prepared by my office will show that. We need to dig a little deeper. We have the cost in the aggregate that we are recovering, but what about the specific fees. That's something that we need to do and it makes good business sense. That's something that we want to show we're charging $300, are we recovering the fee for that? It makes sense. TPAC has requested this as well, so it's something that we definitely want to undertake.

We had an executive kickoff in January 2009 and we had a formal cost study team kickoff in March 2009. Since that time we've been very busy. We're revising the entire Trademark model. One of those steps, a very important step, is to
link the PPAs which are the fundamental building blocks that every contractor and every employee needs to report their time to activities. After we conclude that, then we can link those activities to the fee codes, and that's a very important step as well. That will give us a fee tracking sheet.

There is one challenge that we have had that we've discussed at the beginning with the Trademarks organization. They have been very vocal and concerned about work in process and how we're going to entertain that in the calculation. We have set up an independent phase, Phase 4 of this process, to accommodate that request. It is something very important to the Trademark organization and we want to really adhere to it and see what we can do to accommodate that.

The core team consists of the CFO's Office like I said, and there are two groups within that. One is the Activity-Based Information Division which is under the Office of Finance, and the Office of Corporate Planning or
our Budget Office, the Revenue and Fee Forecasting
Division. Also vital to this is the Trademark
organization and the Trademark Trial and Appeal
Board as well.

We have weekly meetings every Tuesday
that have been very productive. We also have had
many ad hoc requests or ad hoc meetings if we have
had any issues that need to be addressed.
Further, we are scheduling meetings with shared
service providers such as my office, the CFO's
office, the CIO office, to discuss shared service
with subject matter experts to see if there is
anything in particular they do, any activities
they do, that directly support specific fees, and
that way we can drive those costs separately.

Like I said, there are five phases to
this project. The first phase, the Project
Initiation and Planning, we did run a little bit
over. We are hoping that we can make up some of
that time because of the time invested in this
stage. There have been three challenges that we
have up with and if we are able to put a box
around those and identify those in our project plan, we're hoping that we can make up some of the time at the back end.

The next phase is the Trademark Model Revision. I've talked a little bit about that. That's where we are behind currently, 3 to 4 weeks behind. Like I said, we have the PPA codes that are the building blocks to the activities. That's what we're doing right now. We're mapping those PPAs to the activities. Then the next phase will be linking those activities to the fees. Phase 4 will be where we accommodate work in process and how to account for that. The last phase, once we have all this information what do we do with it? We have $300 we charge, the cost is $350. What do we do? That's an executive decision and that will be the final phase, Phase 5. Hypothetical numbers of course.

Methodology. What we're doing is we are revising the Trademark fee model or cost model which the end result, the cost objects, will be fees. That's different than it ever was before.
What we're doing is we're getting the full cost of activities, and I want to give you an example. Scan registered files. That is from a PPA directly from a program project and activity that people are recording their time to. That is then mapped to an activity of scanning registered files. We can then come up with a unit cost by dividing by the number of scanned registered files, and then we can adjust for frequency of occurrence. That will give us a unit cost. If we can isolate all those activities and come up with an activity unit cost, we can then match that to the fees. I know that's a little bit complicated. I wish I had the presentation here because you'd be able to see it a little bit better. And we would finally adjust that for any work in process.

Our final presentation is we're trying to determine what would be the best method for the final presentation and how to present these numbers. The Trademarks organization has been very vocal that they would like to see the indirect cost separate from the direct cost in the
Trademark model. So what we would have, again
let's use that example of $300 is what we charge,
$350 is the cost. Let's say $250 is direct from
the Trademark model or direct cost, and then the
additional $100 would be indirect, and that way we
would be able to show those and where the costs
are coming from, where they're derived from.

Accomplishments. We have accomplished a
lot in a very short amount of time. I think some
of the things that we have accomplished are making
the operational managers very much aware of how
vital PPAs are. They are the building blocks,
like I said, and it's very important for us to
understand the Trademark operational perspective
as well, and I think what we're finding is we're
getting a lot of information from the Trademark
process managers and they're getting a lot of
information from us. A lot of people aren't aware
or the operational managers are not aware of the
ABI information and what exactly we do with it,
and now they're understanding.

I did discuss some challenges that we
are having. We did investigate the challenges. There are three of them. One is shared service and that's groups such as CIO, CFO, CAO, what do we do with those costs? What we're doing is we're setting up meetings with the shared service subject matter experts and saying, Do any of your activities directly affect any of the fee codes? Do they have a direct impact? If they do, we can derive those costs separately, and that's how we're accommodating that. The second one is work in process. I have mentioned that several times, but that is going to be addressed in Phase 4 of our project. The final thing is a validation or check sum. We're trying to come with a validation exercise where when we unitize the activities that I talked about, that we can come back to a final check sum or balance that we need to agree to or come close to. We report quarterly an efficiency measure for the Trademark organization and we hope that can play a role, or the statement cost, but we need to figure that out because that will be vital to making sure we have captured everything.
Current status. We are currently mapping the PPAs to the Trademark activities like I discussed, and we are meeting this week with the shared service providers subject matter experts. We are also planning on meeting with Pilbara. I don't know if anybody is familiar with that. The ABI system is being reviewed by an outside group called Pilbara and we hoping to get some good comments and suggestions to incorporate into this new fee cost model. We will certainly take their comments and work through the team and see what we can come up with.

That's it. No, I'm sorry, the next steps. After we map these PPAs to activities like I said, we want to come up with how these activities affect or how do they derive to the fee codes, and once we come up with that and how we can allocate, direct and indirect costs to the Trademark fee model, we can come up with a cost for each fee. And in the end I hope to have or we hope to have a final cost model which will give us this fee cost information readily. Are there any
questions?

MR. FARMER: Why don't we first turn things over to Elizabeth, and then we'll go broader than that?

MS. PEARCE: I'd like to start by thanking everybody who's worked so hard on the fee study so far. I know that it's been a tremendous amount of work for Mark and Mark in their department, and we appreciate the way they've been able to push this forward. Also I'd like to thank the Trademark Office because they've had to sit in on the meetings and contribute to a lot of the analysis and the early work going on trying to figure out exactly how this material is going to be sliced and diced. I'm saying thank you on behalf of the Trademark community. This was something that when I first got on TPAC was of concern to me. It didn't seem that the Trademark fees had been really examined in a while. They'd done wonderful work on cutting the costs of filing, but it didn't appear that the fees other than had really been looked at for a while. I'd
like to thank everybody for being so responsive to
my concerns and supporting TPAC in this. I think
it's going to be a great boon for the Trademark
community to know that these fees have been looked
at and that they are genuinely being charged for
the cost of doing business. I think that that's
going to be something that everybody will be quite
relieved about.

I would also like to say, and this is
not related to the fee study, but thank you to
Michelle who worked on the fence project. Nobody
has done more to try and enlighten us and to
provide more information in the past month or so.
I want to tell you I'm glad I don't have your job,
but I am completely in awe of what you've managed
to accomplish. She was sending me more
information yet this morning, so I'd like to say
thank you especially to her for that.

I think this whole project is coming
along so well. We hope to have the final results
by the end of September if we're able to stay on
track. Talking with Lynne yesterday, this has
done so well and she's so encouraged by this, that
I am hoping we are going to be able to do, and I
haven't mentioned this to Mark and Mark yet,
possibly a second study taking the services and
staffing costs for the PTO and being able to
examine them in the same way. I'm hoping we'll
learn enough from what we've done with the fees to
be able to streamline it just a little bit and see
if we can also get an accurate accounting of that
to really be able to know how to cut costs, where
the costs are coming from, a better way to
allocate resources. This is a beautifully run
organization. Lynne and her people do a wonderful
job, but they're always anxious to do a better job
which is a great thing to know, and anything that
we can do to help them do their jobs better, to do
them more intelligently with greater transparency,
thank you, Mr. Doll, for that. I think that is
absolutely the word of the moment. It serves the
Trademark community, it serves the federal
government, and it certainly serves the USPTO. So
we've been very encouraged by this and we actually
hope to be able to go even further with it.

All of that having been said, does anybody else besides me have comments or questions?

MR. FARMER: Lynne, I think you had a few.

MS. BERESFORD: Yes, I have a couple of comments. I too and grateful we're doing this fee study and I'm encouraged that we're moving along, but just a couple of things from the macro view. The way Trademark fees are set up in the legislation unlike the Patent side of the house, there's no requirement that Trademark fees be set as individual fees to recover the cost of each service. So there is no legal requirement for instance for the postregistration examination we determine it costs $150 and we only collect $150 for it. The way Congress set up our statute, we can make determinations about policy determinations, we want to encourage filings so we can keep lowering the filing fee if we think that's the right thing to do, and again it's just
an example. But knowing what things actually cost
is always a good thing and as a manager that's
exactly what I want to know, so this is good.

