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

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

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

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

MS. DeLARENA: Yes, I'm here.

CHAIRMAN SAMUELS: Okay. I know we had problems yesterday hooking you in, so I am glad to see that we have resolved those problems.
MS. DeLARENA: Yes, thank you.

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

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

But what is particularly impressive about Margaret was how focused she was, particularly the congressional staffer not just on the intellectual property issues from a policy
Standpoint, but -- I think this is something TPAC can probably appreciate -- she's the only staff person who ever, during the T-bill, asked about the trademark fence (?) -- and make it available to TPAC, but somebody who always got very deeply into the issues.

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

And so it's really great to have Margaret on board, and she's already done a whole lot, internally. So we're both going to give views about things that are going on. Mine, of course, is more of a -- I've been here five years -- maybe I've drunk the Kool-Ade, but Margaret can offer -- but also in the sense of having someone
who's come into the office fairly recently, I
don't think she can raise (?). So we'll end up
talking about a lot of those things being -- I'll
tell you what's been dominating my time to a large
degree has been the debate going on on Capitol
Hill.

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

I'll go ahead and talk about one item
that's out there specifically that affects TPAC, and that is Congressman Coburn from Oklahoma was particularly interested in the patent reform debate on a number of different issues. One of the areas that was important to him was that the office have appropriate funding, and so he noted and was happy that diversion has ended on a year-by-year issue, by a year-by-year basis in President Bush's budget, and that Congress has followed that lead. But he seemed interested in finding a permanent solution diversion.

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

He'd like to bring in the TPAC -- trademark fees were raised. He would like to make certain that the advisory capacity of the Trademark Public Advisory Committee is brought into play.
So there's no final language or anything like that at this point, but I want to make certain that you're aware that he has an idea that we need senators and members seen to be backing, which is that this end of diversion should be permanent. The office should have authority over its budget. There should, of course, be accountability, and there should be very real accountability. And that one of the key roles that TPAC -- and TPAC can play is to give advice if there's going to be changes to fees.

So, I mean, visioning from what we're hearing so far, it would be something along the line, if it becomes -- this is one senator who's talking about and amendment, but again I think it's important for you to be aware that what he's envisioning, I think, is that we would give notice to TPAC, TPAC would get of what fees we thought would need to be adjusted, TPAC would give advice within a certain time period, then we would go to the Federal Register, so TPAC should look for it in the Federal Register, go this to the Federal
Register and then there would be some time period after the Federal Register before the piece (?) would be implemented. I'd suppose, which would give them an opportunity in Congress to make public if the fee increase shouldn't go forward or the decrease shouldn't go forward, because we certainly envision the possibility of both.

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

I mean Madrid was about judges. It had almost nothing to do with the subject of Madrid protocol, and it was held up for 10 years on that
basis. So from a policy standpoint it seems, again unofficially, to make a lot of sense that we would do something along those lines.

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

We were really there as a success story, and I think trademarks is the heart of that success story, as we just came off of the anniversary. Howard, I had to thank you officially. I'm really very, very thankful INTE -- you came in with a statement saying that tele-work has worked, that it's been something that has been a partnership among the -- at the Patent and Trademark Office something that's
helped across the board, and I think -- that's
helped tele-work across the board and
particularly, I think, showed where USPTO -- so I
can tell you what the way I was framing our
testimony was, essentially, we are a great success
in terms of tele-working, as what I call a local
tele-working success.

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

And I think you all know that what
trademarks was able to do has served as a model
for patents. It's also served as a model for
other agencies, so we can continue along this line.

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

Senator Mikulski has been someone who's cared a lot about the office. She is somebody who wanted a report of where had the PTO been and where is the PTO going. We gave her a report along those lines. She read it and has become an incredible supporter, essentially saying, "Whatever I can do to help, we think you're on the right track, the progressive initiatives you have in trademarks and now in patents are quite impressive. And what can we do to do more?" So that might be someone again that's an appropriator
who's looking at what our budget is and what can be done to make sure we stay on that track.

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

So, Margaret?

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

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

I want to talk about funding, specifically, because that is an issue that I've spent a great deal of time on before I came to the
USPTO, and I'm appreciating on a daily basis how significant that is. And one of the things that I've always found interesting in the meetings that Jon and I are in, are people will literally still ask us: Has it been helpful to have access to your fees?

(Laughter)

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

So I know yesterday that TPAC had an opportunity to talk to Barry Hudson and make a lot of questions with him. And one of the things that I want to say is we really appreciate your interest in looking at our cost allocation and making sure that we also put it on the trademark sense as well, because we consider that positive pressure, pressure
we hopefully don't need because we're doing the same things. But it's very useful.

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

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

I want to talk a little bit about our strategic plans, some of our vision for management and then talk again a little bit about -- We did release our strategic plan earlier this year. It covers 2007 to 2012. One of the primary goals, as Jon might have said, is the tele-working/nationwide work force nexus. And one of the things that I want
to highlight is work I'm sure you're aware of, but work that is as critical today as it was when it was begun two years ago: It's the Process Mapping and work force assessment exercises that trademarks has been doing.

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

So I think that Lynne and her team have remarkable perseverance for a multiyear project that can be at times detail-oriented but often tedious in a way in terms of the amount of detail that it takes.
So I think that that is one of the most important foundations -- foundation-laying efforts that has been going on in the area.

In strategic planning, generally, one of the things that I always like to remember is your strategic plan is like buying a new car. As soon as you leave the lot, you lose value to it, so as soon as you print it, it becomes outdated in a way. So what Jon and I are doing is we're in an effort right now to bring someone on board to the front office full time who can do strategic planning with us. So the day-to-day, methodical, organized, structured, benchmarked approach, priority-setting approach to strategic planning is one of the things that you've probably talked about with Barry is, we've got a lot of great ideas, a lot of expensive ideas, and less fees than ideas. So we really need to allay -- (off mike) So we are bringing someone on board to have as their primary job strategic planning and also be the bridge for our day-to-day management, because another mistake that we don't want to make is you've got a simmering think tank of strategic
ideas, and then you're running and, you know, your day-to-day problems, and the two are no communicating. which may seem like a one -- you know, just a one-person hiring in (off mike) that I mentioned, because it is such a significant contribution to the management of the organization.

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

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

Our CFO shop has just now set up their
tele-work program with 20 employees. So this just

tells you how far advanced trademarks has been. And

I'm also -- I want to make sure that you all are

aware of -- we have a virtual art unit now in the

patent side, which is the distrike cathology(?), 13

examiners doing a virtual art unit. So they are not

-- they are not here at all. Seven of them were

already tele-working, and when we are trying a pilot

program with support of the popluck(?) to see if the

virtual art unit works effectively.

And again, these are additional efforts to

see how we move from a similar agency office to an

ACMI (?) work force. One other thing that surprises

me is I was talking to a former member of Congress

on Saturday at a picnic -- so that just tells you

how unofficial it was -- but he swore to me that he

had met with people from the regional PTO offices

when he was in Congress. I'm sorry, sir, we don't

have those, and he said, "I could have sworn we had

people and ventures (?) coming in," and I find that

time and time again, even when I go up on the Hill,

people think that PTO, like many other government
organizations, actually has regional offices. And I keep telling them no, and we're not necessarily trying to have expensive offices that (off mike), we're trying to figure out how to move to a nationwide work force, and that may mean offices, it may mean storefronts, it may mean tele-hub. You know, we're trying to figure that out.

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

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

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

(Laughter)

SPEAKER: Thank you.

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

MS. PETERLIN: One of the challenges,
though, that we will face, and I think this is
--this is one of the things that, you know, I -- I
sort of carry in the back of my mind with concern
is when we, if we do pursue an alternative
solution of establishing local tele-work sites,
you always have the issue in Congress of the exact
opposite of not- in-my-backyard. Everybody will
want one in their backyard, and then you can have
a proliferation of 50 sites.

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

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

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

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

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

One quick update on our outreach activities, as I'm sure you're aware, under the Stop Program, we have been involved in outreach
programs with small businesses. We're still finding that we go places and people don't realize that their trademark registration only applies in the United States, that a patent only applies to the United States. We're also trying to remind them that this is a business decision just like fire insurance is a business decision. And you need to have ambition for your company. You might be small today, you might be doing payroll at 3:00 in the morning today, but if you don't protect it now, you won't have it later as your business develops. So that's certainly a message that we're very focused on providing.

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

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

Trademarks, in a lot of ways
internationally, is ahead of patents for a lot of
countries. They understand the significance and
importance of trademarks, and they also, I think,
believe they can realize automation and economies
of scale much more quickly than trademarks. So
that's one area on the international front that
we're trying to make certain that we are reaching
out to offices throughout the world, not just the
traditional relationships, but also making certain
that the United States is at the edge of seeing
what offices are up and coming, what offices are
doing more, and making certain -- there's in
trademarks, I would say I have not met a head of
office or a world leader on IP that doesn't want
the USPTO, the trademark office here, to be the
model.

Now, I am certain there are some
differences somewhere, and where we have -- you
know, but I think on the patent side that's
largely true, but there are some fundamental
differences in laws. But I think on the trademark
side, there's just not an office throughout the
world that doesn't want the expertise in the
trademark office from the U.S. in terms of either
automation or what's been done, I mean, recognized
as the gold standard or the platinum standard,
whatever the highest standard that there --
whatever the highest standard there is that's out
there.
And then I know we want to open up the questions. I wanted to just finalize from my perspective to just make it, what can TPAC do? That's probably a question that's on your minds, and I'll just sum it up in one simple statement, and it's I would ask TPAC to be heavily involved in our strategic planning over the next few years. And Margaret mentioned, importantly, what the stability of funding has meant, because, you know, with the big difference in this funding issue and full access to funds has not only been that there is more funds there, but it's the appropriate amount of funds. But it's also the stability of funding.

So OMB, Office of Management and Budget, that keeps track records -- they have a green if you're doing well, yellow if you're on your way, and red if you're doing poorly -- had to come up with a new color because Lynne, and Debbie, and Sharon, and Howard, and our whole team in trademarks did such a fantastic job that they had -- this is when you overcome your goals by an
incredible amount. Of course, that just meant for
us that we raise our goal, if we beat them.

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

That doesn't work well in the recruiting
world. We never -- you know, we don't pull offers
back, but, you know, to be able to turn the
faucets on and off, so we now are able to plan
much, much better and see what's out there.
That's given us the abil- -- quite honestly, we
used to have meeting in the PTO. I think TPAC was
involved to some degree when we had two or three
different scenarios. And we literally planned if
we get full funding, these are the initiatives
that will go forward; if we get minimal funding,
these are the ones that will go forward, and if we
get worse than we ever expected, what do we start
doing?

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

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

And I know our unions want to do that, I
know our employees want to do that, I know our management team, executive team, wants to do that. And so we really are sitting down trying to figure out, what should we look like five years from now? What should we look like 10 years from now? It's hard to plan exactly what you're going to do 10 years from now.

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

And one of the things that I think TPAC can also play a role in this strategic vision is, TPAC will live beyond the next transition, as will
all the folks around this table and all the career folks. And I think it's a sensitive time whenever you go to new administration.

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

And, but we want to make certain that the office -- I mean, we have a management team that's excellent. We have a -- we have to -- stop the management team -- we have a team here that's excellent, and we want to make certain that
they're on a path that they can continue without questioning, well, what does this mean to have the new administration? It shouldn't mean that the path of good that the office is on doesn't continue.

