

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, June 9, 2009

ANDERSON COURT REPORTING
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A G E N D A

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

2 (9:00 a.m.)

3 MR. FARMER: Good morning, everybody.

4 Welcome to the TPAC Public Meeting. Today is June
5 9, and my name is John Farmer, and I'm Chairman of
6 TPAC, the Trademark Public Advisory Committee of
7 the United States Patent and Trademark Office.

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

13 A couple of housekeeping matters before
14 we get going. Today's meeting is being webcast
15 just like the last meeting was webcast, and so we
16 say hello to the folks that are watching back at
17 home. There is an email address to which folks
18 who are watching this live or actually perhaps
19 even later can send questions or comments to TPAC,
20 and that email address is asktpac@uspto.gov. It's
21 TPAC's hope that that email address will not just
22 be a one-day thing, but it will become an online

1 suggestion box for things that are appropriate for
2 TPAC that could be sent to TPAC. I don't think
3 we're quite there yet as far as having it so
4 presented on the TPAC portion of the USPTO
5 website, but we hope to get there.

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

14 I wanted to let you know that today we
15 will be having mainly a dialogue with the folks
16 that will be visiting with us. One thing that
17 we've changed this year, we did it at the last
18 meeting and we'll be doing again at this one, is
19 that we are trying to study up in advance on TPAC
20 so that our time here in the public meeting can
21 mainly be interactions and discussions and
22 questions, and we'll hope to carry that forward

1 today.

2 After folks make introductory comments
3 on their sections of the agenda, the pecking order
4 I'm going to follow as Chair in terms of taking
5 questions or comments is first I'll turn to fellow
6 members of TPAC, and then I'll turn to anyone else
7 present here in the live audience since they've
8 taken the trouble to come see us today. Then
9 lastly if we have time, we will take any questions
10 that have come in by email to the
11 asktpac@uspto.gov website.

12 We have some agenda changes today, and
13 that's going to make our meeting shorter, perhaps
14 significantly shorter than we had planned. For
15 those of you who have seen the agenda, perhaps
16 seen it as it's posted on our website, we have
17 decided to at least postpone for now discussion of
18 IV and V. IV was going to be a discussion
19 regarding the history of the funding of recessions
20 and diversions by the Trademark operation
21 vis-à-vis the Patent operation. And V was going
22 to be a discussion of the extent to which the

1 Patent operation may have inadvertently or
2 otherwise loaned funds or otherwise subsidized the
3 Trademark operation particularly in 1999 and 2005.
4 We on TPAC received extensive and helpful
5 materials on those issues from the Office of the
6 Chief Financial Officer on Friday, and we're
7 thankful for those. Thank you for taking the time
8 to prepare those, we know that took a lot of
9 effort, and for your initial briefing to our
10 Finance Subcommittee and to TPAC. But as TPAC
11 considered that, TPAC's view was that we just
12 don't mentally have our arms around the details
13 and the numbers well enough to be able to ask the
14 sort of questions that we would like to be able to
15 ask, and so for that reason we think it's
16 premature to try to have that presentation today
17 because we're just not ready on the TPAC side and
18 so we're going to push that off for a future time.
19 Because of that as I mentioned, our meeting will
20 be a little bit shorter today.

21 Another housekeeping measure especially
22 for the folks listening in at home, one thing that

1 we're trying to do on TPAC and we're changing
2 ourselves so we don't yet do a perfect job is to
3 try to give the office plenty of time to prepare
4 for our meeting and then allow us plenty of time
5 to prepare for what they wish to present and to
6 allow the public plenty of time to see what's
7 coming so that everyone can be better prepared.
8 This is a very expensive meeting you have. We
9 have a lot of very valuable people in the room
10 whose time is worth a great deal and we don't want
11 to waste your time. I've sat down and chatted
12 with John Doll and we worked out what we think
13 will be a good way to make certain going forward
14 that this will all be a smooth sailing ship, and
15 that is TPAC has committed that we will get our
16 proposed agendas and schedules because we have
17 more than just this public meeting when we come up
18 here, we have subcommittee meetings and so forth
19 and so on. At least 4 weeks in advance of our
20 public meetings, and that in turn the office will
21 have any written materials that they intend to
22 submit to us at least 2 weeks in advance of the

1 meeting so we'll have time to study them. And
2 then also so that we can put up on the TPAC
3 portion of the USPTO website any of the public
4 materials. Sometimes there are materials that are
5 confidential because they may address for example
6 personnel matters or budgets that are still in
7 process within the Executive Branch and obviously
8 we can't discuss those in public session or post
9 them, but for all other materials and any
10 materials that would be utilized at a public
11 meeting, we can get those up on the website. We
12 hope that will also serve the public because I
13 realize a lot of time folks have to decide whether
14 it's worth their while to come here perhaps to
15 comment or to even listen in on the webcast and
16 that will allow them to make those decisions and
17 also to better understand what is going on with
18 TPAC. So we hope that that build a stronger TPAC-
19 USPTO relationship as we go forward and we thank
20 Mr. Doll and the office for working that out with
21 us.

22 Having said all that, I'm going to turn

1 things over to Acting Director John Doll to give
2 whatever introductory comments he'd like to give.

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

8 It's a pleasure for me because as John
9 said I'm the Acting Director and I've spent almost
10 all of my 35 years in the USPTO on the Patent side
11 of the house, so this is a great opportunity for
12 me to get to know TPAC, to get to know some of the
13 Trademark users, and to appreciate exactly how
14 important the work is you do every day. It's
15 interesting that I know a couple of you already.
16 I was talking to Jeff right before the meeting and
17 it seems Jeff grew up less than 100 miles from
18 where I grew up in Ohio, so we've fellow Buckeyes
19 so we have a bond there. James Conley and I have
20 known each other for a really long time, way back
21 when James was running biotech conferences at the
22 Kellogg School, and so that was a great

1 opportunity for me. I also had the opportunity
2 recently to meet Jackie Leimer. "Intellectual
3 Property" magazine had their annual awards
4 ceremony and they asked me to do a presentation,
5 and it was an honor for me to present Jackie with
6 the Outstanding IP Attorney of the Year Award at
7 that awards ceremony, and I want to thank you for
8 saving me when my presentation went terribly
9 wrong. Jackie jumped up and saved me. But I also
10 want to say thank you very much to Jackie and to
11 James because I understand this may be your last
12 term, so we really do appreciate everything that
13 you've done, we appreciate all of the hard work
14 and the expertise that you've brought to TPAC. If
15 possible I'd like to twist your arms to see if you
16 would reconsider, but Jackie has said don't even
17 talk to me. I have other things to do in my life
18 right now. But again thank you very much. I
19 appreciate the opportunity to talk to TPAC.

20 What I'd like to do is I'd like to talk
21 about three topics today. I'd like to focus first
22 on the general direction of the USPTO during our

1 transition as we're waiting for new political
2 leadership when we get our new undersecretary.
3 I'd also like to talk about some of the noteworthy
4 developments that Trademarks has been doing
5 throughout the year so far. Then I want to do a
6 quick legislative update on the 111th Congress to
7 give you an idea where things are in the Congress.

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

17 I'll start with the direction of the PTO
18 because I think everybody here recognizes that we
19 don't have political leadership at this time and
20 we are waiting for a nomination. The White House
21 and the President will hopefully soon be
22 nominating an undersecretary for the Patent and

1 Trademark Office. What happens at that point is
2 that the Senate Judiciary has to confirm the new
3 designee, the new nominee, and right now the
4 Senate Judiciary Committee I think everybody
5 understands is extremely busy right now with the
6 Supreme Court nomination, so that might slow us up
7 just a little bit. But the general process is
8 that a confirmation once someone is named takes
9 somewhere between several weeks to possibly months
10 depending. So when the August recess pending, it
11 is possible that we may not get our leadership
12 until sometime in September depending on how
13 quickly Justice Sotomayor goes through the process
14 and how quickly we get our undersecretary named
15 and confirmed. It's an exciting time for us and
16 we are looking forward to welcoming the new
17 undersecretary.

18 While we're doing that rather than just
19 sitting around and marking time, we are taking
20 some steps and initiatives. We are trying to move
21 forward to put in place several things so that
22 when the undersecretary does get here that that

1 person can hit the ground running. One of the
2 things that we're doing is we're working on
3 creating a 5-year strategic plan framework, and
4 what we're trying to do is to set forth all of the
5 information, all of the current goals and
6 functions of the organization and looking at
7 ourselves to see where we think we may have some
8 gaps so that we can put together exactly what
9 information the new undersecretary would need to
10 give us their strategic direction, to understand
11 exactly where we are and what we've been trying to
12 do. This is going to be an important process.
13 It'll be an important opportunity for TPAC and for
14 PPAC to weigh in and give us your direction and
15 your ideas as to what you would to see the Patent
16 Office be in 5 years, what direction you'd like to
17 see us work toward. There will also be a formal
18 invitation for the public to give input. We are
19 very interested in the user community and in our
20 Political Advisory Committee. So it will be a
21 great opportunity to put all that information
22 together for the new undersecretary when they get

1 here to give them again a sense of direction, not
2 to preempt what they're going to do or their
3 strategic vision, but to give them an opportunity
4 to understand what TPAC, what PPAC, what the users
5 have actually given us as suggestions. So that
6 will be an exciting opportunity and it will be an
7 interesting opportunity for us to put that
8 information together and to brief the new
9 undersecretary.

10 The new administration though has been
11 very clear and they've given all the executive
12 agencies what I think is very clear direction.
13 They would like to have open, transparent and a
14 collaborative government. They've been clear that
15 they want us to move in that direction of working
16 with our user groups and meeting their needs and
17 actually addressing exactly the issues and the
18 opportunities that you would like to see us have.
19 Commerce Secretary Locke has also been very clear
20 and has repeatedly made it clear that he expects
21 all of the agencies under the Department of
22 Commerce to push their limits and to push

1 themselves to make sure that the services and the
2 products that we do produce meet the needs of our
3 customers and that we set stretch goals for
4 ourselves and that we push ourselves in new
5 directions and further than we ever have before.
6 So it's not only my obligation as I see it, but
7 it's the obligation of everybody at the USPTO to
8 ensure that we are transparent and that we do work
9 toward that open and collaborative government, and
10 I think meetings like this with the public is a
11 great opportunity for us to move in that
12 direction.

13 As an example of what the Trademark
14 users would be interested in, I know that
15 Trademarks and TPAC, they're working very hard
16 together on transparency. They're working in the
17 Praise and Complaint Department and I give them a
18 lot of credit for that because Trademarks has
19 always listened to the users and made a real
20 effort to comply with what they could do. TPAC
21 and the office is also working on frequent
22 revisions and updates to the "Trademark Manual of

1 Examining Procedure," the "Trademark Trial and
2 Board of Appeals Manual of Procedures," to ensure
3 that they're not only updated frequently, but
4 they're also readily available and that they're
5 easily available across the net for all users. So
6 it's crucial to the POT and to Trademarks
7 especially that we listen to the customers not
8 only on the big issues whether that be
9 legislation, but also on the small things that
10 make their day-to-day practice better and what we
11 can do to get that feedback and then implement
12 that into our day-to-day operations. So I
13 appreciate TPAC and I appreciate John challenging
14 us and continually pushing us to reach out to make
15 sure that we're transparent and we're serving the
16 needs of the community.