Trademarks has had two really big

concerns in this study. One is that we need to
accommodate and know exactly how we're charging
for work in process because when you think about
what's going on in the operation both on the
Patent side and the Trademark side, a lot of work
in process. So it's very important to figure out
how to handle that in the accounting system
accurately. Secondly, it was very important to us
that at the end of the day we have a way to
validate the results of this study. We are very,
very encouraged that this is going on, but we
don't want to have a shot in the dark. We want to
have a way at the end of the day of having another
way of validating the results of this study. So
I'm very happy to hear that that is being
accommodated.

I'm also encouraged to hear the support

of TPAC for having a look at how costs are
allocated in the shared services providers, CFO, CAO, NCIO and OGC and the other areas that support the Trademark organization. So all of those things I think are just absolutely good things for us to look for when we're moving forward, so thank you.

MR. FARMER: Are there any other questions or comments on that issue? Hearing none, we're going to take a 5-minute break, and those who have seen me run meetings know that I mean 5 minutes. Then we're going to come back and we're going to finish up our agenda.

(Recess)

MR. FARMER: Before we go to the next item on the agenda which is a presentation by the OCIO, John Owens, I realized earlier that there was one thing I left off of my recitation of the understanding we've reached with the office regarding getting ready for these meetings, and that is not only will we try to offer up a draft agenda to the USPTO leadership 4 weeks in advance and they'll give us materials 2 weeks in advance,
but the other part of that, I guess it's a
corollary rule, is that they're going to let us
know if there are things that should be on the
agenda, either our executive session agenda or our
public one, just so we can be fully prepared for
everything and get feedback. That's going to be
in play too. So hopefully by the time we have our
public agenda up which we put up 2 weeks before
the meeting, it will reflect everything that will
be discussed and so that way folks who are
following TPAC also will know fully what we're
going to be covering, and we appreciate the
cooperation that the office has given us on that.

Now we're going to turn to a discussion
with the Office of the Chief Information Officer
about the ongoing status of our computer systems
and the milestones and the remediation there.
John Owens I think is going to chat with us, and so
folks listening at home will know, our
subcommittee there is Howard Friedman, Jeff
Storie, Tim Lockhart and Macon Delrahim, who I
don't think has been able to join us today. So
I'll turn things over to you, John, and thanks for joining us.

MR. OWENS: Thank you for having me. I guess in brief we're going to look at how we're doing with the OCIO I-Team Modernization Roadmap. At a high level, the overall message is good for the most part.

Let's start with the plan. The plan was a 5-year plan. Due to economics we have extended it to a 7-year plan, so that the activities are spread over a longer period of time. There are no major programmatic delays as yet which is good news. This will increase the likelihood of us encountering the risks identified in the roadmap living with a system that is unstable for longer, so that is an increase of risk. It will increase the cost living with some of those risks over time as we carry out contractors and other activities into multiple years.

Most current initiatives are on time. A few are experiencing slight delays of no more than a quarter. We have made significant progress on
our automated information systems. That's the acronym AIS. And many of them in both Patents and Trademarks, TDR, Madrid, OACS, SCORE tests and so on. The realignment of the ICIO office was also completed on this Sunday for Phase 1 which was a major initiative taking 12 separate organizations and merging them down into a streamlined five is that oriented toward our systems development lifecycle process.

Funding. From the top we have removed 47 million from the requested budget from the CIO shop. Many of these projects that were delayed will directly slow the progress of the roadmap because they were expected to replace systems that were failing. If you see the second line, business projects taking the largest hit. That is a 16 percent reduction. However, I have to say as part of management council I think there is a very big sensitivity in reductions in CIO because we know that over the last eight or so years there has not been a lot of forward progress in making the system stable, and though my share of the
budget is significant, I have the utmost respect for my peers in making sure that the money we do reduce does not completely stop by any stretch of the information and carries forward the roadmap. I think the proper thing to do was stretch it out over 7 years and I was happy to pitch in to help the office in general, but I don't think that I bore the brunt of the cuts that we had to make to keep solvent.

Just high level. AIS, again Automated Information Systems, these are our computers that is on track. We have completed 14 out of the 20 analyses that we were going to do this year. We have added a project for proactive monitoring of real-time analysis of our systems which will be slowly merged in. We have built the foundation for that project so we can get real-time analysis and feedback on performance and stability and whether or not the system is up and operational. That has also fed into a metric service. We're going to be using the Enterprise Data Warehouse here that the CFO shop runs to put our metrics
into a single place where we can run reports. This will eliminate the ad hoc nature of finding out whether or not something is broken by the phone calls that we receive and the help desk, so that we are well on our way there.

Process standardization. We have introduced a large number of processes by which to manage ourselves very much like there is a process to examine a patent or trademark. There needs to be a process to manage our information systems, so we have introduced the Enterprise Project Management System. I had already talked about the introduction of the systems development lifecycle which is based on the IEEE standard and also the monitoring and problem resolutions from the ITIL model, and those processes and standards have been adopted, the policies have been written, the standards have been documented, and we have undergone extensive training for our organization and our customers including Trademarks to keep them all in synch with our efforts.

Organizational strengthening. Again I
was one of the very few organizations that was
allowed to continue to hire. I feel very strongly
that it is the goal to alleviate the agency and
the CIO shop from a heavy reliance on contractors
and bring development resources in-house. At the
beginning of the year I was close to 100 vacancies
and I was allowed to hire 24, more than any other
organization, again showing the support that I've
gotten from management council and deputies. Of
those 24, 10 are hired and the remaining 14 are
either in the process of interviewing, what's
known as paneling, in other words people have
applied and we're sorting through the resumes.
One we did not find a suitable candidate for, and
nine are getting ready to be advertised right now.
I have also had the gift of support from my fellow
business organizations. I received 29 Patents
folks who are tech specialists from the
organization known as SIRA inside of Patents, and
one Trademark individual to assist me as a special
assistant direct report to me so that I can better
understand and learn the Trademark business. He
is also my direct adviser, his name is Chris Donnenger, on the Trademark business in general and what's going on with it. I have a counterpart, Bill Sturaskie, from Patents as part of the 29 as well. Bill has been with me for quite some time and I have found his advice when it's related to Patents invaluable, and I'm very much looking forward to Chris's efforts working with us and moving the progress of Trademarks forward.

We have met our goal of increasing financial transparency with my budget being online and available to all of my customers as well as my spending reports. We have initiated a new strategic IT plan to bring all of the IT plans from all of the agencies and customers inside of the USPTO together, including Trademarks, and we working on bringing that process back into the organization to properly plan a series of initiatives over the years to fully implement an online system completely electronically, so that is also good news.
Organizational strengthening continued.

We have done a lot of foundational training. We have gone back and we have trained our task order managers. These are the people who are receiving and managing the contractors of which I have over 300 contractors in my organization. We put them through task order and contractor training. We also made sure that we established new policies inside of those contracts to better manage them for deliverables, concentrating on the quality of the technical deliverables and not just the earned value management measures that we used to use, though EVM, earned value management is very important, it sometimes forgets quality and what we want foremost is a quality product that works well without a lot of maintenance. We have also again launched the SDLC training, we have done the Enterprise Project Management Training, and we are developing individual development plans which should be completed by the end of this year in which we will identify the technical training to concentrate on next year.
We have not met the obligation that we have set forward so far on the reductions of contractors. Unfortunately, lack of hiring ability has reduced our ability to get rid of contractors, thus no one be here to do the work, but it is going to be something that we will look forward to in future years.

We have completed a employee survey and compared the results to 2007. Job satisfaction within the CIO jumped up 13 percent, and leadership satisfaction went up 18. We have to address those things identified in the survey that will be announced in July and we'll carry that action plan into future years.

Disaster recovery. We have completed the requisition for enough storage space for failover. That was a major accomplishment and I thank the CFO's office and procurement for their support. We have provisioned additional communications circuits between us and Boyers, and Boyers is an Iron Mountain place in Pennsylvania, the company is Iron Mountain, where we keep our
secondary repository. Unfortunately, we filled up
the bandwidth between the two facilities, our
facility and theirs, so we were receiving data at
a greater rate than we could copy it up there, so
we had to fix that problem. We completed that
acquisition as well. That slowed down our copying
of the data a little bit, but we are still on
track to have it done by the end of the year.
Some of the failover systems, like I had announced
TRAM or configuration management of our email are
still underway. TRAM is complete. It was the
first system to be completely redundant up there,
and it is the fundamental Trademark system.

