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MR. FARMER: As far as how we're going to proceed today, for those of you who are seeking -- possibly can, and sometimes we can wrap things up early, so we're going to try to do that, and we're certainly not going to cut short any work discussions.

The way I plan on doing things is going through the schedule as we published it on the USPTO web site. One thing that we've been trying to do, and we eternally struggle to get better at, is to make these meetings mainly discussion and interaction, and because of that, what we have asked all of our presenters to do today is to limit their opening comments or opening monologue to no more than one-fifth of the time that we have allotted for that segment, and we can do that because we've asked also that everyone give us their written materials in advance, so we read them in advance.

The informal arrangement that we reached at the PTO at our last meeting was that we on TPAC
will try to get in the public meeting agenda at least four weeks prior to the meeting, and then we would ask that all written materials be provided to us and put up on the USPTO web site at least two weeks prior to the meeting. And we did pretty well. We didn't get an A plus. Some of the materials, I don't think, got up quite two weeks out, but they should all be on the USPTO web site now. And what we on TPAC have said is that we promise to thoroughly read everything that's given to us in advance so that we don't have to learn it for the first time at the meeting, but instead we can read in advance, the public can read in advance, and thus, the meetings can be more productive.

Because of that, here's how we'll sort of flow through each of our topics. We'll have opening comments, again, no more than one-fifth of the time allotted by the person presenting from the PTO. Then I will turn to any questions or comments or discussions from TPAC members.

After that, I will go to any questions
or comments from folks who are here in our live
audience. And after that, any appropriate
questions or comments that come in from cyber
space. That can happen and we encourage it
because this meeting is being web cast, and
because folks watching over the web cast have the
ability to send in questions and comments to
askTPAC@USPTO.gov. Again, that's ask, a-s-k,
TPAC, T-P-A-C, @USPTO.gov.

Eventually the meeting transcript for
this meeting will be posted online. It comes out
to TPAC. Some folks read it over just to try to
make certain there's no mistranscription, and that
gets posted. We are short two members today, so
if you look on the table, you'll see we have two
fewer TPAC members than usual. And then we hope
to have those spots filled shortly. James Conley
and Jackie Leimer rotated off at the beginning of
August, and we understand those two spots are in
the process of being filled, and we look forward
to being back to full strength sometime soon. And
that pretty much wraps up my opening comments, and
it's perfect timing, because if you're ready, Mr. Kappos.

David Kappos, our new Director, has just joined us here. We are thrilled to have you here on TPAC. There's been a lot of anticipation. And I will say already that we on TPAC have noticed that you've come out of the gate strong and we're very appreciative for that, too. And so if it's okay with you, I'm actually going to turn things over to you for a few opening comments.

MR. KAPPOS: Okay. Thank you very much, no problem at all. I'm happy to be here. My name is Dave Kappos and I'm pleased to be joining you. I recently started here at the United States Trademark and Patent Office as the Director coming in to try and help on both -- all patent and trademark related operations. I'm very pleased to be able to join you here for a while this morning, and thanks, John, for putting me on the agenda and giving me a chance to make some initial comments. And while I won't take a lot of time, there are some really important things that I feel it's
really very, very critical that we start out
talking about. The first one is, sort of just
getting right down to business, the financial
outlook, and, you know, sort of the situation, if
you will, as we enter financially the year 2010.

So everybody knows that FY 2009 has been
and continues to be a difficult one for us at the
USPTO, with fee receipts down significantly and
financial challenges that have forced us to take
all kinds of actions that are very similar to
actions taken in the private sector, the things
that everyone has had to do, right, including
stopping hiring and cutting back dramatically on
IT investments and the like.

2010, as we start the year, moving in,
you know, on October 1st, I suppose there's good
news and bad news, it's fair to say. The good
news is that it appears, at least at this point,
that our receipts, and this is mostly talking
about the patent side, have stabilized, and that's
a good thing, at least from what we can see at
this point. The bad news, if you will, is that
they tend to be significantly lower than they were in 2008, and certainly at this point in 2008.

So, you know, as we enter financial year 2010, we're going to be very, very careful about spending and we're going to be entering into an extremely cautious posture, continuing not to be able to invest in IT improvements, not to be able to hire or do many of the other things we want to, and it's the only prudent thing to do at this point because we've got a budget to manage.

And as I think everyone in this room knows, the USPTO is an entirely fee funded agency, we do not draw on any public funds, so what the user community pays and currently what they pay on a year by year basis is what we have to work with, with some slight modifications that Mark always explains. So financial outlook, a very cautious one moving into financial year 2010.

That being said, there was this trademark fence legislation that everyone in the trademark community knows about and is very, very concerned about. And I commented on this before,
I'll comment again now. So that legislation, and by the way, Congress did a wonderful job and was extraordinarily helpful to us at putting a tool in our hands that could ensure that we would not be put in a position of having to furlough or even having to get close to furloughing any employees, and that's something that I hope we all share on both the trademark and the patent side, that we never want to be in a position of having to do anything like that to our people here. So we are very appreciative of Congress' quick action.

However, the trademark fence bill is an insurance policy, right, and you never want to have to use insurance policies, right, it was a backstop, not something that anybody wants to use, it's not something that I ever want to be in a position of using.

We want to respect the trademark funds and enable the trademark community and the trademark part of our operation to continue functioning effectively, as it has functioned extremely effectively, and we're not going to let
it get broken, okay. So we have no interest
except an extremist in using that insurance
policy. So hopefully that clarifies any concerns
people have relative to the trademark fence.

Another thing that has been a matter of
some concern is pendency goals. And there's been
a lot of discussion about, you know, whether
pendency goals should be reduced, are they at the
right level, what level is the right level.

So here's why I could say, you know,
coming from an external perspective, and as
someone who, for many years, has been a filer of
many trademark applications on a global basis,
including here at the USPTO, and certainly
understands what I refer to as the sweet spot of
trademark pendency, I get that 2.5 to 3.5 months
is the appropriate and optimal trademark pendency,
balancing out the needs of applicants to be able
to file their specimens and gather those together
and not have to be too rushed on the one hand,
interaction with international treaties on the
other hand, and wanting to have U.S. based
applicants as much as possible on an equal
footing, and certainly not disadvantaged over
people coming in and filing under treaty
provisions.

And so one of the first things I did
when I got here is to clarify to the whole team
that we're going to have pendency goals of 2.5 to
3.5 months, and we're not going to go any lower
than that. And I know Lynne and the trademark
community are focused on not going any higher than
that, because that's what's appropriate for the
trademark community. So that's the, you know,
sort of simple story, very definitive relative to
trademark pendency goals.

I mentioned before the IT related
issues, and I want to come back to that and say
that, you know, whereas we have some really
significant funding challenges on the patent side
of the USPTO, and everybody knows about those,
we're a little more fortunate on the trademark
side, and as a result, would very much like to be
able to move forward on some IT projects for the
We always have a challenge there with the fact that many of our systems are very much interleaved, right, and so it's difficult to untangle the trademark, the say banned with utilization on the IT systems from the patent utilization, and we want to always continue to respect the principal that trademark funds get used for trademark related purposes.

So we're trying to work through, and I have tasked John Owens and the CIO group very early on with looking for ways and working out ways that we can untangle, if you will, where we practically can the trademark IT infrastructure from the patent IT infrastructure. And we're not going to do it in a way that damages anyone, we're not going to bring the patent group down, we've already got a fragile enough IT infrastructure there, and we're certainly not going to disadvantage anything on the trademark side.

But the idea is, where we practically can, if we can untangle those systems a little
bit, it'll enable us to make some of the IT investments on the trademark side that I will -- I think probably everybody in this wants to be able to make, and you know, and meet a principal that I have from a management perspective, which is that, if you can, you don't want to hold back a constituency that's ready to move forward in productive ways because another constituency that's also extremely important has some problems it needs to work its way through.

So we're going to do the best we can in that regard and we're going to try to, you know, free up to be able to advance some really important IT work on the trademark side.

So a couple of other things that I wanted to mention, and then I'll stop here pretty quickly, John, so I'm coming in new, as everybody knows, to this job, haven't interacted with PPAC's or TPAC's much before other than seeing them from an external viewpoint. One thing that's really important to me is transparency, though. And I think this has been a little bit of an issue,
particularly on the PPAC side, frankly, and I
don't know how much of an issue it's been on the
TPAC side, but I do want to stress and emphasize
to the whole PPAC and to everyone who follows this
community that it's important to me that as much
of these meetings be conducted in public, like
this meeting, as possible, and that the so called
executive sessions be limited.

And I tried to make that point by
actually not attending an executive session, you
know, of the TPAC here, and only attending this
session, and I'll spend some time here after my
comments just listening, and that's, you know,
being quite candid, to get the message across to
everyone that I'll put my time into the public
sessions, I'll absolutely minimize the amount of
my time that I put into the non-public sessions.

And I do respect that there's some
things that aren't appropriate to be discussed in
the public sessions, but I really hope that TPAC
will do its best to minimize those and hold as
much of these meetings in public as possible. The
second thing, John and I have talked about this, and I'm really pleased that, from what I understand, the TPAC'S got sort of a good sense of this, is that, you know, so I've read over the TPAC legislation, the authorizing legislation and all of that, and, you know, I get the statute and the role that the TPAC plays, but I hope that you'll see the role here as one of partnership and a role that's trying to help Lynne and I to do the very best we can for the United States Trademark and Patent Office, if you will.

And to play that role, I hope that the TPAC will be ready to actually do things, right, to actually get in and help us make things happen, that's what I was brought in to do. I wasn't brought in to just audit or pontificate or observe or oversee, I was brought in to do things, to change things, to make things happen.

And I hope that you'll see your role as one of partnership with Lynne and I so that we can make things happen together, and that requires rolling up sleeves and getting hands dirty and
actually doing things more than just at a single meeting. If you're up to that, we're up to it, and I hope we can have that kind of partnership.

So the last comment I would make, just by way of conclusion is, look, you know, we've got still, you know, a struggle on our hands here at the USPTO financially, you know, somewhat reflective of what's going on in the world economy. We've taken our share of knocks, and I'm sure we'll continue to take them, many justified, frankly, and some perhaps less justified, but that's okay.

One thing that is for sure, though, is that the people in this building, this complex of buildings, the USPTO, are extremely dedicated to improving the lot of the trademark system to responding to the trademark community, to processing trademark workload and applications at extremely high qualities and under very tight timelines.

I have been incredibly impressed in the two and a half weeks that I've been here with the
intensity, the quality, the capabilities, the
skills, the intelligence, the dedication, the
knowledge of the entire team, both on the patent
and the trademark side, and particularly, you
know, for purposes of this meeting.

Everyone I've met from the trademark
side of our shop here are every bit as dedicated
and capable and working every bit as hard as
anyone I've ever seen anywhere in the private
sector to advance our nation's economic interest
and future through the innovation system, and
particularly the trademark system. I really hope
that we can all, in that spirit, participate in
the system. We need a lot of help here from this
community, the TPAC, and the larger trademark
community to supplement our very, very dedicated
and capable team. And I think that if we can
operate in that spirit and do things together and
all view our role, whether we're internal or
external, as working commonly to improve the
system, we can get the USPTO running the way we
all want it to run, and we can provide a
tremendous engine to help our nation's economy
regain the traction that we all want it to have
for the future.

Okay. So, John, I'm sorry if I took up
too much time, but thanks for giving me a moment
to make a few comments.

MR. FARMER: Thanks for doing so. If
you don't mind, I've actually got a quick
question, and that is, as very interesting and
heartening news on the trademark operation perhaps
getting its own computer system or systems, do you
have any preliminary feel as to whether that will
all remain within the present OCIO, in other
words, even though there may be two systems, it'll
all be an OCIO function with only those personnel
managing it, or would that lead to some partial
OCIO function within the trademark operation?

MR. KAPPOS: That's an interesting
question, and frankly, it's not one that I've
contemplated yet. That's probably one in the
fullness of the meeting that John can help. We're
certainly happy to consider if there's some, you
know, sense or preference that the TPAC has.

I think we need to bear in mind as we go through any process like that, though, John, that there are certain efficiencies in terms of, you know, raised floors, and cooling equipment, and having things commonly housed, and so there's a certain amount of separation that probably will make sense from a financial viewpoint and from an operational and a management viewpoint, and then there will be some amount of separation that we'll all come to agree, oh boy, we don't want to do that, it's going to be really expensive, it's going to be really hard.

So I think it's a great question. To the extent we can reasonably provide, you know, some amount of both technical and operational control, it seems, from what I've seen so far, like something that's worth exploring. Let's work on that together and make the decisions right as we go through the process on where the dividing lines make sense.

MR. FARMER: Sure; and I didn't mean to
imply that TPAC on a particular conclusion was --
by the question, so I'm not implying that there
needs to be a set one, just that when it came up,
that was the next question that naturally occurred
to us, is, is it just a computer potential
separation or is it a broader one than that, and
so we'll just wait for that to roll out.

And you mentioned openness, we're very
interested in that. We try to do a good job, but
want to do a better job. We recently received
some advice of counsel from your office, I'm not
sure if you call it Office of Legal Counsel or
whatever, on that regard, and we are studying
that, and we'll do the best we can at this meeting
on short notice and do even better the next time,
so we appreciate receiving that advice.

And also, we have a pretty activist
TPAC, and so when you issued your call earlier for
us to roll up our sleeves and get busy, we're a
pretty busy bunch and we're glad that you all
would like us to be that way, we appreciate that.

If it's okay, we'll go ahead and turn to
the first agenda item then. And just -- I don't have opening comments on many of those, but I thought I'd just throw in a few on the fence. First of all, I probably shouldn't assume that everyone at least that's watching at home knows what the fence is, and so there is a part of the U.S. code that essentially says that trademark fee revenue can only be spent on trademark operations and a reasonable share of the overhead attributable to trademark operations.

When we had our last meeting in June, there was a prospect that legislation will be passed that would enable the patent operation to borrow from the trademark operation because of the current financial circumstances. The trademark operation has a surplus in the bank, thanks to its very good management, and the patent operation has been not as fortunate in that regard.

And since our last meeting, as Mr. Kappos mentioned, legislation was passed that enables the patent operation to borrow under certain circumstances from the trademark
operation, and I think that window is open through
June 30th of next summer, but if I'm misspeaking,
please let me know.

When that was going through, TPAC was
respectfully opposed to that legislation occurring
because we felt that trademark funds should only
be used for the trademark operation, even though
we certainly understood and were sympathetic with
the desire of avoiding layoffs and rifts on the
patent side. I'll have to say that just in the
things I've heard, not through really executive
channels, but just through reporting and things
such as that, that at least personally I've been
very impressed with how interim and new USPTO
leadership has gone after the issue and has been
solicitous of the needs of the trademark operation
financial as they can be, and we really appreciate
that.

Obviously, we on the trademark side hope
that the borrowing will have to occur, although
we'll just have to see what happens there. And on
the trademark side, our highest concern would just
be that if borrowing must occur, if that day
should happen to come, that the financial analysis
have been done to make certain that enough money
is left in the bank to guard the trademark
operation against its worst -- well, its
reasonably worst possible day, because what would
be a sad outcome is if the patent operation needed
to borrow, and we, of course, would be
understanding there, but then it didn't leave
enough money in the bank for a rainy day on the
trademark side, and then the wave hits the
trademark folk a bit later, and then the trademark
folks are faced with possible rifts and furloughs
even though they've all been working in a very
financially well managed part. Again, I'm not
saying that I see any great likelihood that that
may happen, but that's one thing that we on TPAC
are just trying to be vigilant to make certain
that doesn't happen.

With that thrown out there, I wanted to
turn to the agenda that we have under III, which
is discussion of the trademark fence. And that
leads off with a brief discussion, the financial
status of the patent operation and a look forward.
I'm going to guess that Mark Olechowski will be
addressing that, but if I'm mistaken and it's
someone else, step on up to the mic and we'll be
glad to hear from you.

MR. OLECHOWSKI: Thanks, John. Dave has
really kind of set the stage for completing 2009
and how we're planning on entering 2010 here at
the USPTO. Most of you realize that 2009 has been
a difficult year for the Patent and Trademark
Office, seeing a reduction in our -- in both
patent and trademark fees, but most certainly
having the greatest effect on the patent side;
went through a series of cost-saving measures once
we identified the extent of what we thought those
fee collection reductions would be, and went
through some very serious and long and heart
wrenching discussions about what to cut. But the
bottom line is, one, we won't be using the
legislation that was offered as an insurance
policy so that we would not have to furlough any
USPTO employees, nor borrow from the trademark organization to complete our work in FY 2009. So we'll end up 2009, assuming we continue to collect revenues in the way we have through these last couple of months. We will end the year with a small surplus on the patent side.

While that sounds like good and encouraging news, since the Patent and Trademark Offices, one, fully fee funded, and two, our dollars are what we call know your dollars, we have the ability to carry those dollars over into the next fiscal year, and, in fact, the subsequent fiscal years. And we do need that money in 2010.

Our revenue expectations on the patent side in 2010 are not that much more than they were in 2009. So we will be, starting 2010, in exactly the same operational stance that we are now. And let me try to characterize for folks what that means.

We have to date secured all overtime on the patent side of the operation, so we will not begin the year authorizing overtime. We're not
hiring anybody. We're not just not hiring patent
examiners, we're not hiring anybody from the
support organization. So if somebody leaves,
whether they leave the Patent Corps or the CFO's
office or our international office, we're not
replacing those attrits, we don't have the money
to replace the attrits, we need to take those
salary savings and bank them so that we can make
it through the end of the year.

Those are probably the two most
significant issues facing us. But I will say
there's efforts underway, as hard as I think 2009
was, and it looks like 2010 will be just as much a
challenge for the PTO, we're certainly not sitting
here waiting for '10 to end and the economy to
recover.

We've entered discussions in the past
several months with DOC and OMB, in an effort to
try to seek other solutions rather than just
waiting for fee incomes to come and making other
cuts at the Patent and Trademark Office. While
there's nothing of substance to report, I just
want to let people know that we're not sitting
around waiting for something to happen, we're
actively pursuing other avenues to help ourselves
here at the PTO.

Just to make sure we address all of the
issues under number three, John, I think both Dave
and I have said that while we're very appreciative
of everybody's efforts and support, I'll say, even
from the trademark side on getting the
legislation, we certainly will not be using it
this year, and it's our goal entering 2010, not to
use it next year, the authority expires on June
30th, as you mentioned, John. I think it would be
hard pressed for us to know by June 30th what the
end of the year would look like even at that
point. But it's our goal not to use that
authority either in '09 or '10, and we'll do
everything we can in 2010 to make sure that we
don't have to use that borrowing authority.

So if there's any questions people have,
I'll be glad to try to answer any questions
concerning what we have planned, do not have
planned. I know there's other business unit heads
here who may want to talk, so if there's a
specific question about the impact of their
business units on the cuts we've had to make.
Subject to your questions, that's all I have this
morning.

MR. FARMER: Sure, Mark, thanks. I hear
you when you say that you believe -- well, you're
practically certain that there won't be any
borrowing in fiscal year 2009. Can you quantify
at all how likely it is that there may need to be
borrowing in 2010, and also, if so, how deep that
might go?

MR. OLECHOWSKI: Well, we're going to
start the year, as I mentioned, John, our
financial plans and our revenue projections are
essentially the same number. We will be starting
the year with financial plans that essentially
equal our estimated revenue and carryover. So
something would have to change. And whether we --
I don't think we'll be spending more, we may
collect less, but -- and that would certainly
trigger discussions, just like there was in 2009 about what to do.

If revenues trickled off from our projections, then we'd have to have -- enter those same discussions, not that they've been secure, because we continue to look for savings even today. So to try to quantify what that would be, I just couldn't do that, John. I mean it really would depend on the revenue stream.