17 When I look at the developments in
18 Trademarks, clearly the flagship event this year
19 for the USPTO has been the Trademark Expo, the
20 2009 National Trademark Expo, which was held on
21 May 8 and 9. It attracted over 7,000 visitors to
22 our campus. It was a 2-day event. It was a

1 wonderful example of how the USPTO in a very
2 cost-effective manner is able to reach out to the
3 public and assist the public in the education that
4 they're continually trying to provide especially
5 on issues as important as counterfeiting and on
6 piracy and to show the people that intellectual
7 property really is fun. I'm always amazed at the
8 dedication and the creativity of USPTO employees
9 and how hard they work to pull off an event, and
10 this year's event everybody simply outdid
11 themselves. It was a phenomenal event. There
12 were numerous exhibitors, educational seminars,
13 children's programs, and they worked with
14 corporate America to bring in more Trademark
15 characters than we've ever had before. It's
16 always fun to look out of your window and see
17 Popeye, Olive Oyl, Curious George, Dennis the
18 Menace, and the Pillsbury Dough Boy, and 20 other
19 costume trademarked characters roaming around the
20 campus, so that that was always a lot of fun.
21 There was a lot of local support also. The City
22 of Alexandria sent Vice Mayor Pepper over and she

1 addressed the crowd. Congressman Jim Moran, the
2 PTO is in his district, gave a keynote address and
3 presented Trademarks with a plaque of the
4 Congressional Record where he had read into the
5 Congressional Record the Trademark Expo, so that
6 was quite an honor to have him here also.

7 On the legislative front, everything has
8 been very busy also, and of special interest to
9 all of our employees and especially Trademarks
10 because of the high percentage of people that they
11 have hotelling or teleworking. Senate Bill 707,
12 the Trademark Enactment Act of 2009, has been
13 extremely important. There appears to be some
14 real momentum this year. It's an opportunity for
15 Congress to move forward. They introduced the
16 bill in March. It contains language that would
17 allow GSA to permit the USPTO discretion in paying
18 travel for our employees who choose to live
19 outside the Alexandria area. It gives them the
20 opportunity to move away. It also gives the
21 office that financial opportunity and the
22 discretion to choose whether to pay or not when

1 employees have to come back to the campus. There
2 was a second amendment offered to that legislation
3 during the markup on May 20 that specifically
4 stated that the PTO would set up an advisory
5 committee. That would be a committee of
6 management and labor that would review the
7 policies and procedures of this new discretion if
8 we get it. This is a great opportunity for
9 management to work with our unions, and I want to
10 compliment Howard and NTEU because they've been
11 tremendous supporters of this legislation. It's
12 been a pleasure working with them and having their
13 support when we go to the Hill to go with a union
14 as strong and as large as NTEU and to have their
15 support. So thank you for that, Howard.

16 This amendment was also recently added
17 to the Patent Reform Bill and that I hope will
18 also give it some additional momentum. Key
19 players in both the House and the Senate have made
20 it clear that they would like to see this bill
21 passed. The Obama Administration has made it very
22 clear that they think telework and hotelling is an

1 option that they would like to advance and they
2 would like to move as quickly and as efficiently
3 as possible to make that an option for federal
4 employees. There are a vast majority of reasons
5 to make this work and the Obama Administration has
6 been very good about focusing on the improvement
7 of morale and on the green effects and on the
8 energy conservation of hotelling and teleworking.
9 So we're very hopeful that Congress will be able
10 to pass this bill this year and it will give the
11 USPTO and it will give us an opportunity not only
12 to attract and retain the best people we have, but
13 also to make the USPTO a premiere telework
14 organization in the federal government. Patent
15 reform which is not as interesting to the
16 Trademark people as it is to the Patent people,
17 but it still does affect, it's an extremely
18 important piece of legislation, that again is
19 moving through the 111th Congress. On April 2 the
20 Senate Judiciary Committee completed their markup
21 of Senate Bill 515 of the Patent Reform Act.
22 There is a companion bill, HR 1260, that has not

1 yet seen any action. We think they possibly may
2 be waiting for the Senate to move and to take a
3 floor vote and then possibly to merge the two
4 bills because there are some differences between
5 the two bills. But the bill includes some
6 interesting language and it includes compromise
7 language on assessment of damages in infringement
8 cases. If you're following the bill, I think
9 you'll understand that the lack of consensus on
10 that language was probably what doomed the bill in
11 the last Congress. So we're looking for some kind
12 of consensus language that might give it the
13 opportunity to take the report language that
14 actually moves toward a gatekeeper approach which
15 might appease both sides and bring them both to
16 the table on Patent reform legislation. As I
17 mentioned earlier, the bill also includes the
18 provision for the USPTO telework of hotel pilot.
19 There is also language with fee- setting authority
20 that would be very helpful for the USPTO when
21 we're facing some of the downturns that we're
22 facing right now with Trademark filings and Patent

1 filings being down as much as they are. The bill
2 also creates a postgrant review process for
3 Patents. It changes the interparty's
4 reexamination process in Patents to give a
5 possible option to the very expensive litigation
6 through the court system to make the PTO much more
7 of a player when we talk about the validity of
8 patents.

9 One of biggest differences that I notice
10 when I look at the bill is that the bill doesn't
11 contain any language with respect to inequitable
12 conduct, and that certainly was a point of
13 discussion in the 110th Congress. So it will be
14 interesting to see what happens, and if not, if
15 the language could be introduced because that's
16 one of the major issues in patent prosecution as
17 to whether or not the attorneys have the
18 opportunity to be as open and submit as much
19 information as they can without that threat of
20 inequitable conduct always hanging over their
21 heads. So that will be interesting to see what
22 happens.

1 The best, the most definite thing that I
2 can say about the patent bill right now is that
3 there's a lot of uncertainty around the patent
4 bill. So we'll be interested because the overall
5 goals I think are great. When you talk about
6 improving patent quality, when you talk about
7 reducing litigation costs, when you talk about
8 international harmonization, there are all goals
9 that we all appreciate and that we all would like
10 to work toward. What we'd like to do is to see
11 the diverse parties that are working with the bill
12 and on the bill right now come together and
13 actually move this very important legislation
14 forward. So that will be an exciting time in
15 Congress and it will be interesting to see if we
16 can get some major movement before that August
17 recess.

18 Again in closing I would like to thank
19 John and TPAC for giving me the opportunity to
20 address you and to address some of my concerns.
21 If there are any questions, I would be happy to
22 answer them. If there aren't any questions, I

1 look forward to the rest of the session this
2 morning. So again thank you, and thank you, John.

3 MR. FARMER: Thanks, John. Why don't we
4 go on to the next item on the agenda then, and
5 that is the discussion regarding the future of the
6 Trademark fence. When we had items IV and V on
7 the agenda, I was intending for III to be a much
8 more extensive discussion, but my feeling is that
9 it will probably be more brief. I realize that
10 talking about the Trademark fence may sound like
11 inside baseball to a lot of folks especially those
12 who are listening in on the webcast, so I thought
13 I'd tell them what it is. There's a provision in
14 the United States Code, it's in 35 U.S.C. Section
15 42, subsection C, again that's 35, 42, subsection
16 C, that addresses how Trademark fees may be spent
17 within the USPTO, and it says the following, "All
18 fees available to the Director under Section 31 of
19 the Trademark Act of 1946 shall be used only for
20 the processing of Trademark registrations and for
21 other activities, services and materials relating
22 to Trademarks and to cover a proportionate share

1 of the administrative costs of the Patent and
2 Trademark Office." I look at the Trademark fence
3 as sort of recognizing a roommate analogy, and
4 that is, in the USPTO you have a Trademark
5 operation and a Patent operation and while we both
6 deal in intellectual property, we both really do
7 or each do separate and distinct things, and yet
8 like roommates might share a house or an apartment
9 and they have to find a way to equitably divide up
10 the resources and expenses of the facility and
11 that that takes some vigilance and some goodwill
12 and some negotiation to make certain that works
13 well, the same thing applies here at the Trademark
14 Office because the fence commands that Trademark
15 funds be used to pay for the Trademark operation
16 and for the reasonable share of the overhead
17 that's attributable to the Trademark operation.

18 The reason why I bring this topic up is
19 because we all know that we're in difficult times
20 financially right now. Everyone is struggling. I
21 know that private industry is struggling. Some of
22 our TPAC members, especially that are in-house and

1 their companies have given us reports of the
2 rather painful cuts and steps they've had to take,
3 and we know that the PTO also has had to do some
4 rather extensive things also to make certain that
5 it responsibly weathers the economic storm because
6 the PTO is a fee-based organization. The PTO has
7 to live off the fees that it brings in and when
8 fees are down that means belts get tightened.

9 We understand on TPAC that one thing
10 that has just been floated with contacts with
11 Congress is the possibility of perhaps doing
12 something with the Trademark fence as an option if
13 additional monies are needed on the Patent side of
14 the house down the road. We on TPAC also have
15 noted that the International Trademark
16 Association, INTA, has taken a position with
17 Congress that it would like to see the Trademark
18 fence remain as it is in tact. So without going
19 deeply into things and without asking the
20 leadership to divulge anything that would be
21 confidential within the Executive Branch because
22 they have to keep budgetary processes that are not

1 yet final and published confidential and we
2 respect that, I thought we would just ask Mr. Doll
3 to give some high-level comments on the Trademark
4 fence and the thoughts that the current leadership
5 has regarding that since it's been out there in
6 the public. So John I'll turn things over to you,
7 and thanks for addressing it.

8 MR. DOLL: Thank you, John. It's very
9 easy for me to be totally open and transparent
10 here because I can tell you everything that I know
11 about the Trademark fence. The Trademark fence is
12 very clearly the law. John set forth the
13 statutory language, and the office respects that
14 law. I think it's also the will of the Trademark
15 users, and I respect that. It's much like the
16 greater intellectual property community that we
17 serve. The greater intellectual property
18 community has been very vocal and very vocal in
19 the Patent reform legislation that no fees that
20 are appropriated or collected by the USPTO should
21 be used for other than USPTO functions. It's the
22 same thing with Trademarks. When a trademark user

1 pays a fee, they expect that fee to be applied to
2 trademark services or products. We respect that.
3 I think that's the way that we should do business.
4 I think it's true with respect to the greater
5 intellectual property community with the USPTO
6 funds. It's also true with Trademark funds. It's
7 true with Patent funds, and I respect that.

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

1 Patent examiners.

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

19 I think we accurately and correctly
20 portrayed to DOC, to OMB, the concerns of the
21 Trademark community because the leadership at the
22 USPTO shares those concerns. Trademark fees that

1 are paid for Trademark services and products
2 should be used for Trademark services and
3 products. We felt obligated to list every option
4 so that anybody that reviewed our legislative
5 options or our considerations couldn't say that we
6 didn't list everything. But as I said, we clearly
7 set forth what the pros and what the cons were for
8 each one of those.

