

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, June 26, 2007

ANDERSON COURT REPORTING  
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1 P R O C E E D I N G S

2 (9:06 a.m.)

3 CHAIRMAN SAMUELS: Good morning, let's  
4 get started. Please take your seats. I will call  
5 this meeting of the Trademark Public Advisory  
6 Committee to order, first with housekeeping  
7 measures. First of all, if you haven't already  
8 signed in, please do.

9 Second, if you have a comment, question,  
10 you may please remember to press the button on the  
11 microphones so it can be recorded and probably  
12 it's helpful if you can identify yourself as well.

13 If anybody who's sitting in the  
14 perimeter of the room has any comments to make,  
15 which is frequently the case, please come to the  
16 table and identify yourself as well.

17 I know Lorlei is on the phone. Are you  
18 there, Lorlei?

19 MS. DeLARENA: Yes, I'm here.

20 CHAIRMAN SAMUELS: Okay. I know we had  
21 problems yesterday hooking you in, so I am glad to  
22 see that we have resolved those problems.

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1 MS. DeLARENA: Yes, thank you.

2 CHAIRMAN SAMUELS: Okay. The first item  
3 on the agenda is remarks of the Under Secretary and  
4 Director Jon Dudas, so, Jon?

5 MR. DUDAS: Thanks very much. And also  
6 we'll have remarks from our Deputy Under Secretary  
7 and Deputy Director Margaret Peterlin. So those  
8 of you who don't know Margaret, I will just by way  
9 of introduction, she's somebody who's always been  
10 a great friend of the office -- friend in the good  
11 sense -- not only friend that helps the office but  
12 also exercised oversight when she was on Capitol  
13 Hill. But she's always been incredibly impressive  
14 to us because she played a key role in the last  
15 bills that we've sent out: the T-bill that went  
16 out that made such a difference for us from a  
17 strategic planning standpoint; also, the patent  
18 reform bill that had been up there.

19 But what is particularly impressive  
20 about Margaret was how focused she was,  
21 particularly the congressional staffer not just on  
22 the intellectual property issues from a policy

1       standpoint, but -- I think this is something TPAC  
2       can probably appreciate -- she's the only staff  
3       person who ever, during the T-bill, asked about  
4       the trademark fence (?) -- and make it available  
5       to TPAC, but somebody who always got very deeply  
6       into the issues.

7                   And particularly, now there's so much  
8       going on with Capitol Hill, so much going on in  
9       terms of things that are going on internally and  
10      externally, that we needed somebody who understood  
11      both the inside of the office and the outside of  
12      the office. So it's sort of a reward or maybe, in  
13      my way of saying, all those things you asked about  
14      and all those issues that might be problematic,  
15      you can help us even more by coming here.

16                   And so it's really great to have  
17      Margaret on board, and she's already done a whole  
18      lot, internally. So we're both going to give  
19      views about things that are going on. Mine, of  
20      course, is more of a -- I've been here five years  
21      -- maybe I've drunk the Kool-Ade, but Margaret can  
22      offer -- but also in the sense of having someone

1       who's come into the office fairly recently, I  
2       don't think she can raise (?). So we'll end up  
3       talking about a lot of those things being -- I'll  
4       tell you what's been dominating my time to a large  
5       degree has been the debate going on on Capitol  
6       Hill.

7                   It's patent reform debate. And I won't  
8       go deeply into all those issues, but it's  
9       interesting how the issues that are in the patent  
10      reform because they often overlap a little bit on  
11      the issues that we have here at TPAC and overlap  
12      overall. The kind of strategic initiatives that  
13      we have in place, I'll talk a little more about  
14      how they overlap. I'll talk specifically about --  
15      I won't go into the different patent divisions and  
16      patent quality and all those kinds of things with  
17      people hanging on, and how the attitudes about  
18      intellectual property, generally, have changed and  
19      is affecting things in terms of patent law and  
20      might affect things in terms of trademark law,  
21      although I doubt it is, at some degree.

22                   I'll go ahead and talk about one item

1 that's out there specifically that affects TPAC,  
2 and that is Congressman Coburn from Oklahoma was  
3 particularly interested in the patent reform  
4 debate on a number of different issues. One of  
5 the areas that was important to him was that the  
6 office have appropriate funding, and so he noted  
7 and was happy that diversion has ended on a  
8 year-by-year issue, by a year-by-year basis in  
9 President Bush's budget, and that Congress has  
10 followed that lead. But he seemed interested in  
11 finding a permanent solution diversion.

12 And so he raised that issue, and one of  
13 the things that he -- and we were looking at, and  
14 we don't have any official administration  
15 position. What we are looking at is, he'd like to  
16 be able to give the office the opportunity to  
17 raise fees, adjust fees on their own.

18 He'd like to bring in the TPAC --  
19 trademark fees were raised. He would like to make  
20 certain that the advisory capacity of the  
21 Trademark Public Advisory Committee is brought  
22 into play.

1                   So there's no final language or anything  
2                   like that at this point, but I want to make  
3                   certain that you're aware that he has an idea that  
4                   we need senators and members seen to be backing,  
5                   which is that this end of diversion should be  
6                   permanent. The office should have authority over  
7                   its budget. There should, of course, be  
8                   accountability, and there should be very real  
9                   accountability. And that one of the key roles  
10                  that TPAC -- and TPAC can play is to give advice  
11                  if there's going to be changes to fees.

12                  So, I mean, visioning from what we're  
13                  hearing so far, it would be something along the  
14                  line, if it becomes -- this is one senator who's  
15                  talking about and amendment, but again I think  
16                  it's important for you to be aware that what he's  
17                  envisioning, I think, is that we would give notice  
18                  to TPAC, TPAC would get of what fees we thought  
19                  would need to be adjusted, TPAC would give advice  
20                  within a certain time period, then we would go to  
21                  the Federal Register, so TPAC should look for it  
22                  in the Federal Register, go this to the Federal

1 Register and then there would be some time period  
2 after the Federal Register before the piece (?)  
3 would be implemented. I'd suppose, which would  
4 give them an opportunity in Congress to make  
5 public if the fee increase shouldn't go forward or  
6 the decrease shouldn't go forward, because we  
7 certainly envision the possibility of both.

8 Without giving any kind of official  
9 views, what I'll say is attractive about that, and  
10 unofficially attractive, is, you know, this  
11 office, in particular in trademarks, has been able  
12 to lower fees, has been able to adjust fees in a  
13 way that makes sense. And we've all seen in the  
14 trade protocol that which is not a fee issue, but  
15 we've seen particularly in trade protocol but also  
16 with fee issues that sometimes things make perfect  
17 sense to policymakers as a whole. When we go up  
18 on Capitol Hill, it gets involved in a whole lot  
19 of other debates.

20 I mean Madrid was about judges. It had  
21 almost nothing to do with the subject of Madrid  
22 protocol, and it was held up for 10 years on that



1 basis. So from a policy standpoint it seems,  
2 again unofficially, to make a lot of sense that we  
3 would do something along those lines.

4 Another area where I would have spent a  
5 little bit of time on the Hill that was more  
6 focused on trademarks and was really just an  
7 opportunity for us to talk about victory in a way  
8 was on tele-working. And, essentially, it was a  
9 hearing where the Senate was concerned that  
10 tele-working hasn't taken effect the way it should  
11 take effect, and so there were a lot of hard  
12 questions asked among government agencies and  
13 government agencies that coordinate tele-working.

14 We were really there as a success story,  
15 and I think trademarks is the heart of that  
16 success story, as we just came off of the  
17 anniversary. Howard, I had to thank you  
18 officially. I'm really very, very thankful INTE  
19 -- you came in with a statement saying that  
20 tele-work has worked, that it's been something  
21 that has been a partnership among the -- at the  
22 Patent and Trademark Office something that's

1       helped across the board, and I think -- that's  
2       helped tele-work across the board and  
3       particularly, I think, showed where USPTO -- so I  
4       can tell you what the way I was framing our  
5       testimony was, essentially, we are a great success  
6       in terms of tele-working, as what I call a local  
7       tele-working success.

8                 So I think we have 85 percent of our  
9       eligible examiners in trademarks are now working  
10      from home, that we want to make it not only a  
11      local success but the opportunity to have a  
12      nationwide work force and so forth, which is even  
13      more attractive to employees. We have to do that  
14      right that we're transitioning from what I would  
15      call a local to a nationwide, and then we have  
16      issues along those lines. And we have internal  
17      issues and external issues, but I think the  
18      senator seemed quite impressed at what was able to  
19      be done.

20                And I think you all know that what  
21      trademarks was able to do has served as a model  
22      for patents. It's also served as a model for

1 other agencies, so we can continue along this  
2 line.

3 And then, lastly, on the legislative  
4 front, Senator Mikulski, who is from Maryland, is  
5 the chairperson for -- I don't know exactly what  
6 it's called now, I don't know how they (off  
7 mike)-- but basically are appropriators, and they  
8 have state department and commerce. And I think  
9 they still have justice, still have justice. So,  
10 essentially, it used to be called Commerce, State,  
11 and Justice.

12 Senator Mikulski has been someone who's  
13 cared a lot about the office. She is somebody who  
14 wanted a report of where had the PTO been and  
15 where is the PTO going. We gave her a report  
16 along those lines. She read it and has become an  
17 incredible supporter, essentially saying,  
18 "Whatever I can do to help, we think you're on the  
19 right track, the progressive initiatives you have  
20 in trademarks and now in patents are quite  
21 impressive. And what can we do to do more?" So  
22 that might be someone again that's an appropriator

1 who's looking at what our budget is and what can  
2 be done to make sure we stay on that track.

3 So I'll go into some other issues,  
4 Margaret can go into other issues as well. I  
5 wanted to -- those were issues that recently came  
6 up off from a legislative front that I think TPAC  
7 needs to be aware of, but then we'll all bring it  
8 up to questions which I think is very important.

9 So, Margaret?

10 MS. PETERLIN: Thanks, Jon, and I'm glad  
11 to be here at my first TPAC meeting.

12 Our legislative approach, as Jon  
13 mentioned, is influenced by our strategic goals of  
14 making sure that we all each have stable funding  
15 and establishing a nationwide work force. So  
16 those are our two sort of primary motivating  
17 strategicals right now. And we have many in our  
18 strategic plan which we released earlier this  
19 year.

20 I want to talk about funding,  
21 specifically, because that is an issue that I've  
22 spent a great deal of time on before I came to the

1 USPTO, and I'm appreciating on a daily basis how  
2 significant that is. And one of the things that  
3 I've always found interesting in the meetings that  
4 Jon and I are in, are people will literally still  
5 ask us: Has it been helpful to have access to  
6 your fees?

7 (Laughter)

8 MS. PETERLIN: Yes. It's helpful to  
9 have access to my salary as an individual. It's  
10 helpful to have access to your fees, and we talk  
11 about the strategic initiatives that we were not  
12 able to put in place. We talked about -- which  
13 was severe on the patent side of living in an  
14 attrition-only hiring -- use that over a course of  
15 20 years when you use that model.

16 So I know yesterday that TPAC had an  
17 opportunity to talk to Barry Hudson and make a lot  
18 of questions with him. And one of the things that I  
19 want to say is we really appreciate your interest in  
20 looking at our cost allocation and making sure that  
21 we also put it on the trademark sense as well,  
22 because we consider that positive pressure, pressure

1 we hopefully don't need because we're doing the same  
2 things. But it's very useful.

3 As Jon mentioned, the issue of diversion and  
4 the work that Coburn and, actually, Durban are  
5 doing, and that's -- optimistic is that it's a  
6 bipartisan amendment at this point. It's not even  
7 just a bipartisan idea. Durban's already signed on  
8 to the amendment.

9 When we are talking to people in China and  
10 Brazil, even some of those countries are also facing  
11 the issue of diversion, and we keep telling them use  
12 this as the poster child of just how bad it gets if  
13 you don't have access to your fees. So I actually  
14 think that that's been an opportunity for us to be  
15 instructive through our prior experience.

16 I want to talk a little bit about our  
17 strategic plans, some of our vision for management  
18 and then talk again a little bit about -- We did  
19 release our strategic plan earlier this year. It  
20 covers 2007 to 2012. One of the primary goals, as  
21 Jon might have said, is the tele-working/nationwide  
22 work force nexus. And one of the things that I want

1 to highlight is work I'm sure you're aware of, but  
2 work that is as critical today as it was when it was  
3 begun two years ago: It's the Process Mapping and  
4 work force assessment exercises that trademarks has  
5 been doing.

6 Trademarks again, in this hearing is  
7 actually ahead of our patent organization in terms  
8 of mapping out what actually people are doing on a  
9 day- to-day basis, and then making sure when we move  
10 to end-to-end processing we're doing it efficiently.  
11 In a prior job I worked in an environment where we  
12 were going from paper lifts to an automated system,  
13 and one of the biggest mistakes that people make, as  
14 you know, is you think you just do what you did in  
15 paper in the electronic environment, and then what  
16 you're doing is you're locking in your  
17 inefficiencies pretty much forever.

18 So I think that Lynne and her team have  
19 remarkable perseverance for a multiyear project that  
20 can be at times detail-oriented but often tedious in  
21 a way in terms of the amount of detail that it  
22 takes.

1           So I think that that is one of the most  
2 important foundations -- foundation-laying efforts  
3 that has been going on in the area.

4           In strategic planning, generally, one of the  
5 things that I always like to remember is your  
6 strategic plan is like buying a new car. As soon as  
7 you leave the lot, you lose value to it, so as soon  
8 as you print it, it becomes outdated in a way. So  
9 what Jon and I are doing is we're in an effort right  
10 now to bring someone on board to the front office  
11 full time who can do strategic planning with us. So  
12 the day-to-day, methodical, organized, structured,  
13 benchmarked approach, priority-setting approach to  
14 strategic planning is one of the things that you've  
15 probably talked about with Barry is, we've got a lot  
16 of great ideas, a lot of expensive ideas, and less  
17 fees than ideas. So we really need to allay -- (off  
18 mike) So we are bringing someone on board to have  
19           as their primary job strategic planning and  
20 also be the bridge for our day-to-day management,  
21 because another mistake that we don't want to make  
22 is you've got a simmering think tank of strategic



1 ideas, and then you're running and, you know, your  
2 day-to-day problems, and the two are no  
3 communicating. which may seem like a one -- you  
4 know, just a one-person hiring in (off mike) that I  
5 mentioned, because it is such a significant  
6 contribution to the management of the organization.

7 The nationwide work force, as Jon has said,  
8 percent of our trademark employees, tele-worker-  
9 eligible to do so, and that's about 40 percent -- 46  
10 percent of our trademark employees all together.  
11 And that really has made us a leader on Capitol  
12 Hill.

13 One of the things that I know about the PTO  
14 before I came over here is that the trademark tele-  
15 work program was incredibly successful and was an  
16 example of -- it was almost quirky when it first  
17 started because people couldn't believe that the  
18 government had sort of been able to do this  
19 successfully. And I'm not sure that -- people  
20 always appreciate what that means both internally  
21 and externally.

22 Our CFO shop has just now set up their

1 tele-work program with 20 employees. So this just  
2 tells you how far advanced trademarks has been. And  
3 I'm also -- I want to make sure that you all are  
4 aware of -- we have a virtual art unit now in the  
5 patent side, which is the distrike cathology(?), 13  
6 examiners doing a virtual art unit. So they are not  
7 -- they are not here at all. Seven of them were  
8 already tele-working, and when we are trying a pilot  
9 program with support of the popluck(?) to see if the  
10 virtual art unit works effectively.

11 And again, these are additional efforts to  
12 see how we move from a similar agency office to an  
13 ACMI (?) work force. One other thing that surprises  
14 me is I was talking to a former member of Congress  
15 on Saturday at a picnic -- so that just tells you  
16 how unofficial it was -- but he swore to me that he  
17 had met with people from the regional PTO offices  
18 when he was in Congress. I'm sorry, sir, we don't  
19 have those, and he said, "I could have sworn we had  
20 people and ventures (?) coming in," and I find that  
21 time and time again, even when I go up on the Hill,  
22 people think that PTO, like many other government

1 organizations, actually has regional offices. And I  
2 keep telling them no, and we're not necessarily  
3 trying to have expensive offices that (off mike),  
4 we're trying to figure out how to move to a  
5 nationwide work force, and that may mean offices, it  
6 may mean storefronts, it may mean tele-hub. You  
7 know, we're trying to figure that out.

8 But I have -- I don't know if Jon's  
9 experienced that, but I literally have people tell  
10 me all the time that we have regional offices. And  
11 so I would like to --

12 SPEAKER: Excuse me, I'm sorry, I'm  
13 picking up a little bit of interference from  
14 someone's cell phone. If we could just turn them  
15 off, it's --

16 MS. PETERLIN: He's working it, trust  
17 me. You want to turn them off.

18 (Laughter)

19 SPEAKER: Thank you.

20 MR. DUDAS: He didn't care when I was  
21 talking.

22 MS. PETERLIN: One of the challenges,

1     though, that we will face, and I think this is  
2     --this is one of the things that, you know, I -- I  
3     sort of carry in the back of my mind with concern  
4     is when we, if we do pursue an alternative  
5     solution of establishing local tele-work sites,  
6     you always have the issue in Congress of the exact  
7     opposite of not- in-my-backyard. Everybody will  
8     want one in their backyard, and then you can have  
9     a proliferation of 50 sites.

10           And so I think that as we move forward  
11     in this, we're going to have to make sure that,  
12     you know, our research about what sites do or  
13     don't make sense are very well validated, because  
14     what we don't want to do is spend all of our  
15     strategic planning fees doing sites that we don't  
16     think are efficient.

17           So I think these are some of the  
18     challenges that Jon and I and the members of the  
19     management team sort of think about, are making  
20     sure that we don't somehow preempt ourselves and  
21     get ahead of ourselves in what is a long-term  
22     process.

1           INTEN (?) electronic processing we've  
2 talked about, as you all are aware, more than 95  
3 percent of our trademark applications are filed  
4 online, but just as we know in our patent side,  
5 just 'cause you file online doesn't mean you then  
6 flow into a beautiful end-to-end electronic  
7 processing system. And so, in fact, on our patent  
8 side sometimes we actually slip back out into the  
9 paper world and then enter back into the  
10 electronic world.

11           And that's -- that right there would  
12 prevent us from moving effectively to a nationwide  
13 work force just in terms of trying to manage paper  
14 flow.

15           So again, I want to congratulate  
16 trademarks on their efforts because they are at  
17 the point now when they can start phasing in  
18 increased electronic end-to-end processing, which  
19 is a particular focus I have for this office.

20           One quick update on our outreach  
21 activities, as I'm sure you're aware, under the  
22 Stop Program, we have been involved in outreach

1 programs with small businesses. We're still  
2 finding that we go places and people don't realize  
3 that their trademark registration only applies in  
4 the United States, that a patent only applies to  
5 the United States. We're also trying to remind  
6 them that this is a business decision just like  
7 fire insurance is a business decision. And you  
8 need to have ambition for your company. You might  
9 be small today, you might be doing payroll at 3:00  
10 in the morning today, but if you don't protect it  
11 now, you won't have it later as your business  
12 develops. So that's certainly a message that  
13 we're very focused on providing.

14 We are happy this year because we have  
15 an agreement with the U.S. Chamber of Commerce to  
16 do our roadshows with them, which has been a  
17 successful relationship -- I'm not sure if you're  
18 all aware of it. And then I think I'll turn it  
19 back over to Jon, because I was just going to talk  
20 about the heads of office meetings, but I know  
21 he's going to that as well.

22 Thank you.

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1                   MR. DUDAS: Yeah, and we can talk about  
2                   there's a number of things happening  
3                   internationally, and as Margaret talked about, we  
4                   had a heads of office meeting on the patent side,  
5                   heads of patent offices where it wasn't just  
6                   trilateral but it also involved -- so it was a  
7                   European patent organization, Japan Patent Office,  
8                   Korean intellectual property organization, State  
9                   intellectual property office of China, and USPTO.  
10                  And we're interested very much in -- and I know  
11                  that Lynne has already begun discussions with how  
12                  we make certain that we have the large offices  
13                  throughout the world, the growing offices on the  
14                  trademark side.

15                  Trademarks, in a lot of ways  
16                  internationally, is ahead of patents for a lot of  
17                  nations. They understand the significance and  
18                  importance of trademarks, and they also, I think,  
19                  believe they can realize automation and economies  
20                  of scale much more quickly than trademarks. So  
21                  that's one area on the international front that  
22                  we're trying to make certain that we are reaching

1 out to offices throughout the world, not just the  
2 traditional relationships, but also making certain  
3 that the United States is at the edge of seeing  
4 what offices are up and coming, what offices are  
5 doing more, and making certain -- there's in  
6 trademarks, I would say I have not met a head of  
7 office or a world leader on IP that doesn't want  
8 the USPTO, the trademark office here, to be the  
9 model.

10 Now, I am certain there are some  
11 differences somewhere, and where we have -- you  
12 know, but I think on the patent side that's  
13 largely true, but there are some fundamental  
14 differences in laws. But I think on the trademark  
15 side, there's just not an office throughout the  
16 world that doesn't want the expertise in the  
17 trademark office from the U.S. in terms of either  
18 automation or what's been done, I mean, recognized  
19 as the gold standard or the platinum standard,  
20 whatever the highest standard that there --  
21 whatever the highest standard there is that's out  
22 there.



1           And then I know we want to open up the  
2 questions. I wanted to just finalize from my  
3 perspective to just make it, what can TPAC do?  
4 That's probably a question that's on your minds,  
5 and I'll just sum it up in one simple statement,  
6 and it's I would ask TPAC to be heavily involved  
7 in our strategic planning over the next few years.

8           And Margaret mentioned, importantly,  
9 what the stability of funding has meant, because,  
10 you know, with the big difference in this funding  
11 issue and full access to funds has not only been  
12 that there is more funds there, but it's the  
13 appropriate amount of funds. But it's also the  
14 stability of funding.

15           So OMB, Office of Management and Budget,  
16 that keeps track records -- they have a green if  
17 you're doing well, yellow if you're on your way,  
18 and red if you're doing poorly -- had to come up  
19 with a new color because Lynne, and Debbie, and  
20 Sharon, and Howard, and our whole team in  
21 trademarks did such a fantastic job that they had  
22 -- this is when you overcome your goals by an

1       incredible amount. Of course, that just meant for  
2       us that we raise our goal, if we beat them.

3                But I will tell you that the difference  
4       in both patents and trademarks to having a  
5       stability of funding has been giving us the  
6       ability to plan. And that, in and of itself -- we  
7       used to literally think in terms of what will we  
8       have four months into the year. We have to figure  
9       out what we're going to have. What shall we do  
10      when we get that? And then what do we need to  
11      turn off when we get that, because, you know, we  
12      want to have the stability of hiring? But if  
13      we're hiring thinking we're getting a certain  
14      amount and we don't, we'll have to turn that off.

15               That doesn't work well in the recruiting  
16      world. We never -- you know, we don't pull offers  
17      back, but, you know, to be able to turn the  
18      faucets on and off, so we now are able to plan  
19      much, much better and see what's out there.  
20      That's given us the abil- -- quite honestly, we  
21      used to have meeting in the PTO. I think TPAC was  
22      involved to some degree when we had two or three

1 different scenarios. And we literally planned if  
2 we get full funding, these are the initiatives  
3 that will go forward; if we get minimal funding,  
4 these are the ones that will go forward, and if we  
5 get worse than we ever expected, what do we start  
6 doing?

7           And at times we ended up not giving more  
8 computers. We couldn't replace computers. I  
9 mean, all kinds of issues that causes, you can  
10 imagine, management issues, labor relations  
11 issues, all kinds of things. Well, it's just much  
12 better not to have those for obvious reasons.

13           So what we're doing now -- and I don't  
14 want to -- I think we've always tried to take a  
15 future- looking view, but it's very difficult when  
16 you literally don't know what your budget will be  
17 four months into the year. So I don't mean that  
18 to sound like whining, I mean it to sound like we  
19 should celebrate what we have now. But it's given  
20 us the opportunity to really look out several  
21 years in advance.

22           And I know our unions want to do that, I

1 know our employees want to do that, I know our  
2 management team, executive team, wants to do that.  
3 And so we really are sitting down trying to figure  
4 out, what should we look like five years from now?

5 What should we look like 10 years from  
6 now? It's hard to plan exactly what you're going  
7 to do 10 years from now.

8 But we can look out five years ahead of  
9 time, and I think TPAC can play a key role in,  
10 this is what you should look like five years from  
11 now. Here's what the ideal trademark system would  
12 look like in the United States. And I know that  
13 you've undergone exercises or discussions, should  
14 we have six months final pendency in trademark?  
15 And then what would that cost? What would that  
16 mean? What would we have to do? It's a more of a  
17 philosophical, hypothetical discussion, but we  
18 could actually talk about that, figure out what it  
19 means.

20 And one of the things that I think TPAC  
21 can also play a role in this strategic vision is,  
22 TPAC will live beyond the next transition, as will

1 all the folks around this table and all the career  
2 folks. And I think it's a sensitive time whenever  
3 you go to new administration.

4           There will be a new administration  
5 within two years; sometimes there's not a new  
6 under secretary or new deputy undersecretary. We  
7 went for a year last time, but without that, and  
8 we want to make certain that TPAC will be back,  
9 and most importantly, the executive management  
10 team has a sense that they can continue n a path,  
11 a path that's good. The path they're on right  
12 now, I showed you the charts. How we hit goals  
13 now, it's just a -- it's a beautiful chart. I  
14 bring them to every congressional hearing and set  
15 it on -- regardless of what we're talking about,  
16 and turn this -- (off mike) -- over the course of  
17 10 or 12 years.

18           And, but we want to make certain that  
19 the office -- I mean, we have a management team  
20 that's excellent. We have a -- we have to -- stop  
21 the management team -- we have a team here that's  
22 excellent, and we want to make certain that

1 they're on a path that they can continue without  
2 questioning, well, what does this mean to have the  
3 new administration? It shouldn't mean that the  
4 path of good that the office is on doesn't  
5 continue.

6           And I think TPAC can not only help us  
7 maintain that path, change the path for the  
8 better, but can also be a sort of a stability  
9 force at that time. Because more and more, as I  
10 mentioned, with Congress and others, they  
11 recognize that TPAC and PPAC really plays a role  
12 of advising the office that's significant, that  
13 makes a difference -- and they give something of  
14 an outside view, but without people bringing in  
15 their -- I guess, they're bringing their personal  
16 views, they don't bring in their views of the  
17 people that they represent.

18           So I know you want to know that that's a  
19 credit to all of you, personally and collectively,  
20 and one that we want to leverage for even more.  
21 So, and that leaves us with, hopefully, 15 minutes  
22 or so at least.

1                   CHAIRMAN SAMUELS: Yes. Any questions  
2 for Jon or for Margaret? I guess -- let me take a  
3 little off, I'm sure they'll pop other questions.  
4 I'll filibuster for awhile.