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

So I know you want to know that that's a credit to all of you, personally and collectively, and one that we want to leverage for even more. So, and that leaves us with, hopefully, 15 minutes or so at least.
CHAIRMAN SAMUELS: Yes. Any questions for Jon or for Margaret? I guess -- let me take a little off, I'm sure they'll pop other questions. I'll filibuster for awhile.

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

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

MR. DUDAS: Yes. And I know Margaret's been chairing the management council, so she's have a live on this. Just fundamentally, the $100 million overcollection is meant -- you can imagine how difficult it is to know exactly how much
you're going to collect. That means you have to know exactly how much increase in trademark applications would be and patent applications. And so we've said this: There's an opportunity for inadvertent diversion, and we do our best to actually get the right mark. We don't try to play games with, in terms of what we think we're going to collect. But if we end up having more fees than we anticipated, and we were only allowed to spend that which we anticipated, that money goes to the general treasury. So the $100 million, just to explain that, is if we end up collecting as much as $100 million more than we anticipated -- and I think we'll come well within $100 million of the right number -- that PTO can use that money. So that's another way to end diversion.

The veto is not on that basis. The veto -- this discussion is not that PTO would -- going back, I think -- I think largely we anticipate being able to -- it doesn't affect a whole lot what our planning is, because we generally think
our numbers are pretty good, and we plan within
those numbers, where Margaret's had more potential
and more specific conversations.

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

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

So one of the advantages we have, even though there's this macroissue going on between the president and the Congress in terms of levels of spending and where spending should be directed, is that we have basic (off mike) on a path of helping people realize that whatever the fights are going on, we're not in the middle of the fight, we're not stirring up the fights, and we need our fees.
And so I'm not -- I'm not as yet concerned that somehow someone would start seeing this as a big issue inside of that micro -- or that macrodisagreement.

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

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

MR. DUDAS: And Margaret raises two excellent points that, as I had wanted her to raise to get at if you want to look at a success story for PTO and how important PTO is, and how much recognition Congress understands of how important our people here are, it's that in this continued resolution they essentially said, "We're going to give everybody their money from last
year, and there's no exception. But if you have
to have an exception, let us know," and everyone
got knocked out on exception, unless it was
national security, and then it was PTO.

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

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

Another thing I would note -- and this
is again why I would ask TPAC to play a key role
-- I think our budget -- folks have done a
fantastic job, our operating units have done a
fantastic job with the budget we have now, which
we've done I think very well with -- was a budget
that was intended to have the possibility of
dramatic outsourcing of search and hiring of 750
patent examiners.

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

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

We've managed to do quite well in terms
of in trademarks, particularly, and a fence
certainly helps that. We want to make certain
that's done right. But even in patents hiring
1218 examiners and probably more than 1300 or
maybe 1400 up to this year -- and other
initiatives have been put in place -- but one of
the things that we would like to do is have always
at our ready what the ideal set of fees are that
we should have in trademark office.

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

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

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

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

CHAIRMAN SAMUELS: Ayala?

MS. DEUTSCH: Just to shift gears
dramatically I'm going to ask my typical question
about how things are going with China. And in
particular I know that, in talking with other
rights owners which I constantly do both on the
trademark side and the copyright side, we continue
to identify the next window of 12 months or so as
pretty critical for two reasons, on top of all the
reasons that have existed. One is the upcoming
Beijing Olympics which has garnered a lot of
attention with respect to IPR enforcement and
protection.

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

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

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

A week before the case we were out there. We had extensive discussions with, again, everyone from the courts to the prosecutors, to the trademark office, to the patent office. The great news is every single one of those meetings, it was usually the Chinese side; if not, it was the U.S. side that said regardless of happens with our relationship, on the broader issues we need to continue the cooperation that we have underway right now. And that's been stellar, and it's been more than -- it's certainly risen in terms of
three or four or five times -- I don't know how
you measure that -- but the cooperation is deeper,
misunderstandings are overcome, and judicial
interpretations have been changed, programs have
gone forth.

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

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

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

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

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

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

I also think that -- that's what I want to say.
CHAIRMAN SAMUELS: Any other questions?

Comments? No? Okay, well, Jon, thank you. As usual it's a pleasure, and, Margaret, a pleasure to meet you. We look forward to working with you in the future.

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

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

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

Our quality numbers continue to improve incrementally. I mean, we're at a 96 or 97 percent error-free a first action and final action review rate, and so that is -- it continues to
improve. Obviously, when it's at that level, it's hard to move it up -- move it up any further very rapidly.

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

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

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

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

There's also a chart in here behind
these one-pagers which I think you'll find
interesting. Let's see, we have the numbers. It
is the chart that shows the trademark performance,
first action publication rate, it looked like this
for those of you who want to try to find the
chart. I find this very interesting because it
shows the first action publication rates -- no,
that's not it -- that's it.

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

I was in Doville last week talking to
the European Commission, European Community
Trademark Attorneys Association INTA meeting, and
I shared this chart with them. They were quite
unhappy about the low rate of first action
publications for the Madrid filing, but the bulk
of my talk was about the tips and ways of
increasing your first action pub rate if you're
filing through the Madrid system and the (off
mike) RISA, RISA, the (off mike) from WIPO that
was also speaking, had a very specific
presentation on how to fill out the MMAT, or the
MM2 form, and where to put this, where to put your
state (?) incorporation, where to put your type of entity, where to do this, where to do that.

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

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

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

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

CHAIRMAN SAMUELS: It might be interesting.

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

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

The other thing that I think is exciting in our WICKY (?) project is we're getting ready to pilot -- WICKY was one of our internal process manuals, one of the ongoing issues that any office has to try to keep their manuals up to date. And
we're hoping by using this, by giving folks who
use the process manual access and ability to make
edits in the manual, suggest that it's in the
manual, and then collect those edits and make
decisions about them. We will perhaps solve the
age-old problem of how to keep process manuals up
to date. So next time we meet, hopefully, we'll
have a report on that, too, on how that is
working.

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

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

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

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

I have two questions about TEAS Plus.
You said that there's a 95 percent electronic
filing rate and --

MS. BERESFORD: Right.

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

MS. BERESFORD: Oh, it's on that chart.

If you look at the chart, it's that -- you will
see that there are two figures at the bottom of
the chart. One of them is the first action pub
rate, and I think the other is -- let me just --

MR. TRAMPOSH: Twenty-four percent.

MS. BERESFORD: Yeah. Yes.

MR. TRAMPOSH: The second question I had
was the number just below that, the 29 percent.

What's your feeling about that number. TEAS Plus
is really designed for that. It should go through
in a fairly streamlined way. If you feel like
that's a low number, or can it pick that up? The
percent --

MS. BERESFORD: No, I actually think
that's a historic high first action publication
rate, and it reflects the use of the trademark
management, the ID manual and other issues and
other uses that are -- other things that are
required in the TEAS Plus filing.

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

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

CHAIRMAN SAMUELS: You have to wait for
TEAS Super.

MS. BERESFORD: Yes?

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

MS. BERESFORD: Right.

MS. DEUTSCH: -- is something that you
didn't talk about, and I'm wondering whether the
reduction in pendency is coming at a cost.
MS. BERESFORD: No, I don't think the
reduction in pendency has to do with the
efficiency measure. The reason the efficiency
measure has -- there's an ongoing discussion about
the numbers in the efficiency measure. One of the
things that happened is our sufficiency goal was
set at the beginning of the year, and then the
formula for calculating the goal was changed after
the year started, and part of the reason it
changed was because of these -- and one of the
reasons we're in these discussions -- is the cost
drivers for OCIO expenses changed. And so by
allocating more dollars, the trademarks look less
efficient.

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

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

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

               Attrition continues to be low. We have had some lower-rated people leaving the office, which is really typical, historically, but attrition among the experience GS-13s and 14s is
really, really low. You know, we think that's due
to high employee satisfaction that is in a large
part due to our tele-work program but also due to
the flexibility, the other flexibilities, and just
the nature of the job itself.

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

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

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

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

One of the areas that we have been
really successful in tele-work, also, is in our
Trademark Assistance Center. And I wanted to bring that up because we, I am told, are the first government agency to actually have government call center employees tele-working from home. And it's been extremely successful. We've just completed an evaluation on that program, and we are going to expand it. Our assistance center folks work at home three days a week and report to the office two days a week because they do have some walk-in responsibilities. And it's been going very, very well.

One of the things that happened fairly recently within the past few months is that the entire Alexandria campus experienced a phone problem where our phones weren't working for almost an entire day. And as soon as that happened, I got an email from Dora Best, who's the director of PAC saying, you know, not to worry, she's home, she's got a bunch of people home, they didn't miss a beat. They didn't miss a call. And it just worked so, so well, you know. In situations like that you realize it's no just an
employee benefit, it's really a benefit to the organization to have a system in place like that.

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

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

And so we feel that we've made tremendous progress in that area, due in a large
part to tele-work. But that has been going extremely well, so, you know, as we grow and as we expand we're going to probably look at tele-work in that area and in others. We're looking at it standing at throughout the office. So that's really the tele-work talk I wanted to update you on.

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

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

It was an SLIE, and under the SLIE were several, you know, five, six, seven LIEs doing the
amendment and publication review work. That's changed now.

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

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

We're stopping that contractor review as of the end of this June. The LIEs have been trained, their performance plans have been changed to focus more on quality. We've provided a lot
more training to them, we've done analysis of the results, and I'm really happy to report that we were able to get rid of the contractor at an annualized cost of around $690,000. The LIEs will be doing that review, and we will save about a week in backup pendency, as the case will go into the official gazette more quickly, and, you know, all of this is kind of tied in with the upscaling of the LIE job and has resulted in this kind of realignment that I've just spoken about to focus on -- really focus on areas of quality and areas of efficiency as separate entities, essentially.

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

And I've included in the book here an article that Lynne did for the USPTO weekly last week that kind of talks about, you know, in a general sense what we're doing, how we got there,
and why we did it. So you can kind of read a little more about it if you'd like to.

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

That has been -- I know that many in the outside board (?) -- probably some of you have been waiting for this to happen. It's, we think, a terrific change. Our examining attorneys are very happy about it because they're not sending out huge documents. You're not receiving huge documents to clog up your email boxes, so we've
been doing this since June 11th, I believe, and we
haven't had any problems with it.

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

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

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

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

CHAIRMAN SAMUELS: Any questions for Debbie? Yes?

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

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

And, by the way, I do also want to mention on the training front, we are working with INTA -- and I think Michelle is here -- to develop some additional training. We've done this in the past where we've have to come in and, I think, Ayala, you have done that. And we're working on some new training sessions and legal lectures for the coming years. So we haven't completely decided on the topics yet, but you'll be hearing more about that.
CHAIRMAN SAMUELS: I had some follow-up questions on the tele-work. You mentioned that you have now examiners in Chicago and elsewhere. Do they still have to come to the office for an hour a week? Is that the requirement?

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

You know, we're kind of in -- we're in kind of an in-between situation. And I think Jon alluded to that when he was talking about moving toward a nationwide work force. We're not quite at the point where we can say nobody ever has to come into the office, but yet we're also -- people have to come in frequently enough that we're not ready to say to an entire examining corps, we will
put you on official time and pay your expenses,
whenever you come in, should you come in, should
you decide to move to California or Colorado or
wherever. We're sorting through all of that, and
for the time being and the reason that this is a
pilot that for the time being we do require them
to come in.