9 The administration does not have a
10 position right now. Without political leadership
11 at the PTO it's a little more difficult to get
12 that administrative position. We did submit a
13 paper to OMB, we submitted to DOC as I said
14 earlier, that listed nine options, and we called
15 them legislative options because the majority of
16 them would take a legislative change to enact.
17 That included the Trademark fence. We recently
18 received that list back from OMB. It was sent
19 back to our Acting CFO Mark Olechowski, and they
20 said nice laundry list. What would you like to
21 do? Which ones do you want to pursue? What are
22 your preferences? At that point in time what they

1 directed us to do is to work with OMB to come up
2 with what we think would be viable, real options
3 or alternatives to address the funding problem.
4 We will be working with DOC. We haven't started
5 that process yet. I think it will be a little
6 slower than normal because we don't have political
7 leadership. It will be interesting to see how
8 long it takes to get political leadership, but we
9 will start talking. Again I can be open and very
10 transparent and say we don't have a preference at
11 this point in time. We have a list of nine
12 options. I want to make sure you understand that
13 we clearly understand there are pros and cons to
14 each one of them, but I fully understand, respect
15 and support the position that a Trademark user or
16 a Patent user when they pay money to the USPTO
17 fully expect that money to be used and applied to
18 the goods and services that they expect. I'd be
19 happy to answer any questions about that or to try
20 to say it a different way, but I respect the law.
21 Some of the speeding laws I don't agree with, but
22 the Trademark fence law I fully agree with. The

1 policeman that just gave me a ticket last week, he
2 appreciated my respect for the speeding laws.

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

16 MR. DOLL: One of the things that I
17 should have mentioned that I didn't mention
18 earlier is that in our recent visits to the Hill,
19 the Hill has been very supportive about what can
20 we do to help you. So I think when we do come up
21 with an administration position we will have
22 support on the Hill to move forward. But

1 currently I don't have a position. The leadership
2 of the USPTO has not formulated what we think are
3 the best or the priority options on that list. We
4 simply listed every option that we thought we had
5 available to us. What we will do now is starting
6 to go through the pros and cons of each one and to
7 prioritize what we think might be the best options
8 or the quickest options to address the issues that
9 we have.

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

20 MR. FARMER: I have a few comments.
21 Before I make them, do any other TPAC members have
22 any comments or questions they wanted to ask on

1 the issue?

2 None of this will be news to John, but
3 just for the benefit of the folks visiting today
4 and listening at home, I think the following is
5 the sense of TPAC regarding the fence. And just
6 so everyone knows that TPAC is not sitting idly
7 by, I thought I'd just express that and then I'll
8 ask my fellow members of TPAC whether they want to
9 amend anything I have to say. That is, I think
10 it's the sense of TPAC that the fence should
11 remain as is. We are empathetic and sympathetic
12 to the funding issues that are facing both sides
13 of the office including the Patent operation, but
14 we think the fence remains crucial. And we
15 believe that even a provision that would allow for
16 loans to be taken from the Patent operation to the
17 Trademark operation would be a crack in a dam that
18 would ultimately threaten the integrity of the dam
19 and potentially bring everything down especially
20 if any loan was going to be without interest. So
21 it's the sense of TPAC that even that sort of
22 action would be something that we would advise

1 against.

2 TPAC has been in conversations with Mr.
3 Doll and his office on this issue and we thank
4 them for keeping us in the loop. Just so the
5 folks at home know that we've been doing our job,
6 we have sent letters formally explaining our
7 position and also we sent a copy of one of those
8 to Secretary Locke just so that the Executive
9 Branch should be aware of our position. One of
10 the reasons why TPAC takes this position is simply
11 that the Trademark operation presently does have
12 some money in the back, it does have a surplus,
13 and that's a good thing to have and it's a
14 testament to the wonderful management of the
15 Trademark operation by Lynne Beresford and by her
16 staff. But that's a bit of an insurance policy
17 also in that Trademarks are experiencing a very
18 tough time too and filings are down and they're
19 doing everything they can to be very responsible
20 in how they handle their dollars, and it's
21 Trademark's fear that if that money was not
22 available to the Trademark operation that folks

1 working in that operation would be at an increased
2 risk of a RFI especially the examining corps that
3 we think is doing a great job and there is a lot
4 of great human capital there that we just don't
5 really want to lose, and that thus is TPAC's
6 position.

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

13 MR. DOLL: There is one point that I
14 wanted to add before we answer any of the
15 questions. Some of the comments and some of the
16 concern that we get from outside the USPTO is the
17 USPTO is one government agency. Why don't you
18 solve your problem within the USPTO? So there's a
19 natural question, Why don't you just take your
20 money that you collect as the United States Patent
21 and Trademark Office, then use that to fund the
22 United States Patent and Trademark Office? That's

1 a valid concern if you don't understand that there
2 are Trademark functions and there are Patent
3 functions and they are separate and distinct and
4 the people that pay that money don't pay them for
5 the USPTO, they expect as I said earlier to get
6 Trademark products and services or Patent products
7 and services. So I think we've done a good job of
8 explaining that to people outside the USPTO. And
9 when we went to the Hill, again that's a natural
10 question that somebody would ask. We fund the
11 USPTO. Why don't you use the money that you have?
12 And I think we've done a very good job on the Hill
13 of explaining why these should be treated and
14 statutorily treated as two separate banks of
15 money.

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

1 offer that opportunity if there are any.

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

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

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

22 MR. FARMER: I think we may have the

1 report up.

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

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

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

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

1 programs and to recover full cost of our fees.

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

18 We had an executive kickoff in January
19 2009 and we had a formal cost study team kickoff
20 in March 2009. Since that time we've been very
21 busy. We're revising the entire Trademark model.
22 One of those steps, a very important step, is to

1 link the PPAs which are the fundamental building
2 blocks that every contractor and every employee
3 needs to report their time to activities. After
4 we conclude that, then we can link those
5 activities to the fee codes, and that's a very
6 important step as well. That will give us a fee
7 tracking sheet.

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

18 The core team consists of the CFO's
19 Office like I said, and there are two groups
20 within that. One is the Activity-Based
21 Information Division which is under the Office of
22 Finance, and the Office of Corporate Planning or

1 our Budget Office, the Revenue and Fee Forecasting
2 Division. Also vital to this is the Trademark
3 organization and the Trademark Trial and Appeal
4 Board as well.

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

16 Like I said, there are five phases to
17 this project. The first phase, the Project
18 Initiation and Planning, we did run a little bit
19 over. We are hoping that we can make up some of
20 that time because of the time invested in this
21 stage. There have been three challenges that we
22 have up with and if we are able to put a box

1 around those and identify those in our project
2 plan, we're hoping that we can make up some of the
3 time at the back end.

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

19 Methodology. What we're doing is we are
20 revising the Trademark fee model or cost model
21 which the end result, the cost objects, will be
22 fees. That's different than it ever was before.

1 What we're doing is we're getting the full cost of
2 activities, and I want to give you an example.
3 Scan registered files. That is from a PPA
4 directly from a program project and activity that
5 people are recording their time to. That is then
6 mapped to an activity of scanning registered
7 files. We can then come up with a unit cost by
8 dividing by the number of scanned registered
9 files, and then we can adjust for frequency of
10 occurrence. That will give us a unit cost. If we
11 can isolate all those activities and come up with
12 an activity unit cost, we can then match that to
13 the fees. I know that's a little bit complicated.
14 I wish I had the presentation here because you'd
15 be able to see it a little bit better. And we
16 would finally adjust that for any work in process.

17 Our final presentation is we're trying
18 to determine what would be the best method for the
19 final presentation and how to present these
20 numbers. The Trademarks organization has been
21 very vocal that they would like to see the
22 indirect cost separate from the direct cost in the

1 Trademark model. So what we would have, again
2 let's use that example of \$300 is what we charge,
3 \$350 is the cost. Let's say \$250 is direct from
4 the Trademark model or direct cost, and then the
5 additional \$100 would be indirect, and that way we
6 would be able to show those and where the costs
7 are coming from, where they're derived from.

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

22 I did discuss some challenges that we

1 are having. We did investigate the challenges.
2 There are three of them. One is shared service
3 and that's groups such as CIO, CFO, CAO, what do
4 we do with those costs? What we're doing is we're
5 setting up meetings with the shared service
6 subject matter experts and saying, Do any of your
7 activities directly affect any of the fee codes?
8 Do they have a direct impact? If they do, we can
9 derive those costs separately, and that's how
10 we're accommodating that. The second one is work
11 in process. I have mentioned that several times,
12 but that is going to be addressed in Phase 4 of
13 our project. The final thing is a validation or
14 check sum. We're trying to come with a validation
15 exercise where when we unitize the activities that
16 I talked about, that we can come back to a final
17 check sum or balance that we need to agree to or
18 come close to. We report quarterly an efficiency
19 measure for the Trademark organization and we hope
20 that can play a role, or the statement cost, but
21 we need to figure that out because that will be
22 vital to making sure we have captured everything.

1 Current status. We are currently
2 mapping the PPAs to the Trademark activities like
3 I discussed, and we are meeting this week with the
4 shared service providers subject matter experts.
5 We are also planning on meeting with Pilbara. I
6 don't know if anybody is familiar with that. The
7 ABI system is being reviewed by an outside group
8 called Pilbara and we hoping to get some good
9 comments and suggestions to incorporate into this
10 new fee cost model. We will certainly take their
11 comments and work through the team and see what we
12 can come up with.

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

1 questions?

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

5 MS. PEARCE: I'd like to start by
6 thanking everybody who's worked so hard on the fee
7 study so far. I know that it's been a tremendous
8 amount of work for Mark and Mark in their
9 department, and we appreciate the way they've been
10 able to push this forward. Also I'd like to thank
11 the Trademark Office because they've had to sit in
12 on the meetings and contribute to a lot of the
13 analysis and the early work going on trying to
14 figure out exactly how this material is going to
15 be sliced and diced. I'm saying thank you on
16 behalf of the Trademark community. This was
17 something that when I first got on TPAC was of
18 concern to me. It didn't seem that the Trademark
19 fees had been really examined in a while. They'd
20 done wonderful work on cutting the costs of
21 filing, but it didn't appear that the fees other
22 than had really been looked at for a while. I'd

1 like to thank everybody for being so responsive to
2 my concerns and supporting TPAC in this. I think
3 it's going to be a great boon for the Trademark
4 community to know that these fees have been looked
5 at and that they are genuinely being charged for
6 the cost of doing business. I think that that's
7 going to be something that everybody will be quite
8 relieved about.

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

19 I think this whole project is coming
20 along so well. We hope to have the final results
21 by the end of September if we're able to stay on
22 track. Talking with Lynne yesterday, this has

1 done so well and she's so encouraged by this, that
2 I am hoping we are going to be able to do, and I
3 haven't mentioned this to Mark and Mark yet,
4 possibly a second study taking the services and
5 staffing costs for the PTO and being able to
6 examine them in the same way. I'm hoping we'll
7 learn enough from what we've done with the fees to
8 be able to streamline it just a little bit and see
9 if we can also get an accurate accounting of that
10 to really be able to know how to cut costs, where
11 the costs are coming from, a better way to
12 allocate resources. This is a beautifully run
13 organization. Lynne and her people do a wonderful
14 job, but they're always anxious to do a better job
15 which is a great thing to know, and anything that
16 we can do to help them do their jobs better, to do
17 them more intelligently with greater transparency,
18 thank you, Mr. Doll, for that. I think that is
19 absolutely the word of the moment. It serves the
20 Trademark community, it serves the federal
21 government, and it certainly serves the USPTO. So
22 we've been very encouraged by this and we actually

1 hope to be able to go even further with it.