5                   With respect to civility of funding, I  
6 guess I'm aware of two developments that sort of  
7 cut both ways on this issue. One, I think that  
8 there's been an amendment proposed to the PTO '08  
9 budget that would -- and I'm probably not going to  
10 get this 100 percent right -- allow you to keep  
11 \$100 million of excess fees that are collected.

12                  On the other hand, I'm also aware of  
13 reports that the president has indicated that he's  
14 likely to veto the '08 budget request that  
15 includes commerce. So in light of those  
16 developments, I mean, how are you going about  
17 planning for '08?

18                  MR. DUDAS: Yes. And I know Margaret's  
19 been chairing the management council, so she's  
20 have a live on this. Just fundamentally, the \$100  
21 million overcollection is meant -- you can imagine  
22 how difficult it is to know exactly how much

1 you're going to collect. That means you have to  
2 know exactly how much increase in trademark  
3 applications would be and patent applications.

4           And so we've said this: There's an  
5 opportunity for inadvertent diversion, and we do  
6 our best to actually get the right mark. We don't  
7 try to play games with, in terms of what we think  
8 we're going to collect. But if we end up having  
9 more fees than we anticipated, and we were only  
10 allowed to spend that which we anticipated, that  
11 money goes to the general treasury. So the \$100  
12 million, just to explain that, is if we end up  
13 collecting as much as \$100 million more than we  
14 anticipated -- and I think we'll come well within  
15 \$100 million of the right number -- that PTO can  
16 use that money. So that's another way to end  
17 diversion.

18           The veto is not on that basis. The veto  
19 -- this discussion is not that PTO would -- going  
20 back, I think -- I think largely we anticipate  
21 being able to -- it doesn't affect a whole lot  
22 what our planning is, because we generally think



1 our numbers are pretty good, and we plan within  
2 those numbers, where Margaret's had more potential  
3 and more specific conversations.

4 MS. DeLARENA: We have, because we've  
5 been talking about it in terms of how we'll finish  
6 up '07 moving into '08. We actually are having  
7 discussions about where we sit in '09 because some  
8 of our strategic initiatives that our incoming  
9 fees start to collide at that point. And that's  
10 when the, you know, recognition of the fence  
11 because that was more serious. It's when -- it's  
12 easy to recognize the fence when everybody has  
13 money. People are (off mike), you know. But I  
14 should say very specifically, it's not a question  
15 whether we're going to recognize the fence or not  
16 recognize the fence. As Brenda and I were  
17 discussing the other day, the use PTO, internally,  
18 thinks of the fence as trademark expense. The  
19 appropriators think of the fence as their fence --  
20 do you know what I mean? We put that fence in,  
21 and because we think that's the right policy  
22 issue. So it's not really a question of whether

1 or not the fence is to be respected, it's a fence.

2 In terms of the PTO and some of the  
3 macroissues that are going on right now between  
4 the president and the Congress, one of the things  
5 that I sort of think about when I'm looking at  
6 this question, is that when the CR (?) went  
7 through, and the CR was fairly punishing in terms  
8 of the beginning of this Congress and the reviews  
9 were being forward in saying we're going to move,  
10 you know, forward through the year and then we'll  
11 just work on next year's appropriations, the PTO  
12 was successful in getting a specific allowance for  
13 it to gather all of its fees and music fees.

14 So one of the advantages we have, even  
15 though there's this macroissue going on between  
16 the president and the Congress in terms of levels  
17 of spending and where spending should be directed,  
18 is that we have basic (off mike) on a path of  
19 helping people realize that whatever the fights  
20 are going on, we're not in the middle of the  
21 fight, we're not stirring up the fights, and we  
22 need our fees.

1                   And so I'm not -- I'm not as yet  
2                   concerned that somehow someone would start seeing  
3                   this as a big issue inside of that micro -- or  
4                   that macrodisagreement.

5                   That being said, we have fee initiative  
6                   regardless of what happens between the president,  
7                   OMB, and the Congress that we are trying to make  
8                   sure that we are running to grant (?). And that  
9                   is something that we have been spending time in  
10                  the management council on, because, as I said,  
11                  we've got a lot of strategic initiatives and a lot  
12                  less fees than strategic initiatives.

13                  But I don't necessarily agree with that,  
14                  though.

15                  MR. DUDAS: And Margaret raises two  
16                  excellent points that, as I had wanted her to  
17                  raise to get at if you want to look at a success  
18                  story for PTO and how important PTO is, and how  
19                  much recognition Congress understands of how  
20                  important our people here are, it's that in this  
21                  continued resolution they essentially said, "We're  
22                  going to give everybody their money from last

1 year, and there's no exception. But if you have  
2 to have an exception, let us know," and everyone  
3 got knocked out on exception, unless it was  
4 national security, and then it was PTO.

5 So, essentially, there's a sense -- to  
6 me, it seems like, although five years ago or a  
7 problem as recent as four years ago or three years  
8 ago, we seem to be on the 12-year path diversions  
9 here, and it's here to stay, live with it.

10 And now we almost seem to not only have  
11 this tenuous -- we had this tenuous two years  
12 where it seems like it's ended for a moment. Now  
13 it seems like, even though there's not a permanent  
14 fix right now, that it's understood that PTO  
15 should have full access to their fees. So we want  
16 to continue that. That can be taken away any  
17 moment by legislative fiat, and that's why again  
18 some people want to have a permanent fix.

19 Another thing I would note -- and this  
20 is again why I would ask TPAC to play a key role  
21 -- I think our budget -- folks have done a  
22 fantastic job, our operating units have done a

1       fantastic job with the budget we have now, which  
2       we've done I think very well with -- was a budget  
3       that was intended to have the possibility of  
4       dramatic outsourcing of search and hiring of 750  
5       patent examiners.

6                   And as things moved to Capitol Hill, you  
7       get one thing changed, as we realized at some  
8       point that outsourcing is not the right answer --  
9       at least it's not going to be for Congress and  
10      what the issues are with that -- but the budget  
11      didn't change, which can't -- so they were showing  
12      this support.

13                   We didn't have the opportunity to say,  
14      "Hey, you gave us a budget different than what we  
15      anticipated." So that changed how we had to do  
16      things.

17                   We've managed to do quite well in terms  
18      of in trademarks, particularly, and a fence  
19      certainly helps that. We want to make certain  
20      that's done right. But even in patents hiring  
21      1218 examiners and probably more than 1300 or  
22      maybe 1400 up to this year -- and other

1 initiatives have been put in place -- but one of  
2 the things that we would like to do is have always  
3 at our ready what the ideal set of fees are that  
4 we should have in trademark office.

5           So we're going to engage in not only  
6 what should it look like, do we have  
7 subsidizations going on that shouldn't be going  
8 on? Do we have fees that are in place that are  
9 giving the wrong incentive to applicants instead  
10 of the right incentive? And certainly,  
11 subsidizations are usually the wrong incentives.

12           And I will tell you that on the patent  
13 side there are many outside who just say, just try  
14 just a little money, no big deal, not a problem.  
15 The problem with that is that if it's a real  
16 bargain, a patent application is a real bargain  
17 what we charge, so there's almost not enough money  
18 we can charge. We asked one person who said that  
19 -- if we gave you a \$30,000 rebate for every  
20 patent you didn't follow forward, would you begin  
21 abandoning some of your patent applications that  
22 are, you know, that you think are useless? Nah,

1 just in case.

2           So we have to figure out what -- you  
3 know, and then TPAC and PPAC are going to be  
4 critical for us. And, of course, trademarks and  
5 patents are dramatically different in the regard,  
6 in terms of how much they need to spend in  
7 transactions costs to get their application  
8 through. I think people are more price-sensitive  
9 to the cost of the trademark application than they  
10 are patent application.

11           But we're going to ask that you help us  
12 through that process as well, so that regardless  
13 of who sets fees, we have in place the ideal at  
14 all moments. And it can adjust, as we see things  
15 change. And we don't want to be in a position  
16 where we have an opportunity to set fees right and  
17 don't (off mike).

18           CHAIRMAN SAMUELS: Ayala?

19           MS. DEUTSCH: Just to shift gears  
20 dramatically I'm going to ask my typical question  
21 about how things are going with China. And in  
22 particular I know that, in talking with other

1 rights owners which I constantly do both on the  
2 trademark side and the copyright side, we continue  
3 to identify the next window of 12 months or so as  
4 pretty critical for two reasons, on top of all the  
5 reasons that have existed. One is the upcoming  
6 Beijing Olympics which has garnered a lot of  
7 attention with respect to IPR enforcement and  
8 protection.

9 And the other is the time table for the  
10 WTO proceeding, although it focuses on copyrights  
11 and, obviously again, brings focus to the general  
12 issue of trade compliance and the protection of  
13 IPO rights. So on the trademark front, I'm  
14 just curious what updates or thoughts, if any, you  
15 have on that general topic.

16 MR. DUDAS: It does get -- the WTO case  
17 does affect the general climate, and the Olympics  
18 affect the general climate. And then the  
19 relationships with USPTO has also, so I say those  
20 are the three areas.

21 The WTO case has had positive and  
22 negative implications for those relationships.



1 The positive implications are, I think China very  
2 much understands that the U.S. is serious about  
3 making certain that the WTO commitments for China  
4 are taken seriously; that there are a variety of  
5 different areas -- it's copyright focus, but it's  
6 also very focused on safe harbors in terms of  
7 piracy and the same can apply very easily to  
8 counterfeiting, and in many ways it was the sacred  
9 case to take in terms of where people are outside  
10 the public sector -- or private sector were as  
11 well.

12 A week before the case we were out  
13 there. We had extensive discussions with, again,  
14 everyone from the courts to the prosecutors, to  
15 the trademark office, to the patent office. The  
16 great news is every single one of those meetings,  
17 it was usually the Chinese side; if not, it was  
18 the U.S. side that said regardless of happens with  
19 our relationship, on the broader issues we need to  
20 continue the cooperation that we have underway  
21 right now. And that's been stellar, and it's been  
22 more than -- it's certainly risen in terms of

1 three or four or five times -- I don't know how  
2 you measure that -- but the cooperation is deeper,  
3 misunderstandings are overcome, and judicial  
4 interpretations have been changed, programs have  
5 gone forth.

6           There's been a little bit of a lull in  
7 terms of immediately following that there's a  
8 sense that, you know, although Europe and the  
9 United States sue each other regularly and still  
10 enjoy a good relationship, we haven't gotten to  
11 the point yet with China and the United States  
12 where, you know, where China feels like a WTO  
13 action is the right action. I think there's a  
14 sense that, you know, why can't we just work this  
15 out? And the answer is, this is how you work it  
16 out. When you can't come to an agreement, you go  
17 to the WTO, and that's what we all agreed to do.

18           I think that will be short-lived, but in  
19 the meantime, we're trying to make certain that  
20 all of our counterparts continue the cooperative  
21 efforts.

22           But I do also think that immediately

1 following the case, or close to -- as soon as it  
2 became clear the case was going to go forward,  
3 China changed some laws directly in relation to  
4 where the case was going. And so we think that  
5 it's continued to be a cooperative effort, it's  
6 slowed down a little bit, but will probably  
7 increase. and the Beijing Olympics also, you're  
8 right (off mike) on terms of China cares a lot, as  
9 does the United States about what their  
10 international image is, and nobody wants to be --  
11 everyone wants to be considered a place where  
12 innovation and business is welcome, and a lack of  
13 market access and counterfeiting empire makes a  
14 difference.

15 Margaret also spent a lot of time on the  
16 Hill, not only on intellectual property but also  
17 being national security advisor for the speaker.  
18 And so she's seen -- and believe it or not,  
19 intellectual property, I'm sure you believe, has a  
20 lot to do with national security in terms of  
21 economic prosperity for other countries. And so I  
22 know she has respect (off mike) as well, both

1 inside and outside.

2 MS. PETERLIN: Yes, one of the points  
3 that might be followed through is what Jon was  
4 saying. I think our USPTO relationships that we  
5 have, have been outstanding, have been personal.  
6 It's actually helped us as an agency weather the  
7 case better than some other agencies, because when  
8 I sit in an interagency meeting, I hear about more  
9 sort of cancellations and downgrade, you know,  
10 first sending over someone of a certain level,  
11 then they will try to downgrade the meeting and  
12 some of the other agencies in the NFG (?).

13 So I think one thing that actually has  
14 been helpful for us is to have our own  
15 relationships and sort of continue to pursue them  
16 and use the right language and use comments to  
17 homesteads (?), when can we meet, and sort of just  
18 acting like there isn't -- I mean acknowledging  
19 the case but not reacting to it so violently  
20 ourselves that it inhibits them.

21 I also think that -- that's what I want  
22 to say.

1                   CHAIRMAN SAMUELS: Any other questions?  
2                   Comments? No? Okay, well, Jon, thank you. As  
3                   usual it's a pleasure, and, Margaret, a pleasure  
4                   to meet you. We look forward to working with you  
5                   in the future.

6                   Okay, we'll now move on to the next item  
7                   on the agenda which is the review of trademark  
8                   operations, and have Lynne come forward and --

9                   SPEAKER: Would you rather have Debbie  
10                  move up there, or --

11                  MS. BERESFORD: If Debbie wants to sit,  
12                  it's fine with me. We all have access to the  
13                  mike, so it doesn't matter. That's just fine, and  
14                  I'm going to start as per the norm with our --  
15                  with the usual review of Tayburn (?) statistics,  
16                  so you all have the one-pager in your book. And,  
17                  in general, I think it's just pretty much all good  
18                  news.

19                  Our quality numbers continue to improve  
20                  incrementally. I mean, we're at a 96 or 97  
21                  percent error-free a first action and final action  
22                  review rate, and so that is -- it continues to

1 improve. Obviously, when it's at that level, it's  
2 hard to move it up -- move it up any further very  
3 rapidly.

4           Electronic filing continues to stay at  
5 the percent level. If you look at the charts  
6 behind the one-pager, you will note that it (off  
7 mike) pretty stable at that level. That, of  
8 course, includes the Madrid application filing.  
9 Domestically, if we just look at our domestic  
10 electronic filing, they're -- this is the  
11 one-pager that I'm looking at -- it's behind tab  
12 3, yes. Sorry, this chart. Oh, I'm sorry.

13           SPEAKER: One's for quarter 2 and one's  
14 for May --

15           MS. BERESFORD: Yeah, one's for the  
16 second quarter and one is for May. So both of  
17 them -- they have slightly different figures.  
18 One's just a little bit more updated than the  
19 other. Yeah, it's all basically good news. We're  
20 ahead in production. Application filings are  
21 running about nine percent ahead of last year,  
22 almost close to 10 percent. So we're -- business

1 is good, I guess is the way we have to look at  
2 that.

3 We are fully hired up with FTW (?), I'll  
4 talk a little bit about that. Our disposal rate  
5 is good. Pendency continues to fall. Our first  
6 action pendency is in the -- clearly in the three-  
7 month range, and at the end of May it was at 3.2  
8 months, so we're managing, we're working hard to  
9 keep the pendency rights at the right level, and  
10 3.2 months is certainly good. And the back-end  
11 pendency is also coming down. The disposal  
12 pendency, including interparties is 16.3 months.  
13 The disposal pendency excluded and suspended  
14 interparties proceedings is 14.2 months. So all  
15 of those -- all of those measures are good.

16 There's also a chart in here behind  
17 these one-pagers which I think you'll find  
18 interesting. Let's see, we have the numbers. It  
19 is the chart that shows the trademark performance,  
20 first action publication rate, it looked like this  
21 for those of you who want to try to find the  
22 chart. I find this very interesting because it

1 shows the first action publication rates -- no,  
2 that's not it -- that's it.

3 It shows the first action -- it looks  
4 like this, okay? Like this. Okay, first action  
5 publication rate and I think it's interesting to  
6 note that a paper-filed application first action  
7 is 10 percent; a TEAS filings 14 percent, TEAS  
8 Plus filings 29 percent of the TEAS Plus filings  
9 of first action "pubs," and Madrid 2.3 percent.

10 I was in Denville last week talking to  
11 the European Commission, European Community  
12 Trademark Attorneys Association INTA meeting, and  
13 I shared this chart with them. They were quite  
14 unhappy about the low rate of first action  
15 publications for the Madrid filing, but the bulk  
16 of my talk was about the tips and ways of  
17 increasing your first action pub rate if you're  
18 filing through the Madrid system and the (off  
19 mike) RISA, RISA, the (off mike) from WIPO that  
20 was also speaking, had a very specific  
21 presentation on how to fill out the MMAT, or the  
22 MM2 form, and where to put this, where to put your



1 state (?) incorporation, where to put your type of  
2 entity, where to do this, where to do that.

3 So it was a very practical presentation  
4 to have (off mike) with your filing, and I was  
5 also able to tell them that we've just upgraded  
6 our list if foreign entities that we accept.  
7 We're adding some more to the TMEP. We're adding  
8 I think almost a hundred new entities that we will  
9 automatically accept to the list that's in the  
10 TMEP.

11 So that should make life easier for  
12 folks who are filing through the Madrid system.

13 CHAIRMAN SAMUELS: Do we know how that  
14 2.3 percent compares to the Madrid system overall?

15 MS. BERESFORD: I'm sure it's tiny, but  
16 I don't know. I might be able to find out,  
17 though. Let me write my --

18 CHAIRMAN SAMUELS: It might be  
19 interesting.

20 MS. BERESFORD: Let me write myself a  
21 note to find out, because probably they have some  
22 statistics somewhere or other in the Madrid system

1 about that.

2 I'm also happy to report we have a  
3 little (off mike) packet going on, and before we  
4 have our next meeting we will probably have a  
5 chapter of the TMEP up on the public website  
6 allowing people to make additions, corrections,  
7 rewritings, whatever, to that chapter because we  
8 are looking to see if we can -- we're doing it  
9 internally first or filing it internally, but  
10 we're looking to see if we can't improve the  
11 quality of the trademark manual and (off mike). I  
12 think it is just wonderful that way it is, but  
13 improve the quality of the TMEP by getting  
14 comments from the public, taking them in, and then  
15 making decision about whether or not those are  
16 useful comments and they add value to the  
17 community. So we're looking forward to doing that.

18 The other thing that I think is exciting  
19 in our WICKY (?) project is we're getting ready to  
20 pilot -- WICKY was one of our internal process  
21 manuals, one of the ongoing issues that any office  
22 has to try to keep their manuals up to date. And

1 we're hoping by using this, by giving folks who  
2 use the process manual access and ability to make  
3 edits in the manual, suggest that it's in the  
4 manual, and then collect those edits and make  
5 decisions about them. We will perhaps solve the  
6 age-old problem of how to keep process manuals up  
7 to date. So next time we meet, hopefully, we'll  
8 have a report on that, too, on how that is  
9 working.

10 So those are two things that I think  
11 that we're very -- very interested in, and I'm  
12 hopeful will be the things that are improvements  
13 to how the office operates.

14 And at that point, unless you have  
15 questions of me, I'm going to turn it over to  
16 Debbie.

17 She going to talk about some other  
18 internal issues. Yeah, Al?

19 MR. TRAMPOSH: Thanks, Lynne, and again  
20 congratulations on these always very good numbers  
21 that come out of your office.

22 I have two questions about TEAS Plus.

1 You said that there's a 95 percent electronic  
2 filing rate and --

3 MS. BERESFORD: Right.

4 MR. TRAMPOSH: -- what percentage of  
5 those are TEAS Plus applications?

6 MS. BERESFORD: Oh, it's on that chart.  
7 If you look at the chart, it's that -- you will  
8 see that there are two figures at the bottom of  
9 the chart. One of them is the first action pub  
10 rate, and I think the other is -- let me just --

11 MR. TRAMPOSH: Twenty-four percent.

12 MS. BERESFORD: Yeah. Yes.

13 MR. TRAMPOSH: The second question I had  
14 was the number just below that, the 29 percent.  
15 What's your feeling about that number. TEAS Plus  
16 is really designed for that. It should go through  
17 in a fairly streamlined way. If you feel like  
18 that's a low number, or can it pick that up? The  
19 percent --

20 MS. BERESFORD: No, I actually think  
21 that's a historic high first action publication  
22 rate, and it reflects the use of the trademark

1 management, the ID manual and other issues and  
2 other uses that are -- other things that are  
3 required in the TEAS Plus filing.

4 It doesn't obviate a statutory, in other  
5 words, refusal, so if folks filed using TEAS Plus  
6 there are still issues that can be raised with it.  
7 I would love to see it go up, and, in fact, the  
8 number is still going up. You know, last quarter I  
9 think I reported it was in the 25 percent, so  
10 maybe this number will get better.

11 But in terms of historic first action  
12 publication rates, this is much higher than any  
13 we've ever had. So --

14 CHAIRMAN SAMUELS: You have to wait for  
15 TEAS Super.

16 MS. BERESFORD: Yes?

17 MS. DEUTSCH: Back to the one-page  
18 chart, your last line there, the efficiency --

19 MS. BERESFORD: Right.

20 MS. DEUTSCH: -- is something that you  
21 didn't talk about, and I'm wondering whether the  
22 reduction in pendency is coming at a cost.

1 MS. BERESFORD: No, I don't think the  
2 reduction in pendency has to do with the  
3 efficiency measure. The reason the efficiency  
4 measure has -- there's an ongoing discussion about  
5 the numbers in the efficiency measure. One of the  
6 things that happened is our sufficiency goal was  
7 set at the beginning of the year, and then the  
8 formula for calculating the goal was changed after  
9 the year started, and part of the reason it  
10 changed was because of these -- and one of the  
11 reasons we're in these discussions -- is the cost  
12 drivers for OCIO expenses changed. And so by  
13 allocating more dollars, the trademarks look less  
14 efficient.

15 It doesn't actually have anything to do  
16 with the examining operation. We continue to be a  
17 small -- the direct cost of trademarks continue to  
18 be a smaller and smaller percentage of our fees.  
19 I think we're -- right now we're a little under --  
20 47 percent of our fees are actually spent directly  
21 supporting the trademark organization of course.

22 So as an organization -- and we're

1 producing a lot more work -- so as an organization  
2 we're getting more and more efficient. But the  
3 overhead, the indirects, all of those costs seem  
4 to be growing, and that's one of the reasons  
5 there's such a desire to have a real understanding  
6 of how those costs are allocated and driven to  
7 trademarks (off mike). Okay, Debbie?

8 MS. COHN: Good morning. Lynne, you  
9 mentioned hiring. I just wanted to follow up on  
10 that a little bit. We have adjusted our hiring  
11 plans for this year based on the increased  
12 production that we have been getting from  
13 examining attorneys, and so rather than hiring 30  
14 people this past February, we hired 10, including  
15 two returning examining attorneys who were very  
16 pleased to get back into the office. And then  
17 rather than hiring an additional 20 to 30 this  
18 September, we are not hiring any.

19 Attrition continues to be low. We have  
20 had some lower-rated people leaving the office,  
21 which is really typical, historically, but  
22 attrition among the experience GS-13s and 14s is

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1 really, really low. You know, we think that's due  
2 to high employee satisfaction that is in a large  
3 part due to our tele- work program but also due to  
4 the flexibility, the other flexibilities, and just  
5 the nature of the job itself.

6           And so that's where we are in the hiring  
7 front. We're continuing to look at hiring as we  
8 go through the fiscal year. We are also trying to  
9 utilize overtime to, quote, "react" to increases  
10 and decreases knowing that examining attorneys do  
11 want to work overtime, but we feel that that's a  
12 really good way to immediately react to filing  
13 situations without having to hire or change our  
14 hiring plans right away. So that's where we are  
15 on that front.

16           I wanted to mention, to follow up on  
17 Margaret's discussion of our nationwide work force  
18 in tele-working, and she and Jon both talked quite  
19 a bit about tele-work. One of the things that we  
20 are doing right now is we have a geographic pilot  
21 in place where in a dozen or so examining  
22 attorneys are actually working from more remote



1 locations in the United States, of course.

2 We have two people in Chicago, we have  
3 somebody in New York, we have a few people in  
4 Pennsylvania, we have somebody in Colorado, Texas,  
5 North Carolina. So we're experimenting with that,  
6 and we will be evaluating it probably within the  
7 next couple of months at the end of the summer,  
8 the end of September, rather, and we are hopeful  
9 -- and things have been going very well thus far  
10 -- we would like to look at expanding that  
11 program. Our examining attorneys have really  
12 indicated a desire to move to other places as they  
13 get on in tenure with the office. Life situations  
14 change and such, so we're very much in favor of  
15 going forward with that.

16 And to that end we're looking into  
17 collaboration tools, remote meeting tools, and all  
18 of the things that we need to -- state of the art  
19 tools to really make this a successful nationwide  
20 program for us.

21 One of the areas that we have been  
22 really successful in tele-work, also, is in our

1 Trademark Assistance Center. And I wanted to  
2 bring that up because we, I am told, are the first  
3 government agency to actually have government call  
4 center employees tele-working from home. And it's  
5 been extremely successful. We've just completed  
6 an evaluation on that program, and we are going to  
7 expand it. Our assistance center folks work at  
8 home three days a week and report to the office  
9 two days a week because they do have some walk-in  
10 responsibilities. And it's been going very, very  
11 well.

12 One of the things that happened fairly  
13 recently within the past few months is that the  
14 entire Alexandria campus experienced a phone  
15 problem where our phones weren't working for  
16 almost an entire day. And as soon as that  
17 happened, I got an email from Dora Best, who's the  
18 director of PAC saying, you know, not to worry,  
19 she's home, she's got a bunch of people home, they  
20 didn't miss a beat. They didn't miss a call. And  
21 it just worked so, so well, you know. In  
22 situations like that you realize it's no just an

1 employee benefit, it's really a benefit to the  
2 organization to have a system in place like that.

3 The other thing that has allowed us to  
4 do -- which has been crucial to our success -- is  
5 it's allowed us to recruit really good people into  
6 the Trademark Assistance Center. That job used to  
7 be a job that nobody wanted. It was basically  
8 8:30 to 5:00 before we changed our hours, and, you  
9 know, you're chained to your desk, essentially.  
10 It's become a very, very different sort of job.

11 We have three shifts. People, you know,  
12 can work out which shift works best for them, they  
13 can work from home. It's become a much more  
14 flexible job, and we've gotten great people in  
15 that job. We've managed to upgrade the positions  
16 so that we have a career ladder within the  
17 assistance center. They're no longer coming in as  
18 GS-7s and staying there. We've got a ladder that  
19 goes up to I think a GS-11 -- Sharon, is that  
20 right?

21 And so we feel that we've made  
22 tremendous progress in that area, due in a large

1 part to tele- work. But that has been going  
2 extremely well, so, you know, as we grow and as we  
3 expand we're going to probably look at tele-work  
4 in that area and in others. We're looking at it  
5 standing at throughout the office. So that's  
6 really the tele-work talk I wanted to update you  
7 on.

8 The other thing I wanted to again follow  
9 onto what Margaret was talking about, our Process  
10 Mapping. And, you know, we're looking at all  
11 areas of the office in the Process Mapping. We're  
12 analyzing, we're looking at -- we've been working  
13 with Grant Thornton, a contractor who's really  
14 come to know our business very well, and that's  
15 been a big benefit.