I can be fairly certain that we're not going to spend more than we anticipate right now until we have some sort of good feeling that either revenues are coming up or there's other injection of funds into the PTO, so to try to guess how much that would be, I couldn't.

We feel fairly confident in our revenue projections; they're certainly on the conservative side going into 2010, as I mentioned, it's just $30 or $40 million more than we had collected in 2009. So I feel fairly comfortable that those projections are, like I said, on the conservative side. But even so, even if we start collecting
more, I think there's many things that the Patent
Office, patent side of the office would like to
do, and those would be very difficult decisions.
I know we've already met with Dave on a
couple occasions, people wanting to do things, and
we're just holding off, we're being very
conservative as we start the year, so I think that
those requests for additional spending would be
taken very, very seriously.

MR. FARMER: So even as to not getting
into how much, but if borrowing occurs, you all
don't have any quantitative for cash you can
offer, as to whether it's ten percent likely or 40
percent likely, you have no feeling for that?

MR. OLECHOWSKI: I don't have a feeling,
and I'd be very hesitant to even offer a guess. I
guess I will, you know, offer that it's --
borrowing from the trademark side would not be our
first option, that would be our last option. We
will do everything, just like we did in 2009, to
not exercise that authority in 2010.

MR. FARMER: I've gotten a feeling from
studying this that it's not as much a beginning of
the fiscal year hole, in other words, you're not
going to have cash drop right at the beginning of
the fiscal year, it's that at the end of the year,
you can't spend more than the amount that you
bring in, and so perhaps -- is your challenge more
towards the tail end of the fiscal year as opposed
to the beginning of the fiscal year?

MR. OLECHOWSKI: Certainly in terms of
finishing out the year, that's true, John, but it
is a year long evolution to manage your spending,
keep an eye on revenues, seek other cost saving
measures. Certainly we will have to project what
we will spend and what we will collect through the
end of the year. But you're right, at the end of
the year is when we have to be in the black, we
don't have the option of being in the red.

We don't currently have borrowing
authority from the Treasury, we're not like a
private company where we could seek investors and,
you know, have current borrowing authority if I
needed to, you know, cover a bill that I just
couldn't pay right now. But it's -- at the end of the year is where it has to happen, but it's a year long evolution to make sure it does not happen.

MR. FARMER: Got it; I'm not quite sure where the confidentiality line arises as far as future budgets, and so if the question I'm asking goes over that line, please tell me. But can you tell us what a number looks like, as to how deep the hole for fiscal year 2010 presently looks? In other words, how many millions of dollars have you not yet come up with that you know that you're going to need for that budget year?

MR. OLECHOWSKI: We submitted a President's budget for fiscal year 2010 in May, and in that President's budget, we had yet to identify $30 some odd million in savings. We've certainly worked hard to reduce that. I haven't yet closed out the month of August, I will do that next week sometime when we have three days to close out after the end of the month.

And we've worked hard amongst all of the
business units to identify savings, but all of
those savings added up, John, the no hirings, the
no overtime, and all of those things, reduction in
contracts and everything, I would say when I close
out the month of August, I'll probably be now $10
to $15 million, I don't want to say short because
it's -- we're not short because we'll have plenty
of cash to start the year, but -- so something
would have to happen, we'd have to spend $10 or
$15 less or collect $10 or $15 billion more.

MR. FARMER: So if you might cut that
fiscal year 2010 $30 million gap in half at the
end of August, hypothetically perhaps, I'm going
to guess there's a chance there could be a further
reduction in September, so that perhaps your
budget hole won't look too daunting by the time
you wrap up fiscal year 2009; is that too hopeful?

MR. OLECHOWSKI: No, I would say that's
an accurate assessments. Things always happen at
the end of the year. I mean peoples best laid
plans for trying to spend money as the fiscal year
progresses, lots of things happen. I mean the
negotiations you're doing to do certain programs don't pan out; there's, you know, lots of other things where you just don't get the chance to spend the money that you thought you would.

And what we're seeing now as we start to close out the month of August, we're seeing people returning money that they may have planned a trip and that, you know, the trip fell through for a variety of reasons. So that money is starting to come back into the PTO reserves, and I think that's just normal at the end of the year. What's at least a little bit different about the PTO, if we were a normally appropriated federal agency, everybody would be trying to spend that money, because you're going to lose that money. We at the PTO get to carry that money over, so there's a different mindset here. People know that if they don't spend -- they don't have to spend the money because we'll lose it. So there's a culture, at least certainly this year, that we've instilled, you know, any dollars saved this year allows us to, you know, apply it to a requirement next year.
But you're correct, I mean we're seeing that number slowly come down, but the offsetting pressure will be to try and spend it if we, you know, once we turn the corner and everything else, we'll have to make sure, as I mentioned, keep a very close eye on it.

MR. FARMER: Sure; if at the end of fiscal year 2009, if there's still a gap, in other words, there's still money you haven't come up with, and if you don't get any relief from external sources, in other words, Congress doesn't give you this, that, or the other thing that might help you out with that, then is it likely that, whatever that gap is, will have to be borrowed from the trademark operation, or instead, are there other internal avenues that may be able to be pursued?

MR. OLECHOWSKI: Well, certainly if there was no other avenues, you know, that could certainly be an alternative. As I mentioned, I think that would be our last alternative. I would feel comfortable, though, that if our gap was that
small at the beginning of the year, and assuming
we collected revenues to what we think we would,
making up a small gap of, you know, in the small
millions of dollars would be quite doable.

I think the challenge, though, John, is
going to be that the patent side of the
operations, we're losing ground over there, and to
go through another year in 2010 like we did in
2009, I'm not sure sets it up for success for the
future, so I think that's the reason. Also, we're
trying to pursue other avenues with our DOC and
OMB counterparts to make sure that we cannot
continue to go backwards in 2010.

MR. FARMER: Well, that's actually where
I'd like to go next. And again, I don't know
where the privilege line is here, if there's, you
know, any executive branch privilege with plans
being laid or whatever, but to the extent you, or
if you're not the right guy, anyone else here can
tell us about what options are being explored, as
far as either potential legislation or other means
that can be taken, we'd certainly be interested in
hearing about them. I don't know if you all can
tell us anything or not.

MR. OLECHOWSKI: I certainly -- I don't
think it would be right to talk about any
particular options. I would just say that there's
discussions going on at DOC and OMB with, you
know, now that Dave has shown up and everything
else and we've, you know, thrown him in the middle
of this, you know, financial hardship, so I can
tell you that there's many people interested in
the success of the PTO.

I know Dave's had an opportunity to
greet the Secretary and talk to people at OMB and
everything else, so I don't think our situation is
lost on anybody, and I think there's a lot of
people interested in making sure we're successful,
and what those particular options are I just don't
think are ready for public consumption because
there's just so many discussions going on.

MR. FARMER: I understand. Speaking
just for myself, not necessarily for all of TPAC,
and I realize this wouldn't help you out in a
recession, but it would be awfully nice if, down
the road, if the PTO got to keep all the revenue
that it brings in, not just the amount of revenue
it's budgeted to bring in, so that you don't have
unintentional dollars flowing back out, because if
you all have a better than expected year, and you
get extra revenue, you're going to have extra work
because those are fee payments based upon people
who expect their work to be done, and so I just
personally hope that we'll reach the day where the
PTO not only doesn't have intentional rescission,
but unintentional rescission, because I think that
the folks who pay the fees that create that
revenue deserve that.

I've been running my mouth a lot.

Anyone else on TPAC want to jump in with questions
or comments on this before I go to Lynne's
financial forecast for the trademark operation?

Hearing none, Lynne, what's going on financially
in the trademark operation?

MS. BERESFORD: Thank you very much,

John. I'm going to call Karen Strohecker to the
table to give the details; I will give the big overview here, which is, it looks, from our forecasting models, it looks like we're going to be taking in enough revenue in the next year to certainly sustain our operations.

We aren't going to be taking in lots of extra revenue, but we will be taking in enough to sustain operations. And I'll let Karen Strohecker give you more of the details of what our expectations are. Karen.

MS. STROHECKER: Thank you, Lynne. I don't have very much to say, but I guess what I do have to say is good news for everyone in the trademark community, and that is, trademark expects to end the year with a larger surplus than what we began the year with, and that's a combined trademark revenue for the Patent and Trademark Office less all the trademark related expenses.

The CFO is actually projecting that we'll have a surplus at the end of the year of about $72 million. We began the year with a surplus coming in of about $44 million, so that's
a net gain of approximately $28 million in revenue that we don't expect to spend this year, which is good news for everyone.

I don't want to speak I guess anymore specifically about 2010, with the exception that we do expect I guess at the current revenue estimates and spending projections, again, a slightly larger surplus at the end of 2009 then what we had ending 2008. Okay.

MR. FARMER: Just curious, trademark filings are way down; how is it that the trademark operation increased its surplus with filings being down?

MS. STROHECKER: A combination of a couple of factors, one being that our projected expenditures this year will be less than what they were in 2008, probably by about $7 to $9 million. I believe we spent combined $202 million in 2008. This year the forecast is running about $193 to $194 million, so that's one thing.

The second thing is, we actually had significantly more revenue from filings of
extensions of time in 2009 than we did in 2008.

Approximately 18 percent of our revenue comes from fees collected from intent to use filings, combinations of extensions of time and statement of use, so it's not just the revenue from the filings which is the biggest percentage of our revenue income source that we collect revenues for.

Our income estimates for 2009 are probably only about $3 to $5 million less than what we collected in 2008. So our revenue is actually not that much less than what's -- actually, the difference between 2008 and 2009, in terms of net revenue, is less than the drop in filings.

MR. FARMER: It sounds like maybe some of the cost cutting that was put in PTO wide is -- maybe help push open your surplus a little bit, even though, if that was primarily intended to help on the patent side, it may have had a collateral effect on the trademark side.

MS. STROHECKER: Well, the trademark
operations actually -- we pretty much reduced our forecast for spending in 2009 by about $8 million, which represents probably about a six to seven percent decrease over what our projected spending was going into the year, primarily because of fewer positions hired. We did not hire any examining attorneys in 2009, as you know. And we've also been able to realize a number of process improvement efficiencies that have allowed us to reduce the cost that we spend for contract support for processing of the trademark applications throughout the process.

So our long term projection, at least in terms of our cost relative to what we're spending is that the rate of increase will be much less in the future, even as filings begin to return to more historical levels.

MR. OLECHOWSKI: I'm sorry, John, if I could just add onto Karen. I think you're correct. When we did cost saving measures across the USPTO, certainly if we -- if we do not do something in patents, that money is returned
completely to patents, but if we make cuts in the
support organizations where there's a split of
cost, a certain amount of the cost or the savings
goes back into the trademark bank account. So
you're correct that if we cut in CFO, CIO, PPE,
OGC, some portion of that will go back to
trademarks.

MS. BERESFORD: Yeah; the good news in
this is that we are reducing our dependence I
think on contractors to some extent. We're
cutting -- we see further cuts in contractor
services in the upcoming years. We see -- we're
becoming more efficient in the examination
process.

I think a large part of that efficiency
comes out of our IT systems. And, of course, the
news that we're going to try to upgrade and
modernize and make those systems more capable is
terrific news for the trademark side of the house,
because I think we'll see more efficiency as we go
through time, so all of that is good news. I
think there's a real positive, bright spot in this
kind of dismal financial picture, there's some real good news possible.

MR. FARMER: Lynne, I alluded to the filings being down this year; what's the rough percentage of how down they are this year over last year?

MS. BERESFORD: Application filings as of I think the -- our projection for the end of August, overall for the year, down 12.5 percent from last year.

MR. FARMER: And as we go through the fiscal year, has that percentage down been improving or worsening as we slide through August and head into September?

MS. BERESFORD: We've seen a gradual improvement in July and August and September. We were projecting, for instance, August to be I think about 15 percent below August of last year, it's only nine percent below. We were projecting July I think to be about 12 percent below July of last year and it was six percent below. So we're seeing some flattening of the downward curve and
we think we're going to get to kind of a level filing estimates next year. We'll be about where we were -- we'll continue at the level we are near the end of this year. So we're pretty confident that we may have seen the last of this effect on trademark filings.

I think the thing that we also see next year is, we're going to have some lesser income because of the change in ITU filings, because we've put out less work this year, we'll have less files in our intent to use divisional unit, and so we'll be collecting less fees there. So that -- our fee projections already take that into account, but we will -- there's going to be a change in the mix of these because of the amount of work we did this year. So all of this is part of projecting our revenues, a process in trademarks.

MR. FARMER: Okay. I'm not sure if this next thing is a question or statement, so I'll put it out there, and if it gets a reaction, we'll go for that. As I mentioned in my opening comments,
one of the things that's really on my mind and I think all of TPAC's mind, is just to make certain that trademark operation is guarded against the worst reasonable possible outcome as far as the economy is concerned.

You know, not, you know, the one percent worst outcome that's Pollyannaish, but the reasonably bad outcome, because we don't really know exactly where the economy is going to go.

And so it would be good to know if a financial analysis has been or will be done that looks at what that would be for the trademark operation in terms of its needed habits and surplus, you know. You wouldn't be able to run off current dollars, you'd have to dip into the bank, and when that's done, to look at what the quantity of dollars needed is and when those needs are likely to arise across the time horizon, because it may not be immediate, and then to make certain that information is out there to the whole community so that on the other side, if it's looking like they're going to need to tap patent
funds, then my guess is if trademarks is in that
big of a hole, patents is going to have an issue,
too, that everyone will know how much needs to
remain in the bank to guard against a possible
trademarks for a lower RIF, because obviously
that's one of the things that we're trying to
prevent, and it seems that perhaps priority ought
to be given to protecting on the trademark side
simply because -- there's no respect or disrespect
on the patent side, the trademark folks ought to
be guarded first because they're the ones who
generated the surplus. I don't know if that
produces a comment or a statement as to what's
going on, I throw the floor open in case it has.

MS. BERESFORD: Let me just say, we
should be called filing predictions are us over on
the trademark side of the house with respect, and
I apologize to the Toys-R-Us trademark folks, I
didn't mean it. And the trademark side of the
house has constantly working on its filing
projections, its income projections. And we've
been asked to consider what kind of a number we
would need that we would think would be a good
cushion, rainy day fund, you know, amount of money
that we think we would reasonably need in dire
straights, and so we are, in fact, working on that
particular issue. And I know that Nabil Chbouki
and Karen have come up with some numbers. I
haven't reviewed them yet, but it's -- but we are,
in fact, as soon as we have some competence in
what our prediction is, we will be happy to tell
everyone. You know, if it's an important number
and if we think this is really a number that
reflects what we absolutely have to have, of
course, we would be remiss not to tell people what
we think we need. So ---

MR. FARMER: Okay. Thanks for that. As
I mentioned, I'm now kind of going to roll through
the layers as far as any questions or comments
folks may have. Are there any TPAC members that
have any questions or comments on what we've
talked about so far?

MR. FRIEDMAN: I do; Karen, could you
just -- this was toward of your prepared remarks.
Could you clarify, projection-wise, where we would stand at the end of 2010 versus where we probably are going to be at the end of 2009?

MS. STROHECKER: Are you talking about the surplus?

MR. FRIEDMAN: Yes.

MS. STROHECKER: Okay. The current projection, as I said, for the end of 2009 would be approximately $72 million in trademark surplus. The projection, likewise, for 2010 right now is about $82 million. And that represents a net gain in income versus projected requirements of about $4 to $5 million, with income being slightly less than this year, as well as the carry forward of the surplus for this year.

MR. FARMER: I guess it's -- this is another one of those comments that could be a question, but you really never know, and that is, I guess the whole world is, in a sense, tied together, isn't it, in that trademarks as a surplus, if things go as we hope and anticipate, we don't think it'll be lost.
We hope and somewhat anticipate the patent operation may need to tap it, but it's a bit of a safety blanket, but also because we're hearing wonderful news that there may be some separate trademark computer systems that will allow the trademark operation to get to where it would like to be quicker. That's a potential also future need of some of those trademark dollars in the bank and so that's just one more ball you've got to keep in the air or keep your eye on as far as the surplus is concerned. Back to TPAC, any other questions or comments? Any questions or comments from anyone who's come to visit with us here today? I don't think any have come in from cyber space, so, David, did you have anything else on this?

MR. KAPPOS: No.

MR. FARMER: Okay. In that case, we're going to take a five minute break. We will come back five minutes ahead of time, which makes me happy, and then visit with TTAB Chief Judge David Sams, and for those of you who have been here
before, I really mean five minutes and we'll get rolling. Thanks.

(Recess)

MR. FARMER: We're now going to turn to the portion of our meeting in which we visit with Chief Judge David Sams of the Trademark Trial and Appeal Board. Judge Sams, thanks for coming in. I'm going to turn the floor over to you pretty quickly because I think you've got some good news to deliver to us regarding recent speed statistics.

MR. SAMS: Thank you, John. And good morning, everyone. To frame today's discussion, I provide a couple of documents in your packet of information. One is a workload production and pendency chart and the other is a short article on accelerated case resolution. Let me just hit a couple of -- and it's a rather dense looking chart, so let me provide a summary of the highlights of the workload production and pendency at TTAB through the third quarter of fiscal year '09.
New appeals, first of all, for this year, relative to last year, are down 15 percent and through the end of the third quarter. New oppositions are down 20 percent from last year and our new cancellation petitions are down 16 percent. So we have had a falling off of receipts that's somewhat parallel to that we've seen in the application section.

However, although it's not on the chart, I will point out that the number of cases that matured for a final decision on the merits by a panel of three judges has actually increased this year over last year by 6.5 percent. We don't project that there will be a similar increase next year, but we're not absolutely certain about that. But we expect a fairly flat number of cases that are going to mature for a decision next year.

Pendency, and this is good news in the report, I think, final decisions on the merits, our pendency from the time a case is heard in oral argument or is submitted on brief, is now 6.7 weeks to decision. That contrasts last year of
12.9 weeks, so we made substantial progress there. In the area of deciding contested motions before the board in oppositions and cancellations, for the first three quarters, we had a turnaround time from the time the case was -- the motion was ready for decision until it got decided of 7.1 weeks, which is down substantially from the 17 weeks that it was at the end of the third quarter of FY '08. And in terms of total number of decisions issued, the number of decisions on the merits is up this year eight percent over last year, and the number of decisions on contested motions is up 21 percent over last year. We've been encouraging also our interlocutory attorney staff to handle as many of contested motions as possible by telephone conferences, and that percentage of cases so handled has increased from ten percent in FY '08 to 22 percent for the period -- through the third quarter of '09. If we actually factor in the fact that this for all contested motions, and some contested
motions we don't consider appropriate for handling
by phone, like summary judgment motions, and if we
put in just those that we will handle by
telephone, it's closer to 33 percent of cases are
now being handled by telephone. We're also
collecting statistics in conjunction with a
request by the TPAC over the last couple of years
to determine how long is the case, particular --
case -- oppositions and cancellations, how long
are they pending between the time they're filed in
the first instance and we get a decision, if it
goes all the way through trial to a decision on
the merits, to determine how long a case is
pending at the board in those circumstances.

For appeals, the average this fiscal
year is 44 weeks, and for trial cases, it's 202
weeks from the time it's filed until all of the --
until the decision is issued, if it goes all the
way through the process.

Now, I should point out that 97 percent
of cases are settled or otherwise disposed of
before they get to that point, so it's a
relatively small number, but it's an important number and it takes up a lot of our resources to deal with that three percent of cases.

I'd point out also presidential decisions. We're still on track for the way we have increased the number of presidential decisions in the last couple of years. This year, as of the end of the third quarter, we had 38 presidential decisions issued. We have had nine in July and August, for a total of 47, so we're pretty much on track for the 50 to 60 that we had last year.

Just a word or two, I know we're going to discuss it in greater detail, and I'd like to hear what the committee wants to talk about in this regard, but accelerated case resolution.