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

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

7 MS. BERESFORD: Yes, I have a couple of
8 comments. I too and grateful we're doing this fee
9 study and I'm encouraged that we're moving along,
10 but just a couple of things from the macro view.
11 The way Trademark fees are set up in the
12 legislation unlike the Patent side of the house,
13 there's no requirement that Trademark fees be set
14 as individual fees to recover the cost of each
15 service. So there is no legal requirement for
16 instance for the postregistration examination we
17 determine it costs \$150 and we only collect \$150
18 for it. The way Congress set up our statute, we
19 can make determinations about policy
20 determinations, we want to encourage filings so we
21 can keep lowering the filing fee if we think
22 that's the right thing to do, and again it's just

1 an example. But knowing what things actually cost
2 is always a good thing and as a manager that's
3 exactly what I want to know, so this is good.

4 Trademarks has had two really big
5 concerns in this study. One is that we need to
6 accommodate and know exactly how we're charging
7 for work in process because when you think about
8 what's going on in the operation both on the
9 Patent side and the Trademark side, a lot of work
10 in process. So it's very important to figure out
11 how to handle that in the accounting system
12 accurately. Secondly, it was very important to us
13 that at the end of the day we have a way to
14 validate the results of this study. We are very,
15 very encouraged that this is going on, but we
16 don't want to have a shot in the dark. We want to
17 have a way at the end of the day of having another
18 way of validating the results of this study. So
19 I'm very happy to hear that that is being
20 accommodated.

21 I'm also encouraged to hear the support
22 of TPAC for having a look at how costs are

1 allocated in the shared services providers, CFO,
2 CAO, NCIO and OGC and the other areas that support
3 the Trademark organization. So all of those
4 things I think are just absolutely good things for
5 us to look for when we're moving forward, so thank
6 you.

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

13 (Recess)

14 MR. FARMER: Before we go to the next
15 item on the agenda which is a presentation by the
16 OCIO, John Owens, I realized earlier that there was
17 one thing I left off of my recitation of the
18 understanding we've reached with the office
19 regarding getting ready for these meetings, and
20 that is not only will we try to offer up a draft
21 agenda to the USPTO leadership 4 weeks in advance
22 and they'll give us materials 2 weeks in advance,

1 but the other part of that, I guess it's a
2 corollary rule, is that they're going to let us
3 know if there are things that should be on the
4 agenda, either our executive session agenda or our
5 public one, just so we can be fully prepared for
6 everything and get feedback. That's going to be
7 in play too. So hopefully by the time we have our
8 public agenda up which we put up 2 weeks before
9 the meeting, it will reflect everything that will
10 be discussed and so that way folks who are
11 following TPAC also will know fully what we're
12 going to be covering, and we appreciate the
13 cooperation that the office has given us on that.

14 Now we're going to turn to a discussion
15 with the Office of the Chief Information Officer
16 about the ongoing status of our computer systems
17 and the milestones and the remediation there.
18 John Owens I think is going to chat with us, and so
19 folks listening at home will know, our
20 subcommittee there is Howard Friedman, Jeff
21 Storie, Tim Lockhart and Macon Delrahim, who I
22 don't think has been able to join us today. So

1 I'll turn things over to you, John, and thanks for
2 joining us.

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

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

20 Most current initiatives are on time. A
21 few are experiencing slight delays of no more than
22 a quarter. We have made significant progress on

1 our automated information systems. That's the
2 acronym AIS. And many of them in both Patents and
3 Trademarks, TDR, Madrid, OACS, SCORE tests and so
4 on. The realignment of the ICIO office was also
5 completed on this Sunday for Phase 1 which was a
6 major initiative taking 12 separate organizations
7 and merging them down into a streamlined five is
8 that oriented toward our systems development
9 lifecycle process.

10 Funding. From the top we have removed
11 47 million from the requested budget from the CIO
12 shop. Many of these projects that were delayed
13 will directly slow the progress of the roadmap
14 because they were expected to replace systems that
15 were failing. If you see the second line,
16 business projects taking the largest hit. That is
17 a 16 percent reduction. However, I have to say as
18 part of management council I think there is a very
19 big sensitivity in reductions in CIO because we
20 know that over the last eight or so years there
21 has not been a lot of forward progress in making
22 the system stable, and though my share of the

1 budget is significant, I have the utmost respect
2 for my peers in making sure that the money we do
3 reduce does not completely stop by any stretch of
4 the information and carries forward the roadmap.
5 I think the proper thing to do was stretch it out
6 over 7 years and I was happy to pitch in to help
7 the office in general, but I don't think that I
8 bore the brunt of the cuts that we had to make to
9 keep solvent.

10 Just high level. AIS, again Automated
11 Information Systems, these are our computers that
12 is on track. We have completed 14 out of the 20
13 analyses that we were going to do this year. We
14 have added a project for proactive monitoring of
15 real-time analysis of our systems which will be
16 slowly merged in. We have built the foundation
17 for that project so we can get real-time analysis
18 and feedback on performance and stability and
19 whether or not the system is up and operational.
20 That has also fed into a metric service. We're
21 going to be using the Enterprise Data Warehouse
22 here that the CFO shop runs to put our metrics

1 into a single place where we can run reports.
2 This will eliminate the ad hoc nature of finding
3 out whether or not something is broken by the
4 phone calls that we receive and the help desk, so
5 that we are well on our way there.

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

22 Organizational strengthening. Again I

1 was one of the very few organizations that was
2 allowed to continue to hire. I feel very strongly
3 that it is the goal to alleviate the agency and
4 the CIO shop from a heavy reliance on contractors
5 and bring development resources in-house. At the
6 beginning of the year I was close to 100 vacancies
7 and I was allowed to hire 24, more than any other
8 organization, again showing the support that I've
9 gotten from management council and deputies. Of
10 those 24, 10 are hired and the remaining 14 are
11 either in the process of interviewing, what's
12 known as paneling, in other words people have
13 applied and we're sorting through the resumes.
14 One we did not find a suitable candidate for, and
15 nine are getting ready to be advertised right now.
16 I have also had the gift of support from my fellow
17 business organizations. I received 29 Patents
18 folks who are tech specialists from the
19 organization known as SIRA inside of Patents, and
20 one Trademark individual to assist me as a special
21 assistant direct report to me so that I can better
22 understand and learn the Trademark business. He

1 is also my direct adviser, his name is Chris
2 Donnenger, on the Trademark business in general
3 and what's going on with it. I have a
4 counterpart, Bill Sturaskie, from Patents as part
5 of the 29 as well. Bill has been with me for
6 quite some time and I have found his advice when
7 it's related to Patents invaluable, and I'm very
8 much looking forward to Chris's efforts working
9 with us and moving the progress of Trademarks
10 forward.

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

1 Organizational strengthening continued.
2 We have done a lot of foundational training. We
3 have gone back and we have trained our task order
4 managers. These are the people who are receiving
5 and managing the contractors of which I have over
6 300 contractors in my organization. We put them
7 through task order and contractor training. We
8 also made sure that we established new policies
9 inside of those contracts to better manage them
10 for deliverables, concentrating on the quality of
11 the technical deliverables and not just the earned
12 value management measures that we used to use,
13 though EVM, earned value management is very
14 important, it sometimes forgets quality and what
15 we want foremost is a quality product that works
16 well without a lot of maintenance. We have also
17 again launched the SDLC training, we have done the
18 Enterprise Project Management Training, and we are
19 developing individual development plans which
20 should be completed by the end of this year in
21 which we will identify the technical training to
22 concentrate on next year.

1 We have not met the obligation that we
2 have set forward so far on the reductions of
3 contractors. Unfortunately, lack of hiring
4 ability has reduced our ability to get rid of
5 contractors, thus no one be here to do the work,
6 but it is going to be something that we will look
7 forward to in future years.

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

15 Disaster recovery. We have completed
16 the requisition for enough storage space for
17 failover. That was a major accomplishment and I
18 thank the CFO's office and procurement for their
19 support. We have provisioned additional
20 communications circuits between us and Boyers, and
21 Boyers is an Iron Mountain place in Pennsylvania,
22 the company is Iron Mountain, where we keep our

1 secondary repository. Unfortunately, we filled up
2 the bandwidth between the two facilities, our
3 facility and theirs, so we were receiving data at
4 a greater rate than we could copy it up there, so
5 we had to fix that problem. We completed that
6 acquisition as well. That slowed down our copying
7 of the data a little bit, but we are still on
8 track to have it done by the end of the year.
9 Some of the failover systems, like I had announced
10 TRAM or configuration management of our email are
11 still underway. TRAM is complete. It was the
12 first system to be completely redundant up there,
13 and it is the fundamental Trademark system.

14 The other systems that were planned, for
15 example, search, we did not complete those
16 projects. I actually had to take the hardware
17 that was allocated for Boyers and deploy it here
18 in the United States Patent and Trademark Office
19 IT East Facility which is our data center to meet
20 the growing demand of search. Those devices we
21 use are a pretty heavy piece of machinery, pretty
22 large, practically a supercomputer, and they cost

1 about 1.2 million used, and I didn't have it in my
2 budget to acquire another one, so the HP Superdome
3 move will have to wait and so some of the systems
4 were delayed.

5 Out of the aging platforms that were on
6 the top of our list last time we were together, I
7 discussed a discovery we had where we didn't have
8 enough redundant filtered power in our data
9 center. Through good planning and the cooperation
10 of LCOR and our CAO's office, we were able to take
11 IT West which is our lab services and provisioning
12 area off of redundant power and put it on battery
13 power for redundancy and take that redundant power
14 and move it over to IT East which is the data
15 center, therefore freeing up 90 kilowatts which
16 was significant. It allowed progress to continue.
17 And out of the 22 systems, 12 have migrated and
18 we're catching up very quickly. That doesn't mean
19 that the power problem is over, but we have a
20 stopgap measure until the final power solution can
21 be addressed. And of course, at the end of the
22 year next year we will have completed to know

1 whether or not we will remain in this building as
2 our data center or migrate to some place else.