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

Jon did this in his testimony before the
Senate committee a few weeks ago, asked for a
demonstration project to allow us to do that just,
you know, for USPTO to move toward a nationwide work force by getting relief from the travel regulations in that way. So we're trying to work as many angles as we can on this, but, yes, the answer to your -- the short answer to your question is, yes, they do have to come in right now. But they just --

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

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

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

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

MS. COHN: The requirement that the
agency pay travel expenses and put the employee on official time for travel when they come in.

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

MS. COHN: Yes.

CHAIRMAN SAMUELS: -- then they --

perhaps they won't have to pay for their travel.

SPEAKER: Under this proposal?

CHAIRMAN SAMUELS: Under the proposal.

MS. COHN: Yes.

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

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

CHAIRMAN SAMUELS: Right. Randy?

MR. MYERS: Randy Myers, Patent Office
I know that our association has been up lobbying on the Hill. There's a tele-work bill in process right now up there, and one of the big sticking points that we've been trying to get rid of is this one-hour requirement, because we apparently have some exceptions, also, where some people are working outside the immediate area.

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

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

MS. COHN: Certainly.

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

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

Right now, the 85 percent represents every person who's eligible who wants to work at home. And that is a very high percentage compared with other organizations and other agencies. A lot of, for some reason tele-workers and extremely desirable benefits for trademark examining attorneys, it's not necessarily that way in other agencies or other organizations. So I guess what I'm saying is, it seems to me we'll always have that 15 percent in the office. How large that number is really, you know, depends on, you know,
where our hiring takes us and, you know, how many
new people we get on board.

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

CHAIRMAN SAMUELS: Kathleen?

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

MS. COHN: Um-hmm.

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

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

MS. PORTER: Yes.

MS. COHN: Okay. Once the official duty
station is changed, the employee gets the pay for
the particular locality that they're living in.

Right now everybody gets the same pay because the
official duty station is here in Alexandria.

CHAIRMAN SAMUELS: Ayala?

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

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

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

CHAIRMAN SAMUELS: Van?

MR. LEICHLITER: Van Leichliter, DuPont. Just if you had -- if you could attain everything that you are hoping to attain here in this national work force, what would it look like?

What is your vision for that?

For example, would you have enhanced
collaboration because you don't have the people
coming in once a week? Would you make some
guidelines with respect to coming in and having
joint meetings? Would there be a training
component to that? I mean, what is -- is there a
vision that you're --

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

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

But, yes, we envision them to be able to
do their jobs, including having proper, enough,
the right training and having it really
accessible. And we envision that to the maximum
degree we can. And there are collaboration tools
out there. They're continuing -- the state of the
art is continuing to improve, and we're
investigating that right now.

CHAIRMAN SAMUELS: Yes, sure, Lynne?

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

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

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

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

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

MS. COHN: Um-hmm, the idea of regional
offices is certainly being explored, but primarily -- and we have a committee on nationwide work force that we're working on with that. I think right now that patent needs, or the patent side of the house, is pretty much driving that, because their needs are a little more urgent in terms of hiring and retaining.

CHAIRMAN SAMUELS: Um-hmm.

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

CHAIRMAN SAMUELS: Right.

MS. COHN: I'm not sure there would be really a need to do that, you know, when you have, you know, complete accessibility to everything here at the office online or through collaboration tools, or through remote meeting tools. I'm not sure that there wouldn't be a need to have that, but that's certainly something that we're looking into.
CHAIRMAN SAMUELS: Yeah. I mean, I
guess the question would be whether it would be
viewed as a step backward or a step forward.

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

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

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

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

MR. MYERS: I know on the patent side we
have a project right now where we have what we
call "the virtual art units," which would be
similar to your law office or whatever, where
every individual within that unit is working home,
including the supervisors, to be able to test out
the tools being used, you know, amongst -- amongst
that group. So I would say that at least as far
as one vision, who will have actual virtual
offices as far as the little art units involved of
15 to 20 people that would be operating on their
own, no one actually being here at the office in
that case.

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

CHAIRMAN SAMUELS: Howard?

MR. FRIEDMAN: Jeff, with regard to your
question, I think the answer along the lines of
what Debbie said depends, really, on whether it's
trademarks or patents. Just one of the issues
that I don't think has been raised, interest on
the patent side is they have a recruitment, a
retention problem, and they have difficulty hiring people. And the thought would be that if you're hiring thousands of people over a few years, and it seems that people would be more inclined to go to the patent side who live, if not west of the Mississippi maybe west of Washington, D.C., it's an attractive way to hire people who otherwise wouldn't go to the Patent and Trademark Office.

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

CHAIRMAN SAMUELS: Okay. Randy?

MR. MYERS: I know there's been talk about some kind of, you know, other offices in the United States, and I think that really it's been to try to attract some of the people that are west of the Mississippi and everything. And I think the thought had been that they might have some kind of office in Denver or somewhere out there to
attract engineers and scientists that they might
bring them in and train in that area, if you will,
and then send back up to their homes.

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

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

And I think we're pulling in people like
that and pulling in people from other areas of the
country, and I think -- I think this is part of
the recruiting effort, too, is to make this known
to the potential hirers that we do have this
tele-working program, or "telling program" that
they can take part in.

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

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

MS. COHN: I'd just like to close by
saying we are having an office, a trademark
office, like, meeting on July 26th, and we're
trying to make plans to have that web passed, so
that would be our first office-wide remote
meeting, should we be able to have it. So we'll
keep you posted on that.

CHAIRMAN SAMUELS: Yes.

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

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

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

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

(Recess)

CHAIRMAN SAMUELS: Okay, the next item on the agenda is consideration of various budget issues.
Mark, instead then, is going to be
giving the presentation.

MR. OBECHOWSKI: Yes, sir.

CHAIRMAN SAMUELS: Welcome.

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

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

I look forward to having the opportunity
to talk to you every quarter.
I do have a little bit of experience with advisory/oversight boards at the Treasury. I got a chance to talk to the oversight board on a quarterly basis on what was going on in budget and execution, so I look forward to continuing that relationship with both the TPAC and DPAC.

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

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

CHAIRMAN SAMUELS: Okay.

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

The FOIA 2008 budget season is well
underway on the Hill, as was mentioned before.

The subcommittee did mark up our bill, the CJS bill, earlier in June. We thought that the full committee would meet just a week later; it did not. Right now it's tentatively scheduled for full committee markup on July 9th.

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

Anyway, moving on to --

CHAIRMAN SAMUELS: What about the Senate appropriations?

MR. OBECHOWSKI: The Senate won't take up action on our bill until the House reports out. Typically, all appropriations bills, by law, have
to start in the House. That's not to say that the
staffs aren't collaborating in knowing what's
going on.

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

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

Now, some budget highlights. The slide
3 is the enacted and the budget request numbers.
You could see that the PTO total for 2007 is the 1,771 number, and the president's budget that's up on the Hill right now is 1.915.

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

Slide 4 is just a quick update on the fee collections. In general, trademark fees are being collected in excess of what was planned, and patent fees are slightly under. The total amount is slightly more than our appropriated level. The last column, you can see our projections that
we're anticipating collecting, you know, well over
what we had planned for trademarks and just
slightly under for patents. But, over all, we
plan on collecting more than what was appropriated
to us.

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

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

I mean, you can see that total income as
of the end of May was slightly over $149 million in expenses up to that time for approximately $131 million.

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

MR. OBECHOWSKI: Correct.

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

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

So there's been a three-year plan to get
that money back into the patents base. So what
we've been doing over the past year is, as
patents, you know, generates and saves money,
we've been preobbing (?) and trying to put money,
for instance, in this year, Carol, the exact
number that we put into the FY '07 budget to take
care of their FY several requirements.

We also have plans for $75 million worth
of patent money this year to put it onto '08
requirements. So if there's a plan in effect to,
1) make up for the undercollection of dollars, we
also -- as you know, there's a lot of legislation,
there's a lot of court cases, a lot of uncertainty
into what the fee collections will be. I think
that provides a challenge for both patents and
trademarks, the Patent and Trademark Office in
general, for making sure that we're
cost-conscious, we -- you know, we don't do
anything crazy. We really watch our costs and
everything else. The uncertainty of what the
collections will be really forces us to be cost-
conscious.
So I think there's an overarching respect on the executive side to make sure that, you know, 1) that we're spending our money wisely, we're respecting the fence; that we're conscious of what the fees are collected as we develop not only the spend plans for '08 but the '09 budget formulation, in general.

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

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

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

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

CHAIRMAN SAMUELS: Um-hmm.

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

The question on technology versus, you
know, lease and rent space, you can't save money
unless you get rid of space. You can't, you know,
send a couple of people home and turn their
offices into a conference room. You have to
actually get rid of leased space. So even though
we're spending money on technology and we're
sending people home, if we don't get rid of our
leased space, it's still a bill we have to pay,
whether we're in the building or not.

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

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

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

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

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

    It's just the same amount of money
sliced a little bit differently. But, as Lynne
kind of alluded to, the devil's really in the
details, that the initiatives that we've
undertaken with the trademark office, there, the
Karens, and the Lynnes, and the Debbies understand
fully what goes into these numbers: the cost
allocation methodology; the way we collect cost;
how it's split up among not only patents and
trademarks but the, you know, all the support
organizations from the CIO, CFO, and general
counsel.

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

I think if you track the percentage of
trademark fees that actually goes to support the
trademark operation's examination procedures, it's
probably been going down, oh, for the last several
years. So now it's 45.8 percent, which, obviously, means that more is going into supporting other units within the agency, which then leads into the question as to whether, you know, there's proper accounting of how those other units within the agency are spending trademark fee money.

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

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

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

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

CHAIRMAN SAMUELS: No, we have that.

MR. OBECHOWSKI: Okay. I mean, maybe that's something we could arrange, or maybe, you know, if Lynne doesn't want to wait till, you know, the next quarterly meeting, what -- we're prepared to, you know, provide a briefing on cost-accounting at any time. And we'll do that. But there's really two dimensions we're looking at in the cost-accounting methodology, and we're doing that, you know, with weekly meetings.
with Lynne and her group. But the first is to
make sure that the cost drivers that are
established that take the data and spit out the
allocation are reasonable and accurate to the best
we can collect the data. And so we're going over
each and every cost driver.

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

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

I'm amazed at my time here at PTO at the
staggering amount of information we have here.

We're having discussions with Lynne and her group
about, you know, how much square footage is in
buildings, what's the conference room space, how
much, you know, square footage do the restrooms
and hallways take up?

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

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

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

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

Slide 9, the same numbers split just a different way. And this just shows you for the difference in the same amount of dollars, but it's
a share of the organization versus the business line. The budgeted share for trademarks is on the same cost allocation methodology that was used in the budget. You know, shows a spending $197 million this year.

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

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

Slide 13 is the 2008 president's budget request. You can see in the bottom right-hand corner a budget request for $1.9 billion, estimated fee collections for patents and trademarks, you know, up from what they were this year. I believe trademarks it shows $214 million, and I mentioned before that that's a number that was developed, you know, probably 12 months ago. We will have to, you know, manage within both
patents and trademarks. It's nice to have the
president's amendment in there that allows us to
spend more. If we collect more, it also would be
nice to have it as a permanent end to fee
diversion. That would give the Under Secretary
great flexibility in how he manages the office.