16 One of the results of this Process  
17 Mapping was we actually, recently in mid-June,  
18 realigned our law office support function. And  
19 many of you probably remember the traditional law  
20 office support.

21 It was an SLIE, and under the SLIE were  
22 several, you know, five, six, seven LIEs doing the

1 amendment and publication review work. That's  
2 changed now.

3           What we've done is moved to what we call  
4 a functional -- we have two major support units.  
5 One is the examination work flow and  
6 administrative support doing all of the SLIE  
7 questions and expediting the work flow.

8           The other is focused primarily --  
9 solely, actually, on quality. And we're doing  
10 expanded quality review; we're doing more and more  
11 training; we're doing documentation in the hope --  
12 the whole purpose of this is to bring the LIE  
13 quality to a level that it needs to be and, you  
14 know, some of you may know, historically, we've  
15 always had an issue with the LIE quality to the  
16 point where we've had contractors actually  
17 reviewing the LIE work before they marked us into  
18 the official gazette.

19           We're stopping that contractor review as  
20 of the end of this June. The LIEs have been  
21 trained, their performance plans have been changed  
22 to focus more on quality. We've provided a lot

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1 more training to them, we've done analysis of the  
2 results, and I'm really happy to report that we  
3 were able to get rid of the contractor at an  
4 annualized cost of around \$690,000. The LIEs will  
5 be doing that review, and we will save about a  
6 week in backup pendency, as the case will go into  
7 the official gazette more quickly, and, you know,  
8 all of this is kind of tied in with the upscaling  
9 of the LIE job and has resulted in this kind of  
10 realignment that I've just spoken about to focus  
11 on -- really focus on areas of quality and areas  
12 of efficiency as separate entities, essentially.

13 We've also increased the LIE awards so  
14 that they're eligible now for 10 percent of their  
15 salaries, dependent on how they do quality-wise  
16 and how they do production-wise. So we're really  
17 looking forward to increasing the professionalism  
18 of that group and the quality of their work.

19 And I've included in the book here an  
20 article that Lynne did for the USPTO weekly last  
21 week that kind of talks about, you know, in a  
22 general sense what we're doing, how we got there,

1 and why we did it. So you can kind of read a  
2 little more about it if you'd like to.

3 I think -- oh, the one last thing I  
4 wanted to mention to you was some of you may have  
5 received some office actions in the past couple of  
6 weeks that are slightly different than the old  
7 office actions that you had been receiving via  
8 email. And what we've done is we've changed from  
9 sending you an email office action with the  
10 attachments to sending you a notice that tells you  
11 that the office action has issued, and the notice  
12 contains a link that when you click on it, you  
13 will go immediately to our trademark document  
14 retrieval on our website, and you'll have access  
15 to that office action with the attachments.

16 That has been -- I know that many in the  
17 outside board (?) -- probably some of you have  
18 been waiting for this to happen. It's, we think,  
19 a terrific change. Our examining attorneys are  
20 very happy about it because they're not sending  
21 out huge documents. You're not receiving huge  
22 documents to clog up your email boxes, so we've

1       been doing this since June 11th, I believe, and we  
2       haven't had any problems with it.

3               The only issue that has arisen is the  
4       fact that there is a slight delay. It can be 10  
5       or 15 minutes or maybe a little bit more,  
6       depending on the actual load delay, because these  
7       have to be loaded into our ticker system which  
8       then appears publicly as trademark document  
9       retrieval, TDR. So there is a slight delay.

10              We have heard a little bit of feedback  
11       on that. We're working to try to see what we can  
12       do to eliminate that, but we feel that the  
13       benefits that we're getting and you're getting  
14       from this change, you know, outweighs the  
15       10-or-15-minute delay, or 20 minutes delay that  
16       you may have in retrieving a document. And that's  
17       only if you happen to be sitting at your computer  
18       waiting for the email to come in. If you click on  
19       your email message 20 minute after we've sent it,  
20       you won't have any delay at all, so --

21              CHAIRMAN SAMUELS: So it's just delayed  
22       email.



1 MS. COHN: Well, believe me, that was a  
2 thought. That was a thought. We were thinking  
3 about trying to delay email until the document has  
4 actually been uploaded, but it doesn't work.  
5 So -- but we're continuing to look into it.

6 But I think that's all I had to say this  
7 morning. If there are any questions, I'd be happy  
8 to take them.

9 CHAIRMAN SAMUELS: Any questions for  
10 Debbie? Yes?

11 MS. PORTER: Hi, Debbie. I'm Kathleen  
12 Cooney Porter. Last time we were here, Kevin Teska  
13 (?) had discussed the issue regarding more -- more  
14 just (?) virtual tools for beginning Chinese to  
15 discuss questions. I applaud the office on its  
16 tele-working, but I also note that beginning  
17 Chinese, you know, she did not put (?) her job in  
18 a bubble sense, you know. I think having  
19 discussions with other examining attorneys about  
20 the issues that are important, and is the office  
21 still working to support those models?

22 MS. COHN: Yes. Yeah, that's the

1 collaboration tools that we're looking at, and I  
2 do have to say that I think examining attorneys do  
3 communicate with one another quite a bit. I know  
4 that there's a lot of email traffic back and  
5 forth. People have little groups, you know -- I  
6 want to call them study groups but more like a,  
7 you know, buddy groups, if you will, where they  
8 talk about cases. And, you know, so there is that  
9 collaboration going on. But I do agree, Kathleen,  
10 that we should, you know, try to get the most out  
11 of whatever tools are available, and we are  
12 looking into that.

13 And, by the way, I do also want to  
14 mention on the training front, we are working with  
15 INTA -- and I think Michelle is here -- to develop  
16 some additional training. We've done this in the  
17 past where we've have to come in and, I think,  
18 Ayala, you have done that. And we're working on  
19 some new training sessions and legal lectures for  
20 the coming years. So we haven't completely  
21 decided on the topics yet, but you'll be hearing  
22 more about that.

1                   CHAIRMAN SAMUELS: I had some follow-up  
2 questions on the tele-work. You mentioned that  
3 you have now examiners in Chicago and elsewhere.  
4 Do they still have to come to the office for an  
5 hour a week?

6                   Is that the requirement?

7                   MS. COHN: They do have to come in once  
8 a week. That requirement is tied in with our  
9 desire to keep their official duty station here at  
10 the office at this point in time. And that has to  
11 do with the travel regulations and the  
12 requirements, the statutory requirements to pay  
13 travel expenses and put people on official time,  
14 if their duty station is not here in the office.

15                   You know, we're kind of in -- we're in  
16 kind of an in-between situation. And I think Jon  
17 alluded to that when he was talking about moving  
18 toward a nationwide work force. We're not quite  
19 at the point where we can say nobody ever has to  
20 come into the office, but yet we're also -- people  
21 have to come in frequently enough that we're not  
22 ready to say to an entire examining corps, we will

1 put you on official time and pay your expenses,  
2 whenever you come in, should you come in, should  
3 you decide to move to California or Colorado or  
4 wherever. We're sorting through all of that, and  
5 for the time being and the reason that this is a  
6 pilot that for the time being we do require them  
7 to come in.

8 We're all working both with Howard, with  
9 the Union, with the working group, and we're  
10 working through our legislative contacts in  
11 Congress to try to have some changes that would  
12 either apply to us or apply to tele-workers in  
13 general. GSA has proposed legislation that is  
14 right now in OMB which would make an exception for  
15 tele-workers who voluntarily request to move out  
16 of the area. And that would be an exception to  
17 the travel policy -- the travel regulations that  
18 require our agency to pay their expenses when they  
19 come in. We're trying to follow up on that.

20 Jon did this in his testimony before the  
21 Senate committee a few weeks ago, asked for a  
22 demonstration project to allow us to do that just,

1 you know, for USPTO to move toward a nationwide  
2 work force by getting relief from the travel  
3 regulations in that way. So we're trying to work  
4 as many angles as we can on this, but, yes, the  
5 answer to your -- the short answer to your  
6 question is, yes, they do have to come in right  
7 now. But they just --

8 CHAIRMAN SAMUELS: But are there efforts  
9 to try to eliminate -- there are two issues, I  
10 guess: One, whether they have to come in; and  
11 two, if they have to come in, who pays for their  
12 travel?

13 MS. COHN: Right. They pay for their  
14 travel. The point is, I guess, that there are  
15 efforts to eliminate that, but it has to be done  
16 legislatively because the requirements are  
17 statutory.

18 And so we're not -- we don't have to go  
19 --

20 CHAIRMAN SAMUELS: When you say  
21 "eliminate that," what's "that"?

22 MS. COHN: The requirement that the

1 agency pay travel expenses and put the employee on  
2 official time for travel when they come in.

3 CHAIRMAN SAMUELS: You said if they  
4 voluntarily want to move --

5 MS. COHN: Yes.

6 CHAIRMAN SAMUELS: -- then they --  
7 perhaps they won't have to pay for their travel.

8 SPEAKER: Under this proposal?

9 CHAIRMAN SAMUELS: Under the proposal.

10 MS. COHN: Yes.

11 CHAIRMAN SAMUELS: But what about the  
12 requirement that they have to come in?

13 MS. COHN: Once we don't have to pay  
14 their travel, we can change their official duty  
15 station, and the once-a-week requirement doesn't  
16 apply. The one-a-week requirement is an OPM  
17 requirement in order to maintain the official duty  
18 station here at the office. It's the only reason  
19 we have that requirement. We don't really need  
20 people to show up once a week.

21 CHAIRMAN SAMUELS: Right. Randy?

22 MR. MYERS: Randy Myers, Patent Office

1 Professional Association. I know that our  
2 association has been up lobbying on the Hill.  
3 There's a tele-work bill in process right now up  
4 there, and one of the big sticking points that  
5 we've been trying to get rid of is this one-hour  
6 requirement, because we apparently have some  
7 exceptions, also, where some people are working  
8 outside the immediate area.

9 So it's an ongoing effort, and at least  
10 there's a bill in the works, and I know  
11 everybody's trying to get that one hour taken care  
12 of.

13 So, I mean, do you foresee the day when,  
14 basically, there will be very few examiners  
15 working here? I mean, if you -- if the attrition  
16 rate is as low as it is, and if for more people  
17 qualify for the program, and if the program is as  
18 attractive as it sounds, and if you have right now  
19 85 percent of eligible employees participating and  
20 that base grows, that, obviously, would have  
21 implications as far as how many people work here,  
22 have implications for rent, space, and all kinds

1 of other things.

2 MS. COHN: Certainly.

3 MR. MYERS: I mean, I assume this has  
4 all been thought through, but what do you foresee?  
5 What's it going to look like in two or three  
6 years?

7 MS. COHN: Well, I think in two or three  
8 years, if all goes well, I think probably more  
9 people will have moved out of the D.C. area. And  
10 I think, you know, that will result in, you know,  
11 helping our attrition rates, as it already has.

12 Right now, the 85 percent represents  
13 every person who's eligible who wants to work at  
14 home. And that is a very high percentage compared  
15 with other organizations and other agencies. A  
16 lot of, for some reason tele-workers and extremely  
17 desirable benefits for trademark examining  
18 attorneys, it's not necessarily that way in other  
19 agencies or other organizations. So I guess what  
20 I'm saying is, it seems to me we'll always have  
21 that 15 percent in the office. How large that  
22 number is really, you know, depends on, you know,



1 where our hiring takes us and, you know, how many  
2 new people we get on board.

3 You know, we have a number of people --  
4 we have about 400 examining attorneys now, and I  
5 guess around 130 of them, rough number, are not  
6 yet eligible for tele-work. And as they become  
7 eligible, we plan to deploy them as well.

8 CHAIRMAN SAMUELS: Kathleen?

9 MS. PORTER: I have a quick question  
10 regarding the GS levels of specific --

11 MS. COHN: Um-hmm.

12 MS. PORTER: -- attorneys living in  
13 different areas. Is that going to be affected if  
14 someone's living in New York as opposed to someone  
15 living out in Utah?

16 MS. COHN: You're talking about the  
17 locality thing?

18 MS. PORTER: Yes.

19 MS. COHN: Okay. Once the official duty  
20 station is changed, the employee gets the pay for  
21 the particular locality that they're living in.  
22 Right now everybody gets the same pay because the

1 official duty station is here in Alexandria.

2 CHAIRMAN SAMUELS: Ayala?

3 MS. DEUTSCH: Is there any assessment as  
4 you envision a national work force about whether  
5 there's going to be some shifting of costs from  
6 rent and other types of expenses incurred when the  
7 work force is more prominently in this building as  
8 opposed to technology and other expenses that  
9 might be incurred if you're truly doing a national  
10 work force?

11 Or is it too early to kind of analyze  
12 the supporting costs?

13 MS. COHN: I think it's a little early.  
14 We haven't gotten that far yet. We know that it's  
15 an issue.

16 CHAIRMAN SAMUELS: Van?

17 MR. LEICHLITER: Van Leichliter, DuPont.  
18 Just if you had -- if you could attain everything  
19 that you are hoping to attain here in this  
20 national work force, what would it look like?  
21 What is your vision for that?

22 For example, would you have enhanced

1 collaboration because you don't have the people  
2 coming in once a week? Would you make some  
3 guidelines with respect to coming in and having  
4 joint meetings? Would there be a training  
5 component to that? I mean, what is -- is there a  
6 vision that you're --

7 MS. COHN: Yes. I mean in all --  
8 everything you've said is part of our vision, to  
9 allow for maximum collaboration for remote  
10 meetings.

11 You know, I think down the road when we  
12 have a national work force, we're not going to  
13 look at having everybody come into the office to  
14 have monthly office meetings. You know, they may  
15 have the option of coming into the office once a  
16 year or twice a year for the, you know, all-hands  
17 or all-trademark meeting. I don't -- you know, we  
18 haven't really gotten into those types of details,  
19 but, of course, we will.

20 But, yes, we envision them to be able to  
21 do their jobs, including having proper, enough,  
22 the right training and having it really

1 accessible. And we envision that to the maximum  
2 degree we can. And there are collaboration tools  
3 out there. They're continuing -- the state of the  
4 art is continuing to improve, and we're  
5 investigating that right now.

6 CHAIRMAN SAMUELS: Yes, sure, Lynne?

7 MS. BERESFORD: Yes, thank you. One of  
8 the questions that we've asked was the technology  
9 cost versus rent. Well, we hope that if we deploy  
10 more people, you know, and don't have office space  
11 for them, our rent should go down.

12 We incur the technology costs, though,  
13 it would appear, whether they're in -- down in  
14 Fredericksburg or whether they're in, you know,  
15 Van Nuys. They -- we -- they're online having  
16 their -- doing their collaborative tasks. I'm  
17 not sure. We haven't really looked into it, but  
18 I'm not sure there's that much more technology  
19 cost because they live further away. David can  
20 comment on this if he feels inclined. But I -- so  
21 I think we're already over the hump on how much  
22 the technology is going to cost. I think we've

1 made that -- I think we've made that investment.

2 The one question that we really haven't  
3 dealt with, I think, in this area is that now no  
4 one goes home until they're fully trained. So we  
5 have the people come to the office, and they're  
6 here for a couple of years, usually -- depends --  
7 sometimes it lasts because they come in as  
8 somebody who's practiced trademark law on the  
9 outside, they know the subject matter.

10 But we have not talked about will we  
11 ever have a work force who we will start training  
12 them and they're not here. At this point our  
13 model is, definitely, they're here until they're  
14 fully trained, and then they're offered the  
15 opportunity to go out of the office. So that --  
16 and that will continue to be our model, I think,  
17 until we're convinced we can do the other.

18 CHAIRMAN SAMUELS: Have you given any  
19 thought, if you have, let's say, a critical mass  
20 of employees working in Chicago to having a  
21 regional office?

22 MS. COHN: Um-hmm, the idea of regional

1 offices is certainly being explored, but primarily  
2 -- and we have a committee on nationwide work  
3 force that we're working on with that. I think  
4 right now that patent needs, or the patent side of  
5 the house, is pretty much driving that, because  
6 their needs are a little more urgent in terms of  
7 hiring and retaining.

8 CHAIRMAN SAMUELS: Um-hmm.

9 MS. COHN: But, I mean all of that would  
10 be under consideration. Certainly, I don't know  
11 that we would establish a regional just trademark  
12 office in Chicago if we had, you know, five  
13 people.

14 CHAIRMAN SAMUELS: Right.

15 MS. COHN: I'm not sure there would be  
16 really a need to do that, you know, when you have,  
17 you know, complete accessibility to everything  
18 here at the office online or through collaboration  
19 tools, or through remote meeting tools. I'm not  
20 sure that there wouldn't be a need to have that,  
21 but that's certainly something that we're looking  
22 into.

1                   CHAIRMAN SAMUELS: Yeah. I mean, I  
2                   guess the question would be whether it would be  
3                   viewed as a step backward or a step forward.

4                   MS. COHN: And I don't know the answer  
5                   to that. It's, you know, in my -- in my view of  
6                   things, I don't think that there would be a need  
7                   to do that.

8                   And for that reason, personally, I think  
9                   it probably would be a step backward. However,  
10                  you know, the patent side has some different needs  
11                  and should they develop a regional office is,  
12                  there is no reason we couldn't use that to our  
13                  advantage if we wanted to, if it made sense for  
14                  us.

15                  Right now, the path that we're taking is  
16                  really primarily work at home without reporting to  
17                  an office.

18                  CHAIRMAN SAMUELS: Right. You're back,  
19                  Randy.

20                  MR. MYERS: I know on the patent side we  
21                  have a project right now where we have what we  
22                  call "the virtual art units," which would be

1 similar to your law office or whatever, where  
2 every individual within that unit is working home,  
3 including the supervisors, to be able to test out  
4 the tools being used, you know, amongst -- amongst  
5 that group. So I would say that at least as far  
6 as one vision, who will have actual virtual  
7 offices as far as the little art units involved of  
8 15 to 20 people that would be operating on their  
9 own, no one actually being here at the office in  
10 that case.

11 Now, one other thing that had been  
12 brought up here before about the nation -- or the  
13 salaries, I know that our pay scale the last time  
14 it was put together, we went to a nationwide pay  
15 scale to take care of that problem.

16 CHAIRMAN SAMUELS: Howard?

17 MR. FRIEDMAN: Jeff, with regard to your  
18 question, I think the answer along the lines of  
19 what Debbie said depends, really, on whether it's  
20 trademarks or patents. Just one of the issues  
21 that I don't think has been raised, interest on  
22 the patent side is they have a recruitment, a



1 retention problem, and they have difficulty hiring  
2 people. And the thought would be that if you're  
3 hiring thousands of people over a few years, and  
4 it seems that people would be more inclined to go  
5 to the patent side who live, if not west of the  
6 Mississippi maybe west of Washington, D.C., it's  
7 an attractive way to hire people who otherwise  
8 wouldn't go to the Patent and Trademark Office.

9 So I think that's probably one of the  
10 primary drivers of why those kind of offices would  
11 work for patents. And, like Debbie said, to the  
12 extent that it ultimately occurs, then people who  
13 work in trademarks who work near those places  
14 could piggyback on it.

15 CHAIRMAN SAMUELS: Okay. Randy?

16 MR. MYERS: I know there's been talk  
17 about some kind of, you know, other offices in the  
18 United States, and I think that really it's been  
19 to try to attract some of the people that are west  
20 of the Mississippi and everything. And I think  
21 the thought had been that they might have some  
22 kind of office in Denver or somewhere out there to

1 attract engineers and scientists that they might  
2 bring them in and train in that area, if you will,  
3 and then send back up to their homes.

4 But one of the biggest things I hear  
5 from young examiners is the cost of living here  
6 compared to the rest of the United States. And  
7 it's at least, you know, some of the college towns  
8 and everything there is no problem. And that's a  
9 big consideration, apparently, you know, in  
10 staying here, staying with the office for any  
11 period of time.

12 And so you can imagine -- I have a  
13 friend whose son used to work in the office, and  
14 he decided he wanted to move, you know, out into  
15 the woods in New Hampshire or whatever. Well,  
16 he's starting back here in a training class next  
17 week, hoping to work from home where he was able  
18 to buy a house for \$90,000 in New Hampshire and  
19 still get paid the same amount of money as if he  
20 were here in the Washington, D.C. area. So it's  
21 very attractive.

22 And I think we're pulling in people like

1 that and pulling in people from other areas of the  
2 country, and I think -- I think this is part of  
3 the recruiting effort, too, is to make this known  
4 to the potential hirers that we do have this  
5 tele-working program, or "telling program" that  
6 they can take part in.

7 CHAIRMAN SAMUELS: Thank you. Any other  
8 comments? I guess this is, you know -- Van?

9 MR. LEICHLITER: I'm sorry. Van  
10 Leichliter, DuPont, just also we see it here in  
11 our company and that the tremendous technological  
12 advances really make it a lot easier to work -- to  
13 tele-work together. I mean net meeting is really  
14 successful. There will be, you know, visual  
15 ability to meet visually, but, you know, with the  
16 computerized set climate (?) that exists today,  
17 but I think that technology is going to be  
18 perfected. So as technology perfects I think it's  
19 going to be much easier to achieve the vision that  
20 you have with that, and working and have a  
21 national work force as well.

22 MS. COHN: I'd just like to close by

1 saying we are having an office, a trademark  
2 office, like, meeting on July 26th, and we're  
3 trying to make plans to have that web passed, so  
4 that would be our first office-wide remote  
5 meeting, should we be able to have it. So we'll  
6 keep you posted on that.

7 CHAIRMAN SAMUELS: Yes.

8 MS. PORTER: I'd like to raise one  
9 question that I hope David could answer later as  
10 far as the budget for the CIO's office. We were  
11 talking here today about, you know, patenting  
12 demos being -- working remotely. And I can't  
13 imagine the technology as far as, you know,  
14 encryption technology clearly on the patent side  
15 is not a public record as opposed to the trademark  
16 side, everything's a public record. Is that --  
17 David, if you could answer that later today, I  
18 just want to make sure that that question was  
19 answered, because, clearly, we're talking about  
20 budget, outsourcing, rent -- how far is our rent  
21 out -- as far as those concerns remain and, as far  
22 as, like, you know, JO's budget's indicated.

1 CHAIRMAN SAMUELS: Randy?

2 MR. MYERS: Well, one point there,  
3 actually most of the examiners, almost -- I'd say  
4 almost all of them are working now on applications  
5 that have already been published, so there's no  
6 real problem there as far as privacy. There could  
7 be, for instance, if you were doing a interference  
8 search or something like that on other  
9 applications which haven't been published yet.  
10 But the encryption is there.

11 CHAIRMAN SAMUELS: Okay. Well, I think  
12 you can sense that there's quite a bit of interest  
13 among the members of TPAC on this whole tele-work  
14 initiative. So if you'd just keep us informed as  
15 to what your plans are and run them by us, we  
16 would appreciate it.

17 We are on schedule, so the agenda says  
18 we have a break now till 10:45.

19 (Recess)

20 CHAIRMAN SAMUELS: Okay, the next item  
21 on the agenda is consideration of various budget  
22 issues.

1                   Mark, instead then, is going to be  
2 giving the presentation.

3                   MR. OBECHOWSKI: Yes, sir.

4                   CHAIRMAN SAMUELS: Welcome.

5                   MR. OBECHOWSKI: I appreciate you having  
6 me here today. As you can note, I'm not Barry  
7 Hudson. But anyway, and not to bore you with the  
8 highlights of my career, but I'm a recent addition  
9 to the PTO team. I came here in February. I came  
10 from the Department of Treasury where I was the  
11 budget director for four years, responsible for  
12 the strategic planning, formulation, execution of  
13 treasury's, I guess about \$15 billion worth of  
14 discretionary funds.

15                   Before that, I worked for Perot Systems  
16 doing submarine engineering stuff, and before that  
17 I spent 20 years in the Navy as a project manager  
18 building, cutting up, fixing submarines. So it's  
19 a pleasure to be here. It's really a neat place  
20 to be.

21                   I look forward to having the opportunity  
22 to talk to you every quarter.

1 I do have a little bit of experience  
2 with advisory/oversight boards at the Treasury. I  
3 got a chance to talk to the oversight board on a  
4 quarterly basis on what was going on in budget and  
5 execution, so I look forward to continuing that  
6 relationship with both the TPAC and DPAC.

7 CHAIRMAN SAMUELS: Well, welcome. Just  
8 to clarify, are you the Deputy CFO?

9 MR. OBECHOWSKI: I am the Deputy CFO.  
10 I'm Barry's deputy, yes, sir.

11 CHAIRMAN SAMUELS: Okay.

12 MR. OBECHOWSKI: Slide 2, we'll try to  
13 go through this and either please ask questions as  
14 we go along. I know there's a lot there. There  
15 was already many budget-related questions as we  
16 started the morning right from the get-go from  
17 Jon's opener remarks through the last set of  
18 questions for Debbie, so, please, I'll do my best  
19 to answer them, and if I can't answer them, I'll  
20 certainly take them back to get you the response  
21 that's required.

22 The FOIA 2008 budget season is well

1       underway on the Hill, as was mentioned before.  
2       The subcommittee did mark up our bill, the CJS  
3       bill, earlier in June. We thought that the full  
4       committee would meet just a week later; it did  
5       not. Right now it's tentatively scheduled for  
6       full committee markup on July 9th.

7                 There has been, as most of the speakers  
8       this morning mentioned, a lot of activity on the  
9       Hill on delegislation and patent reform and  
10      everything else, and that's exciting. I think it  
11      happens pretty quickly, sometimes almost overnight  
12      on a lot of cases, and the patent reform bill, I  
13      believe is supposed to be marked up in committee  
14      on Thursday. That's the tentative schedule, I  
15      think, which certainly accounts for all the  
16      activity of the past week or so with the staffers.

17                 Anyway, moving on to --

18                 CHAIRMAN SAMUELS: What about the Senate  
19      appropriations?

20                 MR. OBECHOWSKI: The Senate won't take  
21      up action on our bill until the House reports out.  
22      Typically, all appropriations bills, by law, have



1 to start in the House. That's not to say that the  
2 staffs aren't collaborating in knowing what's  
3 going on.

4 My experience between the House and  
5 Senate's been a, you know, very engaging  
6 relationship between the staffs -- they know  
7 what's going on -- but the Senate considers  
8 themselves to be the upper house, and they'll wait  
9 for the bills to be delivered to them before  
10 taking a formal action on them. But I'm sure  
11 they're following, you know, the activity of  
12 what's going on, on the House side and the  
13 appropriations. But nothing's been scheduled,  
14 officially, on the Senate side.

15 I think all the press releases, you  
16 know, from both sides of the aisle have the desire  
17 to pass all of the appropriations bills by October  
18 1st, but we'll see what happens. It hasn't  
19 happened, I think, in the last 11 years or so, but  
20 there's hope.

21 Now, some budget highlights. The slide  
22 3 is the enacted and the budget request numbers.

1 You could see that the PTO total for 2007 is the  
2 1,771 number, and the president's budget that's up  
3 on the Hill right now is 1.915.