3 Desktop stabilization. The Federal
4 Desktop Core Configuration or GDCC is on its third
5 revision. We had yet to deploy version one. This
6 is a National Institute of Standards and
7 Technology, NIST, guideline that all federal
8 agencies must comply with. We and several other
9 agencies were far behind. We are deploying the
10 set of configurations to help protect the agency
11 against intrusion. We are pushing to 16 percent
12 right now. This is a very complicated effort
13 because we had to create individual baselines for
14 each of the organizations. Trademarks has their
15 own baseline which is the particular desktop
16 configuration with all of the associated software
17 for Trademarks on it, and then test all of the
18 280- something settings, thereabout, give or take
19 a little bit, to make sure that we didn't break
20 anything. So we have started the push first with
21 CIO, CFO, and CAO, and we'll hit the two cores,
22 Trademarks and Patents, last. So that is

1 underway, but it is behind schedule. We have had
2 a 31 percent reduction in admin rights which is
3 significant. We're making sure to do that very
4 carefully as to not break anything. In some
5 instances, software had been deployed without the
6 CIO's knowledge that requires admin rights. Then
7 antivirus was not a complete rollout and had not
8 had latest and greatest versions, and we are at 90
9 percent on that. All of this will get us into a
10 position to establish the baselines and use a
11 tool, the evaluation is listed here in red, due to
12 funding, we pulled back the funding for this year,
13 with which we will monitor the environment. The
14 original plan as stated in the roadmap was to
15 slowly over multiple years replace the desktop
16 hardware here. Due to budget constraints that
17 will not be possible. So we have gone to a
18 secondary plan, a much longer-term plan, that will
19 allow us to purchase a piece of software, we're
20 evaluating several right now, to check and monitor
21 the environment to make sure that the desktop is
22 to the configuration that it was supposed to be,

1 that you haven't suddenly gotten admin rights, you
2 haven't been to change your software settings, you
3 haven't been able to remove your security
4 precautions or add software, therefore diverging
5 from the baseline of which we will manage and
6 adding risk to the agency. This piece of software
7 will allow us to do that remotely, so if you
8 happen to get admin rights and install a piece of
9 software, when you come in the next day it will be
10 removed, and it will allow to keep to the
11 baselines and instead of having over 5,000
12 different images we'll have a very small handful
13 of like four or five to manage which will be much
14 more manageable. This will guarantee that we will
15 have enough test platforms and environments and
16 less variation so we can properly deploy patches
17 and updates to the desktop much more efficiently.
18 Again, that evaluation is behind and is slowed
19 down due to funding.

20 Service desk. We have received an ITIL,
21 that's information technology infrastructure
22 library. It's a well-known and documented

1 methodology for managing IT initiatives. We have
2 gone through an analysis of our organization by an
3 outside entity on how we would conform to the ITIL
4 model and that has centered around incident
5 management, problem resolution, change in
6 configuration management practices, and we are
7 rolling those out now and they should be
8 completely rolled out and policies and procedures
9 established by the end of the year.

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

20 MR. FARMER: John, please continue on,
21 but I did want to allow some time for questions
22 for folks, so if we could get on to the question

1 portion fairly soon that would be good. Thanks.

2 MR. OWENS: Sure. I'll just say then
3 that PTO Net III is on schedule and in fact
4 slightly ahead. I don't want to jinx myself, and
5 enterprise architecture is also on track.

6 Looking forward, we have quite a bit of
7 work ahead of us, but the good news is we're
8 pretty much on track. For nine separate
9 initiatives, two or three of them lagging slightly
10 behind is not bad compared to where we were when
11 we started. Nothing is irrecoverable, and I think
12 the team is highly motivated and we're working
13 very closely building the strategic IT plan with
14 our partner organizations, Trademarks, Patents and
15 so on to set forth a good plan for the future when
16 we have the ability to add more to the environment
17 rather than what we're now which is trying to
18 uncomplicated it. Go ahead, sir.

19 MR. FARMER: That's fine. Thanks for
20 your overview. I'll turn things over to Jeff and
21 Tim and Howard and Macon for any questions or
22 questions they have before we open it up further.

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

22 The efficiencies that the Trademark

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

10 John, we'd just like to thank you for
11 the efforts that you've undertaken. You've been
12 the CIO less than a year, and over the course of
13 that time period, those of us on this subcommittee
14 have had the benefit of a lot of contact with you,
15 also with the help of your chief of staff, Scott
16 Williams, to keep us apprised of what's going on.
17 I do think that it's important that people
18 understand the challenges. We've had a chance to
19 spend a lot of hours talking to you about -- Tim
20 might say getting down in the weeds as to exactly
21 what you're really dealing with on a day-to-day
22 basis, but I think it's important that the

1 Trademark community understand that while we as
2 users get on every day and we logon and we do our
3 searches and it's working today and it seems like
4 everything looks really good, it's taken a great
5 deal of effort to continue that effort and to keep
6 the system running, and we have a lot of
7 challenges to maintain the same service level that
8 we've enjoyed over the course of the last number
9 of years because of the stresses on the system and
10 the age of the gear that we have.

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

20 MR. OWENS: That is most definitely
21 true. The organization over the last 8 years had
22 taken a very organic growth methodology toward the

1 system's development and with the lack of
2 documentation of proper process to manage that
3 development, as people have churned out of the
4 organization, as contractors have left or have
5 been reduced due to budgetary constraints, we have
6 lost much of that knowledge, so much so that a
7 good portion of my time and the time of my
8 organization is going back through the actual
9 systems and documenting them which was in large
10 part what the SWAT team was meant to do so that we
11 could properly know what we have. Of course, the
12 SWAT team was also going to then fix anything
13 immediately found and then plot or document a
14 future plan for growth on a more modern platform
15 very akin to a large corporations web and web 20
16 initiatives.

17 So, yes, it has been a detriment and
18 every once in a while we do make a mistake and
19 break something as John Doll will attest to when I
20 walk into his office and say best of intentions,
21 but we broke something today and I'm very sorry
22 about that. We've had a couple of those

1 incidents, not many, but for the size of the
2 organization we have, it is crucial that we have a
3 properly documented and developed and controlled
4 environment and a process by which to manage that.
5 I think that we as an organization at the USPTO
6 have been very receptive of developing that type
7 of environment. It's just taking a little time to
8 map what we have.

9 MR. STORIE: Thank you, John.

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

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

21 In the wake of your reorganization of
22 OCIO, do you still have a group of folks who are

1 supporting specifically Trademark projects? I see
2 on the org charts you've got under application,
3 engineering and development, Trademark
4 development. Is that what those folks are doing?
5 Are they dedicated to Trademark projects?

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

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

22 MR. OWENS: Somewhere between a dozen

1 and two dozen. I can get you an exact count.

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

14 MR. OWENS: Most definitely.

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

18 MR. OWENS: We had the same conversation
19 with Patents. Your folks are coming over for a
20 6-month to 1- year detail. That's minimum 6
21 months because there is some upswing and I'd like
22 to get some of them, and then a 1-year maximum.

1 I'm looking for a product, program, project
2 managers. I'm looking for analysts. Anyone with
3 some technical skill that can help me piece apart
4 the past history of the systems, how they work and
5 so on. Some of that knowledge most definitely
6 resides in Trademarks. And I'd be willing to
7 consider and accept in a mutual conversation just
8 about anybody.

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

15 MR. OWENS: I think it's a great
16 starting point. The SITP hasn't been a process by
17 which we have gathered requirements since it was
18 last done in 1999 and the year 2000. The SITP I
19 think is the first draft. We have the general
20 knowledge from Trademarks of what they'd like to
21 do, and Lynne's staff has been very cooperative in
22 working with us. I don't think we've fleshed out

1 the entire plan as yet. I know the organization
2 would like to build upon what they have right now,
3 in fact they'd like to charge forward, but I am
4 reluctant until I strengthen the foundation of the
5 building before we add more layers. I am very
6 reluctant to keep adding to a problem that I
7 didn't fully understand. I'm working very quickly
8 to understand it, but I very leery about
9 complicating it. So I believe the first years of
10 the SITP which is we're talking about what happens
11 where it will be a more measured approach to what
12 gets done, and then things will pick up in the out
13 years.

14 MR. LOCKHART: Thank you very much.

15 MR. OWENS: Could I have 2 seconds, if
16 you don't mind? If you'd turn to the last slide,
17 the one before this if you would, there was a
18 request. I don't remember off the top of my head
19 who exactly made the request at the last TPAC. We
20 talked about the test product and how it was less
21 than acceptably stable. At the time we had done
22 some usage computations and realized that as the

1 product took load or more users it would fail. So
2 we added it to the SWAT team's list and they
3 immediately corrected a good dozen or so issues
4 with that product and solidified it significantly.
5 It no longer crashes under extreme load, it just
6 slows down which okay. We also plotted a future
7 evolution of the product in relation to how we're
8 also going to manage a sister product TRD.
9 However, to meet the request of TPAC, we have
10 developed a webpage which I found out is available
11 today. It does not contain real-time data. It is
12 delayed. Again we are working on that real-time
13 data analysis system. It is our hope to make this
14 real time. But once a week or once every few days
15 this website will update which will tell you when
16 we are experiencing increased usage so you can try
17 to plot your usage accordingly. So if you could
18 help me spread out the load, the performance of
19 everyone all together will be improved. This was
20 a suggestion from TPAC, we are happy to meet this
21 suggestion, and we are looking to turn it into a
22 real-time monitoring system sometime next year

1 with the rest of the introduction of our system
2 and continue like we did with TESS, improve the
3 performance of the quality of the product for our
4 customers. Thank you.

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

18 Here's one I have, and then we got one
19 from cyberspace. Our email box works. Here's the
20 one that I have, and that is a messianic goal of
21 TPAC is to reach the day when trademark
22 applications can be processed by the Trademark

1 operation soup to nuts entirely electronically. I
2 think from the public's perspective it appears to
3 be pretty doggone electronic, but there are still
4 some things that go on behind the scenes that are
5 not entirely electronic. It's the understanding
6 of TPAC that we can't do that quite yet because we
7 still need to get some computer system remediation
8 done in order for that then to be worked on. I
9 wanted to see, John, if you had any forecast of
10 how far down the road time wise we need to go
11 before we may be in a position to make those sorts
12 of technological changes so that the Trademark
13 operation can process applications soup to nuts
14 electronically. Because of we can, then the total
15 pendency time will reduce without having to make
16 any great personnel shifts or make folks work
17 harder, it's just the electronics will allow us to
18 do a faster job.

19 MR. OWENS: The good news is our current
20 analysis by the SWAT team of the infrastructure
21 while we're documenting it and fixing immediate
22 issues, we are also plotting out that future

1 evolution. We have had the honor of bringing to
2 Trademarks a small handful, less than six,
3 projects to go forward with foundational changes
4 for next year. They won't really contain large,
5 sweeping function sets of new features to our
6 customers, but what they will do is strengthen on
7 a more modern platform all using modern web 20
8 base technologies the infrastructure that we do
9 have.

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

22 For example, the FAST 1 and 2 products

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

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

1 several-year effort.

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

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

15 MR. OWENS: It is.

16 MS. KING: The increased usage is
17 basically 9:00 to 5:00 on a sample day for both
18 TDR and TESS. What if anything can be done to
19 work on the slowness, continually getting comments
20 and feedback besides working outside the normal
21 9:00 to 5:00 or moving to the far West Coast and
22 working because maybe the optimal usage would fit

1 in that pattern. But this continues to be
2 troubling for trademark owners and filers. As we
3 work to end-to-end electronic processing, when
4 there's an increased usage and a slowness, that's
5 when people revert back to sort of old-fashioned
6 methods and way I'm going to file paper or another
7 thing. So on behalf of INTA I'd register the
8 question.

9 MR. OWENS: The status page is just
10 that, a status page. It was meant to bring to
11 light in Eastern Standard Time what the heavy
12 usage hours were. The system itself, TDR and
13 TESS, were crashing multiple times a day as the
14 system would fail. We'd have to reboot the
15 servers and there would be long outages. We have
16 resolved those to the best of your knowledge now
17 and we haven't have to reboot either of these
18 systems in quite some time, though I will say we
19 did have a back-end database crash of an unrelated
20 system that's tied to it. Again it's all one big
21 jumble right now and that failure has caused some
22 issues.