For those who don't know what it is, it's actually a variation, and it's been given a name, something that's actually been available for probably as long as the board has been in existence, and that is, if, by stipulation of the parties, a trial can be avoided, if the parties
don't want to have a trial and want to have a
decision based on a much more truncated record,
that's always been possible.

In the past we have, on occasion, many
years ago even, taken cross motions for summary
judgments, gotten a stipulation by the parties for
us to treat that as the record in the case for
purposes of issuing a final decision on the merits
that's appealable to court, and they have done so,
and we have done so. We've never, until the last
couple of years, made a concerted effort to make
that option known to people. And we have, in the
last year or so in particular, taken a great deal
of effort to attempt to make this option known and
to get people to use it if it seems to be in their
best interest to do so. We have had only four
decisions issued this year which utilized
accelerated case resolution. But the process
itself is very flexible. The way it's structured
now, it's based on the agreement of the parties.
We will not force people into an accelerated
process unless the parties are in agreement to do
What we're trying to do now is encourage them to do it in certain situations. In those cases where we now have -- we've been invited to participate under our rules in the pre -- in the initial discovery and settlement conference, the interlocutory attorneys involved in those conferences, if they believe this to be a case that might benefit from accelerated case resolution, will make that option known to the parties. And we have had a number of parties and cases that are now before the board seriously consider taking that route.

We've also attempted to make known to the public in general, that is, to attorneys and to trademark owners, that this is a process that might be of use to them. But preparing the article that's in the packet of information that you have for today's meeting, it's something in the nature of a press release, it has been distributed through the International Trademark Association, the IPO, the AIPLA, and at least one
bar association, the California Bar. It has been
made available elsewhere, as well.

So I think, John, those are sort of the
prepared comments I have. I would welcome you to
direct the discussion whatever way you think is
best for the committee at this point.

MR. FARMER: Sure; for everyone's
benefit, Mary Boney Denison is our point person on
TTAB matters for TPAC, and so I have my own
questions, and I'm going to bring up another issue
in a minute, but Mary, I would like to start
deferring to you if there are any particular
questions or things you wanted to take up with
Judge Sams before I start doing my thing.

MS. DENISON: Well, I would just like to
start off with a big thank you to Chief Judge
Sams, the other judges, the interlocutory
attorneys, the entire staff of the TTAB. There's
been a great team effort made this year to reduce
the time it takes to make a decision. And we at
TPAC really appreciate all that you have done to
make this happen. And I don't think that -- if it
hadn't been a great team effort, that it would have happened. So there have been a number of contributing factors, but we're really, really thrilled with the fact that you've gotten your pendency down. And I'm sure that the private bar would agree that the fact that you have cut your decision-making times down to less than half in some cases, and that's just a great thing. So thank you for all your hard work and keep it up.

And I think -- and so the statistics speak for themselves, and we hope that next year will be an even better year because these statistics show that you have made huge progress, yes, filings are down somewhat, but these statistics show that you've made progress, that even if the filings had been flat, that you would still have had great improvement, so thank you for all of that.

And what we have been talking about, Jim Johnson and I are the subcommittee on the TTAB and international for TPAC, and we have also been considering whether it would be good to have a
faster track available where both parties did not consent. And so that's one of the things we wanted to talk about today, was whether the public, the government, TPAC, everybody thinks that it's a good idea, and how it would work, and so we I think wanted to brainstorm. John, you want to talk about your idea?

MR. FARMER: Sure, I'd love to. I'm going to go back and pick up a few other things then come back to that if that's okay with you. And I second everything Mary just said about thanks for the increased speed. Going back to the increased speed, David, what do you think caused it to get faster? I mean we're really appreciative, and I suspect it's not just that the economy has softened, so less things are flowing through.

MR. SAMS: Well, I think it's a combination of things. Obviously, when you have fewer coming in the front door, it's easier to catch up, but I don't think it's entirely that. We put into place this year, among other things, a
new performance plan for the interlocutory attorneys who have more than risen to the occasion.

They have had a huge increase in productivity, in total numbers of decisions and the timeliness of decisions. I think, working under that plan, they've done a terrific job under the leadership of Cindy Greenbaum, who's the managing interlocutory attorney, so that's a very, very big point, as well. I think we started out the year in a good place. Even though our statistics for last year were not as good as we hoped they would be, we positioned ourselves by the end of the year to start out really running fast, and that's what happened. Also, productivity is very high this year for the administrative trademark judges, as well as the interlocutory attorney, so it's a combination of factors I think.

MR. FARMER: Do you all think that you're going to be able to maintain the current faster speed that you all have achieved as filings
kind of come back up to non-recession levels?

MR. SAMS: Yes, we believe we do. Our projection models of workload suggests that we are at a good place. Because we are up-to-date now, we have staffing sufficient to handle even a flat, but even an increased -- a certain level of increase, which we're not really anticipating given the number of application filings that were down this year. But, yes, we believe we have enough staff to continue to make these numbers well within the goals.

MR. FARMER: And whenever I cross into privileged stuff, someone just tell me. But staffing-wise, do you all have a little bit of flexibility so that you may even be able to expand your staff a little bit if things really get heavy?

MR. SAMS: Well, we don't have any anticipation of adding in fiscal year '10 or '11, so I don't -- I can't say how much flexibility we have, but based on our projections, we're probably not going to need any additional staffing.
MR. FARMER: I wanted to go to ACR, Accelerated Case Review, for a few seconds before we go into discussing other ideas. For Accelerated Case Review, just to make certain we all understand what it is and isn't, my understanding from reading the materials is that it's not for every kind of case, and thus, if we needed a faster track or the community thought there should be a faster track, while ACR could be a faster track for some kinds of cases, it might not be for all.

From reading the materials, what I see is statements that is good for cases where issues are straight forward, where the record is small and typically where many facts can be stipulated. And so this is another one of these, is it a question or is it a comment.

It strikes me that if there could be kind of cases that may need to go fast, and ACR might not be the right vehicle for them just because you may have counsel that's like this and no one is going to concede an inch, or just
because it's the nature of the case that the record is just not going to be the kind that can go through ACR.

MR. SAMS: The answer is, that's correct. As I pointed out in my opening remarks, we depend on the agreement of the parties to opt for ACR. Theoretically, if it was a complicated case and they wanted to opt for it, we certainly wouldn't prohibit them from doing it. If they wanted to limit the number of depositions they take, limit the time that they have for discovery or any other kinds of limitations, we would certainly approve that process.

But as you indicate, typically there are cases where the parties are not likely to want to do that or it's a very highly litigious group involved and they're not going to agree to any kind of truncated process, and in that case, ACR would not be useful.

MR. FARMER: Sure; and we talked some about it being brought up to litigants for the TTAB. Presently, the way I understand, if I get
it wrong, let me know, is that in a case, you have
a required initial discovery conference and you
have to have that and your initial disclosures
before you can go out there and take active
discovery. And presently, there's no requirement
that anyone with a TTAB participate in it, usually
it's just one -- the counsel get in touch, they
set up a time, they talk, they go through their
checklists, file their initial disclosures and
they're off running.

And so just to make certain everyone is
clear, my understanding is that in the vast
majority of cases, and I'm not saying this is
wrong or should happen, there's not going to be a
TTAB person on that call pushing the issue, saying
hey, have you really thought deeply about ACR, so
it's instead going to be a situation where people
have to be aware of it and raise it themselves
pretty much, right?

MR. SAMS: That's correct. I believe
the last statistic we collected on this was that
the board is participating in only about two
percent of the cases after an answer is filed and there's a conference for settlement and discovery. So we're involved in very few of those, so the opportunity for us to raise ACR as a possibility, at that stage, at any rate, is rather limited.

MR. FARMER: Right; and those cases -- aren't those -- are those exclusively cases where the party has asked for you all to participate or do you sometimes insert yourselves?

MR. SAMS: No; we only participate at the request of one of the parties.

MR. FARMER: Right; and from the pre-trial order, my recollection is that there's something general in there about talking about cutting down the case and resolution. I don't recall one way or the other, so it's not a rhetorical question, whether there's anything in there that specifically says thou shall discuss and consider ACR.

MR. SAMS: I can't recall. My colleagues back here tell me that it is in that written statement.
MR. FARMER: Yeah, I've got a few opposition cancellations going on now, and I think, remembering language in there, but just a thought that occurred to me in the -- at the first time today is, maybe if you really break it up and put it in bold and say thou shalt consider ACR, that might push some folks in that direction.

And I know that ACR is still young, and so it doesn't necessarily have everything it could have developed. But my feedback, just as a practitioner who goes into these waters some, is that if there was stuff actually interlaced in the TBMP that showed some structure to it, I realize it's a bit of a create your own process, but if you got something concrete that you can grab onto and you can say, okay, now I see how I flow into this and what the process might be like for getting to that stripped down ACR state, you might have more takers just because it's something they can comprehend a bit more, but that's just my initial reaction. And again, I realize it's a young process.
MR. SAMS: I can add a point on that.

Speaking of the trademark manual of practice, TTAB manual of practice, we are in the process of making a major revision to that manual, and one of the judges has -- his whole assignment is to go through the sections as they are edited and decide whether or not it's an appropriate place to insert some reference to accelerated case resolution.

So that suggestion of yours is actually being worked on as we speak, because we, too, believe that there are places in the manual where it would be an apt insertion.

MR. FARMER: Right; and actually that's a perfect opportunity for a small detour. And I know that our Jim Johnson has been working with you all, and Jim, I might turn the floor over to you for just a second, because TPAC has been interested in -- and I know that you all have been also, it hasn't been that you're not interested in moving the TBMP4 to a more user friendly HTML format, and so that the trademark community knows what's going on, Jim, I'm going to give the floor
to you for a few minutes.

MR. JOHNSON: David, as you know, we have expressed some interest in having the trademark TTAB manual to be in a searchable HTML format, as the TBMP is. And I'd like you to update the trademark community on your efforts in this area.

MR. SAMS: Sure, thanks, Jim. The last version of the TBMP, the Trademark Trial and Appeal Board Manual, was put online in 2003, with a revision in 2004. It is searchable, but not in HTML. And we looked into the possibility of converting it, but it was a fairly major project to do that. Plus, we -- because we're in the process right now of making a wholesale revision of the manual, it didn't make any sense to spend the effort and time, and it would have been considerable to do the present out-of-date manual in a different format.

So what we're doing is now constructing the new revision, the new edition of the TBMP in that format so that it will be searchable to the
degree that the TMEP is.

MR. JOHNSON: Thank you, David. Do you have any estimates of the time it would take when the revisions will be completed?

MR. SAMS: Well, as I indicated earlier, we're working on it full-time more or less now. We have a number of people, up to a dozen or more board professionals working on it at the moment. A number of sections are nearly completed. A couple have been sent over to the solicitor's office for a review and clearance.

There is a fairly extensive clearance process which will also include the OMB. So we can't say with absolute certitude when it will be cleared for posting. But if I were estimating now, my best estimate is that it would be available in fiscal year '10. I'm hoping earlier than later in fiscal year '10, but I think we can say fairly safely, unless we run into some problems in clearance that it would be ready in fiscal year '10.

MR. JOHNSON: Thank you.
MR. FARMER: Just in case -- well, just
to make certain we're fully transparent to the
trademark community, in case not everyone knows
what's going on, sort of a messianic goal for TPAC
that the office shares, we're not running into
resistance, it's nothing of that nature, is to
reach a state where both the TBMP, which is the
manual for the TTAB litigation, and the TMEP,
which is for prosecution, are in an HTML format
that's very searchable and very user friendly.
The TMEP, in terms of that aspect, is already
there, and as we're hearing, the TBMP is getting
there. And then not only that, but they be as
up-to-date as possible, because on both sides,
sometimes there are changes, but they haven't been
rolled into the main manual there.

And that's always a challenge, and in
some cases, it's even bit of a tension, because we
sort of hear that there are some folks in some I
guess appellate or trial court sections or
whatever that don't like it to change frequently
because that keeps changing what they have to cite
and what they have to track, and we're sympathetic.

But, you know, we are looking at the interest of the trademark community, and the vast usage is, people prosecute marks are using the TMEP, or people doing TTAB matters are using the TBMP, and the more that can be up-to-date, the less likely it is that folks are going to make mistakes, because many of us practitioners, for instance, with the TMEP, we don't always think to go look through the exam guides, you know, we just reflectively dive into the TMEP and off we go.

And so just a statement to the trademark community that all of us are just trying to row towards that eventual goal because we think it will serve the trademark community. And again, it's not that anyone is resisting us, I don't want that message to imply that we've run into any obstacles.

Now, finally, I'll get around to what Mary wanted me to talk about. Let me make it clear at the outset that this is not something that originated in the PTO. And so I don't want
the trademark community to be under the impression
that there's some movement of foot instigated at
the PTO to create a fast track, and it's coming,
and you better get ready. It's something that
we've instigated on TPAC. As a matter of fact, if
you want someone to shoe that, I'll take the
blame, because I'm the one who's really been
pushing this issue.

And we are just at the brainstorming,
would this make sense stage, we're just kicking
things around, that's all. And so, as a matter of
fact, for those of you who are here, those of you
listening at home, we are very interested in your
thoughts, and not only thoughts from major IP
organizations, many of them have representatives
here, but individuals. And, you know, we have our
email box, askTPAC@uspto.gov, and so let us know
what you think. Here's what's going on, and that
is, even when the TTAB process is fast, it's slow,
in that pendency has come way down, we're very
happy with that, but when you look at how long it
takes to go through the process, and our current
statistics for trials, for oppositions and
cancellations, the mean is 202 weeks, the meeting
is 162 weeks, the 25th percentile cases, in other
words, those that are only one-quarter of -- the
fastest are 107 weeks, and the 75th percentile is
257 weeks.

Now, you can start dividing the number
of 52 into those weeks, since 52 is a year, and
you get, you know, you can see that, for instance,
the median is over three years. And then if you
even look at how hypothetically fast the system
can go, it just can't go but so fast.

For example, David's folks wonderfully
produced us a little timeline that showed if there
were no delays at all, if everything just went
right through as the order requires, that it would
be 550 days from the initial filing of the
petition to the date upon which the rebuttal trial
brief is due. And then on top of that, the
current and good number for getting cases decided
is 6.2 weeks. And so if you add 550 days and 6.2
weeks, you end up with 84 weeks, which is not
quite two years, it's more like a year and a half
to two-thirds, not bad, not super speedy. But
practically speaking, you always have some delay
in a case, it just, you know, unless no one does
anything, and in that case, you have to wonder
what kind of briefs are going to be filed. You're
really probably going to be closer to the current
median number, 162 weeks, which is a little over
three years.

And again, we're not complaining about
the speed of the TTAB process. As a matter of
fact, a lot of us on TPAC have been listening to
the trademark community and chatting with folks,
and a lot of folks like that pace, because it
gives you time to try to work things out with
opposing counsel, you don't have to drop
everything and just litigate this one TTAB case,
unlike if you're in the rocket docket, the Eastern
District of Virginia, and so that's not that that
should go away.

But my point was that sometimes there's
a need for speed, and sometimes, let's be honest,
there can be some strategic behavior on behalf of
an opposing party to take advantage of the lack of
speed because it helps them.

You can have situations where someone
has filed an application, perhaps they've filed an
ITU, they have a product launch coming up, and
then, you know, they're gliding through, getting
ready to launch, and they get this opposition, and
they're not really using the mark yet, so there's
probably not a basis to go off to go to federal
court and get a declaratory judgment action, but
they're being opposed. And sometimes in those
situations, for example, the opposing counsel will
make it clear that I can make this go really slow,
and I can make it three or four potentially more
years, whether that's harder since you're faster,
before there's going to be a final decision.

And there can be other situations that
we can game plan out. I'm sure if we just had a
brainstorming session in which we could think of
all the ways in which you could use speed as
leverage or a lack of speed as leverage, that we
would think of other opportunities.

And thus, because there may be some cases where that length of time could be used as leverage over others, we wanted to think about whether there should be an alternative track, and we just want to start seeing what ideas folks may have for what that may look like, or at least tell folks we're interested in your ideas, so let us have them.

What I'm thinking is that it would be an alternative track where it would not require the consent of both parties, because it strikes me that if both parties consent to go fast, when there's a will, then there's a way, and you have vehicles such as ACR. This is for the cases where there's not agreement. I'm thinking about a possible process in which a party can request the fast track, and then I don't know if you would have it be, well, if someone requested, they'd get it, or if, instead, if someone requested, then there's sort of a little show cause process in which there's a determination as to what is
sufficient cause to get on that fast track, and, of course, that then requires developing a whole set of juris prudence as to what is sufficient cause for a fast track and what is not.

And then you can start thinking about all sorts of things. I mean do you just go rocket docket and just compress everything down to rocket docket speed and get speed that way; do you look at other innovative procedures, maybe looking over to what some folks do on the patent side of the house here, as to how they get through things quickly?

If you're thinking super broadly, I'm not advocating this, but hypothetically, you could say, well, there should be a fast track and it should be outside the USPTO, it should be something available in the federal courts through the Lanham Act. I'm not suggesting that, I'm just saying if you think of the whole universe of possibilities, you would sort of go first, is it in the PTO or is it out of the PTO, and then if it's in the PTO, you know, what shape does it
take, is it automatic, is it a show cause thing, what are the grounds for it, so forth and so on. And beyond that, I don't have really specific thoughts, it's to introduce the topic, it's to get thoughts that people have as to whether there's even a need for one at all, since I guess that's ultimately the zero question, and that is, is this a road we should even contemplate, and thus, I just throw that out for discussion. And so I'm going to stop running my mouth here, which is a challenge, and ask folks at the TTAB, and on the TPAC, and then eventually the audience, if they've gotten anything they want to step up and say about that?

MS. PEARCE: Well, I'll go ahead and inject an opinion here. And I guess this is from someone who is concerned about being strong armed often times. I don't mind when proceedings drag out, because for the most part, I prefer negotiating settlements anyway, I'm not looking to litigate. So if things take a while, that usually buys me some time to negotiate something that's
fair to both sides. My concern with anything
where both parties don't consent is the ease with
which that could be misused. If you've got to
show cause, you're going to wind up dragging out
the process anyway, so I don't know how much speed
you'd get out of it. And I certainly would think
you'd have to show cause, you couldn't just
unilaterally side for both sides, hi, this is
going to get speeded up because it's in my best
interest to go ahead and strong arm this other
side as quickly as possible.

So I have some reservations about it, I
guess. It's not something that I think ordinarily
I would use. But I mean I can see if you're on
the side of the angels, definitely there are times
you'd like to move things along, but I'm concerned
about the possibility for misuse. Anybody else
got any thoughts on that?

MS. DENISON: John, I'd like to know,
you know, right now if you have a bad situation
with infringement, you could go into a court and
seek a TRO. So what advantage do you see to
having a separate proceeding at the TTAB when
there is, in fact, a mechanism in place in the
federal court system that you could presumably
use? Now, I'm assuming it's going to cost more,
but I'm just interested in your thoughts on that.

MR. FARMER: Sure; that's actually a
good thing for me to embellish on. If there was
always a federal court relief ready sort of
situation, then I'd say the need is far less, but
there isn't, in my view. Now, I'm a part-time
trademark litigator, I used to be a full-time
trademark litigator, and so I will certainly bow
down to anyone who's doing this day in, day out.

But it comes down to when there's
declaratory judgment jurisdiction in the U.S.
federal courts, in that up until recently, up
until the Medimmune case, the general rule, as I
understood it, is that if all you have is a denial
of registration and you're suffering prejudice as
a result of that, it's not an issue of also
whether infringement is taking place, the general
position of the federal courts was that was not
sufficient to get you into federal court.