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

14,15 pie charts. The last slide is
actually -- comes out of our Office of Finance.
It's a statement of net costs, and it's actually
all-year dollars, all expenses, all obligations,
all -- but just to show you that, how much at
least through the first half of the year through mid-year review, where we stood in terms of collections and costs, and how much we had spent and everything. So it's pretty standard. I believe we show you this chart every year or every quarter.

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

Hopefully, at the end of the, you know, these next several weeks we'll at least have an understanding of what's good, what's bad, what needs to be changed, prioritized, the cost drivers and the inputs, and get working on the ones that, you know, we all agree need a little tweaking or adjusting. So that's a commitment from Barry and myself to make sure that those meetings continue
to be fruitful, and we'll see where it takes us as
we go through the summer's budget formulation
process.

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

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

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

MR. OBECHOWSKI: Well, I guess let's use
one of everybody's favorite architectural
services. Architectural services is a cost driver
that the CIO uses to, when changes are made to
existing systems whether that be, you know, to the
software or to, you know, the websites and things
like that, that current cost driver is we take the
number of releases times a cost factor for the
total cost of the system. So the current cost
driver, if you have some number of releases and
your total system cost is low, you know, your
allocation is driven low. But if you have a lot
of releases and expenses system, your allocation
is larger.

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

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

So we're certainly open to, whether that's publishing guidance, or whether it's having a steering committee or whatnot, we're certainly
open to having a process that everybody's agreed to.

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

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

MR. OBECHOWSKI: Sure.

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

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

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

But in conjunction with that, there are PTO-wide codes that people were using that we
tried to standardize: how much time it takes somebody to budget, how much time it takes somebody to order supplies, you know, how much time do people take in training, in an effort to capture those across the business units. It was -- it's quite straightforward to, you know, for a trademark attorney or a patent examiner to charge his time to examination. It's the other codes, it's the other, the Office of the CFO and the CIO, administrative officer, ODC, policy, to capture their costs accurately so that we can more accurately allocate those costs.

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

We've completed briefings with the patent office and general counsel. I believe I have one either this afternoon or tomorrow --
BEGIN SEGMENT 01444 with the chief administrative office, so on October 1st, or the first pay period in October for the fiscal year, we hope to implement a new cost collection system. But that still doesn't mean that the costs will be accurate. I have to be, you know, maintained or has to be just the same sort of thing, you know. I'm sure 10 or 15 years ago -- and there's probably people who have been here, you know, then -- we probably didn't have 6,000 accounting codes, but there was a process where people could just generate those. We have a process that we proposed to either add or delete accounting codes so there won't be a proliferation of codes that continues again.

Today, if you go into the web TA, which is our timekeeping system, any employee of PTO can -- has access to all 6,000 codes. They could charge their time to any code that's in the system. The way we've designed a new system is that within each business those -- the business unit will determine, like templates they develop,
which accounting codes are available to their
employees, whether they be strictly, you know,
within trademarks examining, or they can expand
those so that the business units themselves will
be able to restrict what codes people can go to.
We think that that will give us better
information.

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

So I think there's several projects
underway that do that. I think that's our
responsibility to see if those office -- to make
sure the business units have the information they
need to run their business, give them the
information that they can make executive decisions
to better run their business. And I think that's
our responsibility to give that to Lynne and her
team as well as the patents, CFO, CIO. I think
we've endeavoring to do that.

CHAIRMAN SAMUELS: Ayala.

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

MR. OBECHOWSKI: We have proposed a
process for generating new codes that, you know,
there will be not -- it won't be, at least what
we've proposed, it won't be just the business unit
who is able to generate a new code. There will be
what we call a steering committee or something
between the business unit, you know, the CFO
organization, you know, the director of finance
and everything else.

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

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

And I think we'll get into the year, and
it'll be really up to the executives as we provide
them that information for them to take a look at
it and say, "Is that giving me the information I
need, yes or no? And let's adjust it." I think everybody's interested in having the right information, but I think, you know, we've been inundated sometimes with too much information. So it's a challenge. Absolutely.

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

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

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

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

CHAIRMAN SAMUELS: Whenever you're ready, Sharon.

MS. MARSH: Is everybody okay? These meetings are so filled with information and speakers in a very short amount of time, at some point in the day it begins to feel like an
I have five items to discuss this morning, but most of them can be covered very quickly, so I don't think we'll have an problems meeting our lunch schedule.

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

And when Lynne and Debbie and Carol, and Cynthia and Ron and I go to user group meetings, this is almost invariably a topic that comes up.
Users complain that: You never grant letters of protest. And they want us to be more liberal in granting letters of protest. The reason that not many letters of protest are granted is that the standard is very, very high. The protester has to provide a prima facia case for why refusal should be made, and the office has to agree that it would be a clear error for the PTO not to refuse registration.

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

So as a result, though, of continued user comments about the strict standard, we're considering loosening up the standard. And so after the last -- I guess it was the INTA meeting, we came back and asked Cynthia Lanchard, the policy administrator, and Jessie Marshall --
Jessie Roberts, formerly Jessie Marshall -- to
draft a proposal of how an easier standard would
work. And so I brought Jessie along this morning
because she has administered this procedure under
both an easy standard and a hard standard. And I
thought her perspective would be really useful.

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

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

And that standard was certainly a clear
error. But where it really had an implication was
in likely a period like we had a confusion. And
the standard that was advocated by the TPAC
committee at that time was that it be legally the
same mark and legally the same goods or services,
that what I would call a slam dunk at the board.
There's absolutely no possibility of argument that
this is a problem.

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

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

That's where we are today. The same
standard applies both before and after
publication, legally same mark, legally same goods
or services. What we had prior to that standard being implemented in the mid-'90s is what we're talking about going back to now. The standard would stay the same after publication. This is not the -- a substitution for an opposition. You still have to make standard of -- a very high standard of basically the same mark and the same goods or services being involved.

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

And that's what we had before, and that's what was advocated, I believe, at the last INTA meeting where the issue came up of changing
the standard from the high standard it is now to
the kind of bifurcated standard it was before with
an easier standard before publication. It still
gives the applicant trying to argue; it doesn't
hold them up as much from registration. Once the
mark is published, the applicant believes that
they're on their way, and to suddenly send it over
(off mike) with a letter of protest is extremely
upsetting to the applicant. And we feel that that
standard should remain very high and only be
granted in very extreme situations of clear error.

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

After publication, it's the same as it
is now, it must be -- the refusal must be issued.
Of course, there are arguments that may be made,
marks can be bought and sold to if evidence can be
submitted if it's a descriptiveness issue, and
it's possible that it could be withdrawn. But the
refusal must be made.

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

That's kind of where we are now. We're
-- remember, we're at the high standard now both
before and after publication. We're proposing
where refusals must be made both before and after
publication if a letter of protest is granted.
We're suggesting going to the standard where it's
a looser standard before publication; however, the
refusal does not have to be made, and retaining
this higher standard after publication. I
guarantee there'll be more granted before
publication.
Anyway, is that what you want?

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

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

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

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

MS. MARSH: Yes.

CHAIRMAN SAMUELS: And how many are granted?

MS. ROBERTS: Last year in fiscal '06, out of 785 that were -- that were submitted, a total of 168 were granted, and the balance was denied. So it's -- I can't do percentages; if someone can, I know it's a pretty low percent, but
that sounds about right to me, just from my experience of doing them all of that percentage of what's -- I'm sorry, no, I'm sorry, that's not -- that's not correct.

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

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

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

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

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

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

MS. ROBERTS: Yes.

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

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

MS. ROBERTS: We do, but I don't have it here. I can get that. Predominantly before.

There is a window, it's a 30-day window following
publication. Again, we don't want to replace the opposition proceeding, so you've kind of got a smaller window to get your letter of protest in. So there are fewer after publication, definitely, and more before, but I don't have the exact numbers.

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

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

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

We got concern from the public about that because someone would file a letter of
protest the day after something was filed, and
they wouldn't get a response on it for six months
later when our pendency was at six months, because
I was waiting to see what happens.

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

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

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

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

CHAIRMAN SAMUELS: Ayala.

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

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

If I grant it, what I do is send a memo
to the managing and the senior -- well, just to
the managing attorney of the law office saying
that this letter of protest has been granted. And
I put with it the evidence that's relevant. If
it's just a reference to a serial number,
registration number, I'll just put that in my memo
to the examining attorney. If it's evidence, I'll
actually cut and paste to make the evidence that's
relevant public.

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

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

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

MS. ROBERTS: If the letter of protest
had not been worked on, or if it had been worked
on and denied, no. You would not know there was
one in the file.

     CHAIRMAN SAMUELS: Van?

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

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

     MR. LEICHLITER: Um-hmm.

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

     MR. ROSENBERG: I just caused a mess.

Joshua Rosenberg from HP. You should be able to
data that you have to say whether loosening up the
standard is going to be useful, because one would
think that of those that went through and later
were denied through opposition or whatever, that
would have, you know, what's the correspondence
between the remainder of the 700 and those that
were later denied?

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

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

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

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

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

I mean, we -- we just, you know, take
this whole batch that was granted which isn't as
much as, you know, the others, so it's not quite
as -- you know, quite a onerous. But we put that
into our systems and see what the prosecution is
since the granting of the letter of protest. So
within --

MR. ROSENBERG: Or the opposite.

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

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

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

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

MS. ROBERTS: Um-hmm.

CHAIRMAN SAMUELS: Al?

MR. TRAMPOSCH: So just a -- just a
thought. If I understand it right, right now if it's granted, then the examiner must make the refusal, and if it's not granted the examiner never hears about it?

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

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

               MS. ROBERTS: That's certainly a possibility.
               MR. LIVINGSTON: Otherwise it seems to
me that the protestor would be put in the
position, if I'm not confused here, of waiting,
you know, if it's a real hard, drop dead, to the
refusal, tell the publica- -- you know, right at
the appropriate time when you have to review it.
And then, you know, instead of doing it at an
earlier date where it's the examiner's discretion,
so maybe there would be an advantage in having a
two-tier system up front to get it handled more --
I mean --

MS. ROBERTS: Well, again, I don't -- I
don't hold back on something, depending on the
nature of the letter of protest.
MR. LIVINGSTON: Yes. Yes.
MS. ROBERTS: We're really doing them
chronologically.
MR. LIVINGSTON: Yes.
MS. ROBERTS: And they fall where they
fall.
MR. LIVINGSTON: Well, what I meant was
--
MS. ROBERTS: Yes.
MR. LIVINGSTON: -- if the person deliberating waiting --

MS. ROBERTS: Oh, okay.

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

MS. ROBERTS: Got you.

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

MS. ROBERTS: Um-hmm.

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

MR. LIVINGSTON: Yes. They'd do that, right.
MS. COHN: The refusal's already in the record at that point, and, you know, they would be going against established, you know, trademark law and guidance if they didn't. So I don't think that's really a worry of ours, that the examining attorney wouldn't make the refusal. And, you know, if they felt that it was really wrong under any standard, they would have the opportunity later on to withdraw on it for good reason.