1 What we've done is brought forward a
2 plan to redo or rebuild TDR and TESS on a more
3 modern, scalable web 2.0 environment. I know the
4 product called TDRNG has already been presented
5 and accepted by Trademarks. I don't know the
6 current status off the top of my head of the
7 rewrite of TESS. I am limited to some degree by
8 the systems that I have there. I do believe that
9 many of them need to be rewritten, but it is the
10 environment again for the short period of time we
11 are going to have to live in. We stopped the
12 immediate failures and crashes that caused
13 hour-long outages multiple times a day. That was
14 a significant improvement. In fact, I've heard
15 from Lynne and Debbie that that improvement has
16 been seen and fed back to us as it's much better.

17 What this website is is the first
18 example of where I am going to show you how the
19 monitoring is going. It is meant as a guide. If
20 you are on the West Coast or such, I would ask you
21 to push your transactions as late in the day as
22 possible, and if you are on the East Coast as

1 early. But that is all this was meant to be. It
2 was meant to say I heard you, I understand that
3 it's important that you get the data, and I am
4 meeting the need for that data. But there is no
5 silver bullet. There is nothing that can be done
6 anywhere to instantly just sprinkle pixie dust and
7 fix the systems. It's going to take a couple of
8 years. But what I'm trying to reassure you of is
9 we are doing the investigation. I have proven to
10 you that we are making improvements. I have in my
11 mind proven to you that we are listening to your
12 desire to monitor and measure, and that we are
13 committed to fixing the Trademark systems to make
14 them the best that they can be in the future. I
15 know it's not the answer you want to hear, but
16 it's the best one and honest one I have.

17 SPEAKER: I had a follow-up for
18 Michelle. Would you go back to your constituency
19 and ask them whether or not they've noticed that
20 there are fewer outages? Service may be slower.
21 I go on the bulletin board for INTA and so I hear
22 all of these discussions, and it was my impression

1 that people felt things had gotten a little bit
2 better, things were slow that they weren't
3 crashing as much. Would it be possible for you to
4 check on that and see if there has been some
5 improvement from their point of view?

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

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

17 MR. OWENS: At the core design of the
18 systems they weren't built to scale well. They
19 were built a number of years ago on an older
20 platform. They are tied to other products and
21 services that are inside our own control that they
22 shouldn't be, and when they're under load also

1 increase the time it takes and decreases the
2 performance of this system. That's part of that
3 untangling the web that I talked about earlier
4 when I brought in the chart that showed how
5 everything is tied to everything else. So again
6 it's like the weakest link in the chain. If you
7 have one of the links that's relied upon to get
8 the job done and it is overloaded or isn't scaled
9 properly, then it slows everything down.

10 I can tell you that major software
11 development initiatives and piecing apart the
12 problems that we have here, just takes time. As
13 much as I'd like to rush it, and we are moving
14 very quickly, I wish you could see it more, it's
15 all about also managing the risk. I have to keep
16 the systems up and available for the examiner to
17 examine and the public to access so that it's
18 steady and measured. What I committed to you was
19 document the environment, immediately resolve the
20 issues, improve the monitoring so we know when
21 things are broken, and develop and plan, and then
22 working in concert with Trademarks, execute on

1 those plans. TDRNG the new version of TDR that
2 will be much more scalable, it will be developed
3 in a very service-oriented way so it will be in
4 large part independent of other projects and
5 products, and I know that it will scale much
6 better. But that development effort is going to
7 take about a year. These things don't get
8 developed overnight, and we have to use our best
9 practices and policies and procedures to make sure
10 it's developed the right way with quality in mind
11 and not just thrown together quickly which is what
12 we have.

13 MR. FARMER: Thanks, John. Just to show
14 that we do honor our listeners from cyberspace, I
15 got this question that came in. I think we can
16 knock it out quickly because I think I know what
17 the answer is, but I'll read it in. It says, "Was
18 it imprudent to hire contractors to hand IT
19 problems because their sole purpose is to solve
20 them? Without IT problems the need for their
21 services diminishes, and how come the inherent
22 conflict was not addressed?" We're a little short

1 on time. To me, that seems to be mainly addressed
2 to prior practices before your administration and
3 that you're trying to take a different path and
4 grow your staff. But if you've got any other
5 comments, feel free.

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

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

17 MS. BERESFORD: Thank you very much, and
18 specially, John, thank you to you. For the last
19 how many years I don't know we've had constant
20 rebooting of Trademark systems as they fail, as
21 they have memory leaks, and the fact that we've
22 solved that issue on these two systems is

1 extremely important.

2 I'd just like to talk just for a few
3 minutes essentially what's going on in Trademarks,
4 and I'll be talking from a document that was sent
5 out to TPAC members and is available in this room.
6 It's a one-page document that lists Trademark
7 performance measures.

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

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

15 Just a few things about our performance
16 measures. Our quality performance, and this is as
17 of May 31, we are exceeding all of our quality
18 measures for first action and final action. And
19 in terms of pendency, our first action pendency is
20 at 2.4 months, and I say this because people who
21 are outside this room listening, and if you're a
22 practitioner pendency is something that matters to

1 you because it gives you some idea of when you can
2 expect something from the office, our first action
3 pendency is at 2.4 months and our final action
4 pendency, that's pendency to disposal, to
5 abandonment or registration excluding interparties
6 and suspended cases is at 11.4 months. So things
7 are quite speedy here in the Trademark
8 organization.

9 The filing numbers as of this month, we
10 are down about 14 percent, our filings are lower
11 by about 14 percent, than they were a year ago, so
12 comparing to last year. This has produced some
13 challenges for Trademark management and I think
14 we're handling this well. We have had a bunch of
15 quality details announced for our Trademark
16 examining attorney staff and those quality details
17 have been absolutely wonderful because they've
18 given us an opportunity to look at some things and
19 evaluate some things that we would not have been
20 able to do under normal circumstances. We have
21 folks at the TTAB working to update the Trademark
22 Board Manual of Procedure, we have folks analyzing

1 our searching across the core to see how search
2 methodology can be improved across the core. We
3 just have lots of different quality initiatives
4 going on and we're very happy about how those
5 things are working.

6 Finally, just some late breaking news,
7 the trilateral partners, Japan, the European
8 Trademark Office and the USPTO, have as many of
9 you know an agreement to produce the trilateral
10 database, that is, a database of classified goods
11 and services that are acceptable to all three
12 offices. We've been working on this database and
13 you can see example of it in our Trademark manual
14 of goods and services. The IDs that have little
15 t's by them are trilaterally approved IDs. The
16 good news is that yesterday Canada signed a
17 memorandum of understanding to dock onto this
18 trilateral ID database, so that's once piece of
19 good news. Canada will now be going through that
20 list of IDs and approving a large percentage of
21 the ones and you'll now know that those are all
22 acceptable IDs in Canada too. The second piece of

1 good news with the trilateral database is we're
2 poised any day now to sign a similar memorandum of
3 understanding with the Korean office, and so now
4 trilateral IDs will be not only acceptable in the
5 three trilateral offices, but also Canada and
6 Korea. The third piece of good news is that at
7 our last trilateral meeting the European office
8 agreed to give us their translations in all of
9 their languages for all of the agreed-upon
10 trilateral IDs. So soon coming to the website
11 that you all know, uspto.gov, the trilateral ID
12 manual will have translations in the, I don't
13 know, 15 or 16 languages of the Office of the
14 Harmonization for the Internal Markets. We'll be
15 adding the Canadian information, and of course
16 we'll be adding the Korean along with the Korean
17 translations in Korean of the IDs in the ID
18 manual. So I think this is another step in making
19 this ID manual much more useful for Trademark
20 practitioners. So I think this is a real step
21 forward.

22 I just want to make this the newscast

1 from Trademarks. I think that's the high-level
2 news from the Trademark organization and I think
3 people might be interest in it, and if there are
4 questions, I'm happy to answer them. Thank you.

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

10 MS. BERESFORD: Trademarks is in the
11 enviable position of having a surplus of money
12 partly because we came into the year with a
13 surplus of money, but also as a number of
14 agency-wide projects have been cancelled, the
15 money that was allotted to those projects from
16 Trademarks is coming back to the Trademark
17 organization, or some of it is coming back to the
18 Trademark organization. So the result is that
19 we're looking ending the year with a surplus of
20 somewhere between \$60 and \$70 million we believe
21 at this point given our projections for filings
22 and for where the economy is going.

1 We're I think very happy with the way
2 things are working. We're managing to maintain
3 our inventory at a certain level. I think I
4 mentioned our first action pendency is at 2.4
5 months, so we're maintaining what we think is a
6 good inventory of cases on the electronic shelves.
7 We are very concerned. We don't want the
8 inventory to be too low because this produces some
9 issues with staffing perhaps down the road, and we
10 don't want the inventory to be too high. So we're
11 doing the really difficult job of managing our
12 inventory to where we think it should be for the
13 health of the organization and for the benefit of
14 trademark owners.

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

20 MS. BERESFORD: Yes.

21 MR. FARMER: So what you're hoping to do
22 is to hold onto that surplus, so really you're

1 looking at this fiscal year as a break-even year.

2 Is that about right?

3 MS. BERESFORD: Yes, that's correct.

4 MR. FARMER: Also I'm going to guess
5 that your forecast of holding onto that surplus is
6 depending upon things not getting worse of staying
7 bad longer than anticipated, and thus that's a bit
8 of a rainy-day fund for you.

9 MS. BERESFORD: Yes, that's correct.

10 Probably everyone in Trademarks constantly
11 monitors filing levels and filing predictions, so
12 we're very cognizant of how things are happening,
13 and again we expect under the current
14 circumstances to end the year with a surplus and
15 be able to carry on into the next year where we
16 will continue to monitor all of these things and
17 make decisions about how to handle what's
18 happening.

19 MR. FARMER: Tell me if I see this right
20 also. It appears to me that the surplus is a bit
21 of an insurance policy in that you've got a fairly
22 senior and experienced Trademark examining

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

7 MS. BERESFORD: I think that is a fair
8 statement. I'm so lucky in Trademarks with the
9 staff that I have and the examining corps is a
10 fine example of that. There are a lot of senior
11 people, a lot of extremely good examiners. As
12 long as it makes management sense, we want to hang
13 onto those experienced examiners. We have learned
14 that it's not the wise thing to do to get rid of
15 people and then have to hire back inexperienced
16 people and then have all the training costs that
17 are associated with that and have perhaps a lower
18 level of quality. So our plan of course is always
19 to try to maintain as long as it make sense the
20 quality and the staff that we have because we have
21 a known quantity here. They're very well trained.
22 They're very experienced.

1 MR. FARMER: Speaking of that, I
2 understand that there are some possible
3 opportunities being put there on buyouts and maybe
4 early retirement offers to allow you to keep
5 enough work for your examining attorneys while not
6 pushing anyone aside. Do you have any comments on
7 what's going on there for the Trademark community?

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

1 will have to take our case to the Office of
2 Personnel Management and see if they will approve
3 our plan for buyouts and early outs.