4 The discussion this morning, of course,  
5 was making sure that we have full access to our  
6 fees, and we're, at least with the president's  
7 amendment that was sent up there with the \$100  
8 million is certainly a nice safety net to make  
9 sure that we can keep and spend at least \$100  
10 million more than we collect. I don't think we've  
11 ever, you know, been that far off of our  
12 estimates, but that, once again, while it's a nice  
13 amendment to have, it still becomes an annual  
14 event. If it's an appropriations bill, then it  
15 has to be enacted every year, and we'd like to get  
16 away from that, as the Under Secretary mentioned.

17 Slide 4 is just a quick update on the  
18 fee collections. In general, trademark fees are  
19 being collected in excess of what was planned, and  
20 patent fees are slightly under. The total amount  
21 is slightly more than our appropriated level. The  
22 last column, you can see our projections that

1 we're anticipating collecting, you know, well over  
2 what we had planned for trademarks and just  
3 slightly under for patents. But, over all, we  
4 plan on collecting more than what was appropriated  
5 to us.

6 Side 5 is what we call the Daily Fence  
7 Report. This is something that is quite new to  
8 me, just because of the tremendous amount of  
9 information that the Patent and Trademark Office  
10 has.

11 We do a daily fence report. You know,  
12 these are might (?) words because we can. I mean,  
13 we have such a, I think, incredible financial  
14 system to allow us to collect data and display it,  
15 that we can on a daily basis keep track of what  
16 the collections are, what the expenditures and  
17 obligations are so we can, on a daily basis, make  
18 sure that the fence that's around the trademark  
19 dollars is respected and that there's no problems,  
20 you know, that are going to sneak up on us. So a  
21 few details.

22 I mean, you can see that total income as

1 of the end of May was slightly over \$149 million  
2 in expenses up to that time for approximately \$131  
3 million.

4 CHAIRMAN SAMUELS: Can we go back to the  
5 chart which has fiscal year 2003 collections? I  
6 see, with respect to patent fee collections that  
7 you project to take in less than you planned.

8 MR. OBECHOWSKI: Correct.

9 CHAIRMAN SAMUELS: So how do you plan to  
10 overcome that, especially in view of -- I guess  
11 it's my place from what I read in the newspaper --  
12 that the president was going to veto the commerce  
13 appropriations bill.

14 MR. OBECHOWSKI: Well, there's a couple  
15 of things at play there, sir. There's -- I guess  
16 it was before the FY 2007 budget was sent up to  
17 the Hill, the Patent Corps received a seven  
18 percent pay raise across the board. That money  
19 was never put into the patent budget, and it was  
20 enacted up on the Hill prior to that money being  
21 allocated, you know, to the Patents Office.

22 So there's been a three-year plan to get

1 that money back into the patents base. So what  
2 we've been doing over the past year is, as  
3 patents, you know, generates and saves money,  
4 we've been preobbing (?) and trying to put money,  
5 for instance, in this year, Carol, the exact  
6 number that we put into the FY '07 budget to take  
7 care of their FY several requirements.

8 We also have plans for \$75 million worth  
9 of patent money this year to put it onto '08  
10 requirements. So if there's a plan in effect to,  
11 1) make up for the undercollection of dollars, we  
12 also -- as you know, there's a lot of legislation,  
13 there's a lot of court cases, a lot of uncertainty  
14 into what the fee collections will be. I think  
15 that provides a challenge for both patents and  
16 trademarks, the Patent and Trademark Office in  
17 general, for making sure that we're  
18 cost-conscious, we -- you know, we don't do  
19 anything crazy. We really watch our costs and  
20 everything else. The uncertainty of what the  
21 collections will be really forces us to be cost-  
22 conscious.

1                   So I think there's an overarching  
2                   respect on the executive side to make sure that,  
3                   you know, 1) that we're spending our money wisely,  
4                   we're respecting the fence; that we're conscious  
5                   of what the fees are collected as we develop not  
6                   only the spend plans for '08 but the '09 budget  
7                   formulation, in general.

8                   CHAIRMAN SAMUELS: But is the fact that  
9                   you're projecting to take in less fees than the  
10                  plan, does that, then, have any effect, negative  
11                  effect, on patent operations? Are they not going  
12                  to be able to do something that they had planned  
13                  to do?

14                  MR. OBECHOWSKI: Not this year, sir.  
15                  We're -- I think Jon Dudas mentioned that we're --  
16                  they are able to hire up. They plan on hiring  
17                  1200 new examiners. I think they're going to go  
18                  over 1300, maybe to 1400. I think the challenge  
19                  become probably towards the end of '08 --  
20                  certainly '09 -- I think you got a budget briefing  
21                  from Barry yesterday indicating that there's just  
22                  not that much money around to go hiring 1200 new

1 examiners.

2 I think what that also says is what --  
3 we're forced to look within ourselves and business  
4 units, not just patents and trademarks, but to the  
5 CFO, the CIO, the CAO, and general counsel. If  
6 they want to do something that's important to  
7 them, they need to look inside their current  
8 budget and find out what's not so important.

9 I think that that's something the  
10 federal government doesn't do well, in general.  
11 Everybody always trys to do what they're doing and  
12 more.

13 CHAIRMAN SAMUELS: Um-hmm.

14 MR. OBECHOWSKI: You've heard the term:  
15 Do more with less. I just think, Mark personally,  
16 you know, you can't continue doing more with less.  
17 You burn your people out, you have poor retention.  
18 You have to make hard decisions about what you're  
19 going to do and what you're not going to do.

20 The question on technology versus, you  
21 know, lease and rent space, you can't save money  
22 unless you get rid of space. You can't, you know,

1 send a couple of people home and turn their  
2 offices into a conference room. You have to  
3 actually get rid of leased space. So even though  
4 we're spending money on technology and we're  
5 sending people home, if we don't get rid of our  
6 leased space, it's still a bill we have to pay,  
7 whether we're in the building or not.

8 So it's the same thing with the budget.  
9 If we want to do things that are important to us,  
10 we have to stop doing some of the things that  
11 aren't so important to us.

12 CHAIRMAN SAMUELS: Do our leases permit  
13 us to, you know --

14 MR. OBECHOWSKI: I think so, sir,  
15 because you -- we've been growing as we take on  
16 new patent examiners and we've moved over here and  
17 everything else. So I think that that's something  
18 we'll be looking at through the summer, budget  
19 process. We have a list of -- I think we gave  
20 them to you yesterday -- 63-some odd initiatives,  
21 and that's what we're going to be asking our  
22 business units to do, that if these are important



1 to you, we'll do them, but it has to come at the  
2 cost of something else.

3 And, certainly, as we send out the  
4 budget guidance and everything else, we need to  
5 know if they need, you know, new computers, new  
6 space, new parking lots and everything else. So,  
7 I mean, we need to have a fully burden initiative  
8 to understand what the implications of those  
9 initiatives are.

10 So that takes us to slide 6. This is  
11 just -- it shows the relative share of funding  
12 available by each business unit. I think you're  
13 familiar with the slides, at least the next four,  
14 five, six slides.

15 It's just the same amount of money  
16 sliced a little bit differently. But, as Lynne  
17 kind of alluded to, the devil's really in the  
18 details, that the initiatives that we've  
19 undertaken with the trademark office, there, the  
20 Karens, and the Lynnes, and the Debbies understand  
21 fully what goes into these numbers: the cost  
22 allocation methodology; the way we collect cost;

1     how it's split up among not only patents and  
2     trademarks but the, you know, all the support  
3     organizations from the CIO, CFO, and general  
4     counsel.

5                     But these are the current budget numbers  
6     for 2007. You know, we have a slide later on that  
7     shows you where we actually are in 2007. But just  
8     one note. On this number it's a little bit  
9     different, and in the far right-hand column, if  
10    you remember our appropriation was 1.771. We also  
11    have access to other fees -- I just want to show  
12    that (off mike) -- other sources of funds that  
13    take us up to 1.794. And that's fund -- as we  
14    carry over some dollars, we recover funds  
15    throughout the year from contracts that, you know,  
16    we close out. Our parking fees that we collect  
17    from our garages and everything else are included  
18    in that. So our total funds available is 1.794.

19                    I think if you track the percentage of  
20    trademark fees that actually goes to support the  
21    trademark operation's examination procedures, it's  
22    probably been going down, oh, for the last several

1 years. So now it's 45.8 percent, which,  
2 obviously, means that more is going into  
3 supporting other units within the agency, which  
4 then leads into the question as to whether, you  
5 know, there's proper accounting of how those other  
6 units within the agency are spending trademark fee  
7 money.

8 CHAIRMAN SAMUELS: I know you mentioned  
9 that you've collected the information, and I think  
10 we've been discussing over the past year greater  
11 efforts on the part of the agency to make sure  
12 that those records are accurate.

13 Could you speak a little bit to what's being  
14 done to try to make sure that those numbers  
15 accurately reflect what's being spent?

16 MR. OBECHOWSKI: Yes, sir. There's  
17 really two parts of any cost allocation, and first  
18 I guess I'd just like to say, we -- my  
19 understanding is at least the two previous CFOs  
20 before Barry Hudson, with this, the TPAC group,  
21 has offered and executed an account -- I mean, a  
22 cost-accounting briefing, you know, with what

1 we're doing in cost-accounting and activity-based  
2 costing.

3           So I'd certainly like to have that  
4 opportunity to bring our people in and, you know,  
5 for our own good but for, also, the TPACs so that  
6 they have a better understanding of what's going on.  
7 And, certainly, we'd like to get that scheduled,  
8 whether it's -- I don't know. The oversight board  
9 used to have -- the IRS oversight board used to have  
10 subcommittees, and so we -- they would meet off  
11 cycle -- so I don't know if that's what, if the TPAC  
12 has the ability --

13           CHAIRMAN SAMUELS: No, we have that.

14           MR. OBECHOWSKI: Okay. I mean, maybe  
15 that's something we could arrange, or maybe, you  
16 know, if Lynne doesn't want to wait till, you  
17 know, the next quarterly meeting, what -- we're  
18 prepared to, you know, provide a briefing on  
19 cost-accounting at any time. And we'll do that.

20           But there's really two dimensions we're  
21 looking at in the cost-accounting methodology, and  
22 we're doing that, you know, with weekly meetings

1 with Lynne and her group. But the first is to  
2 make sure that the cost drivers that are  
3 established that take the data and spit out the  
4 allocation are reasonable and accurate to the best  
5 we can collect the data. And so we're going over  
6 each and every cost driver.

7 I guess a couple or three weeks ago we  
8 started with the CIO. I don't know if we'll  
9 finish up the CIO next time. We had rent, general  
10 expenses, and then we're going to go into each and  
11 every -- the business units and try to make sure  
12 everybody's understanding of what those cost  
13 drivers are.

14 The second part of the methodology is  
15 actually the input to the cost driver. You could  
16 have the best cost driver, you know, that  
17 everybody agrees to, but if the input's garbage,  
18 you know what you get out on the other side. So  
19 we're also looking at ways of we collect the data,  
20 that we put it into the cost drivers, and we're  
21 finding a lot of interesting things.

22 I'm amazed at my time here at PTO at the

1       staggering amount of information we have here.  
2       We're having discussions with Lynne and her group  
3       about, you know, how much square footage is in  
4       buildings, what's the conference room space, how  
5       much, you know, square footage do the restrooms  
6       and hallways take up?

7                 That's just to me an amazing amount of  
8       information to have discussions on, and I'm just  
9       not, you know, familiar with from previous tours  
10      in the federal government.

11                The IRS had a \$6.9 billion fence around  
12      enforcement, and we used to allocate costs on a  
13      60/40 basis. And if that didn't look like it  
14      worked, we, you know, changed it the next year to  
15      62/38. So, the discussions we're having here are,  
16      you know, I think to use a term Karen used, a  
17      great opportunity to understand and get the best  
18      allocations we can. And I think that's what we're  
19      doing. I would say that the meetings aren't  
20      always eye-to-eye, but they're certainly engaging,  
21      and they're certainly eye-opening, and we'll  
22      certainly be glad -- if Lynne doesn't -- I'm sure

1 she will -- we will report back to you on the  
2 progress of those meetings.

3 But I think there's, you know, there's a  
4 couple of things that need to get done. We need  
5 to make sure we have the best cost drivers, and  
6 then we need to make sure we have the best means  
7 to collect the data. So it is important. I'll  
8 make it -- it's certainly important for how we,  
9 you know, get into '08 and spend our dollars and  
10 then how we formulate the '09 budget.

11 So the next two pie charts I think we'll  
12 put on one page next time, save a few sheets of  
13 paper, but it's just the relative share, as you  
14 mentioned, sir, of what patents and what  
15 trademarks are spending on the other business  
16 units. So it's not lost, but patents -- it looks  
17 like a Pac Man and trademarks looks like somebody  
18 ate half the pie, so it's not lost on us, and  
19 we're working on it.

20 Slide 9, the same numbers split just a  
21 different way. And this just shows you for the  
22 difference in the same amount of dollars, but it's

1 a share of the organization versus the business  
2 line. The budgeted share for trademarks is on the  
3 same cost allocation methodology that was used in  
4 the budget. You know, shows a spending \$197  
5 million this year.

6 And then slide 10, this is the actual  
7 2007 second quarter spending by the business unit,  
8 which is just kind of an update of where we were  
9 at mid-year. But the numbers are, as you  
10 mentioned, are in the 45, 47 percent range for  
11 trademark. Somebody used the term "direct."

12 And then 11 and 12 are the obligatory  
13 pie charts, Pac Man and Half A Pie.

14 Slide 13 is the 2008 president's budget  
15 request. You can see in the bottom right-hand  
16 corner a budget request for \$1.9 billion,  
17 estimated fee collections for patents and  
18 trademarks, you know, up from what they were this  
19 year. I believe trademarks it shows \$214 million,  
20 and I mentioned before that that's a number that  
21 was developed, you know, probably 12 months ago.  
22 We will have to, you know, manage within both



1 patents and trademarks. It's nice to have the  
2 president's amendment in there that allows us to  
3 spend more. If we collect more, it also would be  
4 nice to have it as a permanent end to fee  
5 diversion. That would give the Under Secretary  
6 great flexibility in how he manages the office.

7 Certainly, the fence hasn't gone away.  
8 There's no language in anything I'm aware of that  
9 those restrictions and those constraints are still  
10 on the Patent and Trademark Office to be sent to  
11 DIV (?) and to respect that legislation. But once  
12 this is enacted, or once we're at least getting  
13 some sort of feel for what the Hill's going to do,  
14 both on the House and Senate side, we'll develop  
15 spending plans for all the business units and make  
16 sure that those spending plans are reflective of  
17 what we believe the enacted levels will be.

18 14,15 pie charts. The last slide is  
19 actually -- comes out of our Office of Finance.  
20 It's a statement of net costs, and it's actually  
21 all-year dollars, all expenses, all obligations,  
22 all -- but just to show you that, how much at

1 least through the first half of the year through  
2 mid-year review, where we stood in terms of  
3 collections and costs, and how much we had spent  
4 and everything. So it's pretty standard. I  
5 believe we show you this chart every year or every  
6 quarter.

7 I guess just in closing, sir, that  
8 there's certainly from the office of the CFO,  
9 there is a great sensitivity and understanding of  
10 Lynne's concern about cost allocation methodology.  
11 I know we're working on it hard. I'm convinced  
12 that our people are doing their best to answer the  
13 questions, and sometimes I think the answers may  
14 not be what Lynne wants to hear.

15 Hopefully, at the end of the, you know,  
16 these next several weeks we'll at least have an  
17 understanding of what's good, what's bad, what  
18 needs to be changed, prioritized, the cost drivers  
19 and the inputs, and get working on the ones that,  
20 you know, we all agree need a little tweaking or  
21 adjusting. So that's a commitment from Barry and  
22 myself to make sure that those meetings continue

1 to be fruitful, and we'll see where it takes us as  
2 we go through the summer's budget formulation  
3 process.

4 CHAIRMAN SAMUELS: Thank you, Mark. Any  
5 questions? Van?

6 MR. LEICHLITER: Yeah, this is Van  
7 Leichliter. I'm just wondering, when you have  
8 these meetings for the cost allocation  
9 methodology, I think yesterday someone said that  
10 there were like 30 different methods that were  
11 used to allocate, you know, basically with respect  
12 to fence.

13 Who, if in fact there's, after your  
14 meetings, there's a understanding that cost  
15 allocation method needs revision, who'd actually  
16 participate in that decision?

17 MR. OBECHOWSKI: Well, I guess let's use  
18 one of everybody's favorite architectural  
19 services. Architectural services is a cost driver  
20 that the CIO uses to, when changes are made to  
21 existing systems whether that be, you know, to the  
22 software or to, you know, the websites and things

1     like that, that current cost driver is we take the  
2     number of releases times a cost factor for the  
3     total cost of the system. So the current cost  
4     driver, if you have some number of releases and  
5     your total system cost is low, you know, your  
6     allocation is driven low. But if you have a lot  
7     of releases and expenses system, your allocation  
8     is larger.

9             The trademarks organization ha expressed  
10     a concern that that's not a good driver, and so  
11     that we need to work with the Office of the CIO,  
12     trademarks, and the CFO's office to determine a  
13     new one or different, or tweak it somehow. I  
14     don't think there's a set process in place other  
15     than collaboration between the offices to, you  
16     know, make sure that it's reasonable method of  
17     doing business. And, like I said, there's also  
18     the other, you know, we may all agree that that's  
19     the right cost driver, but if the CIO's not  
20     collecting its cost properly, and, you know,  
21     inputting them into the driver, then we're still  
22     going to get, you know, inaccurate data on the

1 other side.

2 But other than, you know, commitment on  
3 our part to work with trademarks and the CIO to  
4 make sure we have the proper drivers and  
5 everything, there's not set, you know, rules of  
6 engagement, you know, for getting this done.  
7 Although I guess we could -- you know, Barry has  
8 talked about, our CFO has talked about, you know,  
9 establishing a steering committee for cross  
10 drivers again, you know, made up of the business  
11 units and the CFO, and the Office of Finance and  
12 everything. And, certainly, some that were, you  
13 know, interested in doing our -- at least my  
14 philosophy and I believe Barry's as well -- is to  
15 have, you know, open and transparent operations is  
16 nothing. You know, it's not our money, it's the,  
17 you know, your money, the taxpayers' money that  
18 we've been charged to, you know, make sure it's  
19 properly accounted for.

20 So we're certainly open to, whether  
21 that's publishing guidance, or whether it's having  
22 a steering committee or whatnot, we're certainly

1 open to having a process that everybody's agreed  
2 to.

3 MR. LEICHLITER: It's Van Leichliter  
4 again. I'd -- just a thought. I think, you know,  
5 collaboration is obviously the first step, and  
6 it's a very important step. And, hopefully, all  
7 of the issues will be resolved at that step.

8 But, you know, being in private  
9 industry, we see there are going to be disputes.  
10 There are going to be dis- -- you know,  
11 disagreements, and we also see a good way,  
12 internally, to try to resolve those through some  
13 kind of appeals mechanism like a stirring team,  
14 and it's worked very well. And I would commend it  
15 to -- for consideration.

16 MR. OBECHOWSKI: Sure.

17 CHAIRMAN SAMUELS: You mentioned a  
18 couple of times about the importance of having  
19 accurate information, capturing accurate  
20 information. What, if anything's being done to  
21 try to assure that you are doing that, whether  
22 it's by means of training, redesigning forms, or

1 just collecting data?

2 MR. OBECHOWSKI: Well, we also have  
3 another project underway. It's called the  
4 account code restructuring program. The account  
5 codes are those accounting strings that people use  
6 to not only charge their time but to charge  
7 contracts, supplies they've purchased, and  
8 everything else. And they're government-wide  
9 standards that the PTO has to come back into  
10 agreement with. And it's kind of been neglected  
11 over the past 10 or 15 years.

12 Our account codes have grown to over  
13 6,000 codes across PTO. We had over 100  
14 management codes, we had 80 training codes, so the  
15 Office of the CFO, in conjunction with the  
16 business units, undertook an effort this past year  
17 to restructure those codes, and so we engage with  
18 each of the business units to find out what  
19 information they needed to run their business and  
20 which codes, you know, were important to them.

21 But in conjunction with that, there are  
22 PTO-wide codes that people were using that we

1       tried to standardize: how much time it takes  
2       somebody to budget, how much time it takes  
3       somebody to order supplies, you know, how much time  
4       do people take in training, in an effort to  
5       capture those across the business units. It was  
6       -- it's quite straightforward to, you know, for a  
7       trademark attorney or a patent examiner to charge  
8       his time to examination. It's the other codes,  
9       it's the other, the Office of the CFO and the CIO,  
10      administrative officer, ODC, policy, to capture  
11      their costs accurately so that we can more  
12      accurately allocate those costs.

13                 That process is underway. We have a  
14      communication plan, we're developing training,  
15      we're going out, and even though we've been  
16      through all the business units at the staff level,  
17      we're now going back out to the executives so that  
18      they know what we've been up to these past several  
19      months.

20                 We've completed briefings with the  
21      patent office and general counsel. I believe I  
22      have one either this afternoon or tomorrow --



1                   BEGIN SEGMENT 01444 with the chief  
2           administrative office, so on October 1st, or the  
3           first pay period in October for the fiscal year,  
4           we hope to implement a new cost collection system.  
5           But that still doesn't mean that the costs will be  
6           accurate. I has to be, you know, maintained or  
7           has to be just the same sort of thing, you know.

8                   I'm sure 10 or 15 years ago -- and  
9           there's probably people who have been here, you  
10          know, then -- we probably didn't have 6,000  
11          accounting codes, but there was a process where  
12          people could just generate those. We have a  
13          process that we proposed to either add or delete  
14          accounting codes so there won't be a proliferation  
15          of codes that continues again.

16                  Today, if you go into the web TA, which  
17          is our timekeeping system, any employee of PTO can  
18          -- has access to all 6,000 codes. They could  
19          charge their time to any code that's in the  
20          system. The way we've designed a new system is  
21          that within each business those -- the business  
22          unit will determine, like templates they develop,

1       which accounting codes are available to their  
2       employees, whether they be strictly, you know,  
3       within trademarks examining, or they can expand  
4       those so that the business units themselves will  
5       be able to restrict what codes people can go to.  
6       We think that that will give us better  
7       information.

8                 But that will be an ongoing effort, you  
9       know, to see what kind of information we get. We  
10      also generate the CFO office on a monthly basis.  
11      We generate over 300 reports. We're not quite so  
12      sure what people are doing with 300 reports as a  
13      -- like I said, a staggering amount of  
14      information. I think that, you know, we're not  
15      sure. I think the business units aren't sure if  
16      they're getting the right information to manage  
17      their business.

18                So I think there's several projects  
19      underway that do that. I think that's our  
20      responsibility to see if those office -- to make  
21      sure the business units have the information they  
22      need to run their business, give them the

1 information that they can make executive decisions  
2 to better run their business. And I think that's  
3 our responsibility to give that to Lynne and her  
4 team as well as the patents, CFO, CIO. I think  
5 we've endeavoring to do that.

6 CHAIRMAN SAMUELS: Ayala.

7 MS. DEUTSCH: I'm just wondering, we do  
8 project coding on a ridiculously granular basis at  
9 my company, and I'm wondering whether you're  
10 controlling or restricting the ability of people  
11 to generate new codes and also circulating newly  
12 generated codes so that you're not getting  
13 different people setting up different codes for  
14 what's essentially the same thing. Because I find  
15 that's a problem at my company sometimes.

16 MR. OBECHOWSKI: We have proposed a  
17 process for generating new codes that, you know,  
18 there will be not -- it won't be, at least what  
19 we've proposed, it won't be just the business unit  
20 who is able to generate a new code. There will be  
21 what we call a steering committee or something  
22 between the business unit, you know, the CFO

1 organization, you know, the director of finance  
2 and everything else.

3 But you're right, I mean, there we  
4 could, for instance I mean, we could generate a  
5 code for, you know, having TPAC meetings to have  
6 all the time people spend in preparing, and, you  
7 know, the vision could be, if that's -- if Lynne,  
8 and, you know, PTO decide they want to collect  
9 that data. I mean that would be the first  
10 question, do we even want the data?

11 I mean, we could have sent out these  
12 meeting announcement, and the bottom of the  
13 meeting announcement could have been, you know,  
14 the cost code for preparing for this meeting. So,  
15 you're right. I think that there not only has to  
16 be a process for changing or adjusting the codes,  
17 but a sensitivity about what data we want to  
18 collect.

19 And I think we'll get into the year, and  
20 it'll be really up to the executives as we provide  
21 them that information for them to take a look at  
22 it and say, "Is that giving me the information I

1 need, yes or no? And let's adjust it." I think  
2 everybody's interested in having the right  
3 information, but I think, you know, we've been  
4 inundated sometimes with too much information.

5 So it's a challenge. Absolutely.

6 CHAIRMAN SAMUELS: Okay, any other  
7 questions for Mark? If not, thank you very much.  
8 We'll bet back to you about trying to set up a  
9 briefing.

10 MR. OBECHOWSKI: Yes, sir, whatever you  
11 need.

12 CHAIRMAN SAMUELS: Okay, the next item  
13 on our agenda, rulemaking and related legal  
14 matters. Sharon?

15 MS. MARSH: There's a chair up here,  
16 too, if someone wants to sit here.

17 CHAIRMAN SAMUELS: Whenever you're  
18 ready, Sharon.

19 MS. MARSH: Is everybody okay? These  
20 meetings are so filled with information and  
21 speakers in a very short amount of time, at some  
22 point in the day it begins to feel like an

1 endurance contest.

2 I have five items to discuss this  
3 morning, but most of them can be covered very  
4 quickly, so I don't think we'll have an problems  
5 meeting our lunch schedule.

6 The first topic I want to talk about,  
7 though, is the one that might take a little bit  
8 longer, and that is the perennial topic of letters  
9 of protest. If you recall, the USPTO has a  
10 procedure whereby if a third party is aware of an  
11 application that's pending in the office, and he  
12 or she believes that the office should refuse  
13 registration, usually because the mark is  
14 description or generic, or there's a likelihood of  
15 confusion with a registered or pending mark, the  
16 party can file what's called a letter of protest  
17 and, if it's granted, the examiner is ordered to  
18 make a refusal. Now, that refusal can be  
19 withdrawn as prosecution continues if appropriate.

20 And when Lynne and Debbie and Carol, and  
21 Cynthia and Ron and I go to user group meetings,  
22 this is almost invariably a topic that comes up.

1 Users complain that: You never grant letters of  
2 protest. And they want us to be more liberal in  
3 granting letters of protest. The reason that not  
4 many letters of protest are granted is that the  
5 standard is very, very high. The protester has to  
6 provide a prima facia case for why refusal should  
7 be made, and the office has to agree that it would  
8 be a clear error for the PTO not to refuse  
9 registration.

10 As a result, the users are correct that  
11 not many of these letters of protest are granted.  
12 I think the idea behind the procedure is that the  
13 statute has a provision for third parties to get  
14 involved, and that would be the opposition and  
15 cancellation proceedings, and the examination  
16 proceeding is an ex parte proceeding.