So if you've got your application pending at the Trademark Trial and Appeal Board, no, pending in the PTO, and there's an opposition, whether it's 1A or 1B, that doesn't get you your ticket to federal court, and the court should just say, well, you've got to go through the process, that's what it's there for. Then the Medimmune case came along, and that was the case over when you can go to court on a declaratory judgment action, and that actually was a patent case, but it speaks entirely to the case in controversy requirement, so it's applicable in the trademark arena.

The case law there is just getting developed now, it's not fully formed. It's appearing that that has increased opportunities for folks who are stuck in trademark matters to get declaratory judgments. I don't know if the law is fully developed. My own read on the law is that where it's going to end up is if you have a use base situation, if you file an application and
it's IA, or you're using the mark, that may enable
you to get some -- a good shot at getting your
case heard in federal court under a DJ action.

That's a little cloudy because there's a
difference between what a registration is and what
you're actual use is, and sometimes that gap
creates some issues. But still, certainly in ITU
cases, like the example I threw out earlier, and I
realize that's not the only possible example, but
let's say you file an ITU, you've not yet begun
using the mark, you may be getting ready to
launch, and then you get an opposition, and you're
like, well, now I'm afraid to launch because I
have this opposition hanging over me, and it's
precursor to infringement litigation if and when I
start using the mark. In that situation, you
know, is it legal advice to you to get your own
lawyer, but I'd say your odds of getting a DJ
action taken up by the federal courts are pretty
slim.

And so that's a long winded way, since
I'm always long winded, of me saying that it looks
like there are a substantial number of kinds of
cases where you don't have that federal court
option presently, under the present law.

MS. DENISON: Is your proposal limited
to cases where you couldn't have a federal option
for a quick resolution or not, or are you just
talking about it in a general --

MR. FARMER: I hadn't really thought
about putting such a limitation in, and so that's
something to contemplate. If you were going to,
it seems to me you would need to have some
certainty as to when you could get into federal
court, if that's what you wanted to do. And as I
mentioned presently, my view is that there's
haziness in the law as to when you can, even in a
use situation, because the Medimmune case law is
not fully developed on the trademark side, and
also, this is akin to the res judicata and
collateral stopple cases, and that is, as a body
of case law that talks about when a result in a
federal district court action will have a
preclusive effect on a trademark filing and vice
versa, flowing the other way. If you get show
down in the TTAB, what effect does that have on an
infringement action, for example.

And I've got to think there's some
carryover here, because, again, in federal court,
usually what you're talking about is whether
there's infringement or not. And I believe
federal courts have the power to cancel
registrations, but not a power to force the
issuance of them generally, whereas in the
trademark office, we're concerned with whether the
registration should issue or not, and so it's not
the use in the real world, it's the use as
described in the statement of goods and services.

And so I would just wrap all that up by
saying it seems to me if you want say to folks, if
you have a federal court option, you must take it
and not force folk to go fast at the trademark
office, you just need to make certain you know
where that line is. Make sense?

MR. LOCKHART: Well, there's also the
cost consideration, too, isn't there? As you
mentioned, going into federal court is likely to be more costly than pursuing something here.

                  MR. FARMER:  You know, that's a good point, and it is.  And actually, that brings up an even -- another world of things to talk about, and that is leverage, and that is, cost can be a leverage item, and time can be a leverage item, and we just have to be candid about that.

                  I mean presently, let's face it, even if you don't change the world, cost is a leverage item in these matters.  It's not unknown for a party to push an opposition or cancellation that's not unmeritorious, but not super strong, but they feel they've got superior financial resources and willpower over the other party, and a feeling that if they just keep pushing, that they may get a favorable result which probably will be a favorable settlement.  You may not have to take it the distance, and that happens right now.

                  And then this adds another potential leverage point in that usually, while you may not spend more money in the fast case, you actually
spend less, you're going to spend it quicker. For those of us who litigate this stuff, like Tim does and I do know, and so under this world, you would accelerate the day upon which those dollars are going to be spent, and so, yeah, that's an additional leverage point. That doesn't mean it's an undesirable leverage point, one that should be eliminated, but yeah, that's candidly something that's out there. Any other TPAC folks that want to throw in thoughts or ideas? What about folks in the audience, any thoughts out there as to this?

I think then, the way I will leave it for now is, I've thrown the idea out there, and we really would like folks to stew on it and then throw their ideas and responses in to us. And so for the folks listening at home, for the folks here at present, for the folks at the TTAB, for the folks in the General Counsel's office, for my fellow TPAC members, let's give this some thought. Obviously, there's a lot to be decided, and the first question is whether we need it. I've asked
the question, and I look forward to every answer
that someone may have to offer.

I think that turns us now to the Medinol
situation, which Jim Johnson also has been
tracking. I think probably there's nothing going
on, but I'll turn the floor over to Jim for that
topic.

MR. JOHNSON: Yes, John, there's no
decision as far as I know in the Bose decision, so
there's nothing to report, but we'll keep our eye
on it and check on further developments as they
arise in the TTAB. The TTAB, as we noted at the
last TPAC meeting, has made -- given this
considerable progress in outlining the
circumstances in which fraud would apply, and it
is -- decision, and we appreciate that, and we'll
just keep our fingers crossed as to what happens
with the Bose decision, and hopefully it'll let us
all off the hook, so at least give us guidance
since -- how to handle these difficult allegations
of fraud and that sort of thing, speaking of
leverage. Thank you.
MS. DENISON: John, could I add one more thing ---

MR. FARMER: Please do.

MS. DENISON: -- before we close out the TTAB? When we had our subcommittee meeting, we had talked about the fact that generally the TTAB does not get involved in settlements. And Jim and I both had an interest in the TTAB exploring the possibility of being involved in settlement conferences between the parties.

As Jim said yesterday to me, you know, sometimes you don't want to appear weak, and so you don't want to suggest settlement, but if there were a TTAB ordered settlement conference, gee, you'd be there and you'd be happy, and I think that that's the case many times. Both parties kind of want to settle, but no one wants to bring it up, because then they think they're going to be in the weaker position because everybody is going to think, oh, they're desperate to settle. So we will hope that the TTAB will give that some consideration and perhaps some -- if people in the
broader trademark community have any interest in the subject of TTAB involvement in settlement conferences, we'd like to hear about that, too.

Thank you.

MR. FARMER: Anything else on TTAB matters from the audience? If not, Judge Sams, thanks for spending time with us and for your support and congratulations on getting those numbers down. Now we're going to turn things over to the Office of the Chief Financial Officer and Mark Olechowski, who's going to talk to us about a few things. And our lead person there on the TPAC is Elizabeth Pearce, and so she's going to be leading the discussion on the TPAC end of things.

MR. OLECHOWSKI: Thanks, John, Elizabeth. Can I ask a couple of my colleagues to come on up? I think both you've met before, but I'll reintroduce. Mark Krieger, Director of Finance, responsible for our financial reporting, ABI, counts our money, tells us how much we make every day. And then, of course, Michelle Picard is our Acting Deputy Chief Financial Officer and
previously the Director of Finance. So, Mark.

MR. KRIEGER: Thank you, Mark. Good morning, I'm the Director of Finance, as Mark said, and I'm here to talk about the trademark fee cost analysis, and this is my second update to this. On the next slide is our agenda. I wanted to mention briefly that we went over a more detailed version of this with Elizabeth Pearce yesterday. This is a little bit of a highlight for you, but we can entertain any questions at the end.

This is a joint project between the CFO's office and the trademark organization. What we want to do is identify the cost of work performed for fees generated, and there's a couple reasons why we want to do that, the first of which is OMB circular A-25, and that mandates that every other year basically we have to do a fee study. Now, we're going to more than meet that requirement with this fee study, because, as I will get to this, there will be three years of data.
It also makes good business sense, that's an obvious reason to do this. And TPAC requested this, I think in, what was it, October of last year? Okay. Some of the objectives that we want to accomplish is, we want to map our resources to the activities and then to the fee codes, which are the cost objects that we have revised. That's the main goal of this study. But we're hoping that there will be some byproducts of that, because when you do these fee studies, some things come out and come into like, and I'm hopeful that we will see some opportunities for management to look at some of the costs that are occurring in the trademark organization, as well as some of the shared service organizations.

The current time frame, we conducted an executive level kickoff in January of 2009, and we completed that, and then we had a formal cost study team kickoff in March of 2009. We have also during that time frame met with subject matter experts, as well as process owners within the trademark organization, as well as some of the
shared service providers, and were able to
identify some of the activities that are
performed.

The costing model is -- we are on track
to finish that by the end of this month, which is
Monday or Tuesday, and then we will complete the
fee cost analysis by September 30 of 2009. Now,
that will be for 2008 data. What we plan on doing
in October is, performing the calculations for
2007 and 2009, and that will give us three years
of data, and we'll be able to do some trending
analysis and see what that looks like. We have
completed phase one and phase two of the trademark
model revision. The first phase was planning and
the second phase was actually revising the model.
We're currently in the third phase.

We did lose some time in July. There is
a patent, a full blown patent fee study that's
being conducted concurrently, and unfortunately
some of the fee team are performing on both sides,
and so we have competing resources, but we are
making up that time. And I think we did a good
job in the planning phase that is able to mitigate
some of that.

We are going to finalize some displays
for reporting our final results. And what we
envision is, we envision having a fee code, what
we charge, and then the cost of that. And we want
to split that into two separate components, one of
which is direct from the trademark organization,
and then the indirect cost from shared service
organizations.

We've accomplished a lot since the study
began. We validated the trademark processes and
activities by meeting with the process owners, as
well as subject matter experts. And what we have
done is, we've mapped activities to fee codes, so
when we collect a fee, we know what activities are
triggered. We have also determined how to
allocate cost from inside the trademark
organization and outside the shared service
organizations. And what I mean by that is, for
example, in the trademark organization you have
the Commissioner's Office, and that cost needs to
be allocated within the trademark organization, as
well as the shared service organizations which are
outside of the trademark model. Both of those
have to be incorporated and allocated
appropriately, and we've done that.

We have also -- there's 67 fee codes,
and we have mapped those as cost objects in the
model. So the activities that are performed, we
use an activity driver to then split those to the
67 fee codes.

We've also leveraged -- Michelle will
talk next about the Pil-bar review; that was an
organization that did an independent review, and
we've leveraged them to come up with some
information on our allocation methodologies and
whether they found that appropriate or not.

Our next steps are to finalize the
model. Did we map everything appropriately? Did
we validate it, does it make sense? We want to
make sure that we have developed proper
relationships between the activities and the cost
objects. We also need to figure out the display.
Like I said, we think we have a good methodology of what we're going to show in the final results, the direct cost, as well as the indirect cost. And then we need to validate those costs. There needs to be some sort of check sum, some overall, that we account for all the costs.

Then we want to incorporate 2007 and 2009 data, like I said, so we have three years worth of data, and that will provide some good trending analysis, and then we will deliver the results to the executives, as well as TPAC, of course.

I've already talked a little bit about the presentation of the final results and what we plan on doing. This is going to be fully burdened. Go to the next slide, please.

This will be fully burdened cost, and like I said, we will have the direct component and the indirect component of both. And we'll be able to slice and dice that data in many different ways. And we're going to a more granular level. For example, CFO's office, instead of just having
a CFO lump sum, we're going to have Office of
Finance, Office of Procurement, et cetera, so that
will give a little bit more granular detail. We
have had some challenges. I would say the hardest
challenge was the beginning, when we were defining
and formalizing the methodology. But that has
paid dividends in the end, because we are moving
speedily now and we are on schedule to meet the
9/30 date.

It's also been difficult to coordinate
schedules, as always. We have, like I said, team
members on the patent fee study, as well as
trademark fee study, so that's always competing
priorities, but we are getting it done. And we're
overcoming these challenges, and again, we are on
schedule for a 9/30 date to complete the review.
And then sometime in October, probably the end of
October, we will have 2007 and 2009 complete, as
well. Are there any questions for me?

MS. PEARCE: I'd like to thank everybody
for all their hard work on this. We've made a
tremendous amount of progress I think since this
study was first recommended last October. And I'd like to thank, as I always do, Mark and Michelle and their excellent team for their hard work, and also for the beautiful job they've done in presenting this to us. This is by no means easily digestible material. I was given a slightly more complicated version of it in subcommittee, and there are materials beyond that that have to be condensed down. I would also like to thank the trademark organization for the amount of time they've put into this, notably Karen Strohecker and Debbie Cohn have done a beautiful job I think of providing a lot of input and making sure that every eventuality was covered.

I would also like to let the trademark community know that these fees are being studied from both an electronic and a paper point of view. The reason there are 67 different fee codes is because it's going to be broken down from paper filings, electronic filings, TEAS and TEAS Plus, and the various components of the prosecution process.
I have asked the OCFO team to have actual recommendations on fee adjustments for us for our October meeting. That's going to be -- we haven't set the date yet, but it's going to be probably mid October. So we hope to have some specific fee adjustment recommendations at that point. There will be, of course, a presentation to the trademark executives the end of September, so that seemed reasonable. We won't lock them into these, these will be suggested adjustments. There can always be a little bit more wiggle room if we need it. But I'd like to be able to, at the end of one year of working on this project, be able to show the trademark community what it's going to mean to them. I think that's what everybody always wants to know, is the bottom line, what's in it for me, so I'm hoping we'll have some help for them on that. And it may encourage people to continue with the electronic filing process, which I know is what Lynne would like. I'm expecting that that will definitely be one of the points that will come up.
I don't believe I have anything else to contribute at this point, but if anybody has got any questions or any concerns, if there's anybody out there in the trademark community that would like to send in an email question, we'd love to take your questions also.

MR. FARMER: Thanks, Elizabeth. The other two things we had, I always lump them together, result of the Pil-bar study and plans for shared services study, so we're back down here for --

MS. DENISON: John, may I ask one question?

MR. FARMER: Yes.

MS. DENISON: So the recommendations that are going to come out are say TEAS actually costs less than $275, so we might do a fee reduction for TEAS, but we -- it'll cost $500 to process a paper application? I mean is that the kind of thing that you're going to be looking for in the recommendations, or is it going to look at, you know, are the extension fees too low, too
high, I mean is it going to look at every single
fee that's charged along the way?

   MS. PEARCE: That's my understanding,
you know, for the 67, everything is going to be
looked at.

   MR. FARMER: That's correct.

   MR. OLECHOWSKI: Well, we'll certainly
look at everything. I mean I don't think it's a
CFO recommendation in a vacuum. I mean there's --

obviously, the trademark organization is going to
have a big say in what they believe the fees ought
to be, whether it's just pure cost recovery or
behavioral changes and everything else. So I mean
I think that's a team effort to make a
recommendation. And we'll certainly provide the
cost data for everybody to review in trademarks
and CFO, but I think there's a lot of other
considerations just in pure cost recovery.

   MS. BERESFORD: Yes; I think one of the
issues at the beginning was whether A-25 even
applied to our fees because we have the ability to
collect fees in the aggregate, unlike the patent
side of the house, where it's clear A-25 applies.

So the need for this fee study was questioned in
the beginning. Now that we're going to collect
information that is, in theory, going to tell us
actually what our particular services cost, still
does not change the nature of the fact that we
don't have to set our fees just to recover cost.

    Had we been doing that all along, we'd
be in a deep hole right now. So one has to take a
careful look at the information that you're
getting and think about the implications of just
-- of setting fees to recover costs. And so from
that point of view, yes, there are a lot of policy
issues to be considered in making fee
recommendations.

    I'm sure that, in asking CFO to make
these fee recommendations, you're really asking
them to suggest what actually things cost.

    MS. PEARCE: Absolutely, it's going to
be an agency-wide decision. What I wanted was to
have the information out there so that we could
see what the costs are. I realize that, you know,
there are incentive reasons why an extension of
time has a higher fee than a statement of use, and
I think that's perfectly acceptable. And there
will be other considerations along the way. But
I'd like to go ahead and get that raw material to
the trademark office so we can go ahead and start
making some analysis of that. The trademark
organization obviously is very well run and very
well funded, and we appreciate that. And this is
a way I think of being able to provide greater
transparency for the trademark community about how
those fees are calculated and what they're getting
for their money. So I think this is something
that'll be much appreciated by the community.
But, yes, it will be a joint effort to make the
final decision, there's no question about that.

MR. FARMER: Shall we go off to the
Pil-bar study?

MS. PICARD: You can flip to the next
page. I just wanted to give a little bit of an
introduction on this and maybe even some context
as to how this presentation and study fits with
what Mark just briefed you on.

At the USPTO, as I think the TPAC and the public has been briefed over the course of several years, the USPTO has an activity based cost information model, and it's USPTO-wide, not just for the trademark organization, and this model has been in place since 1997. While the fee study that Mark briefed on is a use of the information in the model, it's the trademark model in the amount of shared support costs allocated to the trademark organization and business, the purpose of this presentation is to talk a little bit about the study that the USPTO decided to conduct over the overall activity based information program, the methodology and everything used in the model.

This came out of probably numerous years of interest in the model, the methodology, the technical aspects behind it. A lot of questions about drivers, you know, how are costs being allocated and things such as that.

Given that the ABI program at the USPTO
has been in place since 1997, we decided it was a good idea to bring in just an independent evaluator to look at the model on a short term perspective in the overall program. And you'll see that the things that we asked them to evaluate, when we selected the contractor, we decided to do this from a USPTO-wide approach.

The CFO garnered experts in the patent organization and the trademark organization to actually create the statement of work, so set the objectives for this contractor and evaluate the proposals to come in to actually select the contractor that came and did the work. I think it's -- I can fairly say that all of us were pleased with the contractor that came in, they were very knowledgeable, had many years of experience in both the private sector and the public government sector in the work that they had done, so brought some best practices to us, which we were very much looking for.

So we had them come in and actually look at the technical aspects, I'll call it, of the
model, which was, you know, far more than my knowledge of dealing and digging into the actual software, how we collect the cost, how the -- what drivers we use, how they're allocated, so all the way from coming from our normal core financial system and driving all the way out to the outputs that you will see in October as to what the costs of services are and those that are calculated.

So they also looked at it when -- they kind of, from a technical perspective of how the program was established, meaning how was it managed, how was it operated at the USPTO as a whole, and then they also looked at it from the usefulness of the information that the models produce, and also, how is the agency as a whole using the information, is the agency using the information. They, as I said before, in looking at the third bullet, they brought a lot of knowledge and history and resources to the USPTO and also compared what we do to industry best practices and kind of tried to benchmark us, where do we fit against other organizations that they've
seen. So given the time constraint, we want to leave time for questions, I don't plan on going through every slide, so I will just let you know which ones we want to go to.

The next slide, please, is just making a statement that this presentation, the contractor that came in, the work is already done, and they've left us, and for the purposes of this presentation, they didn't want to change any of the work that they gave.

So if you flip to the next slide, you'll see that what I'm going to be talking from is actually excerpts of the presentation that they briefed the USPTO executive management on on July 20th.

So from a mechanic's perspective, when the contractor came in, we used the activity based information steering committee as the conduit for all business units from a liaison perspective, so members of every business unit had the ability to review the information, ask questions. All business units were present during their briefing.
on July 20th and had the opportunity to ask
questions there. As a part of their -- I
mentioned that they actually got into the
technical details of the model. They also went
out and met with all business units, from an
interview perspective, trying to get a perspective
of how the information is used, getting into the
application and use. So they met with executives
at executive level, they met with the financial
level folks, and the operational level folks in
every business unit. So we can just skip this
slide.

On slide six, you'll see that their
summary of key findings was that USPTO is a leader
in activity based costing and government agencies.
They were actually very surprised, they've been
going this in many government agencies across the
-- both the defense agencies and the civilian
agencies, and definitely felt like that we were
ahead of the game when it came to that.