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

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

19 MS. BERESFORD: Yes. I believe the
20 final decision was made last week to change our
21 goal for this fiscal year which will end at the
22 end of September, we had chosen the first action

1 pendency goal of 2.5 to 3.5 months. We again
2 believe that within the Trademark organization
3 that this is a goal that gives us enough
4 management flexibility to be able to manage our
5 work resources. It beats the requirements of our
6 users. TPAC is certainly on the record in their
7 annual report last year supporting this goal, as
8 is the USPTO subcommittee of INTA. So we felt
9 that the 2.5 to 3.5 month goal was one that
10 supports the needs of the business unit and the
11 Trademark community. And we think that is in
12 fact, and I can tell you it is, a difficult goal
13 to maintain our inventory and other things in this
14 2.5 to 3.5 range in this period of reduced
15 filings. It's a difficult management task to do
16 that. However, the decision was made by our
17 acting under secretary to reduce that goal to 2
18 months. I believe it was made last Thursday. So,
19 yes, that's correct.

20 MR. FARMER: Thanks, Lynne. A little
21 bit of background here, and again I'm going to
22 speak for what I think is the sense of TPAC, and

1 if I get it wrong let me know. We've looked at
2 this issue in the past and we've been asked what
3 do we think of initial first action pendency of
4 2.5 to 3.5 months, and we've always said, sure, in
5 the costless world we'd like things faster than
6 sooner, that registrations that are issued faster
7 rather than later are good for the Trademark
8 community. But we have recognized that things
9 have a cost and that within the Trademark
10 organization we on TPAC have always recognized
11 that you need to be able to staff to a level of
12 pendency. So for example, if you were going to
13 aim for 1.0 months of pendency rather than 2.5 to
14 3.5, you'd have to have a much bigger staff to be
15 able to handle the peaks in the chart, and then
16 that creates some real challenges for you because
17 then you've got even more people looking for work
18 to do when the troughs come along. Thus, we've
19 always realized that it's a tough management task,
20 but we've always thought that 2.5 to 3.5 was a
21 good balance between getting things done quickly
22 for the Trademark community and realizing that

1 that gives you something to manage toward in terms
2 of personnel, and also that it doesn't cause the
3 Trademark organization to have to carry a too
4 expensive staff because it's larger and thus that
5 reduces opportunities for potential fee
6 reductions, it could lead to fee increases, it
7 could create other management issues, so in the
8 past we've endorsed that. As a matter of fact, I
9 know that Secretary Locke is interested in stretch
10 goals for everybody, and believe me, we in TPAC
11 are always interested in improvement, and Lynne
12 knows that from chatting with us that we're always
13 pushing the envelope. But I think it's the sense
14 of TPAC that we see 2.5 to 3.5 months as a stretch
15 goal because it's tough to manage to that when
16 you've got more work than you'd like or less work
17 than you'd like, but that we're really concerned
18 about keeping the high-quality examination staff
19 that we have and thus we realize that part of what
20 you have to look at here is making certain that we
21 can have a sustainable operation and thus we've
22 saluted keeping things within those two goal

1 posts. Have I misstated that anyone on TPAC or
2 anything you want to add to that? Tim?

3 MR. LOCKHART: John, I agree with your
4 comments and I would just point out perhaps the
5 obvious, that although a pendency of 2 months is
6 certainly a goal, lower fees or keeping fees as
7 low as possible is another goal, and having a
8 stable workforce is another goal. These goals are
9 mutually interlocking and there's the law of
10 unintended consequences, so if you emphasize the
11 2.0 pendency goal to the expense of the other
12 goals, perhaps those goals suffer.

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

22 MS. DENISON: Mine is on the trilateral,

1 so if you want to finish this up that's fine.

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

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

21 MR. FARMER: Maybe, Mary, before we go
22 to your comment, are there any other comments or

1 questions on this particular topic?

2 MR. DELRAHIM: I have a follow-up.
3 With the current drop in applications without
4 incurring further costs in overtime or additional
5 resources with the resources that you already
6 have, is it likely that we could hit the 2.0 goal
7 given the decreased workload or would you still
8 need to incur additional costs to meet such a
9 goal? Then after that perhaps we can give the
10 acting under secretary an opportunity why the
11 decision was made last week. Of course, if the
12 Secretary of Commerce has the desire, that's
13 perfectly understandable.

14 MS. BERESFORD: In the short term, it's
15 entirely possible to reach 2.0 months. The issue
16 is more over the long term, that is the result of
17 having an inventory on the shelves? What is the
18 result for staffing purposes and other matters?
19 And having been in this organization for 30 years
20 and watching how the work moves, et cetera, our
21 sense has been that it's very important that we
22 maintain a certain electronic inventory of new

1 cases and manage within that inventory, and that
2 was of course why we selected the 2.5 to 3.5
3 months. Does that answer your question?

4 MR. DELRAHIM: Yes, thanks.

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

8 I'm looking at stretch goals and the
9 goal was actually changed at midyear and there was
10 plenty of discussion the midyear about changing
11 the goal, and at midyear I set the goal and I gave
12 Trademarks the opportunity to come back with
13 reasons as to why I should reconsider that. It
14 seems funny to me that I would go to OMB where we
15 actually set forth our goals, we give them our
16 goals at the beginning of the year, or to DOC and
17 say that I was going to set first action pendency
18 in Trademarks at 2.5 to 3.5 months when we were
19 already achieving 2.4 months, when had already
20 taken 10 full-time Trademark examiners offline to
21 do other details. I think managing the pendency
22 is a great opportunity and a good management tool.

1 But I agree with Howard. It is easy and we have
2 plenty of tools at our disposal to reduce it from
3 2.5 to 3.5 to 2.0 and then to maintain that
4 managing the pendency through tools such as
5 overtime, such as bonuses, such as details.

6 I'm very concerned about taking highly
7 qualified, competent Trademark staff and allowing
8 them to take buyouts and then possibly next year
9 when we get out of this trough or a year and a
10 half from now when trademark comes back when the
11 economy comes back and then we start hiring new,
12 untrained examiners. I think it's a very wise and
13 prudent option to try to maintain as many people
14 as we possibly can, and if that means driving
15 pendency down at this point in time through the
16 experienced staff that we have and then possibly
17 managing back up if the demand is higher than the
18 current workforce, I would love to see us maintain
19 as many Trademark examiners as we can and then
20 manage pendency. I did set it at 2 and 11 and
21 it's set for 2 and 11 for the 5 out years also
22 with OMB, but with every budget submission we have

1 the option of adjusting those goals. So it would
2 be just as easy for me or for the new under
3 secretary to say in view of the increased filings
4 and in view of the current staff that we have and
5 in view of INTA's desires and TPAC's desires, that
6 we could easily go back to 2.5 to 3.5 if that was
7 acceptable to the community. But I could not see
8 myself going to Secretary Locke and saying I was
9 going to set a goal at 2.5 to 3.5 when we were
10 already achieving 2.4 and had more than enough
11 resources and tools at our disposal to drive the
12 goal down to 2.0.

13 MR. FRIEDMAN: John, I want to be real
14 clear about this because either I wasn't clear or
15 you might have misinterpreted my remarks. I
16 wholly support Lynne's interest in staying between
17 2.5 and 3.5. I wholly support TPAC's statement in
18 both its annual report of last year and Mr.
19 Farmer's representation that we think for various
20 reasons it should stay between 2.5 and 3.5. As
21 far as the stretch goal which I know is something
22 that Secretary Locke is always interested in, the

1 point I was trying to make is it's only a stretch
2 goal if it's a stretch to meet the goal, and if
3 there are tools already available to Lynne which
4 there are overtime, hiring, adding bonuses, it's
5 not a stretch goal. What I think gets lost in the
6 translation which I haven't really heard from you
7 is who's goal are we trying to meet, because I'm
8 telling you clearly the internal customers, NTU,
9 has no interest in anything less than what it
10 currently is.

11 We've heard today and we've heard in the
12 annual report going back not only last year but in
13 prior years that our external customers feel very
14 comfortable at a level between 2.5 and 3.5, and if
15 we're serving the needs of not only the internal
16 customers but the external customers, whether you
17 call them the goals that are stretched or not, if
18 the goals are being met by the very same people
19 who file the applications, I don't really know
20 whose interest we're serving if we're stretching
21 however you want to define it from 2.5 to 2.0.
22 And obviously the composition of the people here

1 represent not only the people who work here, but
2 people who are from INTA, people who work from
3 corporations, and I think it's been made very
4 clear from the comments here by both our
5 chairperson and the rest of the members that they
6 feel very comfortable between 2.5 and 3.5 and very
7 uncomfortable going to a level less than that.

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

21 MR. DOLL: I want to start by
22 apologizing if I mischaracterized or spun what you

1 said wrongly, and I certainly didn't mean to do
2 that and I didn't mean to draw you to my side of
3 the table even though I may need some support at
4 this point in time.

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

7 MR. DOLL: Thanks. I'm a little
8 surprised to hear that INTA or that practitioners
9 don't want first action pendency as low as it can
10 reasonably be driven. If the office can manage
11 pendency to 6 months, to 6 weeks, to 2 months, why
12 wouldn't the community want to get as fast a
13 service as they can get as long as quality is
14 maintained, as long as the stability of the
15 workforce is maintained, and the guarantee that
16 they will have jobs and that we can manage to that
17 pendency? Because I truly believe that Lynne and
18 her organization can manage to a much lower
19 pendency than 2.5 through the tools that she has
20 and through the options that she's now exploring
21 such as the details of her examiners to do other
22 things or possible buyouts at a point in time.

1 I'm concerned about seeing a lot of
2 experienced Trademark examiners leave the office
3 at this point in time because we may be at the
4 valley. We may be at the bottom of the trough.
5 And I think trademark filings will bounce back and
6 I think they will bounce back much more quickly
7 than patent filings normally bounce back. So it
8 wouldn't surprise me if we don't go into the next
9 fiscal year with increased filings. But I think
10 we have the ability to manage the 2.0 and 11.0,
11 and I did give the Trademarks the opportunity to
12 come back with written comments and explain
13 exactly why the goals that I had set were not the
14 correct goals or were not achievable or were not
15 advantageous to the Trademark organization and the
16 users and I was simply unpersuaded.

17 MS. PEARCE: I'm not speaking as a
18 member of TPAC. I'm just speaking as a member of
19 the Trademark community on this. I manage a large
20 Trademark portfolio and you wanted to know, John,
21 what's the reason that we might not want pendency
22 to be as low as it could go. I file a lot of ITU

1 applications, intent-to-use applications, as I'm
2 sure most people in the room do. One of the
3 things I've discovered is sometimes when pendency
4 gets too low or I get caught off-guard, I'm planning
5 on filing a specimen, an allegation of use, I go
6 into blackout period too quickly, I've got to sit
7 on that specimen and wait until I get a notice of
8 allowance before I can file it and then that takes
9 longer for me to go to registration. There are
10 many times I'm actually grateful that pendency
11 gives me a little bit of breathing room to be able
12 to get those allegations of use filed, get them
13 accepted and made of record before the application
14 is examined, and then I have a very clear and
15 quick road to registration.

16 So from that point of view, and that may
17 be why the Trademark community is comfortable with
18 this, we have our own rhythm for doing things and
19 many times when you file ITU, you're doing it to
20 reserve a mark, but you know you're going to begin
21 use fairly quickly and so the reduced pendency
22 sometimes I've gotten caught with a specimen, I've

1 missed it by like a week because the examiners
2 were a little too quick to the draw and I've had
3 to sit on that until I got a notice of allowance
4 which actually results in it taking longer usually
5 for me to get to registration. So that's just an
6 example.