17 So as a result, though, of continued  
18 user comments about the strict standard, we're  
19 considering loosening up the standard. And so  
20 after the last -- I guess it was the INTA meeting,  
21 we came back and asked Cynthia Lanchard, the  
22 policy administrator, and Jessie Marshall --

1       Jessie Roberts, formerly Jessie Marshall -- to  
2       draft a proposal of how an easier standard would  
3       work. And so I brought Jessie along this morning  
4       because she has administered this procedure under  
5       both an easy standard and a hard standard. And I  
6       thought her perspective would be really useful.

7                   Do you want to kind of give us an  
8       overview of both systems?

9                   MS. ROBERTS: Sure. Previously, we did  
10       have a looser standard for letters of protest, and  
11       that was changed in, oh, about the mid-'90s.  
12       Prior to that -- well, maybe I should go over the  
13       standard as it is now. The changed standard now  
14       applies both before and after publication. And  
15       this was as a result, actually, of comments made  
16       at a prior TPAC meeting where someone thought that  
17       the standard was too liberal prior to publication.  
18       So we made it the same standard both before and  
19       after.

20                   And that standard was certainly a clear  
21       error. But where it really had an implication was  
22       in likely a period like we had a confusion. And



1 the standard that was advocated by the TPAC  
2 committee at that time was that it be legally the  
3 same mark and legally the same goods or services,  
4 that what I would call a slam dunk at the board.  
5 There's absolutely no possibility of argument that  
6 this is a problem.

7 Of course, other factors could come in  
8 if it did get to the board. Certainly, looking at  
9 the four corners of the application and the  
10 registration, or the two applications -- the prior  
11 filed and the one being protested -- that there  
12 really could be no disagreement, legally, that  
13 this is a problem under likelihood of confusion.

14 As far as to descriptiveness, the  
15 standard really hasn't changed. Usually the  
16 evidence and the issues raised in the area of  
17 descriptiveness are very valid. There's good  
18 evidence provided, so that's not quite the issue  
19 that likelihood of confusion is.

20 That's where we are today. The same  
21 standard applies both before and after  
22 publication, legally same mark, legally same goods

1 or services. What we had prior to that standard  
2 being implemented in the mid-'90s is what we're  
3 talking about going back to now. The standard  
4 would stay the same after publication. This is  
5 not the -- a substitution for an opposition. You  
6 still have to make standard of -- a very high  
7 standard of basically the same mark and the same  
8 goods or services being involved.

9           However, the standard would change for  
10 the letters of protest filed prior to the  
11 publication of the mark, and that standard would  
12 be that it's a reasonable refusal to be made by  
13 the examining attorney. They still wouldn't be  
14 sent back if you kind of couldn't get up at the  
15 board and argue it with a straight face. There  
16 has to be some logic to it, some rationale, but no  
17 longer same mark, same good or services. It would  
18 be a much looser standard, and as a result many  
19 more would be granted.

20           And that's what we had before, and  
21 that's what was advocated, I believe, at the last  
22 INTA meeting where the issue came up of changing

1 the standard from the high standard it is now to  
2 the kind of bifurcated standard it was before with  
3 an easier standard before publication. It still  
4 gives the applicant trying to argue; it doesn't  
5 hold them up as much from registration. Once the  
6 mark is published, the applicant believes that  
7 they're on their way, and to suddenly send it over  
8 (off mike) with a letter of protest is extremely  
9 upsetting to the applicant. And we feel that that  
10 standard should remain very high and only be  
11 granted in very extreme situations of clear error.

12 But before publication the standard  
13 could be easier. If that were the case, the  
14 examining attorney would not be required to make  
15 that refusal prior to, if it were granted to prior  
16 to the publication of the mark. It would be  
17 within his or her discretion whether this really  
18 amounted to something that they felt they could  
19 prevail on at the board.

20 After publication, it's the same as it  
21 is now, it must be -- the refusal must be issued.  
22 Of course, there are arguments that may be made,

1 marks can be bought and sold to if evidence can be  
2 submitted if it's a descriptiveness issue, and  
3 it's possible that it could be withdrawn. But the  
4 refusal must be made.

5 That would not be the case prior to  
6 publication; it would be up to the examining  
7 attorney's discretion whether or not the suggested  
8 refusal is one that they feel confident should,  
9 you know, could go to the board, and that they  
10 could prevail on because it is clearly something  
11 that shouldn't go forward.

12 That's kind of where we are now. We're  
13 -- remember, we're at the high standard now both  
14 before and after publication. We're proposing  
15 where refusals must be made both before and after  
16 publication if a letter of protest is granted.  
17 We're suggesting going to the standard where it's  
18 a looser standard before publication; however, the  
19 refusal does not have to be made, and retaining  
20 this higher standard after publication. I  
21 guarantee there'll be more granted before  
22 publication.

1                   Anyway, is that what you want?

2                   MS. MARSH: I guess, yeah, we want the  
3                   committee, the action to the proposal keeping in  
4                   mind that you and your clients might be on both  
5                   sides of the fence. You might be filing a letter  
6                   of protest; you also might be receiving that  
7                   unexpected refusal from the examiner.

8                   CHAIRMAN SAMUELS: Do you have any idea  
9                   -- I'm sure you do -- what are the numbers that  
10                  we're talking about?

11                  MS. MARSH: Yeah, I have an idea. My  
12                  memory is about 700 a year.

13                  MS. ROBERTS: Yeah, I guess between  
14                  seven- and-eight hundred a year.

15                  MS. MARSH: Yes.

16                  CHAIRMAN SAMUELS: And how many are  
17                  granted?

18                  MS. ROBERTS: Last year in fiscal '06,  
19                  out of 785 that were -- that were submitted, a  
20                  total of 168 were granted, and the balance was  
21                  denied. So it's -- I can't do percentages; if  
22                  someone can, I know it's a pretty low percent, but

1 that sounds about right to me, just from my  
2 experience of doing them all of that percentage of  
3 what's -- I'm sorry, no, I'm sorry, that's not --  
4 that's not correct.

5           Ninety-one were granted, 168 were held  
6 moot. When we hold something moot, it means that  
7 the examining attorney has made the refusal, is  
8 doing exactly what the protester wanted them to  
9 do, and there's no point in granting the letter of  
10 protest because the purpose is to bring something  
11 to the attention of the examining attorney that  
12 they might not be aware of.

13           In very rare cases, usually in the area  
14 of descriptiveness, I will grant the letter of  
15 protest whether a refusal has been made, because  
16 the evidence supplied by the protester is  
17 excellent evidence. A lot of it, the examining  
18 attorney may have done what they could on the  
19 internet, but there's so much evidence in there  
20 from the industry that maybe the examining  
21 attorney wouldn't easily have gotten off the --  
22 gotten their hands on. But I will grant them in

1 those very rare situations.

2 So actually, the number is the grants  
3 were 91, the moots were 168, and that was at a set  
4 of 185 --

5 CHAIRMAN SAMUELS: Do we have numbers  
6 that would show of those that are not granted how  
7 many materialize in oppositions?

8 MS. ROBERTS: No, I don't have those  
9 numbers.

10 MS. MARSH: Also, of the remainder, a  
11 certain percentage of those are items that are not  
12 appropriate for letters of protest.

13 MS. ROBERTS: Yes.

14 MS. MARSH: There's an argument over  
15 ownership, someone's alleging common law rights,  
16 other issues that are just irrelevant to the  
17 examination process.

18 MS. DEUTSCH: Do you have a breakdown of  
19 how many were filed before or after publication?

20 MS. ROBERTS: We do, but I don't have it  
21 here. I can get that. Predominantly before.  
22 There is a window, it's a 30-day window following

1 publication. Again, we don't want to replace the  
2 opposition proceeding, so you've kind of got a  
3 smaller window to get your letter of protest in.  
4 So there are fewer after publication, definitely,  
5 and more before, but I don't have the exact  
6 numbers.

7 CHAIRMAN SAMUELS: Would it be relevant  
8 as to when the letter of protest is filed and  
9 acted on from the standpoint of whether or not  
10 it's an initial refusal as opposed to having  
11 information submitted, and then being used to  
12 support a final refusal.

13 MS. ROBERTS: We actually just changed  
14 our procedure there. Previously, I had waited for  
15 the examining attorney to take an action before I  
16 considered the letter of protest because I was  
17 giving the examining attorney a chance to do his  
18 or her job.

19 And if they did it well, then the letter  
20 of protest would have been held moot.

21 We got concern from the public about  
22 that because someone would file a letter of



1 protest the day after something was filed, and  
2 they wouldn't get a response on it for six months  
3 later when our pendency was at six months, because  
4 I was waiting to see what happens.

5 We have changed that. It's now on a  
6 first- in/first-out. What's happening there,  
7 because I don't screen them anymore, there's no  
8 point in screening them to see how close they are  
9 to publication. Some of them will drift from a  
10 prepublication to a postpublication. Because this  
11 isn't statutory, I deal with the letters of  
12 protest as they exist at the time I pick it up.  
13 It's not like the board where, if you come across  
14 a late-filed notice (off mike), that you can --  
15 you can rewind and go back and deal with it as a  
16 pending application.

17 Again, because this is not statutory, I  
18 take them as they come in the status they're in as  
19 they come before me for decision. But that's what  
20 we're doing now, it's first-in/first-out. And  
21 then, you know, I mean, there are also problems  
22 there with the electronic system.

1                   CHAIRMAN SAMUELS: Yeah.

2                   MS. ROBERTS: If something is faxed in,  
3                   it'll sit there as a fax until someone notices  
4                   that it's a letter of protest, and then it'll be  
5                   brought to my attention.

6                   Certainly, if I were working on things  
7                   that were filed in May, and something that was  
8                   filed in October comes to my attention, I'm going  
9                   to work on the October first before I continue  
10                  with the May docket.

11                  CHAIRMAN SAMUELS: Ayala.

12                  MS. DEUTSCH: I'm sorry that I don't  
13                  know the answer to this, but are letters of  
14                  protest made part of the publicly available file?  
15                  And does that happen prior to your responding to  
16                  them? Or not at all, or -- I just don't know.

17                  MS. ROBERTS: They're not made public  
18                  when they first come in, or they shouldn't be  
19                  public when they first come in. This is a  
20                  third-party intervention. If I deny it, it never  
21                  becomes public.

22                  If I grant it, what I do is send a memo

1 to the managing and the senior -- well, just to  
2 the managing attorney of the law office saying  
3 that this letter of protest has been granted. And  
4 I put with it the evidence that's relevant. If  
5 it's just a reference to a serial number,  
6 registration number, I'll just put that in my memo  
7 to the examining attorney. If it's evidence, I'll  
8 actually cut and paste to make the evidence that's  
9 relevant public.

10 The letter itself will always remain  
11 hidden -- you know, what we call hidden in our  
12 computer systems -- and it would never be seen by  
13 the public.

14 Somebody wanted a copy of it, maybe it  
15 would just be a letter, please give me a copy of.  
16 And so long as there were no FOIA issues -- and I  
17 can't remember ever running into a FOIA issue with  
18 a letter of protest -- we'll just send it to you.

19 MS. DEUTSCH: So you would have no way  
20 of knowing whether an application was already the  
21 subject of a letter of protest by someone else?

22 MS. ROBERTS: If the letter of protest

1 had not been worked on, or if it had been worked  
2 on and denied, no. You would not know there was  
3 one in the file.

4 CHAIRMAN SAMUELS: Van?

5 MR. LEICHLITER: Do you have a breakdown  
6 of the ones which were granted, the basis on which  
7 they were granted?

8 MS. ROBERTS: Yeah, I do have that, but  
9 again for '06 sometimes different -- different  
10 things are put in to mean the same thing. But it  
11 looks like descriptive letters of protest out of  
12 this 91, about 20, 23 were granted. Of the 91, 65  
13 who, based on likelihood of confusion, and our  
14 last category where a letter of protest is  
15 occasionally granted is litigation, pending  
16 litigation.

17 MR. LEICHLITER: Um-hmm.

18 MS. ROBERTS: So the application should  
19 be suspended pending the outcome of the  
20 litigation. That's how that breaks down, yes.

21 MR. ROSENBERG: I just caused a mess.  
22 Joshua Rosenberg from HP. You should be able to

1 data that you have to say whether loosening up the  
2 standard is going to be useful, because one would  
3 think that of those that went through and later  
4 were denied through opposition or whatever, that  
5 would have, you know, what's the correspondence  
6 between the remainder of the 700 and those that  
7 were later denied?

8 MS. ROBERTS: Well, we've never -- we've  
9 never tracked --

10 MR. ROSENBERG: Well, I think that's --  
11 that's a pertinent statistic.

12 MS. ROBERTS: Well, it might be, yeah.

13 MR. ROSENBERG: Because otherwise you  
14 don't know that it's going to be any use at all.

15 MS. ROBERTS: Yeah. At this point and  
16 the standard we're in now, you know, again,  
17 they're granted when they're used at (?), and the  
18 examination must make the refusal. But we haven't  
19 looked for -- we haven't tracked these and we  
20 can't.

21 I mean, we -- we just, you know, take  
22 this whole batch that was granted which isn't as

1 much as, you know, the others, so it's not quite  
2 as -- you know, quite a onerous. But we put that  
3 into our systems and see what the prosecution is  
4 since the granting of the letter of protest. So  
5 within --

6 MR. ROSENBERG: Or the opposite.

7 MS. ROBERTS: Or the -- well, that would  
8 be a lot, yes.

9 MR. ROSENBERG: No, because you have the  
10 remainder of the 700, and the question is whether  
11 those were later denied, the trademark was later  
12 denied from other means.

13 MS. ROBERTS: Yes. Yeah, no, we could  
14 -- I mean, we have all the serial numbers. We  
15 would just (off mike) to find it.

16 MR. ROSENBERG: But it would seem to me  
17 that that would be a first cut at understanding  
18 whether if loosening it would have any effect at  
19 all.

20 MS. ROBERTS: Um-hmm.

21 CHAIRMAN SAMUELS: Al?

22 MR. TRAMPOSH: So just a -- just a

1 thought. If I understand it right, right now if  
2 it's granted, then the examiner must make the  
3 refusal, and if it's not granted the examiner  
4 never hears about it?

5 MS. ROBERTS: Right.

6 MR. TRAMPOSH: Under the new rules, if  
7 it passes the last test, so to speak, then the  
8 examiner would hear about it, and then it's up to  
9 their discretion.

10 MS. ROBERTS: Yeah.

11 MR. TRAMPOSH: Would it make sense to  
12 have an intermediate or combined system where if  
13 it's bad enough the way it would be not, that you  
14 have to tell the examiner to make the refusal; if  
15 it's in between the last test and that's bad, and  
16 you can at least inform the examiner, let the  
17 examiner deal with it the way he would, and then  
18 if it doesn't pass that first special test, then  
19 he would never hear about it?

20 MS. ROBERTS: That's certainly a  
21 possibility.

22 MR. LIVINGSTON: Otherwise it seems to

1 me that the protestor would be put in the  
2 position, if I'm not confused here, of waiting,  
3 you know, if it's a real hard, drop dead, to the  
4 refusal, tell the publica- -- you know, right at  
5 the appropriate time when you have to review it.  
6 And then, you know, instead of doing it at an  
7 earlier date where it's the examiner's discretion,  
8 so maybe there would be an advantage in having a  
9 two-tier system up front to get it handled more --  
10 I mean --

11 MS. ROBERTS: Well, again, I don't -- I  
12 don't hold back on something, depending on the  
13 nature of the letter of protest.

14 MR. LIVINGSTON: Yes. Yes.

15 MS. ROBERTS: We're really doing them  
16 chronologically.

17 MR. LIVINGSTON: Yes.

18 MS. ROBERTS: And they fall where they  
19 fall.

20 MR. LIVINGSTON: Well, what I meant was  
21 --

22 MS. ROBERTS: Yes.



1                   MR. LIVINGSTON:  -- if the person  
2           deliberating waiting --

3                   MS. ROBERTS:  Oh, okay.

4                   MR. LIVINGSTON:  -- before filing  
5           because of the two-tiered system --

6                   MS. ROBERTS:  Got you.

7                   MR. LIVINGSTON:  -- and, I mean, it may  
8           not make that much difference, but I think there  
9           is a possibility of having people delaying  
10          particularly because they know that, gee, this is  
11          a drop-dead too deep problem.  And maybe that  
12          doesn't make much difference, but it -- you know,  
13          it's a thought.

14                  MS. ROBERTS:  Um-hmm.

15                  MS. COHN:  Just to respond to you  
16          further, I think -- I think the general feeling,  
17          my hunch is that if it's a drop-deal 2-D problem,  
18          no matter what the instructions are to the  
19          examining attorney, once they get it, they will  
20          see that it's a drop-dead 2-D problem.

21                  MR. LIVINGSTON:  Yes.  They'd do that,  
22          right.

1                   MS. COHN: The refusal's already in the  
2 record at that point, and, you know, they would be  
3 going against established, you know, trademark law  
4 and guidance if they didn't. So I don't think  
5 that's really a worry of ours, that the examining  
6 attorney wouldn't make the refusal. And, you  
7 know, if they felt that it was really wrong under  
8 any standard, they would have the opportunity  
9 later on to withdraw on it for good reason.

10                   MS. DEUTSCH: I also think -- that's why  
11 I'm kind of interested in the breakdown of before  
12 and after publication as an applicant, or rather  
13 as a trademark holder with interest. I think  
14 what's most attractive about this vehicle is the  
15 opportunity to act, or try and have someone act  
16 before a mark's been published, and you mentioned  
17 the litigation example as one basis.

18                   But I don't know if that's a motivating  
19 factor, and that's why I'm curious to see the  
20 breakdown whether this structure's actually going  
21 to demotivate people enough to delay to a period  
22 when they have other vehicles to respond to the

1 pending application in any event, through the  
2 opposition process. So I would imagine you're  
3 still going -- just the availability of some  
4 avenue prior to publication is probably going to  
5 continue to motivate people to act during that  
6 time period, although again, I don't know what the  
7 statistics are.

8 MS. ROBERTS: The way we wrote the  
9 proposal, as Jessie explained, we are saying it's  
10 the very high clear-air standard after  
11 publication.

12 There's an argument that, at least for  
13 1-B cases, that we could have a lower standard  
14 because, as you know, several years may go by when  
15 we're just waiting for a statement of use to be  
16 filed, and the office could be making a refusal.  
17 And some of my most impassioned phone callers, you  
18 know, are in that period where they're waiting --  
19 it's an ITU case and there's a (off mike) been  
20 issued, and they simply do not understand why  
21 we're unwilling to consider a letter of protest  
22 that late in the process.

1           Again, because of all of the time that  
2           has gone by before you can get to the notice of  
3           allowance stage, and the application is making  
4           certain assumptions, we think it's better not to  
5           interject a letter of protest in at that late part  
6           of the proceeding. But if you all disagree, we'd  
7           be interested to hear that.

8           CHAIRMAN SAMUELS: I don't hear any  
9           disagreement on that. I mean, I think, you know,  
10          you may be devising a system that's going to  
11          collapse of its own weight pretty soon, especially  
12          since there's no legal justification for it to  
13          begin with.

14          Any other comments? It sounds like we  
15          need to get some more information from you, and  
16          how soon do you think you can get that  
17          information?

18          MS. ROBERTS: Pretty quickly. It'll  
19          take interns a few days to get through 700 tram  
20          (?) reports, but --

21          CHAIRMAN SAMUELS: Right.

22          MS. ROBERTS: -- we can -- we can do

1 that.

2 CHAIRMAN SAMUELS: Okay. And then  
3 maybe, you know, maybe through Lynne you could  
4 send it to me.

5 MS. ROBERTS: Yes.

6 CHAIRMAN SAMUELS: And then we have a  
7 subcommittee that maybe could look at it and think  
8 about it before the next meeting.

9 MS. ROBERTS: Okay.

10 CHAIRMAN SAMUELS: You're not in any  
11 hurry to --

12 MS. ROBERTS: No.

13 CHAIRMAN SAMUELS: -- make any changes  
14 on this.

15 MR. LEICHLITER: Just one more question.  
16 You said you changed over from a more liberal rule  
17 to this current rule in the mid-'90s. Did you  
18 have any history or recollection of why that was  
19 done? And I know feedback -- (off mike) I was  
20 just a teenager then. But, and where you were was  
21 the office just inundated with letters of protest?  
22 Is that one of the intervening reasons?

1 MS. ROBERTS: No, it really came out of  
2 the very, very specific complaint, and it switched  
3 from an attorney for an applicant who had a letter  
4 of protest granted prior to publication that he  
5 felt should not have been granted, because there  
6 was some difference between the goods. There may  
7 not have been any difference between the mark, but  
8 there were some, you know, safety over different  
9 goods, and he felt it shouldn't have been granted.

10 It was quite specific. There wasn't any  
11 sudden wave of letters of protest. In fact, I  
12 don't know if we have numbers still from that far  
13 back, but I would guess that the letters of  
14 protest tracked the increase entirely.

15 MR. LEICHLITER: Um-hmm.

16 CHAIRMAN SAMUELS: Yes?

17 MR. FRIEDMAN: Obviously, to the extent  
18 a lot more would be filed prepublication, it would  
19 engender more work, so we would obviously want the  
20 quality subcommittee to look at that.

21 The other things is when you're looking  
22 at it, I guess you don't get to any credit for

1 working on letters. The flip side is if it's a  
2 clear error under our current PAP and conceivably  
3 under the new PAP for 9's, 11's and 12's, it would  
4 count against you, which I think is one more  
5 reason why in the future perhaps even less letters  
6 of protest might be granted pre or post because  
7 people know, examining attorneys know that the  
8 error is going to count against you. So I think  
9 it's one more thing to think about when the  
10 Quality Subcommittee looks at the issue, that  
11 there's sort of a built-in matter that would maybe  
12 cause less letters of protest to be filed in the  
13 past only because examining attorneys are held  
14 that much more accountable if there's a clear  
15 error granted. Kathleen?

16 MS. COONEY PORTER: I think we're  
17 talking about the pre- publication versus  
18 post-publication. If it was pre-publication, it  
19 wouldn't be considered clear error. Isn't that  
20 correct?

21 CHAIRMAN SAMUELS: Right, just  
22 information.

1                   MR. FRIEDMAN: Then I stand corrected,  
2 but still I'm concerned about the level of work,  
3 the increase in the level of work. My apologies.

4                   CHAIRMAN SAMUELS: Okay, are we going to  
5 talk about request for reconsideration?

6                   MS. MARSH: Sure, we can talk about that  
7 just briefly. If you recall, we issued a notice  
8 of proposed rulemaking proposing that applicants  
9 who file a request for reconsideration after final  
10 do so using a yet to be created TEAS form and also  
11 do so within three months of the final.

12                   The comment period closed in April, and  
13 in your notebook is a summary prepared by one of  
14 our staff attorneys of the comments. There was  
15 strong opposition to reducing the response time to  
16 three months, so strong that I think it's fair to  
17 say that we will not pursue that result.

18                   The response regarding mandatory TEAS  
19 was more mixed, and we're still considering how to  
20 proceed with that. I think whether we make it  
21 mandatory or not, just the very fact that a TEAS  
22 request for reconsideration form is available will



1 increase use of that form which will help us out  
2 with the processing and communicating with the  
3 TTAB regarding ex parte appeals.

4           The other item I wanted to mention, in  
5 your notebook also is a draft proposal regarding a  
6 grace period for TEAS applications. Ever since we  
7 started accepting electronic applications, we have  
8 a certain small percentage of filers who make a  
9 mistake and accidentally file usually twice. They  
10 have a miscommunication at their law firm, and the  
11 partner and the paralegal both file the  
12 application on different days. A non- computer  
13 savvy applicant will somehow hit the send button  
14 multiple times and file multiple times.

15           As you know, we've had extremely strict  
16 rules about once you file something here, you  
17 cannot pull it back. We won't refund the money.  
18 We won't return the application. You filed a  
19 duplicate app, and you'll have to eat the money.

20           In the world of the electronic  
21 application, we have a very a brief period where  
22 that application is here in the office in the

1 electronic systems. It has not yet been posted on  
2 the database for public viewing, and we could  
3 pretty easily refund the money and cancel out the  
4 application. And so, the proposal in front of you  
5 is that if an applicant notifies us within 48  
6 hours, 2 days, that filing the application was a  
7 mistake, that we would undo the application.  
8 Again given that this would all happen before the  
9 application was posted on TARR and TESS, we don't  
10 see any harm to the public from this.

11 CHAIRMAN SAMUELS: Is it two days or 48  
12 hours?

13 MS. MARSH: Well, the way it's written  
14 is that you have to respond by 5:00 p.m. the day  
15 after you filed. It's still right now just a  
16 draft proposal. I think it could be either way,  
17 48 hours or 5:00 p.m. next day. I have a feeling  
18 we went with 5:00 p.m. next day because we thought  
19 that would be easier for us to administer.

20 MR. ROSENBERG: How prevalent is this?

21 MS. MARSH: It happens infrequently but  
22 regularly. It's one of those things that it

1 doesn't happen a lot, but it happens again and  
2 again and again. The TEAS phone people, Craig  
3 Morris and Steve Meyer and James Wilson routinely  
4 get these calls, and it just feels bad to have to  
5 tell this applicant: No, it's here. Nothing's  
6 happened. We haven't done any work on it. The  
7 public doesn't know about it. But, sorry, we  
8 can't undo it.

9 CHAIRMAN SAMUELS: Al?

10 MR. TRAMPOSH: Thanks, Jeffery.  
11 Speaking as someone who actually filed a document  
12 with TEAS mistakenly while giving a demonstration  
13 to my office because there's no way to demonstrate  
14 except with a live response, I strongly support  
15 this.

16 CHAIRMAN SAMUELS: Anybody else have any  
17 comments? Does anybody think they should not  
18 proceed?

19 Kathleen?

20 MS. COONEY PORTER: I think it's a great  
21 idea. Certainly human error is what it is. If  
22 it's not on record, I don't see any harm in having

1 that available. I think it's a very good idea.

2 CHAIRMAN SAMUELS: Parker?

3 MR. LIVINGSTON: I certainly agree with  
4 that. It's something if it can be easily  
5 instituted, which apparently it can, I see no  
6 reason the Office shouldn't do it.

7 CHAIRMAN SAMUELS: Any thoughts on  
8 whether it should be 5:00 p.m. the next day or 48  
9 hours from when the application is submitted?

10 MR. LEICHLITER: Ten minutes would help.  
11 Usually, we file close to the end of the day. So  
12 if you have 5:00 p.m. the next day, you really  
13 only have 24 hours to look at it. So I would  
14 encourage if you can wait for 48 hours, I would  
15 encourage that.