The other systems that were planned, for
example, search, we did not complete those
projects. I actually had to take the hardware
that was allocated for Boyers and deploy it here
in the United States Patent and Trademark Office
IT East Facility which is our data center to meet
the growing demand of search. Those devices we
use are a pretty heavy piece of machinery, pretty
large, practically a supercomputer, and they cost
about 1.2 million used, and I didn't have it in my budget to acquire another one, so the HP Superdome move will have to wait and so some of the systems were delayed.

Out of the aging platforms that were on the top of our list last time we were together, I discussed a discovery we had where we didn't have enough redundant filtered power in our data center. Through good planning and the cooperation of LCOR and our CAO's office, we were able to take IT West which is our lab services and provisioning area off of redundant power and put it on battery power for redundancy and take that redundant power and move it over to IT East which is the data center, therefore freeing up 90 kilowatts which was significant. It allowed progress to continue. And out of the 22 systems, 12 have migrated and we're catching up very quickly. That doesn't mean that the power problem is over, but we have a stopgap measure until the final power solution can be addressed. And of course, at the end of the year next year we will have completed to know...
whether or not we will remain in this building as
our data center or migrate to some place else.

Desktop stabilization. The Federal

Desktop Core Configuration or GDCC is on its third
revision. We had yet to deploy version one. This
is a National Institute of Standards and
Technology, NIST, guideline that all federal
agencies must comply with. We and several other
agencies were far behind. We are deploying the
set of configurations to help protect the agency
against intrusion. We are pushing to 16 percent
right now. This is a very complicated effort
because we had to create individual baselines for
each of the organizations. Trademarks has their
own baseline which is the particular desktop
configuration with all of the associated software
for Trademarks on it, and then test all of the
280- something settings, thereabout, give or take
a little bit, to make sure that we didn't break
anything. So we have started the push first with
CIO, CFO, and CAO, and we'll hit the two cores,
Trademarks and Patents, last. So that is
underway, but it is behind schedule. We have had
a 31 percent reduction in admin rights which is
significant. We're making sure to do that very
carefully as to not break anything. In some
instances, software had been deployed without the
CIO's knowledge that requires admin rights. Then
antivirus was not a complete rollout and had not
had latest and greatest versions, and we are at 90
percent on that. All of this will get us into a
position to establish the baselines and use a
tool, the evaluation is listed here in red, due to
funding, we pulled back the funding for this year,
with which we will monitor the environment. The
original plan as stated in the roadmap was to
slowly over multiple years replace the desktop
hardware here. Due to budget constraints that
will not be possible. So we have gone to a
secondary plan, a much longer-term plan, that will
allow us to purchase a piece of software, we're
evaluating several right now, to check and monitor
the environment to make sure that the desktop is
to the configuration that it was supposed to be,
that you haven't suddenly gotten admin rights, you haven't been to change your software settings, you haven't been able to remove your security precautions or add software, therefore diverging from the baseline of which we will manage and adding risk to the agency. This piece of software will allow us to do that remotely, so if you happen to get admin rights and install a piece of software, when you come in the next day it will be removed, and it will allow to keep to the baselines and instead of having over 5,000 different images we'll have a very small handful of like four or five to manage which will be much more manageable. This will guarantee that we will have enough test platforms and environments and less variation so we can properly deploy patches and updates to the desktop much more efficiently. Again, that evaluation is behind and is slowed down due to funding.

Service desk. We have received an ITIL, that's information technology infrastructure library. It's a well-known and documented
methodology for managing IT initiatives. We have
gone through an analysis of our organization by an
outside entity on how we would conform to the ITIL
model and that has centered around incident
management, problem resolution, change in
configuration management practices, and we are
rolling those out now and they should be
completely rolled out and policies and procedures
established by the end of the year.

Acquisition of a new help desk services
tool was something that we delayed again due to
funding. We wanted a more robust tool. You'll
hear many negative comments about the support
received from the help desk. A lot of that has to
do with having the proper knowledge base and the
proper tool to manage it. We do not have that
today and know we need it, and we will work on
getting that as soon as we can. I believe it's
slotted again for FY 2010.

MR. FARMER: John, please continue on,
but I did want to allow some time for questions
for folks, so if we could get on to the question
portion fairly soon that would be good. Thanks.

MR. OWENS: Sure. I'll just say then

that PTO Net III is on schedule and in fact

slightly ahead. I don't want to jinx myself, and

enterprise architecture is also on track.

Looking forward, we have quite a bit of

work ahead of us, but the good news is we're

pretty much on track. For nine separate

initiatives, two or three of them lagging slightly

behind is not bad compared to where we were when

we started. Nothing is irrecoverable, and I think

the team is highly motivated and we're working

very closely building the strategic IT plan with

our partner organizations, Trademarks, Patents and

so on to set forth a good plan for the future when

we have the ability to add more to the environment

rather than what we're now which is trying to

uncomplicated it. Go ahead, sir.

MR. FARMER: That's fine. Thanks for

your overview. I'll turn things over to Jeff and

Tim and Howard and Macon for any questions or

questions they have before we open it up further.
MR. STORIE: Thank you, John. I'd like to take just a minute or two to give some context to John's remarks, especially for the benefit of the folks who are at home. Last summer in 2008 we learned about a study that was being done regarding the infrastructure of the agency. I know that John and been here participating in an evaluation of our system and we were all surprised in the TPAC to learn that there were a great many deficiencies in the system and a lot of instability that we were not aware of. This came out in large part because of a philosophy over the last 7- or 8-year period that moved toward outsourcing a lot of the programming functions and relying more on contractors which created a situation in which the expertise and the information about our systems was leaving. We didn't possess that information and we didn't have control over our own systems and we didn't really understand in many cases even what we had, and so John came into that.

The efficiencies that the Trademark
operation has been able to achieve under Lynne's leadership are really dependent upon the IT infrastructure. So anything that tends to jeopardize the stability of that infrastructure also jeopardizes the continued success of this agency. As a result of that, when we heard about the situation and the predicted costs and the challenges of that, that became a very high priority for us as a committee.

John, we'd just like to thank you for the efforts that you've undertaken. You've been the CIO less than a year, and over the course of that time period, those of us on this subcommittee have had the benefit of a lot of contact with you, also with the help of your chief of staff, Scott Williams, to keep us apprised of what's going on. I do think that it's important that people understand the challenges. We've had a chance to spend a lot of hours talking to you about -- Tim might say getting down in the weeds as to exactly what you're really dealing with on a day-to-day basis, but I think it's important that the
Trademark community understand that while we as
users get on every day and we logon and we do our
searches and it's working today and it seems like
everything looks really good, it's taken a great
deal of effort to continue that effort and to keep
the system running, and we have a lot of
challenges to maintain the same service level that
we've enjoyed over the course of the last number
of years because of the stresses on the system and
the age of the gear that we have.

The legacy system that you're continuing
with is something that as we have learned was not
centrally controlled. It seemed to be something
that grew organically sort of ad hoc. It was not
really controlled from a centralized perspective.
That's had a big impact on your ability to make
changes only because you're still trying to figure
out what we have. Could you speak to that just a
little bit?

MR. OWENS: That is most definitely
true. The organization over the last 8 years had
taken a very organic growth methodology toward the
system's development and with the lack of
documentation of proper process to manage that
development, as people have churned out of the
organization, as contractors have left or have
been reduced due to budgetary constraints, we have
lost much of that knowledge, so much so that a
good portion of my time and the time of my
organization is going back through the actual
systems and documenting them which was in large
part what the SWAT team was meant to do so that we
could properly know what we have. Of course, the
SWAT team was also going to then fix anything
immediately found and then plot or document a
future plan for growth on a more modern platform
very akin to a large corporations web and web 20
initiatives.

So, yes, it has been a detriment and
every once in a while we do make a mistake and
break something as John Doll will attest to when I
walk into his office and say best of intentions,
but we broke something today and I'm very sorry
about that. We've had a couple of those
incidents, not many, but for the size of the
organization we have, it is crucial that we have a
properly documented and developed and controlled
environment and a process by which to manage that.
I think that we as an organization at the USPTO
have been very receptive of developing that type
of environment. It's just taking a little time to
map what we have.

MR. STORIE: Thank you, John.

MR. FARMER: Are there any other
questions or comments from the IT Subcommittee?

Tim?

MR. LOCKHART: Yes. First of all, I
want to thank John and Scott and your colleagues
and your team and staff for coming in yesterday
and giving us a great over 3-hour briefing on
this. And thank you in particular for being very
patient with my questions and probably those of my
colleagues as well. I appreciate your working
through that.

In the wake of your reorganization of
OCIO, do you still have a group of folks who are
supporting specifically Trademark projects? I see
on the org charts you've got under application,
engineering and development, Trademark
development. Is that what those folks are doing?
Are they dedicated to Trademark projects?