They talked about our technical approach
in program management, said that we had a very
robust modeling program. Overall, from a technical approach, they ranked most models at a level three, which was their highest. There were some areas that we had room for improvement, but they understood why the models were designed how they were. There was nothing inaccurate about it or anything, they just said from a typical perspective in industry best practices, they sometimes found models designed differently in one of our models, but they understood why the USPTO had information needs that had the model this way. We, through the process, actually had already realized as an organization as a USPTO, that that -- one model that they pointed out we wanted more detailed information and had already been making steps to make those changes in 2010. So I think if they were to come in in 2010, they would see that the model looked differently.

We are also -- they also talked about that while the models were technically sound, complex, very well built, and the program management, we had a steering committee, we have,
you know, a team that leads it, all of the model
documentations was there and clear and concise
from a technical perspective.

They saw that we weren't really
leveraging the wealth of information in the model,
that this model is producing a lot of data, has
the ability to produce a lot of data and
information, and they didn't see through the
interviews or the reports and things that we do,
how we are actually applying the data in what they
kind of referred to as the more strategic
operational tactical avenues that they typically
see ABI models at this level used for. So they
see that we were using it for financial reporting,
for defense, for all of those kinds of things, but
they said that models at this level tended to be
used more routinely for operational
decision-making. At the USPTO, we tend to use it
for I would say ad hoc decisions of those nature.
So we get questions asked, we go in, the
information is in the model, and we ask them, but
it hasn't necessarily been integrated into the
strategic and operational management at the
organization.

So they kind of talked about a way
forward and that while they came in, they couldn't
necessarily define the strategic direction of the
USPTO as we want to use this information, but made
suggestions and kind of gave us pros and cons of
three different ways forward. If you can flip to
the next slide.

This is a little bit about what we
talked about -- what I had talked about, when you
see that the program had a good organizational
framework. The one thing that they pointed out
that was a plus for us is that it was tied to a
critical business process, and that critical
business process was the financial and performance
reporting.

They said that, from their experience in
the federal government, that that was probably the
reason for the success from the length of the
program, that it's been in place for so long, it's
been recognized, it's been established. They said
they see a lot of things in federal agencies where
they come in and they set up an ABI model or
program for a particular reason, to answer a
particular question, and then the person who
wanted that question is no longer at the agency,
the model dies, people forget about it, it costs a
lot of money to pull it back up again when
somebody has a different question, and they were
impressed that ours has been in place for a long
time.

And their surmise was basically because
we also use it for our financial reporting and
financial statements, which is a must have, we
have to do it for that purpose, so we've kept it
up.

The other thing they thought was, they
were pretty impressed with was our enterprise-wide
time management capture system. With the PTO,
given that, you know, we are more production
oriented, what they see in a lot of, not just
federal agencies, but private sector companies,
too, that the way that time compensation costs are
allocated are based on a survey, random -- they go
and survey employees once a year, once every two
years, what percentage of your time has been spent
on each of these activities, and the fact that
USPTO had an integrated time and attendance
system, where the data used, where they were
capturing that on the kind of activities people
were working on, the business units that were
being supported by those activities are integrated
into the model they said was -- we were far and
above -- ahead of most federal agencies, and a lot
of private sector agencies.

They looked at our process for checks
and balances, quality control, meaning that as
things run through the model, we're not dropping
costs off. If a driver intended to put it in one
bucket instead of another bucket, they're not
technically going to the wrong place, and said
that everything looked good there. If you can
flip to the next slide.

This is where they told us that we have
some room for improvement, the application and use
of our data. I won't go through all these
bullets, but again, this is that we use it for the
financial and performance reporting. Our
financial statements, some of the required GPRA
measures, and also providing and forming the fence
calculation, as you are all aware.

And they just mention that we're not
realizing the full potential of the overall
strategic and operational objectives. Some of the
areas that they evaluated us against and said that
it doesn't appear that we routinely use the
information in this area is process improvement,
strategic sourcing, operational planning, cost
control. The other thing that they said in
benchmarking us against those areas is, that's an
agency decision if that's where we want to go.

So the fact that we're not doing that
isn't a bad thing, but just for us to have --
think about where we want to go with this data in
the future, do we want to just stay as we are
today, which is fine, or do we want to actually
move to -- from a more operational perspective,
which from I think the CFO's opinion and the -- we
agree with the independent assessment, and they
came in saying, wow, there's a wealth of
information here, you should begin using it for
some of those operational decisions.

So the bottom line is that we just need
to decide as an agency strategically where we want
to go as an organization. And I'm going to --
this is just the three options that they talked
about. And you can see that their recommendation
was option three, leveraging the capacity and
capability that's in -- that's there today, to
expand the applications and use. They also, you
know, consideration, you've got to weigh your
needs against the level of detail versus the level
of effort required. In a model like this, you can
count every little nook and cranny, and is that
really value added. You know, the more you count,
the more detail you get, the more granular, the
more it costs for the organization as a whole, so
you have to decide if you're using the information
or not and where you want to go with it.
I mean as you saw from the last presentation, we definitely have a need at the PTO to use it for speed setting, which they recognized we were already doing, and then with that tends to come some of the more operational decisions. If you can turn two more slides, the next one.

So their final thoughts were that their scope was to identify opportunities through best practices, look at the technical aspects of stuff, and they saw that PTO was using a lot of them. There is room for improvement in some of the application and use, and that was something that we just need to decide where we wanted to go as an organization.

They said that we built a credible model in line with best practices, great foundation for moving forward. And they also kind of related to the third bullet, they said that where we are, you know, we have to focus on resolving where we want to go from a strategic direction of that and that is very typical of both government and private sector, when they come in and see a model
like this, that this next hump that PTO is
presented with to get over is very typical as to
where they see with model building. That's all I
have for this presentation. I don't know if
anybody has any questions.

MR. FARMER: Elizabeth, do you have
anything here?

MS. PEARCE: Well, no, not really,
although I would like to know, and this is purely
in an informal way, if the CFO's office, or if
Lynne have any ideas at this point of how they'd
like to proceed to make better use of the ABI
model. You know, I think that the study has been
a great way to start. Anything in particular
that's occurred to you where it could be applied
that you hadn't thought about before that perhaps
the Pil-bar study gave you some insight on?

MS. PICARD: I think, if I can go ahead
and answer, I think that one of the things that we
had discussed a little bit in our steering
committee is, probably what we need to do as a
steering committee is, go through the information
that was in their final report, which was, you
know, many pages long, and decide where those
nuggets of information are. They said room for
improvement, and then they gave us these three
options, pros and cons for a way forward.

I think the steering committee owes it
to the agency to take a look at those, decide
where we want to make improvements or not, and
make a recommendation for a way forward.

Irregardless of the study, the steering
committee has already, I would say, in 2009, began
taking some leaps in looking at cost of certain
aspects and activities at the USPTO from an ad hoc
perspective, study perspective. I think that what
this is telling us is that we should continue
doing that and expanding on that, that's my
opinion.

MS. BERESFORD: Let me just say that one
of the conclusions of the study that you saw
briefly mentioned there was, the system is overly
complex for what we're using it for right now,
also, overly expensive for what we're using it for
right now. So one of the challenges, given our financial situation, one of the obvious questions that will have to be answered is, is this the time to put more money into this system, or is this the time to simplify the system and cut our costs, so that's going to be one way of going forward here. And alternatively, of course, my understanding of ABC is that it's for business decision-making, and it's clear from the results of this that it's not being used for making business decision, we don't have the information we need to make, as a business owner or leader or manager or whatever, I don't have the information I need to make certain decisions.

So the question is, what will it cost to make the model useful for the business units, and then -- and is that worth it, or should we go forward with simplifying and making the system less expensive for the business unit. So those are the kind of questions that will have to be answered.

MS. PEARCE: I think that's reasonable.
1 You can go either direction on that. Obviously,
2 if putting more effort into the system would
3 reduce -- would lead to cost cutting, cost
4 savings, you know, then it begins to pay for
5 itself, but you've got to look at the personnel
6 that are involved and whether or not there's
7 anything that needs to be added. Certainly, once
8 again, the trademark office is pretty well run.
9 But I do think you paid for the Pil-bar study, I
10 think Michelle is right, I think being able to
11 have the steering committee look at the
12 recommendations that have been made and examine
13 all of that, presumably that would not be too
14 labor and cost intensive, and it seems a shame not
15 to go ahead and explore all of that.
16
17 MR. FARMER: Is there a game plan
18 existing or one that will be formulated for
19 getting to the answers to the questions she just
20 posed, Lynne?
21
22 MS. BERESFORD: As far as I know,
23 there's no time line at all or plan. I think one
24 of the things that would have to be considered is,
we'd have to have an estimate of what the cost
savings would be to have a more simple model. And
we would also have to have an estimate of what the
expense would be of having the model actually
capture and give us the useful business
information, and then some kind of an idea of what
the savings could possibly be gotten from that.

So all of those things, I don't think
any of that has been prepared. I don't think --
at least I don't know about it. And so -- but
those are the kinds of questions we'll have to ask
and answer.

MR. FARMER: Michelle, go ahead.

MS. PICARD: I just wanted to comment on
both what Elizabeth and Lynne said. I agree that
we need to come up with a plan to go forward. As
you saw, the study was just completed, we just
received the final report July 31st, and I think
there is a plan to decide as an agency the
direction we want to go.

In making that decision, the one thing
that the USPTO needs to consider, which makes the
balance -- even though we may not be routinely using the model for operational and tactical decision-making, it's not integrated into our day-to-day lives, we do use it to answer those operational decisions on an ad hoc basis.

And some of the complexity that Lynne referenced that's in the model, the reason they typically don't see that in other federal agencies that use it just for financial reporting is, those other federal agencies are not fee funded, so some of the complexity that's built into our models is to actually get the answers and the information we need to figure out the cost of each of the 67 fees in the trademark organization and hundreds in the patent organization.

So it's the balance for the USPTO in figuring out how much we -- I think -- knowing the cost of our fees is a must have, that's something that we cannot do without, and making sure that the complexity in the model is commensurate with at least that, and then deciding whether we should be leveraging that for the more operational
tactical decision-making, and how to integrate
that into the day-to-day lives of the USPTO.

   So we haven't done any cost analysis of
what it would cost to simplify, but that's
something that the steering committee I think can
make a decision, whether we want to spend the time
doing that or not.

   MS. PEARCE: Would you like for the
steering committee to do that, Lynne? Would you
like for that to be a priority?

   MS. BERESFORD: Well, I don't know that
this is something that the steering committee is
particular set up to do, is to do a cost analysis
of what simplifying the system would mean, but
it's something we will have to discuss about what
the best way to make that kind of a decision is.

   The steering committee was actually set
up to talk about drivers and other things of that
nature. I don't know that its charter or its
expertise would be in that area. It's just not
something I would have thought would be something
that the steering committee did. And again, it's
just something we need to think about and figure
out what the best way to do it is.

MR. FARMER: While I'm sure that we'll
be keeping an eye on this on TPAC, I know no one
would intend for this result to occur, but, you
know, this is a great study, and let's not let the
results go to waste, and I'm sure we'll find a way
to gather the value of that going forward. The
last thing we had was plans for shared services
study. Elizabeth.

MS. PEARCE: I'm going to let Michelle
-- we discussed this yesterday and I think
Michelle can probably summarize it pretty well.

MS. PICARD: I think that one of the
things we referred to, the desire for a shared
services study is probably looking at some of the
specific cost areas that we as an organization may
want to ask ourselves questions about. That's the
beauty of activity based information is, it gives
you data and then it allows you to be able to ask
yourself the decisions on how much it's costing in
specific processes.
I think what this topic is related to, as I understood better in the subcommittee yesterday, is interested in understanding the shared services costs as they may be driven to the patent and trademark business lines, and is there improvements that could be made in the organization from a cost improvement perspective, process improvement perspective in having cost savings in some of those areas.

So I think what we had agreed to is that we'll start going forward, making a list of what some of those things are that as a steering committee we want to get into. And I think I referenced earlier that the steering committee in 2009 has already began looking at some of those areas, and I think is very much eager to go -- to take the ABI program to the next level of looking at the output of the models and actually doing some analysis of the data.

And there's just kind of one correction I would like to make for the record, that the charter of the ABI steering committee is to kind...
of funnel the direction of the program as a whole.

So while we have spent a lot of time looking at the detailed cost drivers, as did the independent review, that wasn't the full purpose of the steering committee. And I think we are getting to a point where perhaps we can put that behind us and start actually looking at and analyzing the data that's coming out of the model, the wealth of information that's there. And shared services will definitely I think be a big part of it, because as we're doing the fee and cost study, those are very much looking at the patent and trademark businesses, and all these shared services obviously feed into supporting the patent and trademark business.

So it's prudent for us as an organization to just look and make sure that our processes are as efficient as they could be and as least expensive. So --

MS. PEARCE: I think what we decided was that there was not really a need for a full blown separate shared services study, that a lot of the
information was already contained within the study that we've just done in the Pil-bar report, and it's a matter of taking the areas that are of particular concern and being able to analyze that data and then trace it back to see whether or not the offices that we're most concerned about are operating in the most effective possible way. Maybe that's what's creating an end result that's not what everybody wants to see.

So we did not feel that we needed to do a full blown study, but they are going to take --- the trademark organization and the other members of the steering committee will sit down and prioritize which areas they want to look into, and we'll go into that as thoroughly as possible and see if we can figure out, get a better understanding of what our costs are in those directions.

MS. BERESFORD: So I have a great interest in what shared services cost, because as we've gone through time and trademarks has gotten smaller, as an organization, we've often seen our
absolute cost of shared services go up. So trademarks has always been interested in how much it costs to hire someone, how much it costs to process the 52, how much it costs to do the things that shared services does, how much does it cost OCIO to support one person on our work at home process, on and on and on, those are the kinds of shared services.

And I'm delighted to hear that we already have that kind of information in our ABI model, because we've been asking for it, and now I hear we can get a special report and we can get that information, so this is all really good news. And I know that if the information isn't available in the system, then we'll have a focus of what we can work on in the system. So this is all a really good development, and I'm very happy to hear it. I wait for the information out of the system. Thank you.

MR. FARMER: If there's nothing further, we will go ahead and take another five minute break, then come back for our last session. So
five minutes, and we'll chat then with the OCIO.

Thanks.

(Recess)

MR. FARMER: The next thing we have on the agenda is our every meeting discussion with the OCIO. And I'm going to turn things over to Jeff Storie for a few preliminary comments, and he will lead us into that -- through that part of the agenda. And also, just so the folks at home know, our technology committee is Jeff, and Tim Lockhart, and Howard Friedman also helps us out with that.

MR. STORIE: Thank you, John. For those of you all who have followed the activities of TPAC over this last year, you're familiar with our concerns over the IT challenges that the agency is facing. The trademark office has, as everybody knows, enjoyed some amazing -- an amazing track record for the course of the last five and six years. We've seen unprecedented success in productivity, we've had gains in both quantity of work and quality of work, we lead the federal
government in making available telecommuting
opportunities to our employees. We've seen
pendency rates drop steadily, and so for us, as
members of TPAC, I mean we're very proud to be
here. And the things that have happened are
testament to the drive and the talents of our
examining core and to the skill and diligence of
our Commissioner, Lynne Beresford, and her capable
management team and the support staff.

I mean this, to us, is the agency to be
in in the federal government. But we can't keep
on doing this, we can't keep on maintaining these
kinds of standards without a dependable computer
infrastructure. And so for those listening from
the outside who perhaps have not heard much of
this before, approximately a year ago, in the
summer of 2008, a study was completed of the
infrastructure, and it revealed that there were
significant deficiencies in our systems.

And the policies of the previous CIO
over the past six to eight years have left the
system in a very precarious position. And we were
in need of upgrades, they were way past due. We were operating on systems that relied upon unsupported software, aging devices, obsolete switches. We were running at the outer limits of both our power capacity and our band width. And into that mix came the new CIO, John Owens. Now, as a practitioner, I was only tangentially aware of what these problems were about. I mean I could see them on the outside, I could see some small things. I knew every once in a while TESS wasn't available. I knew sometimes things ran slowly, but the trademark community did not have a clear picture of where we were, and the study made it very, very clear that we needed a comprehensive plan that was going to rebuild the system from the bottom up.

And so under John's leadership, a five year plan was established, often referred to as the road map, and you'll hear that phrase used today, and the road map was a very ambitious plan to give us a world class system. And it was not just about rebuilding the hardware and the
physical infrastructure, but also about rebuilding
the human resources necessary to run the office of
the CIO, and it's a plan that we have applauded
and also followed closely and encouraged, and it's
one that, for those of us on this committee, has
taken most of our attention over the course of
this last year.

We reported in June that, because of the
downturn that happened in this fiscal year, that
the office of the CIO was going to have to make
some significant changes in its expectations
relative to this plan. The plan as initially
rolled was a $200 million project spread out over
a five year period. It is now -- it appears that
because of funding cuts, that we're going to have
to spread that out over a longer period in order
to get the results that we think are necessary,
and now it's become a seven year plan, and that
was -- John discussed that with us in our meeting
in June.

Recently, with the admin of our new
director, we had a chance to see some changes.
And one of the first acts of our new director was to sit down with John and give him some new priorities for this plan. And these are priorities that will have a significant impact on the trademark community, something we think would be very much of an interest to the community.

And so I'm going to ask John to give us an overview, John, of where things are on the road map, maybe some brief comments about that, and then, if you would perhaps spend a greater part of your time on these new initiatives that the director has had you to undertake, and how that will have an impact on the operation of the trademark office and would be of interest to the community is all.

MR. OWENS: Thank you. So just to the very high level, the road map that laid out the modernization of our infrastructure here at the USPTO and the desires to stabilize it and increase its capabilities to a more modern level had nine initiatives. Three initiatives are what we consider not on schedule. This is an update to
what I said back in June. So out of the nine very
aggressive stretch goals that we had, six are
totally on track, and these are delayed mostly due
to funding.

I won't get down into the details of
those, I think they're pretty self-explanatory,
but I was asked what was the overall impact of the
CIO and the CIO's budget with the downturn of the
economy and the need for the agency to recoup
funds.

The OCIO shop for the fourth year
running took the biggest brunt of the collections
of budgetary dollars to fuel other parts of the
agency, and we gave back 60 million out of budget,
mostly on business projects and operations and
maintenance and compensation while trying to keep
the road map projects to improve and stabilize our
infrastructure -- but even with those reductions,
approximately seven million, the aforementioned
items were lost or behind. I was also asked to
briefly mention hiring. We are still down on
vacancies Though we were graced on having some
hires this year, we are still down 92. This
includes all of my attrits out of my organization
for all types of reasons. But we are still
interviewing and trying to hire the few that we
can for next year.

We discussed at length last year about
trademarks lending some assistance. I've been
very happy, I have two trademarks folks that are
already working for me. One is Chris Doninger,
who I don't see here today, and he's been -- he is
my current acting special assistant. He sits in
on all my staff meetings, all the decision-making,
he has full access to my books, full access to my
staff, and is really the top liaison into the
organization.

I also have one librarian from
trademarks helping me out, and two more folks on
their way, which I am very happy to have, as well,
two examining attorneys with some IT knowledge
that are going to be helping us manage the future
IT next generation projects for trademarks.

They'll be starting I believe in just a few weeks.
So now we get down to the big plan. The strategic IT plan, which I was hoping to release chapter seven which pertains directly to trademarks with you, I'm not, and the reason I'm not is because, as we've all discussed in the last few minutes, Mr. Kappos, in his very first official meeting with me, sat down and we had a long conversation about priorities. And to uphold the tradition of trademarks going first, which has been a long held tradition here at the USPTO, and braving new frontiers, Mr. Kappos asked me to, now that we have put a year in to the road map, and the road map called for a year and a half basically of stabilization before taking on work, he said, put aside that idea, you've gotten a year, why don't we use trademarks as the example of where we want to go. He said, why don't we break away their systems, isolate them, stabilize them, host them virtually in the cloud, and I'll explain what that means in a minute, and really make them the prime example for not only the USPTO, but the rest of the federal government,
embracing the new technologies that President Obama and OMB and the Department of Technology there are trying to embrace.