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

But I don't know if that's a motivating factor, and that's why I'm curious to see the breakdown whether this structure's actually going to demotivate people enough to delay to a period when they have other vehicles to respond to the
pending application in any event, through the
opposition process. So I would imagine you're
still going -- just the availability of some
avenue prior to publication is probably going to
continue to motivate people to act during that
time period, although again, I don't know what the
statistics are.

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

There's an argument that, at least for
1-B cases, that we could have a lower standard
because, as you know, several years may go by when
we're just waiting for a statement of use to be
filed, and the office could be making a refusal.
And some of my most impassioned phone callers, you
know, are in that period where they're waiting --
it's an ITU case and there's a (off mike) been
issued, and they simply do not understand why
we're unwilling to consider a letter of protest
that late in the process.
Again, because of all of the time that
has gone by before you can get to the notice of
allowance stage, and the application is making
certain assumptions, we think it's better not to
interject a letter of protest in at that late part
of the proceeding. But if you all disagree, we'd
be interested to hear that.

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

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

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

CHAIRMAN SAMUELS: Right.

MS. ROBERTS: -- we can -- we can do
CHAIRMAN SAMUELS: Okay. And then maybe, you know, maybe through Lynne you could send it to me.

MS. ROBERTS: Yes.

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

MS. ROBERTS: Okay.

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

MS. ROBERTS: No.

CHAIRMAN SAMUELS: -- make any changes on this.

MR. LEICHLITER: Just one more question. You said you changed over from a more liberal rule to this current rule in the mid-'90s. Did you have any history or recollection of why that was done? And I know feedback -- (off mike) I was just a teenager then. But, and where you were was the office just inundated with letters of protest? Is that one of the intervening reasons?
MS. ROBERTS: No, it really came out of the very, very specific complaint, and it switched from an attorney for an applicant who had a letter of protest granted prior to publication that he felt should not have been granted, because there was some difference between the goods. There may not have been any difference between the mark, but there were some, you know, safety over different goods, and he felt it shouldn't have been granted.

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

MR. LEICHLITER: Um-hmm.

CHAIRMAN SAMUELS: Yes?

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

The other things is when you're looking at it, I guess you don't get to any credit for
working on letters. The flip side is if it's a
clear error under our current PAP and conceivably
under the new PAP for 9's, 11's and 12's, it would
count against you, which I think is one more
reason why in the future perhaps even less letters
of protest might be granted pre or post because
people know, examining attorneys know that the
error is going to count against you. So I think
it's one more thing to think about when the
Quality Subcommittee looks at the issue, that
there's sort of a built-in matter that would maybe
cause less letters of protest to be filed in the
past only because examining attorneys are held
that much more accountable if there's a clear
error granted. Kathleen?

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

CHAIRMAN SAMUELS: Right, just
information.
MR. FRIEDMAN: Then I stand corrected, but still I'm concerned about the level of work, the increase in the level of work. My apologies.

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

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

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

The response regarding mandatory TEAS was more mixed, and we're still considering how to proceed with that. I think whether we make it mandatory or not, just the very fact that a TEAS request for reconsideration form is available will
increase use of that form which will help us out with the processing and communicating with the TTAB regarding ex parte appeals.

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

As you know, we've had extremely strict rules about once you file something here, you cannot pull it back. We won't refund the money. We won't return the application. You filed a duplicate app, and you'll have to eat the money. In the world of the electronic application, we have a very a brief period where that application is here in the office in the
electronic systems. It has not yet been posted on
the database for public viewing, and we could
pretty easily refund the money and cancel out the
application. And so, the proposal in front of you
is that if an applicant notifies us within 48
hours, 2 days, that filing the application was a
mistake, that we would undo the application.
Again given that this would all happen before the
application was posted on TARR and TESS, we don't
see any harm to the public from this.

CHAIRMAN SAMUELS: Is it two days or 48
hours?

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

MR. ROSENBERG: How prevalent is this?

MS. MARSH: It happens infrequently but
regularly. It's one of those things that it
doesn't happen a lot, but it happens again and
again and again. The TEAS phone people, Craig
Morris and Steve Meyer and James Wilson routinely
get these calls, and it just feels bad to have to
tell this applicant: No, it's here. Nothing's
happened. We haven't done any work on it. The
public doesn't know about it. But, sorry, we
can't undo it.

CHAIRMAN SAMUELS: Al?

MR. TRAMPOSH: Thanks, Jeffery.

Speaking as someone who actually filed a document
with TEAS mistakenly while giving a demonstration
to my office because there's no way to demonstrate
except with a live response, I strongly support
this.

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

Kathleen?

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

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

CHAIRMAN SAMUELS: Parker?

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

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

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

CHAIRMAN SAMUELS: Lynne?

MS. BERESFORD: The question, of course, is how the proposal will be to implement. We'll have to look at costs in the process of implementing this. If it's really the right thing to do, obviously, we want to help people. We really don't want to hang onto their money if they
feel there's been a mistake. But we'll have to
have a little more detailed look into the computer
systems as to how we would figure this time period
and how we would actually do this and who would
handle the refunding, et cetera, and then come up
with a cost-effective way of doing this.

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

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

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

MS. BERESFORD: We, of course, have to
have fee-setting authority to do that, so that
raises one issue, and the other issue, of course,
this is what we have to look at if the cost is
more than collecting it. So it's a whole series
of issues that we'll look at.

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

MS. MARSH: An email.

CHAIRMAN SAMUELS: Email?

MS. MARSH: Email, yes.

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

MS. MARSH: Okay, thank you.

CHAIRMAN SAMUELS: Anything else?

MS. MARSH: Two quick items that I'll
just mention very briefly: We are probably going
to move forward, and the Committee, of course,
will get a copy of the proposed notice of
rulemaking if we get that far, correspondence
address. We are considering making use of the TAS
correspondence address form mandatory. It is just
so vastly superior to sending in a paper filing
with an address change.

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

Lastly, on your desk in front of you, I
think, are two copied pages from the Official
Gazette. These are items that we are considering
eliminating from the paper Official Gazette. The
first is the annual consolidated list of OG
notices that is published every January 1. Given
that the OG notices are now on the web in
searchable form, we don't think it's necessary to
print them out all once a year.

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

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

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

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

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

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

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

MS. COHN: Nothing that I'm aware of.

Lynne's understanding was that they decided to
back off. They're not going to proceed with that.

CHAIRMAN SAMUELS: Okay, to make sure.
Anything else for Sharon? If not, it is time for
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 possible for someone to call me back when you finish your lunch break?

5 CHAIRMAN SAMUELS: Sure, we'll arrange that.

6 MS. DELARENA: Great, thanks very much.

7 CHAIRMAN SAMUELS: Okay.

8 (Recess)

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

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

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

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

For decisions that were issued in May, we issued decisions on an average of about 16 weeks. This slip in pendency is attributable at large part to the increased workload that we received last year. I think I may have reported on that at prior meetings during fiscal year 2006, we received an increase of 40 percent in new oppositions over the prior year and 11 percent increase over the prior year in ex parte appeals.
with the filings for this year continuing at that same record pace and maybe slightly higher. So that was one of the reasons that we had some slippage just because of sheer numbers.

Also, a number of our judges --

CHAIRMAN SAMUELS: David, excuse me.

MR. SAMS: Yes.

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

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

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

MR. SAMS: Jeff, I can't recall right now. We do have that statistic. It's relatively
small, but we're talking about a relatively huge number that are published with opposition. In a typical year, we're receiving something about 7,000 oppositions a year now which is a pretty substantial number. Luckily, most of them do get settled or otherwise disposed of, and we're still at a fairly constant percentage. About 95 to 98 percent of the cases go away before a final decision by a panel of three judges.

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

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

CHAIRMAN SAMUELS: Do you have a lot of
judges teleworking?

MR. SAMS: We have approximately three-quarters of the judges, well actually, yes, about three-quarter of the judges who are teleworking and a higher number, higher percentage of our interlocutory attorneys who are eligible. I think it's all but one of the eligible people is working from home now, and that's working out very well for us too. Because we are so fully electronic, it's seamless and most people can't tell whether somebody is working at home or not. There is also a kind of culture shift in how judges and attorneys talk about cases. It's done a lot by email, a lot by phone conference rather than face-to-face meetings. That has worked to all reports very well, and we're very pleased with what we've been able to do in that area too.

We've also added this year a number of our paralegals. All the paralegals who are eligible to work at home are now working at home too. Also, we took that stride at a gradual pace,
and we had first two working at home. We saw how
that worked. We were pleased enough with the
results, added two more, and now we allow anyone
who wants to work at home to work at home. They
have a very rigorous and strict performance plan,
and so it's easy to monitor how well they're
doing, whether they're working at the office or at
home. We find that they're doing very well.

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

We expect the final rule to be published
within the next several weeks.
I'm also pleased to report that the TTAB's option for filing papers electronically is very robust. Since the start of this fiscal year, more than 96 percent of extensions of time to oppose are now filed electronically using our electronic file system. The same is true of electronic filing. Eighty-five percent of notices of opposition, seventy-eight percent of petitions to cancel and seventy-eight percent of the motions papers that are filed in connection with our contested motions are now being filed electronically which is a great boon to getting things decided more quickly.

To elaborate on a point I mentioned a couple of moments ago, alluded to at least, the TTAB has continued to follow through on its promise to publish more decisions as precedential. You might recall that last year we published about 55 decisions as precedential which was a giant leap over the preceding year in which we published only 8 as precedential decisions. This year so far, we've published 57 decisions as precedential.
That puts us on a pace to issue close to 80
citable precedents for this fiscal year.

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

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

We are also, for quality purposes,
having a peer review. Judges do peer review of
other judges during the year to give input to me
as the chief judge as to how colleagues are doing,
and I use that both in performance appraisal and
to spot some areas where there might be some
difficulties with quality. It's worked very well,
and we're refining that peer review survey to get as good an information base as we can. We're making sure that our decisions stay at a high level of quality.

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

On the paralegal end, besides having regular paralegal in-house training which is fairly rigorous and outside contractor training, we have created a position of quality review specialist who reviews all -- it's on a sample
basis -- our outgoing actions in the paralegal area to make certain that there's consistency of action and correctness of actions. She generates reports that give the management at TTAB some information about where there might be areas where further training or careful monitoring might need to be done. We've found this to be a real boon to quality in the paralegal area as well.

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

One of the things to which we've committed also in the quality area is trying to help out as much as we can with the quality of examination particularly as it relates to Trademark Trial and Appeal Board appeals. We started a program within the last quarter to have volunteer administrative trademark judges attend law office meetings in the trademark examining
operation to make presentations about how best to
prepare a record which will be a good one should
there be an appeal and to give them basic
information about TTAB practice and procedure. So
far, we've done about seven of these law office
meetings. The response has been very, very
favorable. What we intend to do is to make this
not a one-time kind of program but a continuing
program in which our judges, and we have a number
of volunteers fortunately, can attend law office
meetings to answer questions and to give seasoned
opinions about the best way to go about examining
when they're asked for those opinions.

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

I mentioned the rules package, and one
of the things that appears in the proposed rules
package and will appear in the final rules package
has to do with the position of our standardized
protective order for confidential information.
There were some concerns in the commentary that we
received on that portion of the rule which made us
stop and look at this procedure and this

protective order and raises some issues that we
want to bring to the Committee for some comments
just in general, not directly related to the
rulemaking but related to the way in which we
administer this protective order. I've asked
Gerry to sort of brief us on that and set the
stage for some comments and help.