MR. OWENS: They are. In large part
that organization has not changed. The Trademark
development organization is part of the
application, engineering and development
organization and are dedicated program and product
managers who help facilitate communications with
Trademarks and the Trademark team as well as the
development organization which I separated out
into software architecture and engineering to
really look at the holistic view of the Trademark
systems and help plan a migratory method by which
we can modify and enhance those systems without
detriment to the current performance of the
system.

MR. LOCKHART: How many folks have you
got on that team now?

MR. OWENS: Somewhere between a dozen
and two dozen. I can get you an exact count.

MR. LOCKHART: And you mentioned that you've had folks loaned to you from the Patent operation and one person has come over from the Trademark side, and obviously given that the Patent operation is a lot bigger than the Trademark operation, that would in large part explain that difference. But assuming that the Trademark operation had more people to lend, and I don't know that they do, but assuming that they might have some additional folks to lend you, could you usefully employ some more people like Chris?

MR. OWENS: Most definitely.

MR. LOCKHART: What sorts of backgrounds would you be looking for, and roughly how long would you want those people to come in?

MR. OWENS: We had the same conversation with Patents. Your folks are coming over for a 6-month to 1-year detail. That's minimum 6 months because there is some upswing and I'd like to get some of them, and then a 1-year maximum.
I'm looking for a product, program, project managers. I'm looking for analysts. Anyone with some technical skill that can help me piece apart the past history of the systems, how they work and so on. Some of that knowledge most definitely resides in Trademarks. And I'd be willing to consider and accept in a mutual conversation just about anybody.

MR. LOCKHART: Very good. A final question that I have. Are you comfortable with the input that you've gotten from the Trademark operation that's going into the Trademark section of the strategic IT plan? Is what you have complete? Is it comprehensive?

MR. OWENS: I think it's a great starting point. The SITP hasn't been a process by which we have gathered requirements since it was last done in 1999 and the year 2000. The SITP I think is the first draft. We have the general knowledge from Trademarks of what they'd like to do, and Lynne's staff has been very cooperative in working with us. I don't think we've fleshed out
the entire plan as yet. I know the organization would like to build upon what they have right now, in fact they'd like to charge forward, but I am reluctant until I strengthen the foundation of the building before we add more layers. I am very reluctant to keep adding to a problem that I didn't fully understand. I'm working very quickly to understand it, but I very leery about complicating it. So I believe the first years of the SITP which is we're talking about what happens where it will be a more measured approach to what gets done, and then things will pick up in the out years.

MR. LOCKHART: Thank you very much.

MR. OWENS: Could I have 2 seconds, if you don't mind? If you'd turn to the last slide, the one before this if you would, there was a request. I don't remember off the top of my head who exactly made the request at the last TPAC. We talked about the test product and how it was less than acceptably stable. At the time we had done some usage computations and realized that as the
product took load or more users it would fail. So we added it to the SWAT team's list and they immediately corrected a good dozen or so issues with that product and solidified it significantly. It no longer crashes under extreme load, it just slows down which okay. We also plotted a future evolution of the product in relation to how we're also going to manage a sister product TRD. However, to meet the request of TPAC, we have developed a webpage which I found out is available today. It does not contain real-time data. It is delayed. Again we are working on that real-time data analysis system. It is our hope to make this real time. But once a week or once every few days this website will update which will tell you when we are experiencing increased usage so you can try to plot your usage accordingly. So if you could help me spread out the load, the performance of everyone all together will be improved. This was a suggestion from TPAC, we are happy to meet this suggestion, and we are looking to turn it into a real-time monitoring system sometime next year.
with the rest of the introduction of our system
and continue like we did with TESS, improve the
performance of the quality of the product for our
customers. Thank you.

MR. FARMER: That's fine. Thanks, John.
As a matter of fact, I hope you get the word out.
I don't know when we got this presentation, but
Eleanor, if we could get help getting this up on
the TPAC portion of the website so that the public
can see it and that way they'll see that address.
Also I know at least one person is here from INTA
today. If you could help us get out the word that
that is there so that folks have a place to look
as to when it's easier to get on the system that
would be really appreciated. Before I ask a
question, does anyone else on TPAC have any other
questions for John?

Here's one I have, and then we got one
from cyberspace. Our email box works. Here's the
one that I have, and that is a messianic goal of
TPAC is to reach the day when trademark
applications can be processed by the Trademark
operation soup to nuts entirely electronically. I think from the public's perspective it appears to be pretty doggone electronic, but there are still some things that go on behind the scenes that are not entirely electronic. It's the understanding of TPAC that we can't do that quite yet because we still need to get some computer system remediation done in order for that then to be worked on. I wanted to see, John, if you had any forecast of how far down the road time wise we need to go before we may be in a position to make those sorts of technological changes so that the Trademark operation can process applications soup to nuts electronically. Because of we can, then the total pendency time will reduce without having to make any great personnel shifts or make folks work harder, it's just the electronics will allow us to do a faster job.

MR. OWENS: The good news is our current analysis by the SWAT team of the infrastructure while we're documenting it and fixing immediate issues, we are also plotting out that future
evolution. We have had the honor of bringing to Trademarks a small handful, less than six, projects to go forward with foundational changes for next year. They won't really contain large, sweeping function sets of new features to our customers, but what they will do is strengthen on a more modern platform all using modern web 20 base technologies the infrastructure that we do have.

The roadmap calls out that no major initiatives or projects were going to take place until midyear 2010. Unfortunately, with the delay in funding that will probably stretch out to the beginning of year 2011. But that doesn't mean nothing is going to be done. We are going to continue to improve and strengthen the infrastructure we have. We will add features that we can along the way that make sense. But it also gives us the time to stand back and look at the tools we have in house as well and properly plan for their evolution.

For example, the FAST 1 and 2 products
for examiners, I'd very much like to see that
moved onto a modern platform as a single entity
and managed uniformly instead of having two, and I
think we will have the time to do that now by
bringing in the expertise for UI experts which we
don't have in house and requirements experts which
we don't have in house and avoid some of the
mistakes of the past.

So it's a blessing and a curse. Again,
I know my customers Patents as well would like to
move forward at full throttle. We will make
adjustments when necessary to the systems, but
again not to repeat the mistakes of the past and
grow organically, but grow in a more measured and
monitored fashion. Given where we are, it would
be my recommendation that we can make the
stability improvements now, but really getting the
end to end which would be contained in the SITP
and when it's fully vetted I've promised to share
it with your subcommittee as well as yourselves.
I think you're looking at before major rewrites
done at least 2 years and it's going to be a
several-year effort.

MR. FARMER: Thanks. That's a very helpful answer. I appreciate it. Here is our question from cyberspace. I said I would give priority to the folks who came here in person, so why don't you come have a seat right there and you can turn on that microphone, and introduce yourself, please.

MS. KING: Michelle Sarah King, International Trademark Association. Thanks so much for the roadmap. I have a question on the sample usage page. If you take a look at it in the typical 8-hour day, and I assume that's Eastern Time on the little chart.

MR. OWENS: It is.

MS. KING: The increased usage is basically 9:00 to 5:00 on a sample day for both TDR and TESS. What if anything can be done to work on the slowness, continually getting comments and feedback besides working outside the normal 9:00 to 5:00 or moving to the far West Coast and working because maybe the optimal usage would fit
in that pattern. But this continues to be
troubling for trademark owners and filers. As we
work to end-to-end electronic processing, when
there's an increased usage and a slowness, that's
when people revert back to sort of old-fashioned
methods and way I'm going to file paper or another
ting. So on behalf of INTA I'd register the
question.

MR. OWENS: The status page is just
that, a status page. It was meant to bring to
light in Eastern Standard Time what the heavy
usage hours were. The system itself, TDR and
TESS, were crashing multiple times a day as the
system would fail. We'd have to reboot the
servers and there would be long outages. We have
resolved those to the best of your knowledge now
and we haven't have to reboot either of these
systems in quite some time, though I will say we
did have a back-end database crash of an unrelated
system that's tied to it. Again it's all one big
jumble right now and that failure has caused some
issues.
What we've done is brought forward a plan to redo or rebuild TDR and TESS on a more modern, scalable web 20 environment. I know the product called TDRNG has already been presented and accepted by Trademarks. I don't know the current status off the top of my head of the rewrite of TESS. I am limited to some degree by the systems that I have there. I do believe that many of them need to be rewritten, but it is the environment again for the short period of time we are going to have to live in. We stopped the immediate failures and crashed that caused hour-long outages multiple times a day. That was a significant improvement. In fact, I've heard from Lynne and Debbie that that improvement has been seen and fed back to us as it's much better.