And I said, well, coming from a guy who spent his entire life developing software, that sounds like a lot of fun, and I'm more than happy to take on that as my new top priority. So out of that have come a series of meetings, and I'll touch upon a few of the basic concepts of what we're going to do. In the next six months, we hope to get through what's called intake and then concept/definition. This will define the scope of the project, what needs to be touched, how it will be touched, and how it will be managed, it will provide high level conceptual budgets, the budget requirement, it will produce prototypes that people will be allowed to experiment and play with, and then help us refine our new user interface and design.

Unfortunately, most of the trademark systems today are not capable of being hosted what we call in a virtual environment, they are
dedicated systems built a long time ago that don't suit a modern hosting environments. What does that mean? That means that the technologies used to host them link hardware and software together. Modern technologies don't do this.

With the advent of LINUX, which is an operating system and the java language or any of those similar languages, there is a break between hardware and software, where software can be written once and hosted on any particular platform.

The concept of the cloud fully embraces this. The cloud is this technological concept that says if I have distributed computers all over the globe, potentially, and they are all interconnected, and they can all run any application, any software application you want, as long as it's written appropriately, then I can dynamically allocate resources to meet demand, in other words, scale, to be redundant, in other words, if something fails, there's always a service there to take it over, and to be dynamic,
which means if I need to increase or decrease or
dynamically allocate more resources or less
resources, I can do that.

Companies like Amazon and Google and AOL
and Yahoo all embrace the -- IBM, in particular,
all embrace this ideal, this virtual environment
that doesn't -- that is physically distributed
across the globe, that all interoperates together,
and that's called the cloud.

It's a little hard to wrap your head
around, but it literally happens like a little bit
of magic. If the software is written and hosted
appropriately, and with the software systems that
are available, it can be installed anywhere on the
globe and operate efficiently, including beating
the growing or shrinking demands of its users.

This is how big companies can rapidly
scale for events and search, you know, like
search, for example. Google can increase one
minute, where, you know, where it's text search
and another minute where it's picture search and
so on. It helps to dynamically allocate very
generic resources that are very cost effective and
get away from the concept of main frames,
dedicated hardware, and dedicated environments.

What we are going to do is, we are
looking at the trademark systems in whole. We are
going to evaluate their current technical
capabilities, what they are written in, and we are
going to migrate them from the platforms that they
are on over a period of time to a more modern
infrastructure.

This will start with the separation of
the systems through the development of clean
interfaces, and then their migration, if they can
happen as is, or be rewritten onto the modern
platform.

This will provide you with that
redundancy you want, the scalability that you
desire, as well as the robustness. At the same
time, Mr. Kappos has asked the CIO to look at, in
partnership, of course, with trademarks, all of
the different areas of the system that are not
currently electronic and plug those holes. Of
course, we will do this meeting with the industry
standards, not only those embraced by NIST, but
also OMB, Department of Technology, as well as the
industry standards available for doing this, which
are widely known. This isn't cutting edge, it's
actually been going on for about seven years,
eight years now, and we will embrace those
standards as we move forward to keep as agnostic
as possible. So if, during the time the system is
here, it can be hosted here, and later it could be
hosted anywhere in the world. That's all. If
anyone has any technical questions, I tried to
help smooth that over. Some of these concepts are
a little -- it seems kind of magical; well, yeah,
they are. So I'd be happy to entertain any
clarifying questions.

MR. LOCKHART: Do you have any
questions? Okay. Well, first of all, I'd just
like to thank John and Scott Williams and the
whole OCIO team for doing such a great job,
preparing this briefing, and spending three hours
yesterday briefing us in detail about what's been
going on in terms of moving the road map forward
and now to embrace this opportunity, which I think
is a very exciting opportunity, a great
opportunity.

Mr. Kappos has asked you to lead the way
on. As Jeff said in his remarks, I really want to
commend you guys on everything that you've done
over the past year; the progress has been very
impressive under trying conditions, and we
certainly want to commend you for that. As you
said, this is an opportunity not only for the
trademark operation to increase the effectiveness
and efficiency of its IT systems to move toward
this complete end to end electronic processing,
but it is an opportunity for the USPTO as a whole
to really take the lead in moving toward this, you
know, computing of the future, the cloud
computing, as you described it.

So I think that's very exciting and we
look forward to seeing these developments as you
continue to flush them out.

I realize you just got these new
marching orders recently, and I realize that there
are a lot of details to be filled in, but we
certainly look forward to getting more information
about that going forward.

For the trademark community, we do
recognize, we on the TPAC recognize that there is
some risk inherent in this, but we are confident
that OCIO is going to proceed carefully, working
closely in conjunction with the trademark
operation.

I was pleased yesterday, as I'm sure you
were, to hear the suggestions and recommendations
of folks coming from the trademark side. I think
they had some great ideas about things to --
factors to look at as you go forward. So we, the
TPAC, appreciate the fact that you are sensitive
to getting input from the trademark operation, all
the way from the senior leadership down to the
examining attorneys, and I think that's very
important.

So I guess the only question I have at
this point is, I know you're now revising chapter
seven, the strategic IT plan, to reflect the new 
marching orders that you got from Mr. Kappos; do 
you anticipate that you'll be able to share that 
with us in October?

MR. OWENS: I'm hoping to share in 
October the preliminary data that I have about 
this new strategy, this new project, or the 
trademark's next generation of systems, and the 
update to the chapter seven of the SITP, yes. But 
I don't know; the SITP is a multi year, six year 
or so plan, and I might not have all six years. 
Hopefully this won't take that long, it'll take 
much less time.

But I know that this is an effort that 
is a couple years, is going to take a couple years 
and will show significant progress in a year or 
so, but I probably won't have the entire chapter 
seven for all six years planned out, but I will 
have a significant portion to share.

MR. LOCKHART: So you think you'll have 
part of that to share with us in October?

MR. OWENS: It would be one of my goals
to share.

MR. LOCKHART: Okay, great. And, of course, this is as, you know, new information to you, it's certainly new information to us, I'm sure, and coming back in October, we'll have additional questions about your plans for going forward, but again, we think it's a great opportunity and we look forward to doing whatever we can to help you facilitate.

MR. FARMER: Jeff.

MR. STORIE: John, to the extent you can, can you give us a sense as to, at least from a preliminary point of view, how this change in priorities would effect your overall budgeting for the other road map? Is that something that you think will increase your financial requirements in the short term, or is it something that will simply mean the reallocation of sort of fixed resources as you're going forward?

MR. OWENS: Well, of course, the CIO shop will look to hire a team of contractors dedicated to this effort, drawing upon the best
that we can get a hold of for actual development
work, UI design, of course, support and all.

There will be a significant portion of -- of
course, there is a significant portion of my team
currently dedicated to trademark work, and we will
take those folks that are working on common hosted
parts of the system, whether it be RAM, which is
our financial system, or our networks or hardware
environment and make sure we build the appropriate
environments here with resources that we either
already have or that can be purchased.

As far as impacts to the road map, the
road map called in year two a -- ten mid-year, at
our six month mark, to start up business related
projects; again, that was in there from the very
beginning.

This does accelerate that approximately
six months, but I think that the benefits
definitely outweigh the negatives in this case,
because it was always part of the road map's
intention to replace some of these aging, as I
told you before, systems that cost us a lot of
money to maintain, that don't meet anything near
modern standards with modern ones.
This shift in priorities basically said,
instead of trying to do it all at once, everyone
equally, because of patent's limited budget, why
don't you not pay attention to that for a little
while, we've got other issues to deal with there,
and make sure that trademarks, because you do have
fees that you can use, is put at the forefront of
being the pioneering effort, so that's what we're
doing. It should not impact the road map too
much, and where there is some overlap, we will, of
course, mitigate. But because it fits so closely
in line with the plan, other than that six month
acceleration, it is certainly something that I was
more than happy to embrace.

MR. FRIEDMAN: John, what impact -- I
think it's appropriate that David is still here;
what impact would the revised strategy have, if
any, on the TTAB automation systems?

MR. OWENS: There are several TTAB --
TTAB systems that trademarks may not consider part
of the trademark system, but when you look at the overall architecture, we at CIO do consider to be a significant overlap. At this time, we are concentrating on the core trademark systems, including all the user interface and customer interface. We will be looking at what enhancements need to be made to TTAB, hopefully automate some of it that's manual today. I don't know if many people realize, but TTAB, the systems there do take some manual intervention to get things done.

We would -- if you look at the effort of engineering, a much more robust automated system, but that, of course, will have to be discussed at the time, and which organization would pay for those infrastructure improvements and so on. So is it part of the scope? Yes, because those systems directly plug into the trademark systems, they are core. If the trademark systems suddenly change, they would all break. So we can't go touch it without breaking, you know, the TTAB system, and we wouldn't do that, we're being very
careful not to do that. But it will be a separate plan or addendum plan to the overall trademark system in general.

I have some experience at this, doing this for a living, just rest assured that we will take very careful care not to break the systems while we're going along, whether it be for patents or trademarks.

I led an effort for America Online a number of years ago, where we replaced the entire core connectivity infrastructure for 32 million users across the globe. It was like crawling out on the wing of an airplane and changing out an engine mid flight. It was very dangerous and it had to be done very carefully.

So using that experience, I promise you, we will be very careful on what we touch. We will be very careful to keep the focus on trademarks and the costs of fixing systems that we have to break connections to a minimum. But we will not forget those systems. If we have to touch it, if it has to break, we will make sure that we do what
we can to make sure that it does not impact the
business, because just as trademarks wouldn't want
to overly effect any other part of the business,
including TTAB, we wouldn't want that to happen
either.

MR. FRIEDMAN: And then one other
question. As far as the revised trademark
strategy, I assume down the road that this would
only help our telework program, particularly when
people start moving out of the area?

MR. OWENS: I would definitely hope so.

In fact, it's one of the goals of my office to
fully embrace what's called the Web 2.0
environment. Web 1.0, just to reiterate, was a --
very much the user goes to the web and it's not
very interactive. You can request information,
read information, post information, and that's it.
The Web 2.0 revolution was more about the
interactions with the web; can I go to Google maps
and query something and then send that to a friend
and manipulate it in a bunch of ways, can I look
at my financial data at the same time as I'm
customizing the environment. If any of you are familiar with igoogle or any of the other i products either done by Apple or the My products is done by like Myspace and so on, it's all about taking parts of the internet and making it interactive to the users. That's really taking what was a flat view and making it an application, a web based application, and you might have heard that term, as well.

I am hoping because, as we get a more desegregated core, that we would embrace some of those, as well, with the concept of, per se, my trademark, where a person could go in and see all the trademarks they have going on, get immediate notification on what's going on, knowing how -- what's happening, get information back and forth quicker between the examiner and so on, taking the data we have here and closely merging it with the data that you have in a customized environment for your needs, including linking of account.

So if you had a multi tiered organization, there could be set up some hierarchy
where you could view those applications of your
subordinates and so on and so forth, and that type
of environment is all possible, and I am hoping to
explore all of those possibilities with
trademarks, but relying on that common
infrastructure that is well used throughout the
industry and has been for well over ten years, to
enable us to take all that work that has been done
before and embrace it to help not only you, but
the -- as well as the application, but our own
examining attorneys use tools that are much more
flexible over a longer internet connection than
some of the ones we have today, which are, well,
not capable of that and all the time have issues.

MS. PEARCE: A typical question from
somebody who cheers the Budget Subcommittee. Do
you think you'll have numbers for us in October
about what this is going to cost? I mean the
Trademark Office is going to have to fund this
solely, I assume, this is not going to be a shared
cost, so I think it would be helpful to have some
idea.
MR. OWENS: What we are hoping to do, and what our current plan is to do is, we will complete intake by the end of next month, that's gathering up all the high level requirements and the high level plans and starting off the process. We would like to complete concept and definition. When we do that, at the end of the month, we will have a very high level estimate of what it will take to get requirements and prototypes done.

Those, of course, will further clarify for us what it will cost to fully build out and deploy the system. So it's going to come into two parts; the first one will be a high level estimate, prone to a large amount of error, because we don't know, right. We have a couple concepts floating around a table, a couple discussions, there is no magic key that derives that to funds. What we're going to do is, put a very educated guess in on what that will cost. And then we're going to go through the process of gathering requirements, writing requirements, doing UI design, building actual
working prototypes, aka systems that work but are
not ready for deployment, and making sure that
we're all happy with it and then deriving from
that preferable a fixed set of costs from
releasing fixed price contracts out to vendors to
actually build the particular parts as we do here.
And not going for time and materials, I will be
going for more of a fixed price methodology, so I
can much more tightly control the contractor and
hold them responsible for the quality of the
delivery.

So, yes, you will get some estimates;
you will get a very high preliminary estimate, a
pretty good cost on what it's going to take you
through concept and definition to get through,
that will be an investment cost. You will have to
decide whether or not -- trademarks will have to
decide whether or not it will be worth that
investment to then later clarify what these
systems in whole will cost.

MS. DENISON: John, can I ask couple
questions? First, I understand when examiners are
filing briefs to the TTAB on appeals, they're using the TICR system, which can't be then digitally used, it has to be rescanned into the TTAB system, so I wanted to make sure that you were considering addressing that issue when you do this upgrade, because that would I think help modernize the whole TTAB function. And the second thing is, just going to the cloud platform actually to save money.

MR. OWENS: Good questions; the first, we haven't gotten into the specific details and the holes of end to end processing just yet. These orders are like two weeks old, and we're holding a lot of meetings and having a lot of discussions, but we have not hit that one. But I'm hoping -- that, of course, seems like, to me, it would be a hole in end to end electronic processing. And my orders are to plug all of the holes in end to end electronic processing, so I'm sure it will be discussed, but it hasn't been quite yet.

Your other question about cloud
computing and how it's -- whether or not it will be cheaper; for large scale operations in the industry in general, the answer is, yes. For small scale operations, and I would consider trademarks probably on the border of that, it's not so obvious whether or not it's cheaper. I would have to say we're going to have to look at it in general at a later time, when we get a better idea of what it will take.

You have to understand that migrating the entire system to be virtually hosted is a very big step, in fact, the largest step toward getting the ability to host it somewhere else.

And there are agreements that private companies can make or even government organizations can make to host things in the cloud virtually, and you pay for computer time, CPU, band width and so on, and for large corporations, of course, they sell some of their excess time.

Like Amazon, for example, has a big cloud computing center, and they sell excess time to people, and they're able to, you know, leverage
that to reduce their costs quite a bit, because, as you might understand, Amazon, when it gets to be like Christmas, needs a lot more capacity than they need during the middle of the year. So being able to go to another vendor is important, and that, of course, would help us out, as well. But I don't know all of the economics about the cost today, cost hosting it, the security requirements put on by the federal government. For example, I'm meeting with the CIO GSA next week, I think it's next week, it might be the week after, where we are going to be discussing the federal cloud computing initiative that's currently underway. And I don't know what those costs are because right now that's a brand new concept, as well.

I can tell you for the short term, we're going to be developing a small cloud environment here. Why is that? Some of the systems that we have to talk to are not able to embrace long connections outside. For example, TRAM, the main frame system that I've talked about before running COBOL, will be one of the last things to migrate.
There have been a couple of past attempts at migrating it all for that platform onto something else, those big bang initiatives failed, I don't want to repeat the mistakes of the past. So we will keep it close because there are limitations of how TRAM interacts with the rest of the system and slowly migrate that functionality off over a period of time. I don't have specifics on that yet, I will hopefully soon, but all of that has to be taken into account short term. But the long term goal would be to be able to not only separate the systems, but host them in such a way that we could optimize for cost and efficiency by putting them anywhere that met the CNA federal requirement that met the guidelines that are dictated by the federal government and so on. So --

MR. FARMER: We're going to move on now.

Thank you, John, for your presentation. We could ask a lot of questions, but we just need to move on with our agenda. And I think what I've learned is, because we have this new initiative, people
have to give us a bigger block of time for our
technology chat when we come back in October, and
we look forward to that.

Lynne, I'm going to turn the floor over
to you for a few brief comments about how things
stand. We heard a little bit of it earlier, and
we'll go from there.

MS. BERESFORD: Thank you very much, and
thank you for the information, John. To add to
this just a few comments; John has a real
challenge, because not only while he's looking at
how to migrate us to the cloud, he has to keep all
our card systems running in a way that trademark
owners can use them, and he has to keep improving
those systems, so when we see improvements, it can
really help them, instead of saying, okay, wait
two years and then we'll do something. So he's
got all of the challenges he has right now with
running our systems, and added to that, coming up
with a wise plan for moving sequentially things
into this environment so that we don't have to
redo anything after we've done it once. So he has
got his work cut out for him, to put it mildly. It's going to be very, very challenging. But it's a very exciting -- I mean the door of opportunity has opened, and it can be a very exciting time for the trademark organization.

Now, the trademark staff, I gave them out, they're on the web site, I gave them out earlier, and for all of you that follow this stuff, you know we're meeting our pendency goals, we're meeting our quality goals, we're just -- seem to be just humming right along in trademark, so no need for me to go over those things.

I just have a couple -- three little things I want to tell people, because I think you might want to know them. We have been talking about the global electronic form, the form with the drop down menu that has a whole list of somewhat rarely used forms that we can -- that we want to make available electronically for routing purposes, and we've talked about this in the meeting before. That is -- right now we're thinking that form will -- that will finally come
up in September, so we think this is going to be very useful. For trademark owners, it's certainly going to make the office a little more efficient. In mid September, we're also planning to start issuing our new registration certificates.

You may all remember the meeting where we had registration certificate samples, and we -- and you all gave us input on that. We showed them at an INTA USPTO subcommittee meeting, at an IPO meeting, when we've asked -- we put them on the web site, we've asked lots of people about them. And, in general, the one certificate was kind of the winner, and that's the model that we're going to use.

We'll be printing them in-house, without alliance on a contractor, it's going to save us about $600,000. They'll be eight and a half by eleven, they will have a gold seal, for those of you who have expressed an inability to live without a gold seal on your registration certificate. But there will be no more cover buying. So those new certificates are coming.
We will have a two week period during which we produce the old certificates and the new certificates, just to make sure that the process works before we shut off the old process, and so that's -- but that's -- all of this is upcoming. The only other announcement I have is --

MR. FARMER: Hey, Lynne --

MS. BERESFORD: Yes.

MR. FARMER: -- before you go onto the next thing --

MS. BERESFORD: Yes.

MR. FARMER: -- moving to those new certificates, is that going to produce any speed-up simply because you're not sending it out?

MS. BERESFORD: Well, we will be sending these out, we will be sending these paper certificates with the gold seal on them out.

MR. FARMER: No, I mean because you're not outsourcing the printing.

MS. BERESFORD: No, because they're still tied to the OG process, the paper OG process. However, we see that that process will
soon be coming to an end. Our link to the paper official gazette, and we think that in the next -- certainly within the next year, but probably sooner rather than later, there will be a three month -- three weeks are taken out of the process because we will stop being tied to waiting for, you know, we send the postscript file to the government printing office, and three weeks later they print the official gazette, the paper official gazette. We think we're going to break that link and tell trademark owners that the date of the official gazette is the date it goes up on the web site, and that the paper official gazette may or may not be ready that day.

When that happens, you know, when we get all of that in place, three weeks will come out of our pendency, just like that. But, you know, we have to cross the T's and dot the I's and talk to everybody that's involved and make sure everybody, you know, understands this, what's happening and so on and so forth. But now that we have the paper registration certificates being printed

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in-house, we see less and less reason to be tied
to that paper OG.