16 CHAIRMAN SAMUELS: Lynne?

17 MS. BERESFORD: The question, of course,  
18 is how the proposal will be to implement. We'll  
19 have to look at costs in the process of  
20 implementing this. If it's really the right thing  
21 to do, obviously, we want to help people. We  
22 really don't want to hang onto their money if they

1 feel there's been a mistake. But we'll have to  
2 have a little more detailed look into the computer  
3 systems as to how we would figure this time period  
4 and how we would actually do this and who would  
5 handle the refunding, et cetera, and then come up  
6 with a cost-effective way of doing this.

7 But I agree we need to be as generous  
8 with this 48 hour period as we can. As we can, I  
9 guess is the end.

10 CHAIRMAN SAMUELS: Go ahead. I'm sorry,  
11 Jackie.

12 MS. LEIMER: I would think it would be  
13 supportable to charge some sort of administrative  
14 cost if you learn that you have some. It is an  
15 error on the part of the applicant. We pay  
16 restocking fees when we send merchandise back to  
17 stores. I don't think it's inappropriate if you  
18 feel that that's, again, once you've done your  
19 calculation if you determine there's a cost there.

20 MS. BERESFORD: We, of course, have to  
21 have fee-setting authority to do that, so that  
22 raises one issue, and the other issue, of course,

1 this is what we have to look at if the cost is  
2 more than collecting it. So it's a whole series  
3 of issues that we'll look at.

4 CHAIRMAN SAMUELS: How would an  
5 applicant go about requesting to withdraw. Would  
6 they have to submit something electronically?

7 MS. MARSH: An email.

8 CHAIRMAN SAMUELS: Email?

9 MS. MARSH: Email, yes.

10 CHAIRMAN SAMUELS: Okay, well, it sounds  
11 like everybody is in favor of the idea, just maybe  
12 a little tweaking of the proposal from the  
13 standpoint of how the 48 hours runs. This is  
14 assuming, as Lynne indicated, that this is  
15 something that can be done relatively easily from  
16 the standpoint of the automated system. So go  
17 ahead and further develop it.

18 MS. MARSH: Okay, thank you.

19 CHAIRMAN SAMUELS: Anything else?

20 MS. MARSH: Two quick items that I'll  
21 just mention very briefly: We are probably going  
22 to move forward, and the Committee, of course,

1 will get a copy of the proposed notice of  
2 rulemaking if we get that far, correspondence  
3 address. We are considering making use of the TAS  
4 correspondence address form mandatory. It is just  
5 so vastly superior to sending in a paper filing  
6 with an address change.

7           So we're considering that, and we're  
8 also considering adding a requirement in the CFR  
9 rules that an applicant and a registrant is  
10 responsible for maintaining a current address,  
11 mailing address, at the USPTO. We currently don't  
12 have such a rule. For both applicants and  
13 registrants, it frequently causes problems when  
14 we're trying to contact them and don't have a  
15 current address.

16           Lastly, on your desk in front of you, I  
17 think, are two copied pages from the Official  
18 Gazette. These are items that we are considering  
19 eliminating from the paper Official Gazette. The  
20 first is the annual consolidated list of OG  
21 notices that is published every January 1. Given  
22 that the OG notices are now on the web in

1       searchable form, we don't think it's necessary to  
2       print them out all once a year.

3                 Secondly, the Index of Registrants, each  
4       OG lists all the registrants alphabetically. In  
5       the past, the Office published an annual Index of  
6       Registrants. My understanding is that that is no  
7       longer done, and so we don't really see any  
8       reason. Again with the searchable database, if  
9       you're curious about certain applicant, you can  
10       just do a search on a certain registrant.

11                CHAIRMAN SAMUELS: Any comments on those  
12       proposals? No, okay. Then I guess it sounds  
13       good. Go ahead.

14                MS. MARSH: If you have any thoughts  
15       later, just let us know.

16                MR. LEICHLITER: Just a question on the  
17       paper OG, is that basically on its way out or is  
18       it still alive? We sent in our money this year.  
19       We still haven't gotten the copy of the OG, so  
20       we're just wondering if this is their way of  
21       saying really there is no more paper OG.

22                MS. COHN: I'll try to answer that. We



1 have been told for the past year or so now that  
2 it's on its way out, but our last conversation  
3 with GPO has been that they have not yet set a  
4 date and they have not made a decision. So we  
5 will let you all know as soon as we get a definite  
6 answer. The person that I was working with at  
7 GPO, who was really on top of this issue, is no  
8 longer there, so I don't know if that has  
9 something to do with it.

10 MR. LEICHLITER: That could have  
11 something to do with it. We'll pursue it. Thank  
12 you.

13 CHAIRMAN SAMUELS: Sharon, is there  
14 anything on the Office of Legal Counsel's proposal  
15 to recodify the Lanham Act. Is anything going on  
16 with that?

17 MS. COHN: Nothing that I'm aware of.  
18 Lynne's understanding was that they decided to  
19 back off. They're not going to proceed with that.

20 CHAIRMAN SAMUELS: Okay, to make sure.  
21 Anything else for Sharon? If not, it is time for  
22 lunch. So we'll recess now, and we'll pick up at

1 1:00.

2 MS. DELARENA: Lorelei on the phone.

3 CHAIRMAN SAMUELS: Yes, Lorelei.

4 MS. DELARENA: I'm still here. Is it  
5 possible for someone to call me back when you  
6 finish your lunch break?

7 CHAIRMAN SAMUELS: Sure, we'll arrange  
8 that.

9 MS. DELARENA: Great, thanks very much.

10 CHAIRMAN SAMUELS: Okay.

11 (Recess)

12 CHAIRMAN SAMUELS: Let's get started  
13 even though I know that at least Parker is not yet  
14 back, but I think he'll be here any minute, and I  
15 want to try to keep to the agenda.

16 So the next item on the agenda is review  
17 of the TTAB and David Sams and Gerry Rogers are  
18 with us. I know from talking with David that he  
19 does not have an hour's worth of material, so I  
20 anticipate that we'll be able to move on to  
21 international issues much more quickly than the  
22 agenda indicates.

1 David, welcome.

2 MR. SAMS: Thank you, Jeff. That's  
3 correct. I think when the agenda was set, we  
4 expected to spend a lot more time talking about  
5 what was talked about yesterday in executive  
6 session. Our part of the program today is going  
7 to be a lot more limited than first thought.

8 Let me start as I must, I suppose, with  
9 a few statistics. Among our goals this year was  
10 to issue TTAB final decisions and decisions on  
11 contested motions within 12 weeks of the time that  
12 they are determined to be ready for decision.  
13 We're, at the moment, just a bit behind that.

14 For decisions that were issued in May,  
15 we issued decisions on an average of about 16  
16 weeks. This slip in pendency is attributable at  
17 large part to the increased workload that we  
18 received last year. I think I may have reported  
19 on that at prior meetings during fiscal year 2006,  
20 we received an increase of 40 percent in new  
21 oppositions over the prior year and 11 percent  
22 increase over the prior year in ex parte appeals

1 with the filings for this year continuing at that  
2 same record pace and maybe slightly higher. So  
3 that was one of the reasons that we had some  
4 slippage just because of sheer numbers.

5 Also, a number of our judges --

6 CHAIRMAN SAMUELS: David, excuse me.

7 MR. SAMS: Yes.

8 CHAIRMAN SAMUELS: Is it a greater  
9 percentage of published applications being opposed  
10 or is it just a reflection of more applications  
11 being published.

12 MR. SAMS: The best data we have  
13 suggests that it's just a question of the number  
14 being published with opposition. You may remember  
15 there were some awfully large OGs within the last  
16 year or so, and that tends to end up in our laps  
17 at some point down the line.

18 CHAIRMAN SAMUELS: And remind me, what  
19 is that percentage of cases that actually do get  
20 opposed?

21 MR. SAMS: Jeff, I can't recall right  
22 now. We do have that statistic. It's relatively

1 small, but we're talking about a relatively huge  
2 number that are published with opposition. In a  
3 typical year, we're receiving something about  
4 7,000 oppositions a year now which is a pretty  
5 substantial number. Luckily, most of them do get  
6 settled or otherwise disposed of, and we're still  
7 at a fairly constant percentage. About 95 to 98  
8 percent of the cases go away before a final  
9 decision by a panel of three judges.

10 I should also mention a number of our  
11 judges and attorneys are now involved in mentoring  
12 new staff people, so that does take some time too.

13 Now the good news is that with the  
14 addition of an additional judge since last we met  
15 and four additional interlocutory attorneys in the  
16 last couple of months, we're starting to make some  
17 good progress toward reducing pendency, and I  
18 think we're going to be on target for this year.  
19 At least that's what we're hoping. If not, it  
20 will be early next year that I think we'll be  
21 where we need to be.

22 CHAIRMAN SAMUELS: Do you have a lot of

1 judges teleworking?

2 MR. SAMS: We have approximately  
3 three-quarters of the judges, well actually, yes,  
4 about three-quarter of the judges who are  
5 teleworking and a higher number, higher percentage  
6 of our interlocutory attorneys who are eligible.  
7 I think it's all but one of the eligible people is  
8 working from home now, and that's working out very  
9 well for us too. Because we are so fully  
10 electronic, it's seamless and most people can't  
11 tell whether somebody is working at home or not.

12 There is also a kind of culture shift in  
13 how judges and attorneys talk about cases. It's  
14 done a lot by email, a lot by phone conference  
15 rather than face-to-face meetings. That has  
16 worked to all reports very well, and we're very  
17 pleased with what we've been able to do in that  
18 area too.

19 We've also added this year a number of  
20 our paralegals. All the paralegals who are  
21 eligible to work at home are now working at home  
22 too. Also, we took that stride at a gradual pace,

1 and we had first two working at home. We saw how  
2 that worked. We were pleased enough with the  
3 results, added two more, and now we allow anyone  
4 who wants to work at home to work at home. They  
5 have a very rigorous and strict performance plan,  
6 and so it's easy to monitor how well they're  
7 doing, whether they're working at the office or at  
8 home. We find that they're doing very well.

9 The TPAC met in executive session  
10 yesterday afternoon to discuss the draft of our  
11 final rule notice incorporating a number of  
12 changes in TTAB practice and procedure, and we do  
13 appreciate the Committee's input. For the public  
14 session, I'll just indicate that we have  
15 thoroughly reviewed the comments that we received  
16 in connection with the notice of proposed  
17 rulemaking that was published in the Federal  
18 Register in January of 2006, and we prepared a  
19 final rule notice that's now in the clearance  
20 process.

21 We expect the final rule to be published  
22 within the next several weeks.

1 I'm also pleased to report that the  
2 TTAB's option for filing papers electronically is  
3 very robust. Since the start of this fiscal year,  
4 more than 96 percent of extensions of time to  
5 oppose are now filed electronically using our  
6 electronic file system. The same is true of  
7 electronic filing. Eighty-five percent of notices  
8 of opposition, seventy-eight percent of petitions  
9 to cancel and seventy-eight percent of the motions  
10 papers that are filed in connection with our  
11 contested motions are now being filed  
12 electronically which is a great boon to getting  
13 things decided more quickly.

14 To elaborate on a point I mentioned a  
15 couple of moments ago, alluded to at least, the  
16 TTAB has continued to follow through on its  
17 promise to publish more decisions as precedential.  
18 You might recall that last year we published about  
19 55 decisions as precedential which was a giant  
20 leap over the preceding year in which we published  
21 only 8 as precedential decisions. This year so  
22 far, we've published 57 decisions as precedential.



1 That puts us on a pace to issue close to 80  
2 citable precedents for this fiscal year.

3 The reaction of the Bar and the  
4 Trademark examining corps to this effort has been  
5 uniformly positive as has been the reaction from  
6 the TPAC.

7 Let me just mention quickly one more  
8 thing on our efforts to make sure the quality of  
9 our decisions in this era of publishing a lot of  
10 precedential decisions remains high. All  
11 precedential decisions are reviewed by the entire  
12 cadre of judges before they are published as  
13 citable precedents, and there are some review  
14 processes up to the level of the office of general  
15 counsel.

16 We are also, for quality purposes,  
17 having a peer review. Judges do peer review of  
18 other judges during the year to give input to me  
19 as the chief judge as to how colleagues are doing,  
20 and I use that both in performance appraisal and  
21 to spot some areas where there might be some  
22 difficulties with quality. It's worked very well,

1 and we're refining that peer review survey to get  
2 as good an information base as we can. We're  
3 making sure that our decisions stay at a high  
4 level of quality.

5 We also have been, for the last couple  
6 of years or so, instituting quarterly quality  
7 meetings at which the judges and interlocutory  
8 attorneys attend. We have guest speakers who in a  
9 kind of CLE type presentation will give us  
10 information that might be useful to us in  
11 rendering our decisions. Plus, we use these  
12 sessions to talk about issues of consistency both  
13 in the interlocutory area and in the final  
14 decision area and any other area that we think we  
15 might need to worry about consistency. The judges  
16 and interlocutories have enjoyed having these  
17 sessions, and it's worked out very well.

18 On the paralegal end, besides having  
19 regular paralegal in-house training which is  
20 fairly rigorous and outside contractor training,  
21 we have created a position of quality review  
22 specialist who reviews all -- it's on a sample

1 basis -- our outgoing actions in the paralegal  
2 area to make certain that there's consistency of  
3 action and correctness of actions. She generates  
4 reports that give the management at TTAB some  
5 information about where there might be areas where  
6 further training or careful monitoring might need  
7 to be done. We've found this to be a real boon to  
8 quality in the paralegal area as well.

9 I should also mention that we have a  
10 very strong mentoring system at the Board. All  
11 new employees, whether they be judges,  
12 interlocutory attorneys or paralegals, are  
13 mentored for a period of time until they feel  
14 comfortable working completely independently.

15 One of the things to which we've  
16 committed also in the quality area is trying to  
17 help out as much as we can with the quality of  
18 examination particularly as it relates to  
19 Trademark Trial and Appeal Board appeals. We  
20 started a program within the last quarter to have  
21 volunteer administrative trademark judges attend  
22 law office meetings in the trademark examining

1 operation to make presentations about how best to  
2 prepare a record which will be a good one should  
3 there be an appeal and to give them basic  
4 information about TTAB practice and procedure. So  
5 far, we've done about seven of these law office  
6 meetings. The response has been very, very  
7 favorable. What we intend to do is to make this  
8 not a one-time kind of program but a continuing  
9 program in which our judges, and we have a number  
10 of volunteers fortunately, can attend law office  
11 meetings to answer questions and to give seasoned  
12 opinions about the best way to go about examining  
13 when they're asked for those opinions.

14 That is all the prepared topics I have.  
15 I do want to do one more thing.

16 I mentioned the rules package, and one  
17 of the things that appears in the proposed rules  
18 package and will appear in the final rules package  
19 has to do with the position of our standardized  
20 protective order for confidential information.  
21 There were some concerns in the commentary that we  
22 received on that portion of the rule which made us

1 stop and look at this procedure and this  
2 protective order and raises some issues that we  
3 want to bring to the Committee for some comments  
4 just in general, not directly related to the  
5 rulemaking but related to the way in which we  
6 administer this protective order. I've asked  
7 Gerry to sort of brief us on that and set the  
8 stage for some comments and help.

9 CHAIRMAN SAMUELS: Gerry?

10 MR. ROGERS: Thank you, Jeff. If I can  
11 start by just reviewing a couple of provisions,  
12 I'm not going to through all 17 paragraphs or 16  
13 paragraphs of the standard protective order, but I  
14 did want to review a couple of points about the  
15 standard protective order to provide some context  
16 for the discussion and then also refer to a couple  
17 of comments that were made in the rulemaking  
18 process and a case that we now have pending before  
19 us. This will hopefully set the stage for the  
20 questions I have on which the Committee can  
21 perhaps provide us with some advice.

22 The standard protective order has

1 provisions that define parties and a provision  
2 that defines attorneys. Right now, the definition  
3 of parties is individuals, officers of  
4 corporations, partners of partnerships and  
5 management employees of any type of business  
6 organization. That's as far as we get when it  
7 comes to parties. Attorneys are defined as  
8 in-house counsel and outside counsel including  
9 support staff operating under counsel's direction  
10 such as paralegals or legal assistants,  
11 secretaries and any other employees or independent  
12 contractors operating under counsel's instruction.

13           The standard order also refers to  
14 independent experts or consultants who may be  
15 retained for the purposes of the proceeding and  
16 non-party witnesses. For independent experts or  
17 consultants and non-party witnesses, there's also  
18 a provision in the standard protective order that  
19 says when any one of those individuals is going to  
20 see protected information, they're going to have  
21 to be provided with a copy of the protective order  
22 and to read it, and they're going to have to sign

1 an authorization form that obligates them to  
2 protect the information and by which they agree to  
3 be bound both during and after the proceeding, the  
4 acknowledgment form says.

5 It's the attorney's duty to make sure  
6 that any individual who's not within the  
7 definition of a party or an attorney and who's  
8 going to have information revealed to them signs  
9 the acknowledgement form. The attorney then is  
10 obligated to maintain collection of the originals  
11 of these acknowledgment forms during the  
12 proceeding.

13 A couple of other provisions I wanted to  
14 note again for context are that at the conclusion  
15 of the proceeding, it is the receiving party's  
16 obligation to return all confidential materials  
17 including -- we say in the standard order -- any  
18 briefs, memoranda, et cetera that may refer to the  
19 confidential material in any way. So it's a  
20 pretty all encompassing obligation to return.

21 It's the providing party, the party that  
22 made the designation of confidentiality, it's

1 their option to say: I don't want all that  
2 returned to me. That's too much. You have my  
3 permission to destroy it.

4 But it's not the receiving party's  
5 choice. It's the providing party's choice.

6 The last point I wanted to make about  
7 the coverage of the order is that the standard  
8 order provides that if it's going to be modified  
9 or supplemented, that the modification or  
10 supplementation has to be approved by the Board.  
11 So the parties do have to come back to us and let  
12 us know if they're going to be changing it in any  
13 way.

14 Given that context, I just want to note  
15 that some of the comments that led to discussions  
16 we've already alluded to in yesterday's executive  
17 session and during David's remarks earlier, that  
18 prompted us to re-examine the way we use the  
19 standard protective order and its provisions are  
20 comments that, well, there was one comment in  
21 particular. Of course the comments are all in the  
22 public record and posted on the web, so there's



1 nothing I can't reveal to you now. One comment  
2 noted that the Board has no ability to issue  
3 injunctions or contempt rulings, and it argued  
4 that possible entry of a sanction in a Board  
5 proceeding or disciplinary action against an  
6 attorney would not provide immediate protection or  
7 remedy economic harm. So that was one comment  
8 which while it was only one organization or one  
9 firm that made it, I suspect that a number of  
10 people would agree with that comment.

11 There were a number of comments that  
12 went beyond and were concerned with the  
13 inapplicability of the protective order after the  
14 proceeding if the parties haven't signed it and  
15 created a contract or if they haven't agreed to  
16 some kind of survival clause as part of their  
17 agreement.

18 That's kind of what's been causing us to  
19 look at the issue anew, and we also a case that's  
20 pending where basically the parties have  
21 disagreed. They both want the standard protective  
22 order employed because they each proffered a

1 protective order of their own device. They  
2 couldn't agree on one. They each submitted one.  
3 They couldn't agree to accept the other one.  
4 Finally, they both said let's use the standard  
5 order, but one party says: That's okay, but we  
6 have to have a survival clause, and that's the  
7 only thing that we need to add to it.

8 That, again, is causing us to kind of  
9 look anew at some of these provisions. So I just  
10 prepared a few questions that I would like to pose  
11 to the Committee.

12 I guess the first question is whether  
13 the Committee members or any of the members of the  
14 Bar with whom the Committee members may be in  
15 contact have had significant experience with  
16 breaches of confidentiality designations during  
17 proceedings because at least as far as our  
18 anecdotal experience is concerned, we don't see a  
19 lot of allegations of breach if any. I can't  
20 remember any instance where an interlocutory  
21 attorney has brought up in a case conference a  
22 motion for sanctions in the form of judgment for a

1 breach of a confidentiality designation or a  
2 protective order. But if there are instances that  
3 are under the radar, then we'd certainly like to  
4 know about them.

5 In terms of the definitions that we  
6 include in the standard order, we'd like some  
7 input if the Committee members can provide it as  
8 to whether the definitions of parties and the  
9 definitions of attorneys are suitable or whether  
10 you think we could somehow expand or modify the  
11 definitions to provide more inclusive coverage of  
12 individuals who might have confidential  
13 information revealed to them.

14 Another question would be the  
15 acknowledgment form that non-party witnesses and  
16 independent experts and consultants have to sign.  
17 We say in that form that the signer acknowledges  
18 the protective order and that they're bound by it  
19 both during and after the proceeding, and yet our  
20 manual says and one of our published cases says  
21 that it's doubtful whether the Board has  
22 jurisdiction over third party signatories to

1 protective orders. I take it that that would  
2 include non-party witnesses, for example, who sign  
3 this acknowledgement. Again, because we have so  
4 few, if any, allegations of breach, we don't  
5 really have any experience with trying to enforce  
6 that.

7 But if the Committee would have any  
8 input on the use of this acknowledgement form,  
9 whether the wording in the acknowledge form might  
10 be altered in any way or how a violation of the  
11 protective order by a non-party witness might lead  
12 to a claim that could be asserted in court, that  
13 would be helpful to have your theories on that,  
14 what kinds of claims might be assertable based on  
15 such a breach.

16 CHAIRMAN SAMUELS: Do you have that  
17 case, Gerry?

18 MR. ROGERS: The case is Duke University  
19 v. Haggard, and it's really in just a footnote that  
20 they talk about it being unlikely, and so it may  
21 have been dicta in that case anyway because it's  
22 just kind of supposing that third party signatures

1 might not make the protective order agreement  
2 binding on them. But it's 54 U.S. PQ 2nd 1443  
3 Duke University v. Hagggar Clothing.

4 That, I will point out also, dealt with  
5 a stipulated agreement of the parties that they  
6 had come up with and which we approved and entered  
7 in that case as opposed to the standard protective  
8 order. So the terms were somewhat different, but  
9 I think the principle would be the same.

10 Just like we'd like to know about any  
11 experience that the Committee members have had  
12 with breaches or may have heard about from other  
13 members of the Bar, breaches during proceedings,  
14 if there are any post-proceeding breaches that  
15 have occurred, then we'd certainly like to know  
16 about that too. If the standard order -- and I  
17 take it most stipulated orders contain similar  
18 provisions -- work the way they're supposed to  
19 work, there should be few opportunities for  
20 post-proceeding breaches because of the return of  
21 the material and the return of all briefs and  
22 memoranda and that kind of thing. I wouldn't put

1       it past some aggrieved non- party witness or  
2       aggrieved party to, in this day and age, post  
3       something on the web just for spite, but we're  
4       certainly not aware of anything like that  
5       happening.

6                   Then I guess the other issue that we've  
7       discussed or Jim and David and I discussed the  
8       other day was the extent to which the offices and  
9       the Office of Enrollment and Discipline or a State  
10      Bar counsel may become involved in issues  
11      regarding unethical practice by attorneys who  
12      either participate in a breach or fail to stop  
13      their client from engaging in any kind of breach  
14      and whether this is an adequate safeguard to be  
15      able to go to a State Bar authority or to go to  
16      OED. Harry Moatz from OED did do a little bit of  
17      research, and we discussed this a little bit.

18                   We're not aware of much in the way of  
19      case law involving allegations of breach brought  
20      up in court proceedings or before Bar authorities,  
21      but to the extent that this is a potential penalty  
22      for someone who would breach an agreement,

1 certainly for an attorney, and one that we should  
2 stress more when we're imposing the standard  
3 protective order and reminding people about how it  
4 works, then we'd certainly be willing to consider  
5 doing that.

6 Those are the areas we've been  
7 discussing and thinking about, but if there's  
8 anything else that the Committee wants us to  
9 consider in this kind of re-examination, we're  
10 certainly willing to do that.

11 CHAIRMAN SAMUELS: Okay, I guess we've  
12 got another homework assignment here. Let me just  
13 see if I have all the issues.

14 MR. ROGERS: I can also send you  
15 something by email if you'd like.

16 CHAIRMAN SAMUELS: Yes, maybe that would  
17 be helpful.

18 MR. ROSENBERG: You want it specifically  
19 on the trademark issue.

20 MR. ROGERS: Well, I would say that, for  
21 instance, with State Bar authorities or discipline  
22 issues, if it's any kind of violation of a

1 protective order in an administrative agency that  
2 was then brought to the attention of a Bar  
3 authority or when a violation of protective order  
4 in an administrative agency context, then provided  
5 a cause of action for breach of contract in court  
6 or perhaps under some kind of tort theory in  
7 court. Then we'd like to hear about any of those  
8 instances that you might know of.

9 CHAIRMAN SAMUELS: Thank you very much.  
10 Anything else, Gerry, David? Joshua, do you have  
11 a question or comment?

12 MR. ROSENBERG: Yes. I think once we  
13 asked you about cases that were overturned on  
14 appeal. Is there some statistic that we keep  
15 there.

16 MR. SAMS: The Office of the Solicitor  
17 does keep that statistic. I don't have it on the  
18 top of my head right now. It tends to be, I think  
19 it's the traditional 75 percent affirmance rate  
20 generally although I can't say that that has been  
21 the case over the last, let's say, 3 years. We'd  
22 have to look at it. I don't have a sense that



1 there's been any substantial reversal rate.

2 Is the question prompted by any  
3 particular concern?

4 MR. ROSENBERG: Well, only insofar as  
5 that sounds like a statistic that you would want  
6 to improve in terms of a measure of your success.

7 MR. SAMS: Well, we love to be affirmed.  
8 That's correct. To the extent that a decision in  
9 which we're reversed has any guidance for us, it's  
10 often the subject of discussion within the Board.  
11 So to that extent, reversals are not ignored.

12 CHAIRMAN SAMUELS: Van?

13 MR. LEICHLITER: Have you seen an  
14 increase in the number of allegations of fraud on  
15 the Patent Office with respect to statements of  
16 use recently.

17 MR. SAMS: Yes, we have seen. We have  
18 begun to try to quantify it, but I don't think  
19 we've actually quantified it yet. Because of the  
20 spate of decisions from the Board regarding fraud  
21 on the PTO because of false statements about use  
22 on particular goods or services, we have seen a

1 lot of such pleadings in the initial stages of our  
2 proceedings.

3 We find that many of them drop out or by  
4 the time they get to a decision all the way  
5 through trial, no evidence was offered and they  
6 become sort of moot. That does not say that we  
7 don't have some that go through trial with that  
8 pleading still intact because that's true, and we  
9 have issued some decisions.

10 But the answer is yes, we have seen a  
11 significant increase in the number of pleadings of  
12 fraud. Whether or not that will pan out to a  
13 significant increase in the granting of opposition  
14 or the granting of a petition to cancel, we can't  
15 say yet.

16 CHAIRMAN SAMUELS: Any other questions?  
17 Okay, thanks, David. Gerry, thank you very much.  
18 We'll move on to international issues, and Nancy  
19 Omelko has joined us. Nancy, welcome.

20 MS. OMELKO: As Jeff said, I'm Nancy  
21 Omelko, and I work in the Office of International  
22 Relations and in the Trademark Section.