What this website is is the first example of where I am going to show you how the monitoring is going. It is meant as a guide. If you are on the West Coast or such, I would ask you to push your transactions as late in the day as possible, and if you are on the East Coast as
early. But that is all this was meant to be. It was meant to say I heard you, I understand that it's important that you get the data, and I am meeting the need for that data. But there is no silver bullet. There is nothing that can be done anywhere to instantly just sprinkle pixie dust and fix the systems. It's going to take a couple of years. But what I'm trying to reassure you of is we are doing the investigation. I have proven to you that we are making improvements. I have in my mind proven to you that we are listening to your desire to monitor and measure, and that we are committed to fixing the Trademark systems to make them the best that they can be in the future. I know it's not the answer you want to hear, but it's the best one and honest one I have.

SPEAKER: I had a follow-up for Michelle. Would you go back to your constituency and ask them whether or not they've noticed that there are fewer outages? Service may be slower. I go on the bulletin board for INTA and so I hear all of these discussions, and it was my impression
that people felt things had gotten a little bit better, things were slow that they weren't crashing as much. Would it be possible for you to check on that and see if there has been some improvement from their point of view?

MS. DENISON: I can speak to that. We have discussed it. I'm also the Chairman of the USPTO Subcommittee for INTA and we discussed that at our last meeting, and there was general consensus that there had been a significant improvement.

MS. KING: We definitely note an improvement. Since the last TPAC meeting we went to our constituency and we definitely have noticed an improvement, so we thank you for that. But obviously the slowness is still noted as well.

MR. OWENS: At the core design of the systems they weren't built to scale well. They were built a number of years ago on an older platform. They are tied to other products and services that are inside our own control that they shouldn't be, and when they're under load also
increase the time it takes and decreases the performance of this system. That's part of that untangling the web that I talked about earlier when I brought in the chart that showed how everything is tied to everything else. So again it's like the weakest link in the chain. If you have one of the links that's relied upon to get the job done and it is overloaded or isn't scaled properly, then it slows everything down.

I can tell you that major software development initiatives and piecing apart the problems that we have here, just takes time. As much as I'd like to rush it, and we are moving very quickly, I wish you could see it more, it's all about also managing the risk. I have to keep the systems up and available for the examiner to examine and the public to access so that it's steady and measured. What I committed to you was document the environment, immediately resolve the issues, improve the monitoring so we know when things are broken, and develop and plan, and then working in concert with Trademarks, execute on
those plans. TDRNG the new version of TDR that will be much more scalable, it will be developed in a very service-oriented way so it will be in large part independent of other projects and products, and I know that it will scale much better. But that development effort is going to take about a year. These things don't get developed overnight, and we have to use our best practices and policies and procedures to make sure it's developed the right way with quality in mind and not just thrown together quickly which is what we have.

MR. FARMER: Thanks, John. Just to show that we do honor our listeners from cyberspace, I got this question that came in. I think we can knock it out quickly because I think I know what the answer is, but I'll read it in. It says, "Was it imprudent to hire contractors to hand IT problems because their sole purpose is to solve them? Without IT problems the need for their services diminishes, and how come the inherent conflict was not addressed?" We're a little short
on time. To me, that seems to be mainly addressed to prior practices before your administration and that you're trying to take a different path and grow your staff. But if you've got any other comments, feel free.

MR. OWENS: I would agree with it. I am trying to grow the technology of my organization so that we are not completely reliant on contractors up to and including the design, architecture and development of products and using contractors as an augmentation staff and not the sole control of development.

MR. FARMER: Thanks, John, and thanks for your time. I'm going to turn things over to Lynne Beresford now, our Commissioner of Trademarks to give us some comments.

MS. BERESFORD: Thank you very much, and specially, John, thank you to you. For the last how many years I don't know we've had constant rebooting of Trademark systems as they fail, as they have memory leaks, and the fact that we've solved that issue on these two systems is
I'd just like to talk just for a few minutes essentially what's going on in Trademarks, and I'll be talking from a document that was sent out to TPAC members and is available in this room. It's a one-page document that lists Trademark performance measures.

MR. FARMER: Lynne, would it okay it we have this posted on the website too?

MS. BERESFORD: Of course. We can certainly post it on the website, and if anybody wants their own personal copy, they are welcome to email me and I'll be happy to send them their own personal copy which is lynne.beresford@uspto.gov.

Just a few things about our performance measures. Our quality performance, and this is as of May 31, we are exceeding all of our quality measures for first action and final action. And in terms of pendency, our first action pendency is at 2.4 months, and I say this because people who are outside this room listening, and if you're a practitioner pendency is something that matters to
you because it gives you some idea of when you can
expect something from the office, our first action
pendency is at 2.4 months and our final action
pendency, that's pendency to disposal, to
abandonment or registration excluding interparties
and suspended cases is at 11.4 months. So things
are quite speedy here in the Trademark
organization.

The filing numbers as of this month, we
are down about 14 percent, our filings are lower
by about 14 percent, than they were a year ago, so
comparing to last year. This has produced some
challenges for Trademark management and I think
we're handling this well. We have had a bunch of
quality details announced for our Trademark
examining attorney staff and those quality details
have been absolutely wonderful because they've
given us an opportunity to look at some things and
evaluate some things that we would not have been
able to do under normal circumstances. We have
ds folks at the TTAB working to update the Trademark
Board Manual of Procedure, we have folks analyzing
our searching across the core to see how search methodology can be improved across the core. We just have lots of different quality initiatives going on and we're very happy about how those things are working.

Finally, just some late breaking news, the trilateral partners, Japan, the European Trademark Office and the USPTO, have as many of you know an agreement to produce the trilateral database, that is, a database of classified goods and services that are acceptable to all three offices. We've been working on this database and you can see example of it in our Trademark manual of goods and services. The IDs that have little 't's by them are trilaterally approved IDs. The good news is that yesterday Canada signed a memorandum of understanding to dock onto this trilateral ID database, so that's once piece of good news. Canada will now be going through that list of IDs and approving a large percentage of the ones and you'll now know that those are all acceptable IDs in Canada too. The second piece of
good news with the trilateral database is we're poised any day now to sign a similar memorandum of understanding with the Korean office, and so now trilateral IDs will be not only acceptable in the three trilateral offices, but also Canada and Korea. The third piece of good news is that at our last trilateral meeting the European office agreed to give us their translations in all of their languages for all of the agreed-upon trilateral IDs. So soon coming to the website that you all know, uspto.gov, the trilateral ID manual will have translations in the, I don't know, 15 or 16 languages of the Office of the Harmonization for the Internal Markets. We'll be adding the Canadian information, and of course we'll be adding the Korean along with the Korean translations in Korean of the IDs in the ID manual. So I think this is another step in making this ID manual much more useful for Trademark practitioners. So I think this is a real step forward.

I just want to make this the newscast
from Trademarks. I think that's the high-level news from the Trademark organization and I think people might be interest in it, and if there are questions, I'm happy to answer them. Thank you.

MR. FARMER: Thanks, Lynne. Lynne, I wonder if you could give us a few comments on how the Trademark organization is holding up this year on a revenue versus expenses basis given the current recession that we're in.

MS. BERESFORD: Trademarks is in the enviable position of having a surplus of money partly because we came into the year with a surplus of money, but also as a number of agency-wide projects have been cancelled, the money that was allotted to those projects from Trademarks is coming back to the Trademark organization, or some of it is coming back to the Trademark organization. So the result is that we're looking ending the year with a surplus of somewhere between $60 and $70 million we believe at this point given our projections for filings and for where the economy is going.
We're I think very happy with the way things are working. We're managing to maintain our inventory at a certain level. I think I mentioned our first action pendency is at 2.4 months, so we're maintaining what we think is a good inventory of cases on the electronic shelves. We are very concerned. We don't want the inventory to be too low because this produces some issues with staffing perhaps down the road, and we don't want the inventory to be too high. So we're doing the really difficult job of managing our inventory to where we think it should be for the health of the organization and for the benefit of trademark owners.

MR. FARMER: Thanks, Lynne. To clarify the record, tell me if I have this right, it's rough understanding that you entered the fiscal year also with a surplus of around $60 to $70 million.

MS. BERESFORD: Yes.

MR. FARMER: So what you're hoping to do is to hold onto that surplus, so really you're
looking at this fiscal year as a break-even year.

Is that about right?

MS. BERESFORD: Yes, that's correct.

MR. FARMER: Also I'm going to guess

that your forecast of holding onto that surplus is

depending upon things not getting worse or staying

bad longer than anticipated, and thus that's a bit

of a rainy-day fund for you.

MS. BERESFORD: Yes, that's correct.

Probably everyone in Trademarks constantly

monitors filing levels and filing predictions, so

we're very cognizant of how things are happening,

and again we expect under the current

circumstances to end the year with a surplus and

be able to carry on into the next year where we

will continue to monitor all of these things and

make decisions about how to handle what's

happening.