MS. PEARCE: I have a quick question
also, and this came off, Michelle, you may be able
to back me up on this one. Off the INTA list --
people were looking for the form of the new
registration online and were not able to find it.
Perhaps someone was not looking in the right
place. Have you guys posted it nice and
prominently, where everybody can see it?

MS. BERESFORD: It's been posted for
quite some time. Sharon, I see you nodding your
--

MS. MARSH: Well, we posted -- Sharon
Marsh, USPTO. We posted the notice, but at the
beginning we were unable to post an example. I
think one should have been posted by now, and if
not, we'll get it up.

MS. PEARCE: Well, if you would just
double check that. I think maybe I was reading
the bulletin board sometime in the last week and
there was one question, but I had not looked
myself to see it.

MS. MARSH: Right.

MS. PEARCE: But if you could do that, maybe even just put it on the front page for one day so it's nice and prominent, I think everybody would be thrilled to see it.

MS. MARSH: Okay.

MS. DENISON: One more quick question; when you get the registration certificate now, it has the insert, which is, you know, the customs notification; is that going to be incorporated into the registration now or is that going to continue to be an insert?

MS. BERESFORD: No, I don't know the answer to that.

MS. DENISON: Because it's kind of annoying, I mean it makes the whole thing not look as nice and I'm scared it's going to fall out.

MS. BERESFORD: I'm not sure what we decided to do, but the customs will be part of the -- will it be a separate insert?

MS. MARSH: Yeah.
MS. BERESFORD: The customs notice will be a separate insert. All the other information will, of course, be part of the registration certificate, the section eight and nine requirements, that sort of thing. Any other questions on this? I'll get to my last announcement, which has to do with the trademark trilateral ID list.

As you may know, it's been mostly the trademark trilateral members on the list. We have signed an agreement with Canada, they've docked on, they will be starting to bring Canadian ID's onto the list.

We are also in the process of signing agreements with some other countries, Korea, for example. And as we sign these agreements, China, the Philippines, Vietnam, and Singapore are also lined up because they all want to join. As we sign these agreements, those ID's will start appearing in our ID list, in our very own manual of identifications, and they will have appropriate notations as to where they're acceptable. Of
course, they're acceptable here. But that will be
adding to the usefulness of our ID manual. And,
in addition, we're still working with OHEM to post
translations of the ID so they're acceptable and
have available translations in all the OHEM
languages and eventually in Korean, Chinese, and
other languages, so that they can be available on
our web site for folks that are looking to get
information about ID's and what ID's are
acceptable in the various countries that join this
trilateral ID list.

This will not happen overnight, but we
keep plugging along and making the trilateral ID
list more robust, more helpful. And by adding
some countries, I think it's going to eventually
be a far more useful list.

As you can imagine, each country has
some resource restrictions. I mean the ID list
has hundreds and hundreds of ID's in it. For
instance, Canada gets this list, they have to go
through and approve or disapprove the ID's that
are already there before they start adding their
own ID's. So most countries don't have a large
staff to do this, it's usually one person who
already has a full-time job. So this will be a
relatively slow process, but I think, you know,
slow and steady, we will eventually have what is a
very, very useful tool on our web site for all
trademarks owners, not only filing in the U.S.,
but filing into other countries. So I think
that's it, the news in brief.

MR. FARMER: Okay. Thank you, Lynne.

Any other questions for Lynne on anything? Now we
reach the public comment section. Does anyone
attending here have any comments they want to make
or questions they want to ask? We have one coming
from cyber space, it's for John Owens. This one
comes in and it asks, "what kind of performance
penalty would you expect from migrating from a
dedicated on campus main frame computer to a cloud
based model?"

MR. OWENS: None.

MR. FARMER: Thank you.

MR. OWENS: Actually, no, the power of
cloud computing is dynamic scaling and the
distributed model, which will not only help our
distribution of our work force across the entire
United States, hopefully, but it will certainly
allow multiple paths, instead of being
bottlenecked here in, you know, getting in and out
of just the USPTO, we, of course, would allow
access anywhere from anyone, and it will fully
embrace the way the internet works, so dynamic
load balancing is part of the whole plan.

MR. FARMER: Okay.

MR. OWNES: It removes bottlenecks, not
adds it.

MR. FARMER: Great, thanks. A few
wrap-up items. First, as far as schedule is
concerned, after the lunch break for the TPAC
members, I've decided to call, if needed, a brief
executive session, and then we'll have an
additional public session, but it will not be web
cast or transcribed, and I think you'll find in a
second it's going to be pretty boring.

We're trying to take to heart the
abonition of Mr. Kappos in the community to try to make -- as open as we can. And as I mentioned at the top of the program, we recently received some advice from the Office of General Council on how to do a good job there. And we are -- we've just recently received that and we are in the process of doing things better, and so I apologize for the impromptu nature of that.

What will happen is, after the lunch meeting, we'll come back, and I'm going to ask the TPAC members whether there's anything that needs to be conducted in executive session, for instance, are there any agency personnel sort of issues that we need to talk about, anything that relates to the content of future budgets, and so we could be in executive session. After that, we will -- and, of course, we'll vote to go in if we need to, and after that, I'm going to call a public meeting, but it's not going to be broadcast or transcribed, and all we're going to be doing there is, we're going to be doing some nuts and bolts stuff.
We, on TPAC, will be identifying any to
do items for individual TPAC members flowing from
this, like look after this, look after that,
follow this. And we're going to plan logistically
how we're going to get the annual report produced,
because that's one of the biggest lifts we have on
TPAC every year, and so it's just going to be
trying to figure out schedule-wise what our
milestones are going to be like in order to get
that report produced in the time that's necessary,
and we'll try to work on picking a date for an
upcoming TPAC meeting or two.

And so if anyone really wants to come
back and listen, they're welcome to. And then
going forward, one of our to do items is to make
certain we have processes in place for making
certain that we are doing all that we can as far
as transparency, and so I ask your forgiveness and
we'll try to make certain in the future we have
agendas up two weeks in advance for even those
sorts of meetings. I had one other question come
in for John Owens, and that is, have any other
MR. OWENS: There is a cloud initiative that has been going on for quite some time, to my understanding, with the Department of Defense and other agencies, associated agencies. For the rest of the federal government, there is an initiative that just got underway with GSA, as I had mentioned. But, to my knowledge, we would be one of the pioneers.

Now, as far as industry, though, it is widely used and accepted. So we are not breaking new technological ground, just new ground for the federal government, which is a good thing.

MR. FARMER: Unless anyone has anything further, that's it. Thanks to everyone at the PTO for doing a lot of work. This is the tip of the iceberg, it takes a lot of time and a lot of effort and we appreciate it and we look forward to seeing you again soon and working with you soon. Take care.

(Recess)
MR. FARMER: We're back on the public record for TPAC, and we're now going to have another public session. And the plan that I have is, first, to talk about the construction of the 2009 fiscal year annual report to get that process down. Then I'm going to go to assessing our meeting today and identification of any to do items before our next meeting. And then I'm going to go to scheduling both our next telephone conference, and yes, I'll be addressing the public meeting aspects of that, and our next in person set of meetings up here in Alexandria. And so first let's go to the annual report and getting that done.

We've been given guidance, well, I don't think it's guidance, I think it's really a request from folks in the General Council's office on how quickly they would like some -- like this stuff from us.

What I understand is that, in addition to needing to get in our report statutorily within 60 days of the end of the fiscal year, the other
deadline, although this deadline was not put on us 
last year, so this is new, is to have it in it 
time to make the official gazette, and it's the 
paper version, and so that adds a lot of time 
there.

I'm hearing promising things that may be 
in the future that we can just make it in time for 
our 60 day deadline because of moving to the 
electronic gazette, but we don't appear to be 
there yet, although that answer is really a little 
hazy to me when I hear it explained. And so 
looking at the chart that we've been provided, it 
looks like the annual gazette or the official 
gazette is published on November 24, 2009, and if 
you back three weeks off of that, which apparently 
is not due to the office, it's due to the contract 
with the printing company, so it's not something 
that could be controlled internally, that backs us 
off to November 3, 2009.

There are other requests from the office 
as to how quickly we give things to them, but I 
think there that there's room for us to squeeze
that because PPAC squeezed it. And no offense to
the folks at the office, but this is our annual
report, there shouldn't be a lot of office rewrite
of it because they have their own annual report
they can issue, and so it's not our duty to fully
carry their message, it's their duty to carry
their message, we'll carry our message.

And so I consider the date that we're
working off of to be November 3, 2009, although
certainly we want to turn it in a little before
then to give them a chance to make any comments on
it. I just don't think we need to make that
tremendously big. Now, I've been trying to think
about what each of the stages are that we need to
go through in producing the report and thinking
about how we went through it last year, and I've
sketched this out. I wish I had actually thought
far enough in advance to give you all a handout,
but that's been the nature of preparing for this
meeting when you get these sort of memos in so
late in the game.

And so this is what I'm thinking; let me
just -- let me lay out the whole thing before you
comment and then let's get comments on it. We can
amend it as we need. And these are just the
steps, and once we've got the steps finalized, I
think then we can plug in dates as to when each
step needs to occur.

So first we'll get the critical path and
then we'll fill in the dates in the critical path,
if that's okay with everybody.

And so the way I have it is, and I used
bullet points, I don't even know how many I've
got, it looks like eight or nine steps. Step one,
I send out a frame for the annual report, and that
doesn't contain any commentary in it, it's just
what the frame work looks like, and, you know, who
comes first, who comes second. And one of the
things I'm going to put into the frame work is
items that I feel that we should report on that
we've been tracking or pushing as TPAC members,
because we've said we're going to start commenting
on what we've been pushing and now we're going to
start that. So item one, let's send out the
frame. Item number two is, when first drafts are
due from writers, and by writers I mean
individuals on the committee who are responsible
for individual sections of the report. In some
cases it may be sort of a team thing, in some
cases it may be a single person thing, depending
upon your circumstance.

Item number three is, after those come
back from the writers, everyone making substantive
comments on what the other writers have put in.
So, for example, if I were writing a section, I
think the only thing I want you to be writing is
the Chair's overview. Everyone else would then
have an opportunity to email back any comments
they may have substantively.

I'm not looking to get grammar corrected
at that stage, I try not to get too picky, but
comments in the nature of, do you think we really
need to go into as much detail as we're going into
here because the PTO is going to issue its own
annual report, or do you think we should address
the issue which we haven't, or do you think you're
too harsh, too soft, not really hitting the target
on those sort of substantive comments, so that's
step three. Don't worry, I'll go back and I'll
recap this. Step four will be revisions from
writers, in other words, everyone has kind of
heard what their fellow TPAC members think by
e-mail, and then they go and they make revisions to
their sections based upon what they've heard back.

Section five would be, after you've sort
of done your second draft as writers, then I'm
going to do what I did last year, and that is, go
through and just sort of put my gloss over the
whole report and harmonize, because, you know,
people have different writing styles, some write
more concisely than others, there may be a few
points that I, as Chair, wanted to hit in a
section, but maybe didn't quite come out, so I'll
add my gloss on top of all of it.

After I do that, then it goes back out
for substantive individual review and comment by
members who may want to send stuff in. At that
stage, I'm still not looking for grammar or turn
of a phrase stuff, but more, okay, now that we're
getting close to final, did we leave out
something, did we pull a punch, did we not punch
hard enough kind of stuff. Then after we get all
of that in, I think we have to be a little
flexible. My plan next step is that I would then
make revisions, so if you've already been through
two drafts by individual writers, although it's
hypothetically possible, that we could be back to
square one or closer as far as major changes to a
section, or hopefully it will be beyond that at
that stage. I'll send out a draft. Then you send
back any detail, grammar, turn of a phrase
comments you may have, or things that I've missed,
and then I make those changes and I pop it out to
the PTO.

So, to review, let me add up the dots,
one, two, three, four, five, six, seven, eight,
none dots. And a real quick recap; dot one, I
send out structure, dot two, first drafts from
writers, dot three, substantive comments to those
writers, dot four, revisions by the writers, dot
five, I had my gloss, dot six, substantive review
of my gloss, dot seven, I make revisions, dot
eight, detailed grammar, turn of a phrase review,
dot nine, I clean that up and I send it in. Does
anyone have any comment on that critical path?
Okay.

Well, now we've got to figure out how to
get there from here. And we've got to leave the
PTO time. Let me see if I can get my calendar to
stay -- on my blackberry here. Okay, all right.
So today is August 28th; effectively we've got two
months, and that includes time for the PTO review.
And I'm thinking we're probably going to have to
work backwards. And so, let's think here, so how
much -- I'm thinking for the PTO, maybe allow them
a calendar week in total for dealing with what we
send in; and if we did that, that would be --
let's see, November 3 is when it's got to go off,
so that would back off to October 27.

Now, we may end up finding out that by
the time we give everything the time it needs,
that we're going to have to go back and do some
compression. So that's October 27, okay.

And so if I've got to submit my final to the PTO by then, that means that we need to -- when do we get the detailed grammar, in other words, how long do I allow myself to turn around to detail and grammar review, that ought to be pretty short.

And so Tuesday -- October 27 is a Tuesday, so I'm going to think about backing that off to Friday, October 23rd. See how this works out. Speak up as we go along --- it's not coming up right. I was able to get Jim Tupin on the phone and he answered the question, so I think we're all set.

(Discussion off the record)

MR. FARMER: A telephone conversation on a transcript, I'm sure there's some sort of statutory issue there. Okay. So Friday, October 23 is when I've got to get out my detail. So I make revisions and send out. So now what we're talking about is, how long after these substantive review -- hold on.
MR. STORIE: (Off mike)

MR. FARMER: Right, that's that. And so how long -- so I'm trying to think, how long
should I give you all to give me the grammar, turn
of a phrase comments. I'm sorry. This is when I
owe you my document, upon which you will get me
your detail grammar comments by October 23rd. And
so that ought to be fairly quick because that's
not anything substantive. So, what do you think,
two days, three days, no preference there? We'll
start by saying three. Well, we may end up
needing to squeeze, so we'll say the 20th, so -- I
realize this is like watching paint dry, that's
probably more exciting. Okay.

So now if I'm getting out my substantive
-- my revisions based upon your substantive
review, what we're now calculating here is, after
I add my gloss, no, what are we calculating here,
how long I need to make revisions after you give
me substantive comments on my gloss to the report.
So this is my time that we're talking about here.
I might take a little more time. I'm going to try
to put that down for -- that could take some time, I'm going to say Wednesday, October the 14th for now. Again, we may end up having to squeeze this. Okay.

So now what we're up to is -- hold on, did I do this right? Substantive review, I add my gloss, what am I looking at here? I think I just screwed up. Let me back off. The 27th is when we turn it in, which means that's when -- so these are really due dates. That's due, that's due, that's due, so it's really when is my gloss due.

MR. LOCKHART: We've got nine bullets and you've got about eight weeks, and the drafting is probably going to take say two weeks, so that leaves you a week for most of the things except the stuff that's real quick turnaround, which might be like that grammar thing at the end.

MR. FARMER: Yeah, you're right. So let me try working it from that end, because I keep confusing myself in the other direction.

MS. DENISON: Also, John, to the extent we need year end statistics, we're not going to
get them until after the year end.

MS. PEARCE: Yeah.

MR. FARMER: We're totally -- it's impossible to produce a report practically.

MR. LOCKHART: Well, no --

MR. FARMER: Well, no, you land them, don't you?

MR. LOCKHART: -- you can say, you know, pendency decreased by XX percent, I mean you can just put in place holders and wait for the actual numbers.

MR. FARMER: Well, that or you just use year to date statistics, because again, we are not the annual report of the PTO, it's not our job to give a comprehensive review on their performance as much as it is to give a review on the things that -- to give a review on the things that we've been following. So, all right, let's go after it this way. It's the 28th. Let me put myself down for sending out the structure by Friday, September 4th.

MR. FRIEDMAN: All the other reports I
1 think have been tied into the end of the fiscal
2 year. And if people are going to be looking at
3 our report compared to whatever the office issues,
4 it gets a little confusing if you're looking at
5 something where it drops off sometime in
6 September, and then the office's report drops off
7 at the end of September. I just -- if we're going
8 to use as a model to a large degree what we've
9 already done, I think, like Tim said, having
10 placeholders I don't think really is going to
11 change the report that much. We now -- it's
12 mostly going to say we've met the goals, they've
13 exceeded the goals, congratulations, great job. I
14 don't really think it would cause that much
15 rewrite if we're doing that in September and then
16 have to change it in early October. But if
17 they're different time periods, I think it just --
18 I think Congress will get confused.
19
20 MR. FARMER: Okay. Well, I guess what
21 will happen is that we pretty much know what we
22 want to say, we just don't know the exact
23 quantitative value, although I realize I'm a
broken record. I think last year we had more
detail than we needed on the performance for the
office, and I think we can reduce that some,
because they needed their annual report. But,
yeah, we may have some blanks we have to fill in
later.

All right. Well, if I'm getting out
your structure on Friday, September the 4th, this
is really the biggest chunk of work, as you
pointed out, which is, when are the first drafts
due from writers, two weeks?

MR. LOCKHART: Two weeks.

MR. FARMER: Is that going to be --- I
mean, in a sense, you can start now, so we'll say
Friday, September -- do we want to put our
deadlines on Fridays or on Mondays? Fridays, that
way you -- hearing no objection, we'll go for --
we can move it around. So Friday, September 18th.

MR. LOCKHART: That's drafts due?

MR. FARMER: Yeah, first drafts due from
writers. I'm going to come back and give you
these.
MR. LOCKHART: Yeah, I understand.

MR. FARMER: We're just roughing it out.

MR. LOCKHART: Yeah, we're just doing it.

MR. FARMER: I'll email it later. So then substantive comments from others, so now what we're talking about is how long to comment on what others point out. Why don't we try putting in a week for now, so Friday, September the 25th.

MR. STORIE: That's our comments to --

MR. FARMER: To everybody, right; just send it -- cast it out on the water, substantive comments. And so, let's see, if we go for a week, then for revisions by writers, that would be Friday, October the 2nd. Okay. So they revise, it's their due day, and then so to add my gloss, if I give myself a week, I may be a bit tight.

MR. LOCKHART: You might want two weeks or ten days.

MR. FARMER: How about the 14th; let me look at that, Wednesday the 14th. Although sometimes you want a little bit of time so you
know it's going to fill every day you've got.
Okay. So, yeah, that has put us in a tough spot
then, because then I've got substantive review by
you all on the 14th, so yeah, we're going to have
to do some squeezing and so forth and so on.

MR. LOCKHART: Yeah, but what we're
reviewing then is, we're reviewing --

MR. FARMER: It's my gloss.

MR. LOCKHART: Yeah, but it's been --
we've drafted it, we've got comments, we revised
it, you've done a gloss. What we're reviewing is
the third draft, you know. Comments on the third
draft shouldn't be voluminous.

MR. FARMER: Yeah, but it could be that
I will give you something to really shoot at. Let
me try backing myself down to a week.

MR. LOCKHART: When you say gloss, are
you -- like are you embedding questions or are you
just tweaking it around?

MR. FARMER: I tweak it around, but I
have a heavy tweaker.

MR. LOCKHART: Well, that's okay.
MR. FARMER: Yeah; so as everyone probably saw last year. So if I back -- I'm just doing some math here. If I back myself down to the 9th for getting out my substantive version, then if we stuck with the present thing that we worked out from the other end, then you all would have a weekend plus three working days to the 14th to give me substantive comments, then my revisions -- I think I then made -- I've given myself too long there because I didn't give myself until the 20th. So, let's see, maybe give you all until the 15th.

MS. PEARCE: Now, I just have one comment to make on this. Are we planning on having a TPAC meeting in October, too, and do we need to calculate that in?

MR. LOCKHART: Yes.

MR. FARMER: Yes, and probably -- let's get this down and see if we need to change it as a result.