1                   I'm going to report first on the status  
2 of the Singapore Treaty. There is going to be  
3 hearing, a Senate hearing, coming up in July.  
4 Right now the treaty has been ratified by one  
5 country, Singapore. It needs nine other countries  
6 to ratify before it goes into effect.

7                   Just as a reminder of what the Singapore  
8 Treaty does, it provides for an assembly so that  
9 day to day matters can be handled there rather  
10 than going back to the general assembly. It  
11 prohibits mandatory license recordal which in some  
12 countries could lead to cancellation of a  
13 registration. It also recognizes non- traditional  
14 marks but does not require a country to provide  
15 for filing and protection of non-traditional  
16 marks, and it also requires relief measures in  
17 those cases where someone unintentionally or even  
18 with due diligence did not file a document in  
19 time. So those are the major provisions of the  
20 treaty.

21                   The Senate Foreign Relations Committee  
22 has scheduled a hearing for July 17th. This is

1 for the Singapore Treaty as well as the Hague  
2 Designs Treaty as well as the Patent Law Treaty,  
3 so all of those will be heard on July 17th.  
4 Treasury, USPTO and the Joint Tax Committee will  
5 testify on the first panel, and the second panel  
6 will include private sector representatives  
7 although those haven't been determined yet.

8           The U.S. is already in compliance with  
9 the provisions of the treaty. Therefore, we will  
10 need no implementing legislation or regulations.  
11 As I said before, it will be come effective once  
12 countries ratify it, so that could be a long way  
13 off. I also wanted to report on the standing  
14 Committee for Trademarks Industrial Design and  
15 Geographical Indications which took place in May  
16 of this year, and we had a few topics that we  
17 discussed. This committee has really become a  
18 place to exchange information. Although part of  
19 the title of the committee is geographical  
20 indications, we do not discuss those. They just  
21 remain on the agenda because it's a very hot and  
22 controversial topic. The rest of it, industrial

1 designs, doesn't apply too much to us because we  
2 don't really examine them under our Trademark  
3 system, but we did have a questionnaire for  
4 industrial designs which people from delegations  
5 from other countries were asked to submit  
6 information about how they protect industrial  
7 designs. The U.S. will submit something along  
8 those lines once we talk to our Patent people and  
9 find out exactly how we do it in the U.S.

10 We also had an interesting discussion  
11 about opposition proceedings: Various countries,  
12 depending on whether they examine or not;  
13 applications before registration, how that can be  
14 considered a pre-registration opposition or a  
15 post-registration opposition. That's not to be  
16 confused like in the United States where we have  
17 cancellation proceedings which are  
18 post-registration proceedings, but these are  
19 oppositions that are filed shortly after the  
20 registration issues. So it's considered actually  
21 during the registration process somehow.

22 In those countries, rights are

1 established. We, in the United States, are trying  
2 to get across the information about how  
3 pre-registration oppositions can avoid the  
4 situation where you bestow rights only later to  
5 extinguish them because of an invalidation  
6 proceeding or cancellation.

7           At this point, we're just discussing  
8 what each country does and putting that in a  
9 document that the WIPO Secretariat is composing.  
10 I guess the benefit for the U.S. is that some  
11 countries might think that our system is valuable  
12 and therefore try to do it more along our lines  
13 which is pre-registration.

14           They also can see the benefits in the  
15 efficiencies of our opposition proceeding because  
16 in some countries, for example, an opposition is  
17 filed and the members of that tribunal that  
18 decides who wins and who loses will actually start  
19 looking at the evidence, consider standing, time  
20 windows and all those features where in our system  
21 we can point out that some of this is handled by  
22 machine, another is handled by motion and evidence

1 isn't decided upon until later in the proceedings.  
2 The efficiencies are something that we really want  
3 to highlight because there are backlogs in some  
4 counties that could be avoided if they adopt a  
5 system that provides for the parties doing the  
6 work rather than the government doing the work.

7 We also discussed Article 6(ter) which  
8 has to do with protection of emblems on symbols,  
9 et cetera, et cetera, and we're trying to come up  
10 with a form for notification and also a form that  
11 would provide contact information for those  
12 countries who want to find out more about the  
13 particular mark, so to speak, that is being asked  
14 to be protected.

15 We're also being asked to look at our  
16 own 6(ter) Notifications to see whether they are  
17 really still something that we want to protect  
18 under 6(ter). That's actually a voluntary  
19 request.

20 As far as non-traditional marks, we're  
21 talking about drawing requirements, how to portray  
22 a sound mark, 3-D mark, et cetera. We've only

1 gotten to talk about those and color marks at this  
2 point. Lots of countries are interested in  
3 expanding to protect non-traditional marks, but  
4 they really don't know how to present them. For  
5 example, some countries think that for set marks,  
6 you'd have to present the chemical equation to  
7 show what that particular thing is, and that could  
8 be a way of doing it. It's all under discussion  
9 as I mentioned.

10 The rest of the non-traditional mark  
11 discussion will be held at the next meeting which  
12 is in November. It's held twice a year.

13 Also, in the APEC, Asia Pacific Economic  
14 Cooperation, meeting in Taipei last month, where  
15 the intellectual property experts group discusses  
16 certain issues, we did bring up the opposition  
17 proceeding again in an effort to get the group  
18 looking at efficiencies in our system and perhaps  
19 learning from other systems as well.

20 I also wanted to talk about the Madrid  
21 Working Group meeting which had its eyes on  
22 eliminating a safeguard clause. When the Protocol



1       came into being, there was a provision put into it  
2       that said that after 10 years and after 5 years at  
3       least of the time when the majority of Madrid  
4       Agreement parties joined the Protocol, we could  
5       consider getting rid of the safeguard clause which  
6       was a clause that said if a party is governed by  
7       both Madrid and the Protocol, the Madrid Agreement  
8       will always be what you'd have to adhere to.

9                So for the Madrid Agreement, the  
10       difference is that you have a lesser fee and also  
11       you can only have 12 months before a registration  
12       is issued. If you don't notify the International  
13       Bureau within that 12-month period, then the mark  
14       is registered. The Protocol extends that to allow  
15       countries to opt for 18 months and also to charge  
16       complementary fees to cover the cost of  
17       processing.

18               What happened at the working group  
19       meeting, which was supposed to be going towards  
20       revoking the safeguard clause, was it actually  
21       took a step backwards and instead increased the  
22       basic fee from 73 Swiss francs to 100. Part of

1 the U.S. consideration was that there was no  
2 service provided for this additional fee increase.  
3 The U.S., even though it cannot vote on whether to  
4 repeal the safeguard clause because it's not a  
5 member of both the Protocol and the Madrid  
6 Agreement, is still interested in services  
7 provided for the increase in money and is trying  
8 to figure out a position for demonstrating that.

9 This will be voted on at the assembly.  
10 I believe that's going to be in September. So  
11 that's what's happening with the Madrid Working  
12 Group.

13 Then one other consideration is we've  
14 been approached by WIPO Madrid people, the people  
15 who actually do the work with Madrid filings and  
16 have asked us to reconsider our statutory  
17 requirement to have the bona fide intent to use  
18 statement included in the international  
19 application that's filed with the International  
20 Bureau. The reason is that the International  
21 Bureau has to check for this bona fide intent  
22 statement and if it isn't there, then they return

1 it, and the U.S. does not have to process it until  
2 the bona fide intent statement is resubmitted to  
3 the International Bureau. It creates a lot of  
4 work for the IB, and there is also a problem with  
5 various countries' national offices complaining to  
6 us that the U.S. system is very difficult and they  
7 spend a lot of time on the phone with their  
8 nationals explaining how to file a Madrid  
9 application.

10 That being said, this is where we are.  
11 We're being asked. I think the people from the  
12 Madrid group are coming over within the next month  
13 or so. We'll be asked again what our thoughts are  
14 about this.

15 As far as it could be a messier  
16 application, we would have to request that the  
17 bona fide intent to use statement, if omitted, be  
18 submitted again in an office action. The problem  
19 possibly is also that Madrid applications are kind  
20 of messy to begin with, so this might just be  
21 another form paragraph rather than a completely  
22 different office action only dealing with the bona

1 fide intent to use statement.

2 The idea is also allowing countries to  
3 put up on their web sites, tips for filing in  
4 whatever country you choose to extend protection  
5 in. The U.S. would put up a page that says you  
6 have to include a bona fide intent statement, et  
7 cetera, et cetera, et cetera, all those things  
8 that we would need to do.

9 As I mentioned, this would be a  
10 statutory change. It would require us to  
11 eliminate in I believe Sections 66 and 68, the  
12 words that say that you have to include for a  
13 filing date, the bona fide intent statement, and  
14 68 would talk about how in examination you didn't  
15 have to prove use of the mark in the U.S. Or in  
16 commerce, but you would have to at least have a  
17 bona fide intent to use statement.

18 We have a draft. It's a very easy draft  
19 for fixing this if people are in agreement to  
20 this. It's really, I think, for the people who  
21 help us from the WIPO group because it's really  
22 creating problems for them.

1                   Any questions on any of it? Any  
2 suggestions about the last point I made?

3                   CHAIRMAN SAMUELS: Yes, I mean I have  
4 some comments on that. I think it's a real  
5 political hot potato. I can recall when we were  
6 negotiating the regulations, that the Trademark  
7 Bar, INTA, and others were fairly insistent upon  
8 the necessity of including the requirement that  
9 there be a bona fide intent set forth by the  
10 Madrid applicant. Unless people's views on that  
11 have changed, I assume that that would still be  
12 their position insofar as you can get a  
13 registration on Madrid without using it and there  
14 are all kinds of other benefits that accrue to a  
15 Madrid applicant that do not accrue to some U.S.  
16 trademark owners.

17                   I'm aware of all the views of other  
18 countries because I sat through, listened and got  
19 a lot of abuse from others, but I still think that  
20 it's a real political hot potato.

21                   I don't know what they're complaining  
22 about at WIPO. I mean they are being paid to

1 perform a service. Are they being so overwhelmed  
2 by applications that do not contain the statement  
3 where it's made clear that this statement is  
4 required or are they just looking to get out from  
5 a little additional work?

6 I guess my general view is I would not  
7 be in favor of making that change.

8 MS. OMELKO: Thank you, Jeff. I'm  
9 trying to remember whether the concern of INTA and  
10 others was that the Madrid filer would get away  
11 with never including a bona fide intent statement  
12 or whether it needed to be there as a filing date  
13 requirement. When we did the TLT revisions, TLT  
14 and Madrid were kind of going head to head and  
15 then we didn't know which one was going to go  
16 forward first.

17 But we were reducing the filing date  
18 requirements to really notice. We had to know  
19 what the mark was, what the goods or services  
20 were. We had to be paid for it. We had to know  
21 who to communicate with. So we reduced it to five  
22 different elements, but with the Madrid

1 applicants, we go beyond that. We also require  
2 the bona fide intent statement. Under the  
3 legislative proposal, this would just shift the  
4 requirement from the filing date requirement to  
5 sometime in examination.

6 CHAIRMAN SAMUELS: Yes, but you say  
7 you're shifting the work from WIPO to the PTO.

8 MS. OMELKO: Yes.

9 CHAIRMAN SAMUELS: Essentially, that's  
10 what you're doing.

11 MS. OMELKO: But possibly mitigated by  
12 this fact sheet that we're allowed to put up now  
13 on the web site.

14 CHAIRMAN SAMUELS: Right, and if you're  
15 a 44 applicant, you have to have to have that  
16 statement in order to get a filing date.

17 MS. OMELKO: No.

18 CHAIRMAN SAMUELS: No?

19 MS. OMELKO: No, nothing, no. All of  
20 them, all except Madrid. All of them, only have  
21 those five requirements: The name, the address,  
22 the fee, and the goods and the mark except for

1 Madrid.

2 MR. LIVINGSTON: Under U.S. 44, it's my  
3 understanding the practice is you do have to put  
4 intent to use on 44. Yes, that's a requirement.

5 MS. OMELKO: Not for filing date.  
6 Right, not for a filing date.

7 MR. LIVINGSTON: But I mean you have to  
8 have it in the application.

9 MS. OMELKO: Yes, and we wouldn't be  
10 changing that at all. It has to be there before  
11 registration. It just doesn't have to be there as  
12 a filing date requirement. This would conform the  
13 Madrid filings with all of the other ACs, 44 as  
14 well as 1A and 1B.

15 MR. LIVINGSTON: I guess the question is  
16 whether we want to shift the burden to the PTO.

17 CHAIRMAN SAMUELS: Al?

18 MR. TRAMPOSH: Thanks, Jeff. Just a  
19 couple points of information: One is that one of  
20 the difficulties with the declaration that has to  
21 be submitted with the Madrid Protocol application  
22 which is Form MM18 is that there seems to be a



1 certain amount of confusion about who can sign  
2 that declaration because a foreign attorney can  
3 sign the international application, but in fact  
4 under USPTO rules the foreign attorney cannot sign  
5 the MM18. However, there are a number of people  
6 that are not aware of that fact. So I think there  
7 are at least some MM18 declarations that come in  
8 with attorney signatures which would in fact put  
9 into question the validity of the extensions of  
10 protection into the United States.

11 Just one other point of information, as  
12 of course everyone at the PTO knows, there are a  
13 couple of other countries -- I believe the UK and  
14 Ireland -- who also require a declaration of  
15 intent to use, but they accept a footnote in the  
16 application that says if the box is checked  
17 designating that country, that constitutes a  
18 declaration of intent to use. So this is another  
19 option, but I would caution if that other option  
20 is used, then the question of who signs the  
21 application may arise as well. That may be a  
22 halfway option to do something like that.

1 MS. OMELKO: If I could just ask for  
2 clarification on the first point about signing, if  
3 the International Bureau does not know who is the  
4 proper party to sign, they're just going to accept  
5 it as long as there's a signature and then it  
6 could possibly be rejected by the U.S. later when  
7 an examination is done of the application?

8 MR. TRAMPOSH: Actually not because  
9 oddly enough the MM18 never leaves WIPO and never  
10 arrives at the USPTO.

11 So WIPO will not evaluate the signature.  
12 The MM18 will stay at WIPO. It will not be  
13 challenged at any time by the USPTO because they  
14 simply don't see it. The only way it could be  
15 challenged would be in an interparties proceeding  
16 where the challenging party, either in an  
17 opposition or cancellation or litigation, would in  
18 fact order the file from WIPO and see who it is  
19 that signed. It would say that the MM18 not only  
20 has a slot for signature but also for the position  
21 of the person, and there are cases where that  
22 position would say attorney, and that would really

1 be a red flag.

2 CHAIRMAN SAMUELS: Of course, Lynne.

3 MS. BERESFORD: Thanks. The practical  
4 matter, the MM18 resides on the web site where  
5 they're filling out the application and the  
6 extension that turns into the extension  
7 protection. If we decided to wait and allow  
8 people to file this later, they would in fact  
9 either have to come up with their own form or  
10 they'd have to go back to the WIPO web site, print  
11 the form and then mail it or fax it or something  
12 to us or we'd have to create an electronic form  
13 for it or some such thing as that.

14 To me, what we're doing now has some  
15 flaws in it, but it seems to me the most practical  
16 way to handle this particular form because it's  
17 there where the application is being filled out.

18 It's true we issue office actions in 97  
19 percent of the extensions of protection. We all  
20 saw that statistic this morning.

21 So if you're saying, oh, you're just  
22 adding another form paragraph, that's probably

1 true. We do hope those statistics will improve as  
2 European attorneys become more savvy about filing  
3 in the U.S., but I think it also sets up some  
4 other issues that when we accept it later, I think  
5 we'll have some additional issues there. I think  
6 we'll have a signature issue really raised every  
7 time we get the MM18 form directly into the USPTO.

8 Bottom line is I guess I have to say,  
9 what's in this for us? I'm willing to take on  
10 more work if I think it's going to improve the  
11 system, make it better or do something like that.  
12 I'm not sure what's in this for us. If there are  
13 people here at the table who think, yes, we really  
14 should be getting these in and it really would  
15 improve the system, then I'm willing to change,  
16 but at this point I'm not convinced.

17 MS. DEUTSCH: My question when Jackie  
18 and I met with Nancy yesterday was not so much  
19 what's in it for us in terms of this change but  
20 whether the burden of making this change would be  
21 a valuable chit that we could use for something  
22 else because I don't necessarily see a benefit for

1 this change, but I'm wondering in the horse  
2 trading whether there's some value there. I'm not  
3 close enough to it to know. I don't know if Al is  
4 closer or somebody else is, but that would be  
5 where I would see the perceived value, if any.

6 MR. TRAMPOSH: Just that the horse  
7 trading would be between USPTO and WIPO, and  
8 that's not the usual place for the horse trading.

9 CHAIRMAN SAMUELS: Does anybody think  
10 that we should agree to the change?

11 Excuse me, Al?

12 MR. TRAMPOSH: I think there should be a  
13 change. I'm not convinced, though, that this is  
14 the right change.

15 CHAIRMAN SAMUELS: Does anybody think  
16 that the change as proposed by Nancy is the right  
17 change?

18 I guess not.

19 MS. OMELKO: Okay.

20 CHAIRMAN SAMUELS: Was there another  
21 issue that you wanted to bring?

22 MS. OMELKO: No. That's it.

1                   CHAIRMAN SAMUELS: That's it. What is  
2 going on? I think two meetings ago, we had some  
3 discussion. I'm not sure whether you were here or  
4 Amy. I think Amy. There was a draft proposal  
5 with respect to the California Innovations Case.  
6 Is that moving along?

7                   MS. OMELKO: No, not since the last time  
8 we were here.

9                   CHAIRMAN SAMUELS: Does that mean the  
10 idea has been killed or is it just sort of sitting  
11 somewhere?

12                  MS. OMELKO: No. I think we're trying  
13 to figure out next steps. First of all, there's a  
14 new Congress, and we were told we should wait a  
15 little bit just because there were things for them  
16 to do. Probably sometime this summer, we'll try  
17 to re- evaluate whether and what we should do  
18 next.

19                  There's a possibility of breaking apart  
20 some of this legislative proposal because we have  
21 certain sections that are really non-controversial  
22 like the Madrid fix for maintenance documents

1       which does not mirror regular Sections 8s and so  
2       forth, things like that that we could split apart  
3       and have something move forward, but that would  
4       probably not include the California Innovations  
5       piece. So we're still trying to figure out where  
6       we are and what we're going to do.

7                   CHAIRMAN SAMUELS: Any questions for  
8       Nancy? Thank you. We're up to David and the  
9       report of the Chief Information Officer. Welcome,  
10      David, any time.

11                  MR. FREELAND: Thank you. Good  
12      afternoon. I have a few slides I believe that are  
13      in your packages, and I'd like to just go through  
14      those and answer questions whenever you so choose.

15                  On page two, for the first couple of  
16      slides, they're just updates on volumes that give  
17      you an idea of what we've been doing for the first  
18      part of this fiscal year as compared to the full  
19      year in 2006. Some of the differences or the  
20      weights, assuming an even distribution between the  
21      first and the second half of fiscal year 2007, it  
22      looks like there would be a slight decline on TEAS

1 filings, but I think the difference is so minimal  
2 that you really couldn't come up with a valid  
3 comparison at this point. Also on the searches,  
4 we're still doing about the same rate, about two  
5 million transactions a year.

6 On the trade-ups, well, that's a little  
7 bit more significant at 37,000 a month. On TRAM,  
8 we're also increasing our workload at 26 million  
9 for the first half of the year, so that would be  
10 about a 53 million dollar annualized rate which is  
11 a good jump, a little bit more than 10 percent  
12 increase from past years.

13 On slide three, look at Madrid numbers,  
14 slightly up also on applications filed. When you  
15 look at the TICRS applications, it's a little bit  
16 more significant, well, about the same, about 6  
17 million on annualized basis in 2007 and 22 or 23  
18 million pages, 23-24 million pages on TICRS  
19 loaded. So definitely what we're seeing is maybe  
20 the number of filings are okay, but often times  
21 the filings are getting bigger and bigger on pages  
22 loaded. You may be seeing that in your own



1 practices as well.

2 On TESS, we're at another jump up to  
3 about 24 million or 12.8 up to 24-25 million on an  
4 annualized basis. One positive there is on our  
5 response times, slightly better in 2007. We're  
6 definitely doing some hardware updates and a  
7 little bit better performance on the time.

8 On slide four, several initiatives or  
9 accomplishments, activities that we've been  
10 conducting in the first part of 2007, Madrid  
11 redesign: We completed a proof of concept where  
12 we went out and looked at how to do redo Madrid  
13 with a couple of different vendors. The products  
14 were interesting. We liked parts of one and parts  
15 of the other, but we tabled it for right now.  
16 Some of the technologies were not quite as mature  
17 as we would like at this point, and we're trying  
18 to mature those, and we're looking at TICRS. But  
19 as soon as we pull that together, I think we're  
20 going to have a more comprehensive plan on moving  
21 forward with the Madrid redesign.

22 Another project that we're working on is

1 the searching pics are a good idea. But as we  
2 completed the evaluation, we found that  
3 automatically classifying the images, we weren't  
4 as good as we would like on that software and that  
5 the recommendation was not to pursue that at this  
6 point. We're continuing to watch the technology,  
7 but it wasn't ready for primetime.

8 Again, on Madrid, we went out with a new  
9 version or a new release in May that enhanced or  
10 allowed support for us telework, Trademark work at  
11 home, so that's always a good thing. Any time we  
12 can improve the quality of support for our  
13 distributed workforce, that's a good thing.

14 Our photo composition system, Trademark  
15 in-house photo composition to help out with the  
16 Official Gazette, to simplify that publication  
17 process, that's fairly labor intensive. A lot of  
18 work goes into that on our side and also in the  
19 general counsel, I believe, too. So anything  
20 anywhere along that way that we can do to improve  
21 that, we're trying to push through there.

22 In June, in this month, Debbie Cohn had

1 mentioned that earlier this morning, the postings  
2 or the emails going out that have electronic links  
3 as opposed to the full big attachments, where  
4 you're able to pull it down. So that's out.

5 On page six, in July, we're looking at  
6 the design search code automation where the  
7 assignment of classification codes, performing the  
8 AQ on the assigned codes and really allowing for  
9 TESS and XSearch to then go against those assigned  
10 codes. Those are all positives in that we can  
11 hopefully end up with better search results.

12 MS. BERESFORD: Can I just say  
13 something?

14 MR. FREELAND: Sure, please.

15 MS. BERESFORD: Yes, this has to do with  
16 closing the Trademark paper search facility. We  
17 have decided that we would use the design coding  
18 that's in the search room now, the draw design  
19 coding and add it to the kind of design codes that  
20 are available online. So one can search using the  
21 international codes that we have now or one can  
22 search through the draw-based codes of

1       miscellaneous designs and circles and things of  
2       that nature.

3                       We will have the same staff applying  
4       those design codes that applies them in the paper  
5       search room right now. So it should be an  
6       absolutely just a seamless transfer over and allow  
7       folks who feel that the paper-based design search  
8       codes are more accurate or more easy to use or  
9       whatever to continue to use those paper-based  
10      search codes, but that's what this is all about.  
11     We have published the Federal Register notice, and  
12     we're waiting on it.

13                      Thanks, David.

14                      MR. FREELAND: Thank you, Lynne. Also,  
15     in our ongoing efforts to try to get to 100  
16     percent electronic end to end processing in  
17     Trademarks, our intent is to use paralegal  
18     specialists. We are making the next release of  
19     FAST which is going to be able to support them.  
20     This is another big step for us in marching down  
21     that path because we've added significant  
22     enhancements to FAST over the last year in being

1 able to support this and then processing.

2 I believe the next area, as Lynne and I  
3 were speaking last night, I think  
4 post-registration is another big area that we're  
5 going to be pursuing, looking at that, and then  
6 petitions is another area to look at automation  
7 and electronic processing of things. This is  
8 definitely in the forefront of our heads in trying  
9 to continue the efforts on electronic end to end  
10 processing in Trademark systems.

11 On page seven, slide seven, the form  
12 paragraph editor program eliminating, helps  
13 supporting form paragraphs and has a standardized  
14 pull there in allowing customers to basically have  
15 their own user preferences in how they're going to  
16 use that. So, trying to simplify or improve the  
17 tools that we're making available to everybody.

18 In September, we're having another FAST  
19 examiner support for supporting some of the  
20 organizational developments or changes that we've  
21 been working with in the Trademark area, and this  
22 is some additional changes in FAST to support that

1 on the LIEs, and SLIEs.

2 In December, TICTRS is redesigned. So  
3 that's when our report is due on how we're  
4 proposing to move forward with TICTRS redesign, and  
5 then we'll be marrying that up with the Madrid  
6 redesign in coming up with a more comprehensive  
7 strategy for Trademark systems and those two  
8 fairly significant systems.

9 Two big things or one big area is we've  
10 been looking at and we're moving down the path of  
11 implementing low cost/no cost Trademark bulk data  
12 downloads, improving the accessibility of the web  
13 so that people can have an easier time at  
14 accessing that data from us. We're always looking  
15 to make the Trademark system more easily  
16 available, and this is one of the ways that we've  
17 been pursuing.

18 TEAS forms, we have a lot of TEAS forms,  
19 and we keep enhancing them and improving those.  
20 So we have quite a few areas that we will be  
21 pursuing and releasing early next calendar year.

22 MR. ROSENBERG: Can I just ask?

1 MR. FREELAND: Sure.

2 MR. ROSENBERG: The last initiative on  
3 low cost Trademark bulk downloads, who does that  
4 benefit?

5 MR. FREELAND: Who does that benefit?  
6 Well, there's a lot of the general public that  
7 accesses that data. We sell. There are a lot of  
8 people that use this information that have been  
9 hitting us on our general sites or they go through  
10 our information dissemination area to pull down  
11 that information now.

12 MR. ROSENBERG: Are you talking about  
13 for profit companies that charge for the data  
14 later on? Is that who?

15 MS. BERESFORD: No.

16 MR. ROSENBERG: No?

17 MS. BERESFORD: We do sell data to for  
18 profit companies. It costs us more to produce  
19 that data right now than I think we make on it.  
20 There are two real objects to this. First of all,  
21 we think this will end our data mining problems.  
22 We have data miners hit our TEAS web site and

1 bring it down. I don't know anything about IT,  
2 but they robotically manage to get their little  
3 tentacles in and they take up all the server  
4 space. We've had a number of those things happen  
5 this year.

6 My view is we should be giving everybody  
7 Trademark data that wants it as quickly as we can,  
8 so they don't do that. We produce it anyway.  
9 It's not like we're going to produce it especially  
10 for anybody. Now these companies will save a  
11 little bit of money, but really the cost is  
12 nominal that the pay now.

13 But the real purpose of this is to give  
14 a site to people who really want to mine data to  
15 be able to mine the data and not be interfering  
16 with all of you or anyone else who is making a  
17 legitimate use of our business web site. That was  
18 the impulse behind this, the thought behind this  
19 when we went forward with it.

20 We can get the cost figures if you want  
21 them. I'll be happy to.

22 MR. ROSENBERG: It did seem to me that



1 it is for a limited group of folks.