MR. FARMER: Tell me if I see this right

also. It appears to me that the surplus is a bit

of an insurance policy in that you've got a fairly

senior and experienced Trademark examining
attorney corps, for example, and my personal
observation is over the past several years that
the quality of their work has really come up.
Thus, if that surplus gets reduced, then there's
going to be an increased risk to that examiner
corps. Is that a fair statement?

MS. BERESFORD: I think that is a fair
statement. I'm so lucky in Trademarks with the
staff that I have and the examining corps is a
fine example of that. There are a lot of senior
people, a lot of extremely good examiners. As
long as it makes management sense, we want to hang
onto those experienced examiners. We have learned
that it's not the wise thing to do to get rid of
people and then have to hire back inexperienced
people and then have all the training costs that
are associated with that and have perhaps a lower
level of quality. So our plan of course is always
to try to maintain as long as it make sense the
quality and the staff that we have because we have
a known quantity here. They're very well trained.
They're very experienced.
MR. FARMER: Speaking of that, I understand that there are some possible opportunities being put there on buyouts and maybe early retirement offers to allow you to keep enough work for your examining attorneys while not pushing anyone aside. Do you have any comments on what's going on there for the Trademark community?

MS. BERESFORD: Yes. We've made a proposal to management council to offer early outs and buyouts to an identified set of folks, you have to be eligible for these things, you have to have a certain amount of years in the office, et cetera, to Trademark examining attorneys, some of our LIEs and our postregistration paralegals. This would allow people who wanted to to leave the USPTO a little earlier than they might have planned otherwise, sweetened by a little additional money. The money analysis is that it will save Trademarks money in the very near future if we have some success with this buyout/early out plan. Again we're seeking approval from management council, and once that is done then we
will have to take our case to the Office of Personnel Management and see if they will approve our plan for buyouts and early outs.

MR. FARMER: I think the sense of TPAC, and members of TPAC, please correct me if I'm mistaken, is that we fully support your efforts there because we look at that as a humane way of proceeding to give folks the opportunity to take advantage of it if it's fiscally right for the Trademark organization and thus that helps out the folks who don't wish to take it also, and so we're supportive of that.

Another thing I wanted to touch on is I understand there's been a change in your initial pendency goal. Historically and with TPAC's blessing it's been 2.5 to 3.5 months for initial first action pendency, and do I correctly understand it's now down to 2.0?

MS. BERESFORD: Yes. I believe the final decision was made last week to change our goal for this fiscal year which will end at the end of September, we had chosen the first action
pendency goal of 2.5 to 3.5 months. We again believe that within the Trademark organization that this is a goal that gives us enough management flexibility to be able to manage our work resources. It beats the requirements of our users. TPAC is certainly on the record in their annual report last year supporting this goal, as is the USPTO subcommittee of INTA. So we felt that the 2.5 to 3.5 month goal was one that supports the needs of the business unit and the Trademark community. And we think that is in fact, and I can tell you it is, a difficult goal to maintain our inventory and other things in this 2.5 to 3.5 range in this period of reduced filings. It's a difficult management task to do that. However, the decision was made by our acting under secretary to reduce that goal to 2 months. I believe it was made last Thursday. So, yes, that's correct.

MR. FARMER: Thanks, Lynne. A little bit of background here, and again I'm going to speak for what I think is the sense of TPAC, and
if I get it wrong let me know. We've looked at this issue in the past and we've been asked what do we think of initial first action pendency of 2.5 to 3.5 months, and we've always said, sure, in the costless world we'd like things faster than sooner, that registrations that are issued faster rather than later are good for the Trademark community. But we have recognized that things have a cost and that within the Trademark organization we on TPAC have always recognized that you need to be able to staff to a level of pendency. So for example, if you were going to aim for 1.0 months of pendency rather than 2.5 to 3.5, you'd have to have a much bigger staff to be able to handle the peaks in the chart, and then that creates some real challenges for you because then you've got even more people looking for work to do when the troughs come along. Thus, we've always realized that it's a tough management task, but we've always thought that 2.5 to 3.5 was a good balance between getting things done quickly for the Trademark community and realizing that
that gives you something to manage toward in terms of personnel, and also that it doesn't cause the Trademark organization to have to carry a too expensive staff because it's larger and thus that reduces opportunities for potential fee reductions, it could lead to fee increases, it could create other management issues, so in the past we've endorsed that. As a matter of fact, I know that Secretary Locke is interested in stretch goals for everybody, and believe me, we in TPAC are always interested in improvement, and Lynne knows that from chatting with us that we're always pushing the envelope. But I think it's the sense of TPAC that we see 2.5 to 3.5 months as a stretch goal because it's tough to manage to that when you've got more work than you'd like or less work than you'd like, but that we're really concerned about keeping the high-quality examination staff that we have and thus we realize that part of what you have to look at here is making certain that we can have a sustainable operation and thus we've saluted keeping things within those two goal
posts. Have I misstated that anyone on TPAC or
anything you want to add to that? Tim?

MR. LOCKHART: John, I agree with your
comments and I would just point out perhaps the
obvious, that although a pendency of 2 months is
certainly a goal, lower fees or keeping fees as
low as possible is another goal, and having a
stable workforce is another goal. These goals are
mutually interlocking and there's the law of
unintended consequences, so if you emphasize the
2.0 pendency goal to the expense of the other
goals, perhaps those goals suffer.

MR. FARMER: I'm going to think, Tim,
that that may circle back to a question you asked
earlier about the IF infrastructure, and that is
if you've got folks looking for work to do, we are
always interested in anything that can be done to
help the computer system if there are any folks
who ever want to go over there. Are there any
other questions or comments from anyone else here
on the issue? Mary?

MS. DENISON: Mine is on the trilateral,
so if you want to finish this up that's fine.

MR. FRIEDMAN: I would just add that I think there are already things at Lynne's disposal that could help her reduce pendency if she ever needed to, whether it's bringing back overtime or increasing bonuses. So I think there are plenty of tools already available to her to get whatever goal she needs to get to whether it's 2.5 or 3.5. It's almost mischaracterizing 2.0 as a stretch goal. It's not a stretch goal that there are already tools available to her to get to that point.

MS. BERESFORD: I think, Howard, you've made the kind of obvious point here that 2.0 isn't a stretch goal. It's easy. All we have to do is put more people in examination. The difficult part is managing our pendency so it matches our workforce and meets our user needs. That's the difficult goal. So I thank you for bringing that point up.

MR. FARMER: Maybe, Mary, before we go to your comment, are there any other comments or
questions on this particular topic?

MR. DELRAHIM: I have a follow-up.

With the current drop in applications without
incurring further costs in overtime or additional
resources with the resources that you already
have, is it likely that we could hit the 2.0 goal
given the decreased workload or would you still
need to incur additional costs to meet such a
goal? Then after that perhaps we can give the
acting under secretary an opportunity why the
decision was made last week. Of course, if the
Secretary of Commerce has the desire, that's
perfectly understandable.

MS. BERESFORD: In the short term, it's
totally possible to reach 2.0 months. The issue
is more over the long term, that is the result of
having an inventory on the shelves? What is the
result for staffing purposes and other matters?
And having been in this organization for 30 years
and watching how the work moves, et cetera, our
sense has been that it's very important that we
maintain a certain electronic inventory of new
cases and manage within that inventory, and that
was of course why we selected the 2.5 to 3.5
months. Does that answer your question?

MR. DELRAHIM: Yes, thanks.

MR. DOLL: I can talk about the decision
and why I made the decision. I'd be happy to
answer any questions. Interrupt me at any time.

I'm looking at stretch goals and the
goal was actually changed at midyear and there was
plenty of discussion the midyear about changing
the goal, and at midyear I set the goal and I gave
Trademarks the opportunity to come back with
reasons as to why I should reconsider that. It
seems funny to me that I would go to OMB where we
actually set forth our goals, we give them our
goals at the beginning of the year, or to DOC and
say that I was going to set first action pendency
in Trademarks at 2.5 to 3.5 months when we were
already achieving 2.4 months, when had already
taken 10 full-time Trademark examiners offline to
do other details. I think managing the pendency
is a great opportunity and a good management tool.
But I agree with Howard. It is easy and we have plenty of tools at our disposal to reduce it from 2.5 to 3.5 to 2.0 and then to maintain that managing the pendency through tools such as overtime, such as bonuses, such as details.