CHAIRMAN SAMUELS: Gerry?

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

The standard protective order has
provisions that define parties and a provision that defines attorneys. Right now, the definition of parties is individuals, officers of corporations, partners of partnerships and management employees of any type of business organization. That's as far as we get when it comes to parties. Attorneys are defined as in-house counsel and outside counsel including support staff operating under counsel's direction such as paralegals or legal assistants, secretaries and any other employees or independent contractors operating under counsel's instruction.

The standard order also refers to independent experts or consultants who may be retained for the purposes of the proceeding and non-party witnesses. For independent experts or consultants and non-party witnesses, there's also a provision in the standard protective order that says when any one of those individuals is going to see protected information, they're going to have to be provided with a copy of the protective order and to read it, and they're going to have to sign
an authorization form that obligates them to protect the information and by which they agree to be bound both during and after the proceeding, the acknowledgment form says.

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

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

It's the providing party, the party that made the designation of confidentiality, it's
their option to say: I don't want all that
returned to me. That's too much. You have my
permission to destroy it.

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

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

Given that context, I just want to note
that some of the comments that led to discussions
we've already alluded to in yesterday's executive
session and during David's remarks earlier, that
prompted us to re-examine the way we use the
standard protective order and its provisions are
comments that, well, there was one comment in
particular. Of course the comments are all in the
public record and posted on the web, so there's
nothing I can't reveal to you now. One comment noted that the Board has no ability to issue injunctions or contempt rulings, and it argued that possible entry of a sanction in a Board proceeding or disciplinary action against an attorney would not provide immediate protection or remedy economic harm. So that was one comment which while it was only one organization or one firm that made it, I suspect that a number of people would agree with that comment.

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

That's kind of what's been causing us to look at the issue anew, and we also a case that's pending where basically the parties have disagreed. They both want the standard protective order employed because they each proffered a
protective order of their own device. They
couldn't agree on one. They each submitted one.
They couldn't agree to accept the other one.
Finally, they both said let's use the standard
order, but one party says: That's okay, but we
have to have a survival clause, and that's the
only thing that we need to add to it.

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

I guess the first question is whether
the Committee members or any of the members of the
Bar with whom the Committee members may be in
contact have had significant experience with
breaches of confidentiality designations during
proceedings because at least as far as our
anecdotal experience is concerned, we don't see a
lot of allegations of breach if any. I can't
remember any instance where an interlocutory
attorney has brought up in a case conference a
motion for sanctions in the form of judgment for a
breach of a confidentiality designation or a protective order. But if there are instances that are under the radar, then we'd certainly like to know about them.

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

Another question would be the acknowledgment form that non-party witnesses and independent experts and consultants have to sign. We say in that form that the signer acknowledges the protective order and that they're bound by it both during and after the proceeding, and yet our manual says and one of our published cases says that it's doubtful whether the Board has jurisdiction over third party signatories to
protective orders. I take it that that would
include non-party witnesses, for example, who sign
this acknowledgement. Again, because we have so
few, if any, allegations of breach, we don't
really have any experience with trying to enforce
that.

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

CHAIRMAN SAMUELS: Do you have that
case, Gerry?

MR. ROGERS: The case is Duke University
v. Haggar, and it's really in just a footnote that
they talk about it being unlikely, and so it may
have been dicta in that case anyway because it's
just kind of supposing that third party signatures
might not make the protective order agreement binding on them. But it's 54 U.S. PQ 2nd 1443 Duke University v. Haggar Clothing.

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

Just like we'd like to know about any experience that the Committee members have had with breaches or may have heard about from other members of the Bar, breaches during proceedings, if there are any post-proceeding breaches that have occurred, then we'd certainly like to know about that too. If the standard order -- and I take it most stipulated orders contain similar provisions -- work the way they're supposed to work, there should be few opportunities for post-proceeding breaches because of the return of the material and the return of all briefs and memoranda and that kind of thing. I wouldn't put
it past some aggrieved non-party witness or aggrieved party to, in this day and age, post something on the web just for spite, but we're certainly not aware of anything like that happening.

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

We're not aware of much in the way of case law involving allegations of breach brought up in court proceedings or before Bar authorities, but to the extent that this is a potential penalty for someone who would breach an agreement,
certainly for an attorney, and one that we should
stress more when we're imposing the standard
protective order and reminding people about how it
works, then we'd certainly be willing to consider
doing that.

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

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

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

CHAIRMAN SAMUELS: Yes, maybe that would
be helpful.

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

MR. ROGERS: Well, I would say that, for
instance, with State Bar authorities or discipline
issues, if it's any kind of violation of a
protective order in an administrative agency that was then brought to the attention of a Bar authority or when a violation of protective order in an administrative agency context, then provided a cause of action for breach of contract in court or perhaps under some kind of tort theory in court. Then we'd like to hear about any of those instances that you might know of.

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

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

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

Is the question prompted by any particular concern?

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

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

CHAIRMAN SAMUELS: Van?

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

MR. SAMS: Yes, we have seen. We have begun to try to quantify it, but I don't think we've actually quantified it yet. Because of the spate of decisions from the Board regarding fraud on the PTO because of false statements about use on particular goods or services, we have seen a
lot of such pleadings in the initial stages of our proceedings.

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

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

CHAIRMAN SAMUELS: Any other questions?

Okay, thanks, David. Gerry, thank you very much. We'll move on to international issues, and Nancy Omelko has joined us. Nancy, welcome.

MS. OMELKO: As Jeff said, I'm Nancy Omelko, and I work in the Office of International Relations and in the Trademark Section.
I'm going to report first on the status of the Singapore Treaty. There is going to be a hearing, a Senate hearing, coming up in July. Right now the treaty has been ratified by one country, Singapore. It needs nine other countries to ratify before it goes into effect.

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

The Senate Foreign Relations Committee has scheduled a hearing for July 17th. This is
for the Singapore Treaty as well as the Hague Designs Treaty as well as the Patent Law Treaty, so all of those will be heard on July 17th. Treasury, USPTO and the Joint Tax Committee will testify on the first panel, and the second panel will include private sector representatives although those haven't been determined yet.

The U.S. is already in compliance with the provisions of the treaty. Therefore, we will need no implementing legislation or regulations. As I said before, it will be come effective once countries ratify it, so that could be a long way off. I also wanted to report on the standing Committee for Trademarks Industrial Design and Geographical Indications which took place in May of this year, and we had a few topics that we discussed. This committee has really become a place to exchange information. Although part of the title of the committee is geographical indications, we do not discuss those. They just remain on the agenda because it's a very hot and controversial topic. The rest of it, industrial
designs, doesn't apply too much to us because we don't really examine them under our Trademark system, but we did have a questionnaire for industrial designs which people from delegations from other countries were asked to submit information about how they protect industrial designs. The U.S. will submit something along those lines once we talk to our Patent people and find out exactly how we do it in the U.S.

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

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

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

They also can see the benefits in the efficiencies of our opposition proceeding because in some countries, for example, an opposition is filed and the members of that tribunal that decides who wins and who loses will actually start looking at the evidence, consider standing, time windows and all those features where in our system we can point out that some of this is handled by machine, another is handled by motion and evidence
isn't decided upon until later in the proceedings. The efficiencies are something that we really want to highlight because there are backlogs in some counties that could be avoided if they adopt a system that provides for the parties doing the work rather than the government doing the work.

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

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

As far as non-traditional marks, we're talking about drawing requirements, how to portray a sound mark, 3-D mark, et cetera. We've only
gotten to talk about those and color marks at this point. Lots of countries are interested in expanding to protect non-traditional marks, but they really don't know how to present them. For example, some countries think that for set marks, you'd have to present the chemical equation to show what that particular thing is, and that could be a way of doing it. It's all under discussion as I mentioned.

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

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

I also wanted to talk about the Madrid Working Group meeting which had its eyes on eliminating a safeguard clause. When the Protocol
came into being, there was a provision put into it
that said that after 10 years and after 5 years at
least of the time when the majority of Madrid
Agreement parties joined the Protocol, we could
consider getting rid of the safeguard clause which
was a clause that said if a party is governed by
both Madrid and the Protocol, the Madrid Agreement
will always be what you'd have to adhere to.

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

What happened at the working group
meeting, which was supposed to be going towards
revoking the safeguard clause, was it actually
took a step backwards and instead increased the
basic fee from 73 Swiss francs to 100. Part of
the U.S. consideration was that there was no
service provided for this additional fee increase.
The U.S., even though it cannot vote on whether to
repeal the safeguard clause because it's not a
member of both the Protocol and the Madrid
Agreement, is still interested in services
provided for the increase in money and is trying
to figure out a position for demonstrating that.

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

Then one other consideration is we've
been approached by WIPO Madrid people, the people
who actually do the work with Madrid filings and
have asked us to reconsider our statutory
requirement to have the bona fide intent to use
statement included in the international
application that's filed with the International
Bureau. The reason is that the International
Bureau has to check for this bona fide intent
statement and if it isn't there, then they return
it, and the U.S. does not have to process it until
the bona fide intent statement is resubmitted to
the International Bureau. It creates a lot of
work for the IB, and there is also a problem with
various countries' national offices complaining to
us that the U.S. system is very difficult and they
spend a lot of time on the phone with their
nationals explaining how to file a Madrid
application.

That being said, this is where we are.

We're being asked. I think the people from the
Madrid group are coming over within the next month
or so. We'll be asked again what our thoughts are
about this.

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

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

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

We have a draft. It's a very easy draft for fixing this if people are in agreement to this. It's really, I think, for the people who help us from the WIPO group because it's really creating problems for them.
Any questions on any of it? Any suggestions about the last point I made?

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

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

I don't know what they're complaining about at WIPO. I mean they are being paid to
perform a service. Are they being so overwhelmed by applications that do not contain the statement where it's made clear that this statement is required or are they just looking to get out from a little additional work?

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

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

But we were reducing the filing date requirements to really notice. We had to know what the mark was, what the goods or services were. We had to be paid for it. We had to know who to communicate with. So we reduced it to five different elements, but with the Madrid
applicants, we go beyond that. We also require
the bona fide intent statement. Under the
legislative proposal, this would just shift the
requirement from the filing date requirement to
sometime in examination.

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

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

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

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

MS. OMELKO: No.

CHAIRMAN SAMUELS: No?

MS. OMELKO: No, nothing, no. All of
them, all except Madrid. All of them, only have
those five requirements: The name, the address,
the fee, and the goods and the mark except for
MR. LIVINGSTON: Under U.S. 44, it's my understanding the practice is you do have to put intent to use on 44. Yes, that's a requirement.

MS. OMELKO: Not for filing date.

Right, not for a filing date.

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

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

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

CHAIRMAN SAMUELS: Al?

MR. TRAMPOSH: Thanks, Jeff. Just a couple points of information: One is that one of the difficulties with the declaration that has to be submitted with the Madrid Protocol application which is Form MM18 is that there seems to be a
certain amount of confusion about who can sign that declaration because a foreign attorney can sign the international application, but in fact under USPTO rules the foreign attorney cannot sign the MM18. However, there are a number of people that are not aware of that fact. So I think there are at least some MM18 declarations that come in with attorney signatures which would in fact put into question the validity of the extensions of protection into the United States.