2 MS. BERESFORD: Well, there will be a  
3 limited group using it, but it's also for another  
4 group of folks that will come in and try to get  
5 without paying for it at all but will cause  
6 serious system problems and we've had a number of  
7 those.

8 MR. ROSENBERG: So it's sort of like  
9 methadone and heroin or something?

10 MS. BERESFORD: Get your methadone here.

11 MR. ROSENBERG: You're sort of giving it  
12 to avoid them breaking the law, okay.

13 MS. BERESFORD: Yes.

14 MR. FREELAND: I'll talk a little bit  
15 about the data mining issues in a couple of  
16 minutes that this is helping.

17 CHAIRMAN SAMUELS: Gary, do you want to  
18 come to the table? David, I think we've lost your  
19 microphone.

20 MR. CANNON: It benefits everyone really  
21 because as has been pointed out with people that  
22 log onto the site with scripts which monopolize

1 the site and essentially brings down the sites  
2 that everybody's using for searching or whatever  
3 else, and so this would give relief to that.

4 But it's not just the for profit  
5 companies. We have other people. Certainly  
6 academic institutions search our data, but we have  
7 the Customs and Border Patrol. If you fill out  
8 the application on their site to have your mark  
9 their watched at the border, they pull the data  
10 from our site to populate it. Right now, they  
11 have a little script that logs onto TESS and does  
12 the search and all that sort of that, but since  
13 TESS is full we can only have so many users at a  
14 time. So that's taking up some of our capacity.  
15 It's more than just the for profits that benefit  
16 from this.

17 CHAIRMAN SAMUELS: Kathleen?

18 MS. COONEY PORTER: I'd like to add that  
19 there have been numerous times when I've tried to  
20 get on the web site, and it's unavailable due to  
21 too many users. So I would attest to that. It  
22 does affect practitioners also.

1 MS. DEUTSCH: I would also say the  
2 thought is that you're not going to stop or from a  
3 policy standpoint don't even necessarily want to  
4 stop the people who are doing the mining. Then at  
5 least you're driving them to a location where it's  
6 not going to unduly interfere with the other  
7 people using your web site. It's a different  
8 question whether as a matter of policy we should  
9 be thinking about how to stop them. That's a much  
10 bigger question.

11 MS. BERESFORD: Well, David can talk to  
12 that because there's a lot more. We just don't  
13 put up the stop sign and they go away.

14 MR. FREELAND: On page nine, a couple of  
15 initiatives that we've just released on our  
16 systems development life cycle, this is was a big  
17 step for us in trying to implement a comprehensive  
18 development life cycle within the organization.  
19 In the past it was very independent from each of  
20 the groups. They would have a different subset of  
21 what was appropriate deliverables and  
22 documentation for project management.

1           We are standardizing on all of the  
2 artifacts, all of the pieces of a good IT project,  
3 what are the things that have to be produced and  
4 in what sequence, because it also helps with  
5 improving communications between the  
6 organizations. You know that this deliverable is  
7 due at this point and there's a handoff, a logical  
8 quality handoff to the next group. We strongly  
9 believe that this is going to really help in  
10 improving quality of our products that we're  
11 delivering.

12           Another thing just recently published is  
13 our strategic IT plan. This is a spinoff from the  
14 planning process where the agency comes up with  
15 its strategic plan. So we have the high level  
16 objectives that the businesses are trying to  
17 achieve as we go down.

18           The IT strategic plan is more focused on  
19 what are the strategic things that I need to be  
20 doing in my organization to be able to produce the  
21 results that are listed or support the initiatives  
22 that are in the agency's strategic plan. You

1 won't see, in my strategic initiative, delivering  
2 a specific business area project. It is more I  
3 need to handle human capital management, training  
4 skills, the types of skills that I'm going to need  
5 to be able to produce quality results and  
6 supporting PTO as a whole. We took the first step  
7 in getting that out. We're now driving our  
8 operational plan for the next 12 to 18 months, so  
9 that we have an operating plan for all the  
10 initiatives that we're going to be working through  
11 fiscal year 2008.

12 Another big effort that is still  
13 underway is our business area disaster recovery.  
14 That was really a multi-phased effort. The first  
15 phase was making sure that our data is truly  
16 protected. In the past, we had relied upon tape  
17 backups. We have a large amount of data, and tape  
18 is a very cost-effective way of backing up your  
19 repositories, but there are errors on tapes and  
20 sometimes it is difficult to recover when you have  
21 terabytes of information or you're trying to  
22 recover a large amount. It's not always as

1       successful as you'd like particularly when you  
2       look at our Patent databases. In our total  
3       repositories, we're looking at 450-500 terabytes  
4       of data. Recovering that all is a problematic  
5       process at best.

6                So phase one was more moving toward a  
7       cheap, low cost alternative for our electronic  
8       storage. We have a separate facility in Boyers,  
9       Pennsylvania, Iron Mountain, where we have a  
10      repository of our records, currently paper  
11      records. We've added the capability now of having  
12      some electronic storage devices there, and we will  
13      be synchronizing our key databases electronically  
14      up there. So in the event that we ever have an  
15      issue here, at least we have a comprehensive  
16      electronic image of everything that we need to  
17      recover from, much more reliable than just tape  
18      alone.

19               Phase two through subsequent phases past  
20      that --

21               MR. ROSENBERG: I just wanted to note,  
22      you said tape was unreliable. Disks are much more

1 unreliable. But I guess you're talking about like  
2 RAID huge disk farms and things.

3 MR. FREELAND: Yes, we're looking at  
4 disk farms with RAID technology. If you have  
5 single failures on drives, yes. Well, they could  
6 be self-healing too when you pop one drive in  
7 another, then they will restrike themselves and  
8 handle that. They're relatively low cost now when  
9 you go to the third tier type disk drives. You  
10 can get pretty close now to tape.

11 I found that actually on the volumes  
12 that we're looking at and how we're going to be  
13 using it, they will be, for us, more reliable in  
14 the long run than tapes would be on the recovery  
15 side, pulling it back. These aren't going to be  
16 hit constantly like our production systems are.

17 In subsequent phases, we're also looking  
18 for a second site, a disaster recovery site to  
19 actually start splitting off some of our workloads  
20 and then having the two sites able to back each  
21 other up. We have gone through the process of  
22 selecting a city throughout the U.S. That was a

1 very comprehensive, aggressive review of all the  
2 requirements we had. You can't be in an  
3 earthquake zone. You can't be along the coast.  
4 You had to be outside of the same power grid which  
5 is southeastern electrical coop or something like  
6 that which covers the entire southeast of the U.S.  
7 is in that power grid.

8 We did that, and then we looked at cost  
9 of living and the cost of building of a new  
10 facility and the cost of labor and all those  
11 things. We ended up with a list of 20 sites that  
12 they prioritized through the country. Then when  
13 they compared all the costs, we had one clear  
14 winner amongst all the rest of them, and that was  
15 San Antonio Texas that came out the low cost  
16 option that met all of our criteria.

17 In fact, unfortunately, we're trying to  
18 get that site identified now that we have the MSA,  
19 the Metropolitan Statistical Area, identified.  
20 Now we're trying to get the site. Unfortunately,  
21 three other major companies have announced data  
22 centers in that area. So I'm hoping that we can



1 get in there before somebody consumes all the  
2 cheap labor that we were hoping for. NSA and  
3 Microsoft are two of the big ones that went in  
4 there. Plus several of the universities are  
5 expanding in that area which is actually good for  
6 us because that does improve the labor pool.

7 We have had some difficulties in making  
8 sure that we get a low cost option. The first  
9 round of the bids ended up in proposals that were  
10 just outrageous on pricing. We're going back and  
11 reviewing that and coming up with making sure that  
12 the cost side of this makes sense for us.

13 A couple of other areas in these  
14 initiatives I want to make sure touch upon:  
15 Collaboration tools, you heard earlier, are very,  
16 very key to the success of our support and the  
17 distributive workforce. There is an effort  
18 underway in USPTO to basically look at improving  
19 the tools that support work at home, distance  
20 learning, the web publications, the web broadcasts  
21 that we've been doing, also improving just general  
22 support for travelers because we do have quite a

1 few people that travel around the world,  
2 supporting the different IT offices but making  
3 sure that we are looking at the tools that support  
4 that. One of those is looking specifically at  
5 collaboration tools.

6 My deputy, Deborah Diaz, has been tasked  
7 with leading that effort, and they've been working  
8 with Trademark staff, with our corporate and with  
9 Patents on reviewing, evaluation different  
10 collaboration toolsets and making sure that we're  
11 heading down the path of pulling that in.

12 We had some preliminary usage of tools  
13 and that was on the Patent side. My understanding  
14 was there was some discussion that they helped,  
15 but there was definite improvement needed to  
16 really take advantage of that area.

17 We know that as we're moving to virtual  
18 art units or staff that is in other cities without  
19 the expectation that they're going to be coming in  
20 all the time, we have got to have the electronic  
21 tools that support them particularly. It's not  
22 just in their day to day activities. It's also

1 with training, how we are going to conduct  
2 training, and we have so many other HR-related  
3 systems that we want to make sure that entire  
4 experience for how you do your pay and travel and  
5 time and all of those other tools are readily  
6 available electronically as well.

7 One last initiative that we're working  
8 on right now that you also mentioned this morning  
9 is telephone. We had a day on the telephone. It  
10 seems fairly mundane. People take telephones and  
11 should take telephones for granted. You pick it  
12 up. It should work. You shouldn't have to worry  
13 about it. Telephone switches have been around  
14 forever, and you shouldn't have to worry about  
15 them.

16 Unfortunately, that has not been the  
17 case here in this office. We have had significant  
18 down time on our telephone switch, and we believe  
19 that we finally found a contributing factor, a  
20 reason for that. We conducted an independent  
21 review of some of the power supporting our  
22 telephone switch, and we found some significant

1 grounding issues in the complex, that it wasn't  
2 installed appropriately at the beginning. But  
3 we're working with the telephone switch vendor  
4 that we have in a very generous act of good faith  
5 on their part to help improve the quality that  
6 their switch has been attributing. They're  
7 looking at providing us an at-cost upgrade of that  
8 switch or replacement of the switch which is a  
9 good deal from their standpoint or from our  
10 standpoint because they really weren't the ones  
11 that installed the hardware or the power.

12           The other part that we're going to do is  
13 when the telephone switch was originally put into  
14 the complex, the Knox and the four outlying  
15 buildings were the first ones that were brought  
16 up, not Madison. So our data center wasn't up  
17 with all of its redundant power and clean UPSes.  
18 When we put in the new switch, we're going to be  
19 putting it in the data center where the power is  
20 definitely cleaned, and so that completely  
21 eliminates that as a possibility in future issues.  
22 We should be significantly improving that.

1                   On the next slide, on 10, the budget,  
2                   that has generated some discussions far and wide.  
3                   Out of our budget for 2007 of \$267 million, \$49  
4                   million or just under \$50 million is allocated to  
5                   Trademarks and \$217 million to Patents.

6                   As you've heard, we're going through  
7                   significant review of the cost allocation factors  
8                   in our organization. I've got to say it's very  
9                   positive right now because in past years there  
10                  wasn't enough detail of the IT budget to be able  
11                  to do a review. The numbers were aggregated at  
12                  such a high level, it would have been near  
13                  impossible to have done the examination of the  
14                  numbers.

15                  We specifically have been driving to  
16                  break those costs up by category, so that we can  
17                  have these meaningful discussions.

18                  Lynne is about the most ideal proponent  
19                  for an organization as you can imagine when it  
20                  comes down to cost. She does a great job. I do  
21                  welcome that because, for us, it is definitely  
22                  about making sure that we don't subsidize rates,

1 that we make sure we have the right cost, no  
2 matter what they are, attributed to the right  
3 service.

4 My background is I came from a state  
5 organization where we provided services to a large  
6 group. We supported Medicaid and food stamps and  
7 child support and those things. We had over 20-  
8 something federal fund streams. Each one had a  
9 fence around it because I tell you, the feds, when  
10 it came down to submitting these things, were very  
11 adamant about their funds were used for their  
12 purpose. So I come from an environment where  
13 that's the way it is and you don't subsidize rates  
14 or services and you have the ability to make sure  
15 that funds are only used for their directed  
16 purpose.

17 I am carrying that with me in my  
18 organization on breaking down our costs to make  
19 sure that we can go through and appropriately  
20 attribute those costs back to the services and  
21 then make meaningful decisions based on that  
22 information because we haven't had the detail to

1 be able to make good business decisions in the  
2 past.

3 On the last page is out of that \$50  
4 million attributed for Trademarks, about \$11  
5 million of it is in development projects that  
6 we're working on, the FAST releases and the other  
7 different initiatives that we're working on.

8 One last piece on the 2008-2009 budget  
9 cycle that we're going through --

10 CHAIRMAN SAMUELS: Could you elaborate a  
11 little? Could you elaborate a little bit on that  
12 data because that's a big gap between \$11 million  
13 and almost \$50 million?

14 MR. FREELAND: Absolutely, \$39 million.  
15 How did I know you were going to ask that?

16 Okay, the breakdown of that \$49.9  
17 million, \$50 million, is \$11 million of it is  
18 Trademark direct non-comp. That is the amount of  
19 money that is directly attributed to  
20 Trademark-specific projects where we work on FAST  
21 and all the TICRS and TEAS and support those and  
22 have that running.

1           We also have a direct comp budget of  
2           about \$3.5 million, compensation, salaries that  
3           are also associated directly with support of that,  
4           about \$3.5 million.

5           Then we provide support for other  
6           service organizations that have a cost that's  
7           reallocated back to Trademarks and Patents. For  
8           example, we provide support for RAM which is the  
9           revenue system for the CFO. We provide HR system  
10          support for the CAO's office, and that's about  
11          \$2.8 million. Then they we reallocate the funds,  
12          and those funds are reallocated back to Trademarks  
13          through that.

14          The International Policy Organization,  
15          our external affairs shop, has an allocation. We  
16          provide about \$1.2 million in services to them.  
17          That comes back to Trademarks through that  
18          organization.

19          Then we also have information  
20          dissemination which is primarily the Patent and  
21          Trademark depository libraries and search  
22          facilities and requests for certified copies of



1 registrations. That information is about \$3.2  
2 million.

3 So those are fairly simple and easy to  
4 talk about. It leaves a slightly large number of  
5 \$28 million that is associated with our  
6 infrastructure, and this is a problem in my mind  
7 because this is a huge piece of my budget. That  
8 is, over half of the budget associated with  
9 Trademarks for the OCIO is actually indirect  
10 allocation through our mixed infrastructure. A  
11 page is made up of a page of about 20-25 different  
12 items, everything from every piece of my  
13 organization, space, a little bit of quality.

14 Every one of my organizations, they all  
15 have a piece of their support that goes indirectly  
16 into the Trademark areas. These are the areas  
17 that need the closest review on the cost  
18 allocation and how we're driving those numbers.  
19 This is the area that I'm wanting to focus on  
20 within my shop to make sure that we should be  
21 driving our indirect charges, no matter to whom  
22 they go to, down to as low a number as possible.

1           There are some numbers that we have  
2           shared infrastructures where we will have a shared  
3           service on some of the tools that we provide  
4           support for. Office and Outlook is a good  
5           exchange server. Email, that is a shared service  
6           and that gets allocated out based on or the driver  
7           should be on mailbox counts.

8           Don't quote me. I've got to go back and  
9           check that driver to make sure that it's being  
10          allocated correctly because that's what it ought  
11          to be is that we allocate that out by appropriate  
12          drivers. We're undergoing that to make sure that  
13          those drivers are correct.

14          But \$28 million out of \$50 million is  
15          clearly not what it ought to be and we are now  
16          starting to provide the information that you can  
17          start going, well, wait a second, whereas a year  
18          ago, year and a half ago, you couldn't even do  
19          that. This is just an evolving process, and we  
20          need to bring everybody along. I'm on board.  
21          Lynne doesn't have to worry about pulling me on  
22          board. We're just now pulling everybody else --

1 some of my staff who haven't had to deal with  
2 details at that level and some of the other areas  
3 in understanding the need for this type of  
4 information.

5 The last line I have is two areas of  
6 concern right now: Quality of support, Trademark  
7 work at home program. We have two versions of it:  
8 TWA2 and TWA3. TWA3 is the new version of the  
9 software that we're trying to migrate all the  
10 existing workers onto, but unfortunately we've had  
11 three significant issues with that environment.

12 We've had to bring in the vendor, the  
13 contractor or the owner of the system, Citrix  
14 Software, bring them in here to find out why we're  
15 having some issues with fast running in that  
16 environment, that it freezes unexplainably. So  
17 we're trying to figure that out. We have a couple  
18 of issues where people were just being  
19 disconnected from the Citrix server without any  
20 event that we could track, and we're going to find  
21 that out. We're just pursuing those issues right  
22 now and as soon as we can get that.

1           The big driver in the TWA2 environment  
2           was the software was being discontinued on support  
3           from Citrix. Because they have stability issues  
4           on TWA3, we've gotten them to extend the  
5           supportability of previous versions. So we're  
6           working on that.

7           Then the last issue I had was on data  
8           mining. I don't know if you remember, but  
9           probably six to nine months ago we were having  
10          some significant issues on the support and  
11          performance of our systems on the data mining area  
12          where people were coming in and going through all  
13          of our data and really having a negative impact on  
14          the examiners and on public filers and people  
15          wanting to go in and look at information on their  
16          accounts.

17          Then we made some changes to some of our  
18          web addresses, and we were very successful for  
19          about six months, five months, in significantly  
20          reducing the impact of the data miners. I was a  
21          little bit premature in hoping that we had solved  
22          it. Unfortunately, the data miners are very, very

1 smart at what they do, and they figured out. They  
2 eventually figured out what we had changed, and  
3 they just started up again about two to three  
4 weeks ago, I believe, started hitting us again  
5 after they figured out our conventions for naming  
6 files and have been going through and having a  
7 significant impact in the last month.

8 We're looking at a variety of solutions.  
9 One of the desirable states, long-term, is we want  
10 to seal that off. I would rather have registered  
11 users coming in. Whether they're public data  
12 miners, I don't care, as long as they come in. If  
13 they were registered and had to go through a  
14 sign-on capability, I would at least know who's  
15 kicking off all the activity, and I could work  
16 with them on how to not have such a negative  
17 impact on everybody else. Unfortunately, a lot of  
18 the data miners are coming in through anonymizers,  
19 through ways that they don't want to be tracked as  
20 to who they are or where they're kicking this off.  
21 We have a very difficult time tracking them down  
22 to the source company who's kicking it off.

1           One of the ways that we're looking at is  
2           if we had a registration system, even though it's  
3           free, just a registration way so that they sign  
4           on. Then at least we could work with them and  
5           know who we're working with and adjust that.

6           Other ways we were looking at doing this  
7           are some tools that keep track of these key web  
8           servers and they detect when a performance problem  
9           is (interruption) and then, based on decisions on  
10          usage patterns, can start to curtail the data  
11          miners while they're allowing others to get  
12          through. I have high hopes that that might be a  
13          solution that we can look at, but we've one  
14          through some preliminary testing and it's very  
15          preliminary. There may be some tuning in case  
16          inadvertently we may be hurting some of our  
17          legitimate filers and people, that it can't make  
18          that meaningful distinction up front. We're  
19          working on those to see if we can get some  
20          maturity in those toolsets.

21                   MR. ROSENBERG: Did you look at  
22           captures.

1                   MR. FREELAND: No. I don't believe that  
2 was one of them.

3                   MR. ROSENBERG: That's what most web  
4 sites use now. AOL uses it. Yahoo uses it and so  
5 forth. Basically, it's a little picture as you  
6 log on.

7                   MR. FREELAND: Oh, I see. Yes, yes,  
8 yes.

9                   MR. ROSENBERG: You have this picture  
10 that is slightly distorted, and the user has to  
11 type it in, and that's a detection system against  
12 bots.

13                   MR. FREELAND: Right, and tickets for  
14 concerts and stuff like that, they use that  
15 capability.

16                   MR. ROSENBERG: Right, they use that.

17                   MR. FREELAND: It's very effective. It  
18 keeps me from getting in at times when I can't  
19 quite figure it out. But those are good because,  
20 yes, the bots really have a tough time with that  
21 image recognition on web sites.

22                   MR. ROSENBERG: That's right.

1                   MR. FREELAND: So we're looking at  
2 different possibilities there.

3                   MS. DEUTSCH: Is the thought that if you  
4 can identify users, what, there would be an  
5 outreach to say, please do your mining at 2:00  
6 a.m. when there is less public usage?

7                   MR. FREELAND: It would be slow down  
8 your bots, so that they're not cranking out 10 or  
9 20 of them at once. Just some of them have been  
10 very, very destructive in that they were having  
11 multiple bots hitting concurrently. Had they  
12 looked at a single thread, it would have been a  
13 little bit more metered, and we could have  
14 survived much more easily, and we wouldn't have  
15 been concerned as much. But when it aggregates,  
16 you kill one of them and they have four other  
17 fingers coming in at you, not good.

18                   It is public information. We need to  
19 make it available. Making the bulk data and  
20 pointing them at the bulk data and let go to your  
21 heart's content. There it is. Don't kill anybody  
22 else. Just go through this. That seems to be



1 maybe one of the cheapest, easiest ways that we  
2 can protect our filers and direct users of the  
3 system and our examiners as well.

4 MR. ROSENBERG: The last time we  
5 discussed this, I thought there was some  
6 information, privacy issues that were brought up.

7 MS. BERESFORD: The only issue that is  
8 ever brought up about our data is the phone/fax  
9 information that's in their Trademark  
10 applications, and the data mining robots or  
11 whatever that comes in now have access to that.  
12 They're essentially public record. I mean we  
13 could have a discussion about if we put up a bulk  
14 data web site, do we want to take out phone  
15 numbers and fax numbers. It makes it a little  
16 more complex, and it gives data miners a reason to  
17 go back to the original web site.

18 Even though David successfully stopped  
19 some of these attacks, it isn't inexpensive. It  
20 takes a lot of resources here to figure out what's  
21 going on and handle it. So we're looking. Again,  
22 the free bulk data is one of the ways we're hoping

1 we will be able to handle it.

2 If the privacy issues are an issue with  
3 bulk data, I think it's in the bulk data. Well,  
4 I'll have to check. I don't know. I don't know  
5 whether it's in the bulk data that we sell to  
6 search companies, but it's available.

7 MR. FREELAND: It's the same datasets  
8 that we would be handing out through the current  
9 information dissemination system now. We're not  
10 increasing any of the datasets that we're  
11 currently selling. So the information is already  
12 available out there now.

13 MS. BERESFORD: Yes. We don't actually.  
14 Now that I'm thinking of this conversation, we  
15 don't give phone number or fax number stuff to the  
16 search firms. That's out of what we give. If we  
17 put up bulk data, we'd have the option of putting  
18 it up without that information too.

19 CHAIRMAN SAMUELS: Questions for David?

20 MS. COONEY PORTER: I have one quick  
21 question, David. What is the progress with the  
22 portal as far as updating records? Is it

1 complete?

2 MR. FREELAND: I'm sorry.

3 MS. COONEY PORTER: The portal web site,  
4 the portal, the retrieving of documents from the  
5 PTO web site?

6 MR. FREELAND: For the mailings with the  
7 URL? I'm sorry.

8 MS. COONEY PORTER: This is the portal  
9 where we go to access file histories of the  
10 applications, the registration and then we  
11 download it into our site.

12 MR. CANNON: We do use a portal right  
13 now for TDR, and we are using a portal and Patent  
14 is using the same one. But I think you're talking  
15 about where we're intending to go which is that  
16 you'll have an account and log on and be able to  
17 see your particular portfolio. Is that it?

18 MS. COONEY PORTER: Right.

19 MR. CANNON: Yes, that's still a concept  
20 working forward, but that's not available yet.

21 MR. FREELAND: We haven't scheduled that  
22 one yet.

1                   CHAIRMAN SAMUELS: Any particular  
2 staffing issues? David, you're fully staffed?  
3 You're looking for new people? What's going on?

4                   MR. FREELAND: I'm always looking for  
5 new people, and that is an area that we're  
6 continuing down. We were struggling with our  
7 hiring practices for quite a while. We had a  
8 spurt of where we were able to hire quite a few,  
9 and that was a great relief, but we're struggling  
10 a little bit now again. So we're trying to work  
11 out those processes and getting that moving, but  
12 we have quite a few postings that we're trying to  
13 get out on the streets and to get the right  
14 skillsets. I'm always looking for good people,  
15 and if you know about them, please have them apply  
16 because we need all the good people we can get.

17                  CHAIRMAN SAMUELS: Anything else? Thank  
18 you very much.

19                  MR. FREELAND: Thank you for your time.

20                  CHAIRMAN SAMUELS: That brings us to the  
21 end of the agenda except for some closing  
22 announcements.

1                   We probably should discuss our next  
2 meeting although we don't have to set an exact  
3 date. We generally try to meet sometime in mid to  
4 late October. So if you can check your calendars  
5 over the next couple of weeks, I probably will  
6 send out an email. Let me know. I'll propose  
7 some dates and let me what works next.

8                   Ann Farson has informed me that  
9 financial disclosure forms are going to be due  
10 soon. The easiest thing to do if your financial  
11 situation has not changed is to just photocopy the  
12 one you used last year and resign and date it. If  
13 you do not have copies of what you submitted last  
14 year, she does and she'll be happy to provide it  
15 to you.

16                   I think we have a couple of follow-ups  
17 that we're probably going to want to take  
18 advantage of. We probably will have some type of  
19 conference call or webcast in late August with  
20 respect to budget issues following up on our  
21 discussion this morning.

22                   Gerry Rogers before he left the room

1 gave me copies of the issues that he wants  
2 comments on. So take a look at that, and if you  
3 have any comments, send it to David?

4 MR. SAMS: Yes, sure.

5 CHAIRMAN SAMUELS: Okay, I was going to  
6 say send it to Gerry, but I don't know his email  
7 address. Do you want to give us your email  
8 address, David?

9 MR. SAMS: Very simple, actually you can  
10 send it to Gerry. It would probably be more  
11 efficient to do that. He is at  
12 gerard.rogers@uspto.gov.

13 If you want a copy of this  
14 electronically, we will send it to Jeff and he can  
15 forward it to you.

16 CHAIRMAN SAMUELS: Right, okay. If  
17 that's easier, we can do it that way.

18 Let's see. I don't think I have  
19 anything else. At the next meeting in October, we  
20 probably will spend some time talking about the  
21 annual report which is the bane of my existence,  
22 how to do go about putting it together. Last

1 year, the way we did it worked out fine in that  
2 various individuals working together as teams were  
3 assigned various topics and then we pulled it all  
4 together. That seemed to work well. Our annual  
5 report is due on November 30th.

6 So if there are no other comments, I  
7 think we'll adjourn and wish everybody a good  
8 summer.

9 (Whereupon, at 1:47 p.m., the  
10 PROCEEDINGS were adjourned.)

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