I'm very concerned about taking highly qualified, competent Trademark staff and allowing them to take buyouts and then possibly next year when we get out of this trough or a year and a half from now when trademark comes back when the economy comes back and then we start hiring new, untrained examiners. I think it's a very wise and prudent option to try to maintain as many people as we possibly can, and if that means driving pendency down at this point in time through the experienced staff that we have and then possibly managing back up if the demand is higher than the current workforce, I would love to see us maintain as many Trademark examiners as we can and then manage pendency. I did set it at 2 and 11 and it's set for 2 and 11 for the 5 out years also with OMB, but with every budget submission we have
the option of adjusting those goals. So it would be just as easy for me or for the new under secretary to say in view of the increased filings and in view of the current staff that we have and in view of INTA's desires and TPAC's desires, that we could easily go back to 2.5 to 3.5 if that was acceptable to the community. But I could not see myself going to Secretary Locke and saying I was going to set a goal at 2.5 to 3.5 when we were already achieving 2.4 and had more than enough resources and tools at our disposal to drive the goal down to 2.0.

MR. FRIEDMAN: John, I want to be real clear about this because either I wasn't clear or you might have misinterpreted my remarks. I wholly support Lynne's interest in staying between 2.5 and 3.5. I wholly support TPAC's statement in both its annual report of last year and Mr. Farmer's representation that we think for various reasons it should stay between 2.5 and 3.5. As far as the stretch goal which I know is something that Secretary Locke is always interested in, the
point I was trying to make is it's only a stretch
goal if it's a stretch to meet the goal, and if
there are tools already available to Lynne which
there are overtime, hiring, adding bonuses, it's
not a stretch goal. What I think gets lost in the
translation which I haven't really heard from you
is who's goal are we trying to meet, because I'm
telling you clearly the internal customers, NTU,
has no interest in anything less than what it
currently is.

We've heard today and we've heard in the
annual report going back not only last year but in
prior years that our external customers feel very
comfortable at a level between 2.5 and 3.5, and if
we're serving the needs of not only the internal
customers but the external customers, whether you
call them the goals that are stretched or not, if
the goals are being met by the very same people
who file the applications, I don't really know
whose interest we're serving if we're stretching
however you want to define it from 2.5 to 2.0.
And obviously the composition of the people here
represent not only the people who work here, but
people who are from INTA, people who work from
corporations, and I think it's been made very
clear from the comments here by both our
chairperson and the rest of the members that they
feel very comfortable between 2.5 and 3.5 and very
uncomfortable going to a level less than that.

We've sort of touched upon this, but I
can tell you and you know this, we've been sort of
in a crisis mode for a few months now. If we've
been a crisis mode now for a few months now, I can
only imagine that it would be like if pendency was
reduced by 25 percent. We'd be running around
every day wondering if we had too many people, if
costs are exceeding revenues which not a good way
to operate a business. And you know from our
conversations that the people we represent now are
very concerned about their jobs. They would be
that much more concerned if we reduce pendency any
more.

MR. DOLL: I want to start by
apologizing if I mischaracterized or spun what you
said wrongly, and I certainly didn't mean to do
that and I didn't mean to draw you to my side of
the table even though I may need some support at
this point in time.

MR. FRIEDMAN: I'm happy to help you on
the Hill with telework legislation.

MR. DOLL: Thanks. I'm a little
surprised to hear that INTA or that practitioners
don't want first action pendency as low as it can
reasonably be driven. If the office can manage
pendency to 6 months, to 6 weeks, to 2 months, why
wouldn't the community want to get as fast a
service as they can get as long as quality is
maintained, as long as the stability of the
workforce is maintained, and the guarantee that
they will have jobs and that we can manage to that
pendency? Because I truly believe that Lynne and
her organization can manage to a much lower
pendency than 2.5 through the tools that she has
and through the options that she's now exploring
such as the details of her examiners to do other
things or possible buyouts at a point in time.
I'm concerned about seeing a lot of experienced Trademark examiners leave the office at this point in time because we may be at the valley. We may be at the bottom of the trough. And I think trademark filings will bounce back and I think they will bounce back much more quickly than patent filings normally bounce back. So it wouldn't surprise me if we don't go into the next fiscal year with increased filings. But I think we have the ability to manage the 2.0 and 11.0, and I did give the Trademarks the opportunity to come back with written comments and explain exactly why the goals that I had set were not the correct goals or were not achievable or were not advantageous to the Trademark organization and the users and I was simply unpersuaded.

MS. PEARCE: I'm not speaking as a member of TPAC. I'm just speaking as a member of the Trademark community on this. I manage a large Trademark portfolio and you wanted to know, John, what's the reason that we might not want pendency to be as low as it could go. I file a lot of ITU
applications, intent-to-use applications, as I'm sure most people in the room do. One of the things I've discovered is sometimes when pendency gets too low or I get caught off-guard, I'm planning on filing a specimen, an allegation of use, I go into blackout period too quickly, I've got to sit on that specimen and wait until I get a notice of allowance before I can file it and then that takes longer for me to go to registration. There are many times I'm actually grateful that pendency gives me a little bit of breathing room to be able to get those allegations of use filed, get them accepted and made of record before the application is examined, and then I have a very clear and quick road to registration.

So from that point of view, and that may be why the Trademark community is comfortable with this, we have our own rhythm for doing things and many times when you file ITU, you're doing it to reserve a mark, but you know you're going to begin use fairly quickly and so the reduced pendency sometimes I've gotten caught with a specimen, I've
missed it by like a week because the examiners were a little too quick to the draw and I've had to sit on that until I got a notice of allowance which actually results in it taking longer usually for me to get to registration. So that's just an example.

MS. LEIMER: This is Jackie Leimer. I'm at Kraft Foods. First, wearing my Kraft hat I will agree with Elizabeth's summary. We too face pressures internally. We do all of our Trademark filings in house, and while we have a good sized team for it, I'm grateful to have them. We are stretched right now internally because of our own need to manage tightly, so having a little extra time is not something my team is sorry to have, and I won't repeat Elizabeth's statement because we have those same concerns.

Wearing my TPAC hat, I was on TPAC last year when we endorsed the 2.5 to 3.5 month period. Part of the reason I felt comfortable about that and liked that approach was it offered a range, and I'm a big believer in deferring to
management's ability to have a range of options to
meet their performance goals. So to me, having a
range of pendency made a lot of sense and it gives
the leadership team a lot more options to look at,
all of the needs, in addition to pendency which is
important for us. I'm pleased with what you've
been able to do here in driving pendency down from
times when I've practiced when it's been
significantly longer than that. So not to take
away from that great performance, but I know there
are other challenges and competing challenges, and
so I prefer to endorse management's opportunity to
have that ability and flexibility to look at all
options.

MR. FARMER: I think also part of the
reason why we supported 2.5 to 3.5 is because it's
not costless, and one thing that really concerned
me was the fact that this goal will remain in
effect if I understood it correctly potentially
for 5 years, although it could be altered, and
that the economy is going to come back at some
point and at that stage this would be expensive to
the Trademark operation, it would affect the way Lynne has to staff the office, and that in turn can negatively affect the Trademark community because it could mean that fees to up or the opportunities to reduce fees goes down. So I think it's really important to understand that going to 2.0 is not costless, it has a cost, and we on TPAC understand the cost. We think that given all the tradeoffs that 2.5 to 3.5 is the right speed-cost balance and I think that's why we endorsed trying to stay within those goalposts.

Any other comments or questions from folks on this topic?

Mary, let me turn things over to you. I think you had something on another thing that Lynne mentioned.

MS. DENISON: Lynne, you mentioned the trilateral. I was interested to see that Canada was on board since they're not a member of the Nice Convention and also Japan has subclasses. So I think the public would be interested in hearing a little bit more about those countries and how
it's going to impact them and when it's going to come into effect.

MS. BERESFORD: Under the memorandum of understanding, Canada has I think up to a year to go through the current list of trilateral IDs and evaluate them. Of course, they have all the staffing issues everybody has. How many people can you put on reviewing 15,000 IDs and deciding whether or not they meet the requirements of the Canadian office? So they'll be doing that. We haven't worked out the details of how we'll accept them, whether we'll get them in chunks and add them to the database, we'll get them all at once, all those details, literally we signed this yesterday, Canada signed it yesterday, I'm supposed to sign it today and ship it off to the other trilateral partners, but we've all agreed this is going to happen. So we'll have to work out the details about how Canada docks on to those IDs.

Canada of course is interested in Nice and keeps flirting with the Nice agreement but
 hasn't actually decided to join it yet, just as
they've been flirting with Madrid for a number of
years but seem to be moving forward in that
particular direction, and that too will be
something that kind of imposes Nice on them.
Canada does classify everything. They have a
contractor that classifies all of their IDs. So
although they don't have Nice, they use Nice, and
so I don't think it's going to be too much of a
problem.

As for the other events that I talked
about, again we're still working out the details
about how we'll get all the translated IDs from
OHIM and the details on how Korea will work
through the ID list and handle their requirements
under this memorandum of understanding.

MR. FARMER: Unless there are any
comments or questions from the audience -- we may
have one from cyberspace. This one I think is
directed to you, Lynne. It says, "At a previous
TPAC meeting there was some discussion about
dropping pendency and the office's ability to
honor Section 44(d) claims of priority. What are the office's current thoughts on that?