Just one other point of information, as of course everyone at the PTO knows, there are a couple of other counties -- I believe the UK and Ireland -- who also require a declaration of intent to use, but they accept a footnote in the application that says if the box is checked designating that country, that constitutes a declaration of intent to use. So this is another option, but I would caution if that other option is used, then the question of who signs the application may arise as well. That may be a halfway option to do something like that.
MS. OMELKO: If I could just ask for clarification on the first point about signing, if the International Bureau does not know who is the proper party to sign, they're just going to accept it as long as there's a signature and then it could possibly be rejected by the U.S. later when an examination is done of the application?

MR. TRAMPOSH: Actually not because oddly enough the MM18 never leaves WIPO and never arrives at the USPTO. So WIPO will not evaluate the signature. The MM18 will stay at WIPO. It will not be challenged at any time by the USPTO because they simply don't see it. The only way it could be challenged would be in an interparties proceeding where the challenging party, either in an opposition or cancellation or litigation, would in fact order the file from WIPO and see who it is that signed. It would say that the MM18 not only has a slot for signature but also for the position of the person, and there are cases where that position would say attorney, and that would really
be a red flag.

CHAIRMAN SAMUELS: Of course, Lynne.

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

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

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

So if you're saying, oh, you're just adding another form paragraph, that's probably
true. We do hope those statistics will improve as
European attorneys become more savvy about filing
in the U.S., but I think it also sets up some
other issues that when we accept it later, I think
we'll have some additional issues there. I think
we'll have a signature issue really raised every
time we get the MM18 form directly into the USPTO.

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

MS. DEUTSCH: My question when Jackie
and I met with Nancy yesterday was not so much
what's in it for us in terms of this change but
whether the burden of making this change would be
a valuable chit that we could use for something
else because I don't necessarily see a benefit for
this change, but I'm wondering in the horse trading whether there's some value there. I'm not close enough to it to know. I don't know if Al is closer or somebody else is, but that would be where I would see the perceived value, if any.

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

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

Excuse me, Al?

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

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

I guess not.

MS. OMELKO: Okay.

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

MS. OMELKO: No. That's it.
CHAIRMAN SAMUELS: That's it. What is going on? I think two meetings ago, we had some discussion. I'm not sure whether you were here or Amy. I think Amy. There was a draft proposal with respect to the California Innovations Case. Is that moving along?

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

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

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

There's a possibility of breaking apart some of this legislative proposal because we have certain sections that are really non-controversial like the Madrid fix for maintenance documents.
which does not mirror regular Sections 8s and so forth, things like that that we could split apart and have something move forward, but that would probably not include the California Innovations piece. So we're still trying to figure out where we are and what we're going to do.

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

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

On page two, for the first couple of slides, they're just updates on volumes that give you an idea of what we've been doing for the first part of this fiscal year as compared to the full year in 2006. Some of the differences or the weights, assuming an even distribution between the first and the second half of fiscal year 2007, it looks like there would be a slight decline on TEAS
filings, but I think the difference is so minimal
that you really couldn't come up with a valid
comparison at this point. Also on the searches,
we're still doing about the same rate, about two
million transactions a year.

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

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

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

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

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

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

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

In June, in this month, Debbie Cohn had
mentioned that earlier this morning, the postings
or the emails going out that have electronic links
as opposed to the full big attachments, where
you're able to pull it down. So that's out.

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

MS. BERESFORD: Can I just say
something?

MR. FREELAND: Sure, please.

MS. BERESFORD: Yes, this has to do with
closing the Trademark paper search facility. We
have decided that we would use the design coding
that's in the search room now, the draw design
coding and add it to the kind of design codes that
are available online. So one can search using the
international codes that we have now or one can
search through the draw-based codes of
miscellaneous designs and circles and things of that nature.

We will have the same staff applying those design codes that applies them in the paper search room right now. So it should be an absolutely just a seamless transfer over and allow folks who feel that the paper-based design search codes are more accurate or more easy to use or whatever to continue to use those paper-based search codes, but that's what this is all about.

We have published the Federal Register notice, and we're waiting on it.

Thanks, David.

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

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

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

In September, we're having another FAST examiner support for supporting some of the organizational developments or changes that we've been working with in the Trademark area, and this is some additional changes in FAST to support that
on the LIEs, and SLIEs.

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

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

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

MR. ROSENBERG: Can I just ask?
MR. FREELAND: Sure.

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

MR. FREELAND: Who does that benefit?

Well, there's a lot of the general public that accesses that data. We sell. There are a lot of people that use this information that have been hitting us on our general sites or they go through our information dissemination area to pull down that information now.

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

MS. BERESFORD: No.

MR. ROSENBERG: No?

MS. BERESFORD: We do sell data to for profit companies. It costs us more to produce that data right now than I think we make on it. There are two real objects to this. First of all, we think this will end our data mining problems. We have data miners hit our TEAS web site and
bring it down. I don't know anything about IT, but they robotically manage to get their little tentacles in and they take up all the server space. We've had a number of those things happen this year.

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

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

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

MR. ROSENBERG: It did seem to me that
it is for a limited group of folks.

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

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

MS. BERESFORD: Get your methadone here.

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

MS. BERESFORD: Yes.

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

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

MR. CANNON: It benefits everyone really
because as has been pointed out with people that
log onto the site with scripts which monopolize
the site and essentially brings down the sites
that everybody's using for searching or whatever
else, and so this would give relief to that.

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

CHAIRMAN SAMUELS: Kathleen?

MS. COONEY PORTER: I'd like to add that
there have been numerous times when I've tried to
get on the web site, and it's unavailable due to
too many users. So I would attest to that. It
does affect practitioners also.
MS. DEUTSCH: I would also say the thought is that you're not going to stop or from a policy standpoint don't even necessarily want to stop the people who are doing the mining. Then at least you're driving them to a location where it's not going to unduly interfere with the other people using your web site. It's a different question whether as a matter of policy we should be thinking about how to stop them. That's a much bigger question.

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

MR. FREELAND: On page nine, a couple of initiatives that we've just released on our systems development life cycle, this is was a big step for us in trying to implement a comprehensive development life cycle within the organization. In the past it was very independent from each of the groups. They would have a different subset of what was appropriate deliverables and documentation for project management.
We are standardizing on all of the artifacts, all of the pieces of a good IT project, what are the things that have to be produced and in what sequence, because it also helps with improving communications between the organizations. You know that this deliverable is due at this point and there's a handoff, a logical quality handoff to the next group. We strongly believe that this is going to really help in improving quality of our products that we're delivering.

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

The IT strategic plan is more focused on what are the strategic things that I need to be doing in my organization to be able to produce the results that are listed or support the initiatives that are in the agency's strategic plan. You
won't see, in my strategic initiative, delivering a specific business area project. It is more I need to handle human capital management, training skills, the types of skills that I'm going to need to be able to produce quality results and supporting PTO as a whole. We took the first step in getting that out. We're now driving our operational plan for the next 12 to 18 months, so that we have an operating plan for all the initiatives that we're going to be working through fiscal year 2008.

Another big effort that is still underway is our business area disaster recovery. That was really a multi-phased effort. The first phase was making sure that our data is truly protected. In the past, we had relied upon tape backups. We have a large amount of data, and tape is a very cost-effective way of backing up your repositories, but there are errors on tapes and sometimes it is difficult to recover when you have terabytes of information or you're trying to recover a large amount. It's not always as
successful as you'd like particularly when you
look at our Patent databases. In our total
repositories, we're looking at 450-500 terabytes
of data. Recovering that all is a problematic
process at best.

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

Phase two through subsequent phases past
that --

MR. ROSENBERG:  I just wanted to note,
you said tape was unreliable. Disks are much more
unreliable. But I guess you're talking about like RAID huge disk farms and things.

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

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

In subsequent phases, we're also looking for a second site, a disaster recovery site to actually start splitting off some of our workloads and then having the two sites able to back each other up. We have gone through the process of selecting a city throughout the U.S. That was a
very comprehensive, aggressive review of all the requirements we had. You can't be in an earthquake zone. You can't be along the coast. You had to be outside of the same power grid which is southeastern electrical coop or something like that which covers the entire southeast of the U.S. is in that power grid.

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

In fact, unfortunately, we're trying to get that site identified now that we have the MSA, the Metropolitan Statistical Area, identified. Now we're trying to get the site. Unfortunately, three other major companies have announced data centers in that area. So I'm hoping that we can
get in there before somebody consumes all the
cheap labor that we were hoping for. NSA and
Microsoft are two of the big ones that went in
there. Plus several of the universities are
expanding in that area which is actually good for
us because that does improve the labor pool.

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

A couple of other areas in these
initiatives I want to make sure touch upon:
Collaboration tools, you heard earlier, are very,
very key to the success of our support and the
distributive workforce. There is an effort
underway in USPTO to basically look at improving
the tools that support work at home, distance
learning, the web publications, the web broadcasts
that we've been doing, also improving just general
support for travelers because we do have quite a
few people that travel around the world, supporting the different IT offices but making sure that we are looking at the tools that support that. One of those is looking specifically at collaboration tools.

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

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

We know that as we're moving to virtual art units or staff that is in other cities without the expectation that they're going to be coming in all the time, we have got to have the electronic tools that support them particularly. It's not just in their day to day activities. It's also
with training, how we are going to conduct
training, and we have so many other HR-related
systems that we want to make sure that entire
experience for how you do your pay and travel and
time and all of those other tools are readily
available electronically as well.

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

Unfortunately, that has not been the
case here in this office. We have had significant
down time on our telephone switch, and we believe
that we finally found a contributing factor, a
reason for that. We conducted an independent
review of some of the power supporting our
telephone switch, and we found some significant
grounding issues in the complex, that it wasn't
installed appropriately at the beginning. But
we're working with the telephone switch vendor
that we have in a very generous act of good faith
on their part to help improve the quality that
their switch has been attributing. They're
looking at providing us an at-cost upgrade of that
switch or replacement of the switch which is a
good deal from their standpoint or from our
standpoint because they really weren't the ones
that installed the hardware or the power.

The other part that we're going to do is
when the telephone switch was originally put into
the complex, the Knox and the four outlying
buildings were the first ones that were brought
up, not Madison. So our data center wasn't up
with all of its redundant power and clean UPSes.
When we put in the new switch, we're going to be
putting it in the data center where the power is
definitely cleaned, and so that completely
eliminates that as a possibility in future issues.
We should be significantly improving that.
On the next slide, on 10, the budget, that has generated some discussions far and wide. Out of our budget for 2007 of $267 million, $49 million or just under $50 million is allocated to Trademarks and $217 million to Patents.

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

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

Lynne is about the most ideal proponent for an organization as you can imagine when it comes down to cost. She does a great job. I do welcome that because, for us, it is definitely about making sure that we don't subsidize rates,
that we make sure we have the right cost, no
matter what they are, attributed to the right
service.

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

I am carrying that with me in my
organization on breaking down our costs to make
sure that we can go through and appropriately
attribute those costs back to the services and
then make meaningful decisions based on that
information because we haven't had the detail to
be able to make good business decisions in the past.

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

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

CHAIRMAN SAMUELS: Could you elaborate a little? Could you elaborate a little bit on that data because that's a big gap between $11 million and almost $50 million?