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

18 Wearing my TPAC hat, I was on TPAC last
19 year when we endorsed the 2.5 to 3.5 month period.
20 Part of the reason I felt comfortable about that
21 and liked that approach was it offered a range,
22 and I'm a big believer in deferring to

1 management's ability to have a range of options to
2 meet their performance goals. So to me, having a
3 range of pendency made a lot of sense and it gives
4 the leadership team a lot more options to look at,
5 all of the needs, in addition to pendency which is
6 important for us. I'm pleased with what you've
7 been able to do here in driving pendency down from
8 times when I've practiced when it's been
9 significantly longer than that. So not to take
10 away from that great performance, but I know there
11 are other challenges and competing challenges, and
12 so I prefer to endorse management's opportunity to
13 have that ability and flexibility to look at all
14 options.

15 MR. FARMER: I think also part of the
16 reason why we supported 2.5 to 3.5 is because it's
17 not costless, and one thing that really concerned
18 me was the fact that this goal will remain in
19 effect if I understood it correctly potentially
20 for 5 years, although it could be altered, and
21 that the economy is going to come back at some
22 point and at that stage this would be expensive to

1 the Trademark operation, it would affect the way
2 Lynne has to staff the office, and that in turn
3 can negatively affect the Trademark community
4 because it could mean that fees to up or the
5 opportunities to reduce fees goes down. So I
6 think it's really important to understand that
7 going to 2.0 is not costless, it has a cost, and
8 we on TPAC understand the cost. We think that
9 given all the tradeoffs that 2.5 to 3.5 is the
10 right speed-cost balance and I think that's why we
11 endorsed trying to stay within those goalposts.
12 Any other comments or questions from folks on this
13 topic?

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

17 MS. DENISON: Lynne, you mentioned the
18 trilateral. I was interested to see that Canada
19 was on board since they're not a member of the
20 Nice Convention and also Japan has subclasses. So
21 I think the public would be interested in hearing
22 a little bit more about those countries and how

1 it's going to impact them and when it's going to
2 come into effect.

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

21 Canada of course is interested in Nice
22 and keeps flirting with the Nice agreement but

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

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

17 MR. FARMER: Unless there are any
18 comments or questions from the audience -- we may
19 have one from cyberspace. This one I think is
20 directed to you, Lynne. It says, "At a previous
21 TPAC meeting there was some discussion about
22 dropping pendency and the office's ability to

1 honor Section 44(d) claims of priority. What are
2 the office's current thoughts on that?

3 MS. BERESFORD: The office has been
4 talking to other offices about how Section 44(d)
5 priority claims are handled around the world, and
6 this is something that we need to do more work on.
7 What we've discovered is there are a variety of
8 practices out in the world. There are some
9 offices that hold applications that have been
10 approved for publication and registration under
11 the 6-month priority period is over so that they
12 can honor the requirements under the priority
13 provision in the Paris Convention. There are
14 other offices that just send things on to
15 publication and registration and ignore that
16 provision in the Paris Convention, which is
17 written in such a way that it doesn't require that
18 you hold anything up. It's written just that you
19 have to provide that priority period. Again we're
20 kind of exploring this phase. I think ultimately
21 they will have discussions and perhaps a Federal
22 Register notice on this issue to try to get the

1 sense of where the public and our user community
2 thinks we should go on this particular issue. But
3 given the other things that have been happening,
4 we haven't moved too quickly on that particular
5 issue.

6 MR. FARMER: I can also add a little bit
7 of information for the person who asked the
8 question. Before the Trademark operation has come
9 to us on TPAC and asked what we think about the
10 issue, and what TPAC has said before is that we
11 like speed, we like registrations popping out
12 sooner rather than later. We realize in some
13 cases there is a cost associated with speed, for
14 instance, that's why we've been in the 2.5 to 3.5
15 goalpost. But for example, we're doing other
16 things to encourage earlier than later
17 registration such as trying to move toward
18 soup-to-nuts processing of applications
19 electronically, and while we've stated that we
20 have a messianic goal some day of having
21 electronic certifications of registration simply
22 because that cuts time off the back end,

1 specifically the Trademark operation has come to
2 us at TPAC and said as a matter of policy does
3 TPAC support or oppose allowing notices of
4 allowance and registrations for 1A applications to
5 pop out before 6 months, and the answer is that we
6 support it, that we are fine with things coming
7 out earlier because you still have the petition to
8 cancel and the petition to oppose opportunity
9 that's available, and so that's how historically
10 we have looked at that tradeoff as a matter of
11 policy when we've been presented with it. If I've
12 misstated that, if someone on TPAC would correct
13 me I'd appreciate it.

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

19 MR. JOHNSON: John, let me just make one
20 comment. I wanted to take this opportunity to
21 thank David Samms and his staff for their recent
22 decision in the Zanellia case. As many of you

1 know, the board recently issued a decision in
2 which it gave Trademark owners the opportunity to
3 correct any mistakes in their registrations and
4 possibly avoid a fraud claim as a result of the
5 ruling in the Menninol case. The board issued a
6 decision and then thought about it and went back
7 and issued the right decision in my view and went
8 back and made it a presidential decision which was
9 a deal of guidance for the Trademark practitioners
10 in managing their portfolios. Too often all the
11 Trademark office here and TTAB and other parts of
12 the Trademark operation is just criticism,
13 criticism, criticism, and I wanted David to make
14 sure he and his staff knew that we appreciate what
15 they did, their efforts were not in vain, and we
16 applaud him and his staff for all that they've
17 done on this effort. Menninol was a big issue for
18 us and we thank you for it, David.

19 MR. FARMER: I endorse that entirely.
20 Also for those listening at home, you may have
21 been wondering why we don't have a TTAB segment
22 today. We thought we were going to have a pretty

1 crowded docket. We will certainly be visiting
2 with Judge Samms at our August meeting. Recently
3 there was a bit of an informal survey done on TTAB
4 speed at the INTA meeting and are just now
5 digesting what we've gotten back from that, so we
6 didn't want to go prematurely with that.

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

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

16 MS. KING: In light of the discussion
17 about the pendency and the references to INTA,
18 this is Michelle King, from the International
19 Trademark Association. I just want to say that
20 INTA would concur with both what Elizabeth and
21 Jackie said about brand owners and their
22 perspective on pendency. In addition, we support

1 and encourage and rely on the role of management
2 of the PTO in giving us feedback and advice on how
3 things work in terms of pendency and we want to
4 support a stable workforce and encourage
5 examiners' growth and education and we support and
6 applaud Lynne and her team for the hard work that
7 they're doing in the examination process.

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

11 The final piece of business is that we
12 have two members of TPAC who may be rotating off
13 of TPAC. I'll explain the maybe tense to my verb
14 before I get on to other things. Jackie Leimer is
15 finishing up a full 3-year term on TPAC, and James
16 Conley is finishing up a partial term that he
17 picked up. Before we get into the full thanks and
18 praise, we're not quite certain because we need to
19 replace two TPAC members, but also of course we've
20 had a change in administration and John Doll has
21 been the Acting Director and we don't know how
22 long it's going to be before we have political

1 leadership in place. John and I have talked about
2 this and we don't know where things would go, but
3 I know that Jackie and James if they're needed to
4 be held over, I think their terms end at the end
5 of August, on a temporary basis until folks can
6 fill their slots, they are not imposing
7 themselves, but they are available if you need
8 them for their service, and hypothetically, for
9 example, you could do an appoint and then resign
10 when you get new people if you need. So just so
11 we can be transparent for all the folks who wonder
12 how TPAC members get chosen, I'd thought I'd just
13 let those folks know that we're looking to have
14 those spots filled but we've got two folks who are
15 willing to continue serving until they can be
16 filled if we need them. I appreciate Jackie and
17 James being willing to do that because I can tell
18 you that TPAC is a massive nonbillable time sponge
19 even though it's a lot of fun.

20 That being said, first off to Jackie,
21 Jackie is the senior member of TPAC and thus one
22 of the great things is that we can always turn to

1 Jackie and say what did we do in the past because
2 a lot of us weren't part of we, and that's been a
3 tremendous service. Also she's put a lot of time
4 into it in serving her full term. One of the
5 things that's been very valuable about Jackie's
6 service is that she's one of only two members
7 presently on TPAC who is able to bring to us the
8 perspective of being in house and managing a large
9 portfolio and an international portfolio, and I
10 can say that personally from my experience that's
11 really helpful because I'm just the opposite of
12 that. I'm in a boutique law firm that mainly
13 represents who only file in the United States and
14 they don't have really large portfolios. So I
15 know that from people coming more from my
16 perspective, to have someone there who can say
17 this is how this works and these are our concerns
18 and things I may not bump into really add to the
19 committee and that's been very valuable.

20 Also Jackie has been not our only, but
21 our great expert on international stuff and
22 because she manages an international portfolio

1 she's really on top of a lot of the stuff such as
2 the Nice classifications or rumblings in the
3 distance as to whatever could happen with Madrid
4 or how we interface with the rest of the world,
5 and she has championed that issue on TPAC and
6 that's very valuable because on TPAC we have a
7 variety of different backgrounds and thus it's
8 really good to have a mix of backgrounds that we
9 can match up with the functions of the office, and
10 Jackie has been perfect for that international
11 role and we greatly appreciate it.

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

19 Now on to James Conley. I'd like to say
20 I knew James at Virginia, but I didn't, but I
21 should have because he is one interesting guy and
22 a lot of fun to be around. James filled an

1 interim term and has gotten up to speed incredibly
2 quickly. I should make a side note that we on
3 TPAC have recommended that James be appointed to
4 serve another term but that's not within our
5 purview to control and we have to have him back,
6 but things will be whatever they will be.

7 What James has really done for us is to
8 bring strong financial ability to TPAC and to help
9 us get into things that we've been wanting to look
10 at. For example, one thing that TPAC is ever
11 vigilant on not because we think anything is wrong
12 but just because it's role is to look at the USPTO
13 overhead and always remain vigilant that that
14 appears to be a fair apportionment between the
15 Trademark and the Patent operations, and if
16 nothing else, to really get in there and
17 understand how that works because it's a very
18 complex process that produces that and we wouldn't
19 be doing our duty if we didn't do some oversight
20 there. James has put a lot of time into that and
21 he's really become our expert on TPAC and he's
22 been able to come back to us and tell us what he's

1 seeing. And while you may not hear many comments
2 from James at the public meeting, there is a lot
3 floating below the tip of that iceberg in terms of
4 work. I know that James has had times for
5 instance this past year where he's had to set
6 aside two whole workdays just to visit with folks
7 to get information in order to give us the
8 feedback that we need, so that's yeoman's work.

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

20 So James, thank you for your service.
21 We love having you on TPAC and we hope to keep
22 working you for quite a while.

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

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

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1 CERTIFICATE OF NOTARY PUBLIC

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3 I, Carleton J. Anderson, III do hereby certify
4 that the forgoing electronic file when originally
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10 proceedings were taken; and, furthermore, that I
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12 or counsel employed by the parties hereto, nor
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15 /s/Carleton J. Anderson, III

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17 in and for the Commonwealth of Virginia

18 My Commission Expires: November 30, 2012

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