MS. BERESFORD: The office has been talking to other offices about how Section 44(d) priority claims are handled around the world, and this is something that we need to do more work on. What we've discovered is there are a variety of practices out in the world. There are some offices that hold applications that have been approved for publication and registration under the 6-month priority period is over so that they can honor the requirements under the priority provision in the Paris Convention. There are other offices that just send things on to publication and registration and ignore that provision in the Paris Convention, which is written in such a way that it doesn't require that you hold anything up. It's written just that you have to provide that priority period. Again we're kind of exploring this phase. I think ultimately they will have discussions and perhaps a Federal Register notice on this issue to try to get the
sense of where the public and our user community thinks we should go on this particular issue. But given the other things that have been happening, we haven't moved too quickly on that particular issue.

MR. FARMER: I can also add a little bit of information for the person who asked the question. Before the Trademark operation has come to us on TPAC and asked what we think about the issue, and what TPAC has said before is that we like speed, we like registrations popping out sooner rather than later. We realize in some cases there is a cost associated with speed, for instance, that's why we've been in the 2.5 to 3.5 goalpost. But for example, we're doing other things to encourage earlier than later registration such as trying to move toward soup-to-nuts processing of applications electronically, and while we've stated that we have a messianic goal some day of having electronic certifications of registration simply because that cuts time off the back end,
specifically the Trademark operation has come to
us at TPAC and said as a matter of policy does
TPAC support or oppose allowing notices of
allowance and registrations for 1A applications to
pop out before 6 months, and the answer is that we
support it, that we are fine with things coming
out earlier because you still have the petition to
cancel and the petition to oppose opportunity
that's available, and so that's how historically
we have looked at that tradeoff as a matter of
policy when we've been presented with it. If I've
misstated that, if someone on TPAC would correct
me I'd appreciate it.

I think we're then on to our grab bag
session. Is there any issue that we have not
raised today that either a member of TPAC would
like to bring up or someone visiting with us would
like to bring up?

MR. JOHNSON: John, let me just make one
comment. I wanted to take this opportunity to
thank David Samms and his staff for their recent
decision in the Zanellia case. As many of you
know, the board recently issued a decision in which it gave Trademark owners the opportunity to correct any mistakes in their registrations and possibly avoid a fraud claim as a result of the ruling in the Menninol case. The board issued a decision and then thought about it and went back and issued the right decision in my view and went back and made it a presidential decision which was a deal of guidance for the Trademark practitioners in managing their portfolios. Too often all the Trademark office here and TTAB and other parts of the Trademark operation is just criticism, criticism, criticism, and I wanted David to make sure he and his staff knew that we appreciate what they did, their efforts were not in vain, and we applaud him and his staff for all that they've done on this effort. Menninol was a big issue for us and we thank you for it, David.

MR. FARMER: I endorse that entirely. Also for those listening at home, you may have been wondering why we don't have a TTAB segment today. We thought we were going to have a pretty
crowded docket. We will certainly be visiting
with Judge Samms at our August meeting. Recently
there was a bit of an informal survey done on TTAB
speed at the INTA meeting and are just now
digesting what we've gotten back from that, so we
didn't want to go prematurely with that.

We do receive performance statistics
from the TTAB and their pendency on dispositive
motions and on final decisions is really coming
down and it's at a good number, so we're pleased
to report that and we are looking forward to
visiting with Judge Samms when we get together in
August. Thanks for your service.

Are there any other comments or
questions? Yes, ma'am. Michelle?

MS. KING: In light of the discussion
about the pendency and the references to INTA,
this is Michelle King, from the International
Trademark Association. I just want to say that
INTA would concur with both what Elizabeth and
Jackie said about brand owners and their
perspective on pendency. In addition, we support
and encourage and rely on the role of management
of the PTO in giving us feedback and advice on how
things work in terms of pendency and we want to
support a stable workforce and encourage
examiners' growth and education and we support and
applaud Lynne and her team for the hard work that
they're doing in the examination process.

MR. FARMER: Thanks, Michelle, and
thanks for being here today. Are there any other
things from those visiting with us today?

The final piece of business is that we
have two members of TPAC who may be rotating off
of TPAC. I'll explain the maybe tense to my verb
before I get on to other things. Jackie Leimer is
finishing up a full 3-year term on TPAC, and James
Conley is finishing up a partial term that he
picked up. Before we get into the full thanks and
praise, we're not quite certain because we need to
replace two TPAC members, but also of course we've
had a change in administration and John Doll has
been the Acting Director and we don't know how
long it's going to be before we have political
leadership in place. John and I have talked about this and we don't know where things would go, but I know that Jackie and James if they're needed to be held over, I think their terms end at the end of August, on a temporary basis until folks can fill their slots, they are not imposing themselves, but they are available if you need them for their service, and hypothetically, for example, you could do an appoint and then resign when you get new people if you need. So just so we can be transparent for all the folks who wonder how TPAC members get chosen, I'd thought I'd just let those folks know that we're looking to have those spots filled but we've got two folks who are willing to continue serving until they can be filled if we need them. I appreciate Jackie and James being willing to do that because I can tell you that TPAC is a massive nonbillable time sponge even though it's a lot of fun.

That being said, first off to Jackie, Jackie is the senior member of TPAC and thus one of the great things is that we can always turn to
Jackie and say what did we do in the past because a lot of us weren't part of we, and that's been a tremendous service. Also she's put a lot of time into it in serving her full term. One of the things that's been very valuable about Jackie's service is that she's one of only two members presently on TPAC who is able to bring to us the perspective of being in house and managing a large portfolio and an international portfolio, and I can say that personally from my experience that's really helpful because I'm just the opposite of that. I'm in a boutique law firm that mainly represents who only file in the United States and they don't have really large portfolios. So I know that from people coming more from my perspective, to have someone there who can say this is how this works and these are our concerns and things I may not bump into really add to the committee and that's been very valuable.

Also Jackie has been not our only, but our great expert on international stuff and because she manages an international portfolio
she's really on top of a lot of the stuff such as the Nice classifications or rumblings in the distance as to whatever could happen with Madrid or how we interface with the rest of the world, and she has championed that issue on TPAC and that's very valuable because on TPAC we have a variety of different backgrounds and thus it's really good to have a mix of backgrounds that we can match up with the functions of the office, and Jackie has been perfect for that international role and we greatly appreciate it.

Jackie, while you may be able to check out anytime you want, but you may never be able to leave, we would like to thank you with a few tokens of our esteem. We have something secret in this box that's been signed by a few people and a little gift on behalf of TPAC. Jackie, thank you for your service.

Now on to James Conley. I'd like to say I knew James at Virginia, but I didn't, but I should have because he is one interesting guy and a lot of fun to be around. James filled an
interim term and has gotten up to speed incredibly quickly. I should make a side note that we on TPAC have recommended that James be appointed to serve another term but that's not within our purview to control and we have to have him back, but things will be whatever they will be.

What James has really done for us is to bring strong financial ability to TPAC and to help us get into things that we've been wanting to look at. For example, one thing that TPAC is ever vigilant on not because we think anything is wrong but just because it's role is to look at the USPTO overhead and always remain vigilant that that appears to be a fair apportionment between the Trademark and the Patent operations, and if nothing else, to really get in there and understand how that works because it's a very complex process that produces that and we wouldn't be doing our duty if we didn't do some oversight there. James has put a lot of time into that and he's really become our expert on TPAC and he's been able to come back to us and tell us what he's
seeing. And while you may not hear many comments from James at the public meeting, there is a lot floating below the tip of that iceberg in terms of work. I know that James has had times for instance this past year where he's had to set aside two whole workdays just to visit with folks to get information in order to give us the feedback that we need, so that's yeoman's work.

Also James has a lot of international experience in a different vein. James is an academic and I think he always challenges us because the rest of us tend to look at it from a practitioner point of view in nuts-and-bolts stuff and he always comes at it and says have you thought about this, and he can always make us think outside of the box, and sometimes it's useful to have us pushed outside of our box because otherwise we can get too comfortable inside of it.

So James, thank you for your service.

We love having you on TPAC and we hope to keep working you for quite a while.
Unless there's anything else, I think we're done. A scheduling note, we are planning, don't carve this in stone in your calendar, on having our next public meeting during the last full week in August. It will be on that Friday that's before the weekend that's before Labor Day weekend. I think that's around the 28th. That's pretty set, we still have to nail it down, but those of you who may really want to be here rather than being at the beach or something which is hard for me to fathom, then I just want to give you some heads up on that. Of course we'll be getting that up on the TPAC website. Thank you everyone for coming and for your participation.

(Whereupon at 12:30 p.m., the PROCEEDINGS were adjourned.)

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