MR. FREELAND: Absolutely, $39 million. How did I know you were going to ask that?

Okay, the breakdown of that $49.9 million, $50 million, is $11 million of it is Trademark direct non-comp. That is the amount of money that is directly attributed to Trademark-specific projects where we work on FAST and all the TICRS and TEAS and support those and have that running.
We also have a direct comp budget of about $3.5 million, compensation, salaries that are also associated directly with support of that, about $3.5 million.

Then we provide support for other service organizations that have a cost that's reallocated back to Trademarks and Patents. For example, we provide support for RAM which is the revenue system for the CFO. We provide HR system support for the CAO's office, and that's about $2.8 million. Then they we reallocate the funds, and those funds are reallocated back to Trademarks through that.

The International Policy Organization, our external affairs shop, has an allocation. We provide about $1.2 million in services to them. That comes back to Trademarks through that organization.

Then we also have information dissemination which is primarily the Patent and Trademark depository libraries and search facilities and requests for certified copies of
registrations. That information is about $3.2 million.

So those are fairly simple and easy to talk about. It leaves a slightly large number of $28 million that is associated with our infrastructure, and this is a problem in my mind because this is a huge piece of my budget. That is, over half of the budget associated with Trademarks for the OCIO is actually indirect allocation through our mixed infrastructure. A page is made up of a page of about 20-25 different items, everything from every piece of my organization, space, a little bit of quality.

Every one of my organizations, they all have a piece of their support that goes indirectly into the Trademark areas. These are the areas that need the closest review on the cost allocation and how we're driving those numbers. This is the area that I'm wanting to focus on within my shop to make sure that we should be driving our indirect charges, no matter to whom they go to, down to as low a number as possible.
There are some numbers that we have shared infrastructures where we will have a shared service on some of the tools that we provide support for. Office and Outlook is a good exchange server. Email, that is a shared service and that gets allocated out based on or the driver should be on mailbox counts.

Don't quote me. I've got to go back and check that driver to make sure that it's being allocated correctly because that's what it ought to be is that we allocate that out by appropriate drivers. We're undergoing that to make sure that those drivers are correct.

But $28 million out of $50 million is clearly not what it ought to be and we are now starting to provide the information that you can start going, well, wait a second, whereas a year ago, year and a half ago, you couldn't even do that. This is just an evolving process, and we need to bring everybody along. I'm on board. Lynne doesn't have to worry about pulling me on board. We're just now pulling everybody else --
some of my staff who haven't had to deal with
details at that level and some of the other areas
in understanding the need for this type of
information.

The last line I have is two areas of
concern right now: Quality of support, Trademark
work at home program. We have two versions of it:
TWA2 and TWA3. TWA3 is the new version of the
software that we're trying to migrate all the
existing workers onto, but unfortunately we've had
three significant issues with that environment.

We've had to bring in the vendor, the
contractor or the owner of the system, Citrix
Software, bring them in here to find out why we're
having some issues with fast running in that
environment, that it freezes unexplainably. So
we're trying to figure that out. We have a couple
of issues where people were just being
disconnected from the Citrix server without any
event that we could track, and we're going to find
that out. We're just pursuing those issues right
now and as soon as we can get that.
The big driver in the TWA2 environment was the software was being discontinued on support from Citrix. Because they have stability issues on TWA3, we've gotten them to extend the supportability of previous versions. So we're working on that.

Then the last issue I had was on data mining. I don't know if you remember, but probably six to nine months ago we were having some significant issues on the support and performance of our systems on the data mining area where people were coming in and going through all of our data and really having a negative impact on the examiners and on public filers and people wanting to go in and look at information on their accounts.

Then we made some changes to some of our web addresses, and we were very successful for about six months, five months, in significantly reducing the impact of the data miners. I was a little bit premature in hoping that we had solved it. Unfortunately, the data miners are very, very
smart at what they do, and they figured out. They eventually figured out what we had changed, and they just started up again about two to three weeks ago, I believe, started hitting us again after they figured out our conventions for naming files and have been going through and having a significant impact in the last month.

We're looking at a variety of solutions. One of the desirable states, long-term, is we want to seal that off. I would rather have registered users coming in. Whether they're public data miners, I don't care, as long as they come in. If they were registered and had to go through a sign-on capability, I would at least know who's kicking off all the activity, and I could work with them on how to not have such a negative impact on everybody else. Unfortunately, a lot of the data miners are coming in through anonymizers, through ways that they don't want to be tracked as to who they are or where they're kicking this off. We have a very difficult time tracking them down to the source company who's kicking it off.
One of the ways that we're looking at is if we had a registration system, even though it's free, just a registration way so that they sign on. Then at least we could work with them and know who we're working with and adjust that.

Other ways we were looking at doing this are some tools that keep track of these key web servers and they detect when a performance problem is (interruption) and then, based on decisions on usage patterns, can start to curtail the data miners while they're allowing others to get through. I have high hopes that that might be a solution that we can look at, but we've one through some preliminary testing and it's very preliminary. There may be some tuning in case inadvertently we may be hurting some of our legitimate filers and people, that it can't make that meaningful distinction up front. We're working on those to see if we can get some maturity in those toolsets.

MR. ROSENBERG: Did you look at captures.
MR. FREELAND: No. I don't believe that was one of them.

MR. ROSENBERG: That's what most web sites use now. AOL uses it. Yahoo uses it and so forth. Basically, it's a little picture as you log on.

MR. FREELAND: Oh, I see. Yes, yes, yes.

MR. ROSENBERG: You have this picture that is slightly distorted, and the user has to type it in, and that's a detection system against bots.

MR. FREELAND: Right, and tickets for concerts and stuff like that, they use that capability.

MR. ROSENBERG: Right, they use that.

MR. FREELAND: It's very effective. It keeps me from getting in at times when I can't quite figure it out. But those are good because, yes, the bots really have a tough time with that image recognition on web sites.

MR. ROSENBERG: That's right.
MR. FREELAND: So we're looking at different possibilities there.

MS. DEUTSCH: Is the thought that if you can identify users, what, there would be an outreach to say, please do your mining at 2:00 a.m. when there is less public usage?

MR. FREELAND: It would be slow down your bots, so that they're not cranking out 10 or 20 of them at once. Just some of them have been very, very destructive in that they were having multiple bots hitting concurrently. Had they looked at a single thread, it would have been a little bit more metered, and we could have survived much more easily, and we wouldn't have been concerned as much. But when it aggregates, you kill one of them and they have four other fingers coming in at you, not good.

It is public information. We need to make it available. Making the bulk data and pointing them at the bulk data and let go to your heart's content. There it is. Don't kill anybody else. Just go through this. That seems to be
maybe one of the cheapest, easiest ways that we
can protect our filers and direct users of the
system and our examiners as well.

MR. ROSENBERG: The last time we
discussed this, I thought there was some
information, privacy issues that were brought up.

MS. BERESFORD: The only issue that is
ever brought up about our data is the phone/fax
information that's in their Trademark
applications, and the data mining robots or
whatever that comes in now have access to that.
They're essentially public record. I mean we
could have a discussion about if we put up a bulk
data web site, do we want to take out phone
numbers and fax numbers. It makes it a little
more complex, and it gives data miners a reason to
go back to the original web site.

Even though David successfully stopped
some of these attacks, it isn't inexpensive. It
takes a lot of resources here to figure out what's
going on and handle it. So we're looking. Again,
the free bulk data is one of the ways we're hoping
we will be able to handle it.

If the privacy issues are an issue with bulk data, I think it's in the bulk data. Well, I'll have to check. I don't know. I don't know whether it's in the bulk data that we sell to search companies, but it's available.

MR. FREELAND: It's the same datasets that we would be handing out through the current information dissemination system now. We're not increasing any of the datasets that we're currently selling. So the information is already available out there now.

MS. BERESFORD: Yes. We don't actually. Now that I'm thinking of this conversation, we don't give phone number or fax number stuff to the search firms. That's out of what we give. If we put up bulk data, we'd have the option of putting it up without that information too.

CHAIRMAN SAMUELS: Questions for David?

MS. COONEY PORTER: I have one quick question, David. What is the progress with the portal as far as updating records? Is it
complete?

MR. FREELAND: I'm sorry.

MS. COONEY PORTER: The portal web site, the portal, the retrieving of documents from the PTO web site?

MR. FREELAND: For the mailings with the URL? I'm sorry.

MS. COONEY PORTER: This is the portal where we go to access file histories of the applications, the registration and then we download it into our site.

MR. CANNON: We do use a portal right now for TDR, and we are using a portal and Patent is using the same one. But I think you're talking about where we're intending to go which is that you'll have an account and log on and be able to see your particular portfolio. Is that it?

MS. COONEY PORTER: Right.

MR. CANNON: Yes, that's still a concept working forward, but that's not available yet.

MR. FREELAND: We haven't scheduled that one yet.
CHAIRMAN SAMUELS: Any particular staffing issues? David, you're fully staffed?
You're looking for new people? What's going on?

MR. FREELAND: I'm always looking for new people, and that is an area that we're continuing down. We were struggling with our hiring practices for quite a while. We had a spurt of where we were able to hire quite a few, and that was a great relief, but we're struggling a little bit now again. So we're trying to work out those processes and getting that moving, but we have quite a few postings that we're trying to get out on the streets and to get the right skillsets. I'm always looking for good people, and if you know about them, please have them apply because we need all the good people we can get.

CHAIRMAN SAMUELS: Anything else? Thank you very much.

MR. FREELAND: Thank you for your time.

CHAIRMAN SAMUELS: That brings us to the end of the agenda except for some closing announcements.
We probably should discuss our next meeting although we don't have to set an exact date. We generally try to meet sometime in mid to late October. So if you can check your calendars over the next couple of weeks, I probably will send out an email. Let me know. I'll propose some dates and let me what works next.

Ann Farson has informed me that financial disclosure forms are going to be due soon. The easiest thing to do if your financial situation has not changed is to just photocopy the one you used last year and resign and date it. If you do not have copies of what you submitted last year, she does and she'll be happy to provide it to you.

I think we have a couple of follow-ups that we're probably going to want to take advantage of. We probably will have some type of conference call or webcast in late August with respect to budget issues following up on our discussion this morning.

Gerry Rogers before he left the room.
gave me copies of the issues that he wants
comments on. So take a look at that, and if you
have any comments, send it to David?

MR. SAMS: Yes, sure.

CHAIRMAN SAMUELS: Okay, I was going to
say send it to Gerry, but I don't know his email
address. Do you want to give us your email
address, David?

MR. SAMS: Very simple, actually you can
send it to Gerry. It would probably be more
efficient to do that. He is at
gerard.rogers@uspto.gov.

If you want a copy of this
electronically, we will send it to Jeff and he can
forward it to you.

CHAIRMAN SAMUELS: Right, okay. If
that's easier, we can do it that way.

Let's see. I don't think I have
anything else. At the next meeting in October, we
probably will spend some time talking about the
annual report which is the bane of my existence,
how to do go about putting it together. Last
year, the way we did it worked out fine in that
various individuals working together as teams were
assigned various topics and then we pulled it all
together. That seemed to work well. Our annual
report is due on November 30th.

So if there are no other comments, I
think we'll adjourn and wish everybody a good
summer.

(Whereupon, at 1:47 p.m., the
PROCEEDINGS were adjourned.)

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