MS. PEARCE: Okay.

MR. FARMER: All right. So then, let's
1 see, if we make your comments on my gloss due on
2 the -- maybe the 15th --
3
4 MR. LOCKHART: I'm just going to throw
5 this out on the table, and I think about, you
6 know, our TPAC meetings are usually two days; if
7 we blocked out three days and we left that third
8 day just to work on the document all day, and we
9 could get a lot done in one day, like if it's just
10 final edits and things.
11
12 MR. FARMER: Yeah.
13
14 MR. LOCKHART: We can all bring our
15 laptops and --
16
17 MR. FRIEDMAN: Sit in different rooms.
18
19 MR. FARMER: Sometimes -- I don't know.
20 Sometimes I'd just like to be able to just sit in
21 my office and get it done, but --
22
23 MR. LOCKHART: But for a final scrub,
24 you've got everybody all in one place.
25
26 MR. FARMER: I mean I've written
27 proposals, you know, doing it that way, and you
28 can get a lot done in one day. I don't know.
29
30 Thanks for the comment. I'm not sure if I want to
go that way, but okay, let me look down here. So
I have my gloss, and then your substantive review
is due then, and then I make -- oh, come on --

MR. LOCKHART: So you had comments on
the 14th?

MR. FARMER: Don't write down dates yet,
please. Let me just see if I can -- substantive
by TPAC on the 15th, and then I have to make my
revisions on the 20th, the detail -- 23 -- okay, I
think it works. Now let me try just rolling
through it -- bamboozling you all. So presently I
have -- I sent out the structure on September --
on Friday, September 4th. Don't worry, I'm going
to email this to you.

And then we go a week, we've got two
weeks for first drafts for you all, until Friday,
September the 18th, and then we give ourselves --
25th, I just wrote down the wrong number, to the
25th to get in substantive comments, so that's one
week, and then we go one more week to the 2nd, to
revisions by writers, then we go one more week to
my gloss being due on the 9th, and then we go not
quite a week for a substantive review by TPAC,
pretty much six days until the 15th, and then my
revisions based up the substantive review, are due
the 20th, and then detail grammar review the 23rd,
and then ship off to the PTO on the 27th, so
that's roughly -- and don't worry, I'll be --

MS. DENISON: John --

MR. FARMER: Yeah.

MS. DENISONA: -- let me just make a
comment. I'm going to be out of town for two
weeks in the middle of all this, so I will do the
first draft, but Jim may have to pick up the
revisions in the middle. I'm doing to be in New
Zealand, it's going to be very hard to reach me.

MR. FARMER: Sure; well, work it out
with Jim, but yeah, that's fine. So let me see
here, okay, so that's what we'll -- save this, so
don't lose it. That would be pretty painful to
lose that, wouldn't it?

MR. LOCKHART: I've written it all down.

MR. FARMER: Okay. And I'll clean it up
and I'll email it out to you also. That will be
that process. It seems to me, while we're talking
schedule, though, that now let's just go ahead and
talk about scheduling that public meeting because
that may cause us to mess with this.

MR. LOCKHART: Well, my own personal
view is, we would not want to try to have the
public meeting during this process, so if you're
shipping it off on the 23rd, we could meet
Thursday, Friday, the 29th and 30th of October.

MR. FARMER: Push it back that way.

MR. LOCKHART: If we try to have the
public meeting in the midst of writing the report,
the report is going to come to a grinding halt.

MR. FARMER: Yeah.

MR. LOCKHART: We're going to have all
these documents to review for the meeting, get
ready for, you know. See, and this way, if you
ship it off on the 23rd, then we've got a clear
week or three days, working days, to get ready for
the public meeting.

MS. PEARCE: Well, the CFO's office will
be delighted the later we go in October so ---
MS. DENISON: Why don't we do it in October?

MR. FARMER: You're thinking even November. Howard, what's your view here in that now we're talking about meeting close to the end of the fiscal year? Are there any special sensitivities to meeting around the end of the fiscal year or the beginning of the next?

MR. FRIEDMAN: You beat me to the punch; I was just -- this is more yours and everybody else's call. The answer is, I don't -- the answer is, no, the short answer. The long answer is, just to throw out some options, if you meet in early -- let me go through the different scenarios. If you meet in early October, then you're going to get -- relatively early October, then you're going to get the end of the year stuff that may or may not help you write the report, though, of course, they can send that material. If you're not going to meet until later in October ---

MR. FARMER: Or later than that.
MR. FRIEDMAN: Well, I was going to get to that; then it probably makes sense not to meet in October, and not have to worry about the materials that may be sent in October that deal with at the end of the fiscal year, because it kind of mucks up everything we've been talking about for four day merits.

MR. FARMER: Yeah.

MR. FRIEDMAN: I think that you really have to make the call. Granted, you're only talking about the last month, but the last month deals with the whole year statistics. You have to decide what's really more important, and we just kind of taken a snapshot at the end of the year, to a large degree, are we looking at the whole body of work that occurred or didn't occur in the PTO, because otherwise, I think you might get bogged down with end of the year statistics, particularly with all the stuff going on with CIO now.

MR. FARMER: I'm now beginning to wonder if we shouldn't push it. I mean you've got to
watch out for Thanksgiving until late November, or

even early December, because the other practical

reality is that we're going to all be spending a

lot of time on getting this report done, and it
takes a lot of work to properly prepare for these
meetings that we come here to. Yes, Ann.

MS. FARSON: We have two new members

also that -- going down to the department, so the
likelihood could be that we can -- the next couple

---

MR. FARMER: That's one point. In case

you couldn't hear that on the record, Ann just

pointed out that we could have two new -- members.

My gut is that we're at least 60 days out from

seeing them, and so that's going to be roughly end

of October, so that might be another reason to

look at late November or early December, so that

we've got time to get them sworn in then actually

have them usefully participate.

MR. FRIEDMAN: The other thing I would

add is, if we're going to meet later, that will

take up less of Lynne and everybody else's
resources here in late September or October, 
pulling all those documents together, and maybe 
that will be a nice entrie' to say, we'd like 
those -- if you can, can get those materials 
earlier just to help us write the report, and you 
don't have to come up with materials that are 
going to focus on us meeting and doing all the 
dance that takes place to get ready. So you might 
want to pass that on to Lynne sort of rather than 
later.

MR. FARMER: Right; when is
Thanksgiving, is it the ---

MS. DENISON: 26th.

MR. FARMER: It is; is it the last
Thursday in November?

MS. PEARCE: Yes.

MR. FARMER: Well, we're free then,
right? No.

MR. LOCKHART: That's the 27th, right?

MS. DENISON: The 26th is what I have.

MR. FARMER: Yeah, 26th is a Thursday.

MS. PEARCE: Thursday is the 26th.
MR. FARMER: Okay. Well, I'm going to
guess that you all are going to complain if I
schedule it for Thanksgiving for the public
meeting, and so -- see, if we don't do that, then
we have ---

MS. DENISON: No one wants to come
through Washington at Thanksgiving.

MS. PEARCE: No.

MR. FARMER: There you go.

MR. BUDENS: (off mike)

MR. FARMER: Well, in that case, I'm
looking at two weeks. And also, there's the
rhythm of the week. I kind of like having it at
the end of the week, because, frankly, I don't
feel like going to my office a lot after two days
of TPAC meetings. It's kind of a wear you out
process. And so if we're looking at
Thursday/Fridays, I'm looking at November 19 and
20, and I'm looking at December 3 and 4. Do you
all have any thoughts on that?

MR. LOCKHART: I think from August to

December is a long time.
SPEAKER: I think November is --

November date is literally the next morning after --

MR. LOCKHART: Oh, the leadership meeting?

SPEAKER: Yeah, because they come back. This starts on the 10th -- ends the 16th, but the PTO will be back like that week, too. So the whole week before, they're not going to be around ---

MS. DENISON: They're supposed to get two weeks.

SPEAKER: They're also going to be getting ready for ---

MR. FARMER: That's a good point. December 3rd and 4th? What about November 6th/7th?

SPEAKER: December 3rd and 4th is during the WIPO meeting.

MR. FARMER: We're not going to find a clean time, we know that. What about the first week in November? Are we a little concerned of
being -- is there any special activity going on at that very beginning of --

SPEAKER: (off mike) the meeting -- that we have this auditorium --

MR. FARMER: Yeah, I don't think I'd want to go quite that early just because we really have a month of activity to get things rolling, and I'm afraid if we're overlapping at all with the annual report, we're just not going to do as good a job.

MR. LOCKHART: Well, then you're definitely looking at December then.

MR. FARMER: Why?

MR. LOCKHART: Well, because you're saying you're not going to go the first week of November, the second week you've got a federal holiday the 11th, and you've got a leadership meeting the next week, well, that's the week before Thanksgiving, and that was an issue, why?

MR. FARMER: Why is the 12th -- well, hold on. What's wrong with the 19th and the 20th?

MS. DENISON: She was saying that the --
a few people will have been out of town; is that
right?

MR. LOCKHART: And they will have been
getting -- the previous week, instead of being
here to get ready for our TPAC meeting, they'll be
at the leadership meeting and unavailable to get
ready.

MR. FARMER: Who would be there, Debbie
and Karen and Lynne?

MS. DENISON: Oh, five people -- six
people -- it's usually David Sams, and Lynne
comes, Debbie comes, Sharon comes, Craig Morris
comes, what's her name, the interlocutory, Cindy
Greenbaum comes.

MR. FARMER: But Lynne would be there,
right?

MS. DENISON: Yeah, Lynne always comes.

MR. FRIEDMAN: But what about the
federal holiday? We do work that week.

MR. FARMER: I mean --

MS. DENISON: The federal holiday is
what day?
MR. FARMER: It's the -- well, the 11th.

MS. DENISON: The 12th and 13th, but that's -- that's the middle of the meeting. In fact, I think that the USPTO subcommittee is probably meeting on Thursday, the 12th.

MR. FARMER: You know, the reality is in the past, maybe we haven't been as solicitous, we've just scheduled them -- happened, there's always some conflict.

SPEAKER: The meeting has typically always been in October.

MR. FARMER: Yeah, we can't do that. I'm thinking it's going to have to be the 19th and the 20th. It's not optimal, but if you consider that there's no perfect date, I don't see a set of dates that's better.

MR. LOCKHART: Well, let me ask you this, would it be possible for us to phone Lynne right now and say, if we did it those days, is that a conflict given for the trademark folks, given the leadership meeting, see how much of a burden or a conflict that is. Maybe she'll say,
oh, yeah, that's fine, it's not a problem.

MS. DENISON: Well, they might only be coming for one night; I don't know what their funding is. Their funding has been cut.

MR. FARMER: Well, I think also, the point made earlier is a fair one, and that is that if things are done the way that we have agreed, they should be prepared before they go, because they're supposed to have materials to us two weeks in advance.

MS. PEARCE: Well, for instance, the OCIO's office and the CFO's office are not going to be involved in INTA, so they'll be able to get us materials. It's not going to have any effect on them.

MR. LOCKHART: Yeah; I think it's just the trademark operation. But I think it would be a nice courtesy if we just ask that question before we drop the hammer.

MR. FARMER: Yeah; and also -- that's a good point, Tim, although also, the trademark stuff tends to just roll right on because it's
easy, it's just an updated current statistics and
stuff. Let's do this, I don't want to make a
regular habit of making phone calls on the public
record, and so let's tentatively set it for the
19th and 20th. And I'm going to check with Lynne,
we might take a brief recess in a minute, but
we're tentatively going to set it for then.

Now, if that's the case, then I
recommend that -- hold on. We've got to revisit
the schedule. What I was going to say then is
that we need to have monthly telephone
conferences, and what I'm initially planning, and
I have not had a chance to think this through
carefully, is that we will have a monthly
telephone conference where we start out with going
on the public record, there will probably be a
dial-in, I've got to figure that out with the
General Council's office, and then we would have a
separate dial-in number for any executive session
items, we would have our public meeting, we were
ascertain in our public meeting if we cannot even
in advance, whether there are any executive
session items, we would go to executive session, hang up, redial in, do any executive session stuff, if any of it has to be done. I've still got to go back -- to see what that means as far as agendas is concerned.

MS. DENISON: So are you thinking that we would just put a notice up on the USPTO web site two weeks before a call?

MR. FARMER: Probably something like that. There's also -- well, yeah, probably so. And so I'm looking now at the schedule, and it strikes me that it calls somewhere after first drafts are due from writers, but before substantive comments are due back might be good. If that's the case, then we're looking at the week of September the 21st through the 25th, and I'm going to be gone for part of that.

MS. DENISON: I'll probably be gone that whole week.

MS. PEARCE: And I'm out of town for two days.

MR. FARMER: You're out Monday -- you're
gone the whole week, so it just is what it is.

And you're out Monday and Tuesday, Elizabeth?

MS. PEARCE: Yes, I am.

MR. FARMER: Okay. How about Wednesday, the 23rd?

MS. PEARCE: I'm -- I will have been out several days the previous week also. I'm going to get you my materials earlier so you're not going to be held up, but if you're going to want anything substantive from me on that Wednesday, I won't have it for you.

MR. FARMER: No, it's more of a monthly telephone conference.

MS. PEARCE: That's okay, as long as your expectation level of me is very low, I can --

MR. FARMER: Well, that's hard to do since you always over perform. But, yeah, let's -- so let's say that -- and then that would mean 9/23, 11:00 a.m. eastern telecom. Don't worry, I'll go back and recap this. And if we do that, and then if we have one in October, let's see, how does this fit in? I'm going to be making
revisions based off the substantive review that you all give of my gloss on the 20th. And so -- and then on that Friday is when -- I'm going to be getting out on the 20th, okay. What does the 19th look like? Looking at an annual report schedule, your substantive comments and my gloss are going to be due on the 15th, and I'm going to be making revisions, and I'm going to be getting them out by the 20th. So I'm thinking if we have a conference around the 21st, even though you're going to give giving your grammar comments on the 23rd, there's still a chance that I will have greatly offended somebody or just blown it, and you might want to tell me about it.

And so I'm kind of looking at October the 21st or the 22nd for an October conference. Any thoughts on those dates? Okay. Let's say the 21st, so 10/21, also 11:00 a.m. And then, let's see, we have a meeting on the 19th and 20th. Generally it's a good idea to have a are we getting ready enough phone conference not too far out from that, like no more than a week, and so
I'm looking at the 12th and 13th of November, roughly. It could be -- it's not that far, but just I want something that's not too far away from there to come to your meeting, if it's, indeed, on the 19th and 20th.

MS. DENISON: Okay. I'm going to be a the INTA meeting on the 12th and 13th, so it'll be a little tough, but --

MR. FARMER: Well, we can push it ahead.

MS. DENISON: Can we do it on the 9th?

MR. FARMER: I hate -- I don't want to back off that far. I'd like to have it kind of close to the meeting. What about the 11th?

MS. DENISON: I'm already tied up.

MR. FARMER: Okay. Well, in that case, we've got to go in the other direction. Monday the 16th?

MS. DENISON: That's fine.

MR. FARMER: Okay. So Monday the 16th at 11:00 a.m., okay. And then I need to check with Lynne to see if those are going to work.

Let's do this then, let me -- let's take a brief
recess, I'm going to go see if I can get Lynne on
the phone to check that public meeting date with
her as we suggested. And while I'm out, while
we're in recess, I'd love for you all just to pour
over your notes to see, one second, to identify --
I'm sorry to cut you off.

All right. Hopefully this is short.

Now I just want to go back on the record and
figure out what else we need to do to make certain
that we pick up all the loose ends from our
meeting today.

MR. LOCKHART: What was the decision on
the meeting?

MR. FARMER: Oh, I spoke to Lynne, and
the 19th and the 20th looks good. So it's
possible it could blow up for other reasons, for
instance, if Mr. Kappos is out of town and really
wants to be here, you know, both things, then that
could influence it, but for now we'll go with it.

I have a few loose end items and then
we'll see what else we have. Here's an idea I
had, Mary and others, tell me what you think of
this. I started a conversation, if not a brush
fire today, about whether there should be a fast
track in the TTAB.

In addition to the simple fact we had a
meeting in which we talked about it, I'm wondering
if we should write some sort of article that maybe
gets put out to the IPO organizations for them to
run that raises the issue, that doesn't suggest a
result, but just says, you know, this is what
we're thinking about and this is why we're
thinking about it and we're very interested in
hearing what you think about it, whether an
article will be a good way to approach that or
whether there's a better way to approach that,
because I think what we want next there is to get
ideas and reaction. So what do you all -- we
could --

MS. DENISON: Well, the first thing is
to formulate what the proposal is before the
article is written, because it's not totally clear
to me what the proposal is. I mean are you just
going to say is this is an involuntary fast track
option at the TTAB, are you going to say, you
know, the two step thing, you know, you are
required to approach the other side, see if
they'll consent, if they're not, they show cause,
you know.

I mean I don't know, are we going to go
into a very detailed explanation of what we have
in mind, you know, I don't know exactly. I think
we have to give them an idea to comment on, more
than just would you be interested in a fast track
proceeding.

MR. FARMER: I envision sort of neither
of the above in that, what I envision is something
that identifies the need and the thinking about
various options you could use to address the need
and then seeks comments on whether there's a need
worth addressing at all, whether they wanted to
address it at all, and if so, have them suggest to
us what they would like to see things look like.
And we could throw out some ideas, but I wouldn't
want to have only one path forward illuminated.
And so you could throw out ideas that, you know,
if you're interested in this, potentially it could be a process that one party seeks, and if the other party doesn't consent, cause has to be shown, then you could mention the fact that that opens up the box over what constitutes cause, and then you can get into -- there are all sorts of options for what the procedure could be like, and you might mention a few, but it would be non-exclusive, and you probably mentioned it, if you're really thinking broadly, you could even make it a federal court option other than may not be -- for that, I don't know.

I'm not thinking about us brainstorming at a specific thing for them to shoot at as opposed to soliciting comments on whether there should be a fast track that one party can float at all, and to get them to talk to us about what those options might look like. What do you think about that?

MR. STORIE: So it's more about whether philosophically they believe that they want one?

MR. FARMER: Yeah.
MR. STORIE: And then -- and if so, what should it look like?

MR. FARMER: Yeah.

MR. STORIE: Pretty much.

MR. FARMER: But what I'm thinking about out loud is, is the best way to get the trademark community talking about this an article that we put out there to the various organizations and publications, or is that too wooden, and is it best just to contact each of them through our -- and say orally, this is what we're thinking about in case you didn't pay a lot of attention to it at our meeting or notice it, we'd be interested in what you think about -- what you think about the issue.

MS. DENISON: Well, I realize I was in charge of it, but I can't remember what we asked in the survey we did, whether we asked about that; did we not ask something about that?

MR. FARMER: Yeah; I guess I just don't see this as a -- survey, and that this is more of a -- what I would hope that would come out of this
is that we might actually get some feedback from
the organizations, but it might also spur
individual interested parties maybe to write on
the subject. You know, they might write comments,
articles, journal things.

MR. LOCKHART: Well, one way you could
approach it is, I assume that the INTA's USPTO
committee is going to meet.

MS. DENISON: Yeah.

MR. LOCKHART: Your committee ---

MS. DENISON: Yeah.

MR. LOCKHART: -- is going to meet?

MS. DENISON: September 16th.

MR. LOCKHART: Well, you're going to
meet; and then also there's the leadership
meeting, so that would be two opportunities to
have U.S. practitioners who theoretically would be
interested in this issue think about it, and maybe
you could collect the comments.

MS. DENISON: Well, I already
volunteered that yesterday actually.

MR. LOCKHART: Okay. Well, I'm sorry
then if I'm plowing already plowed ground. But,

you know, if you could -- at those two meetings,

if you could get peoples' preliminary thoughts and

they put them on paper and give them to John and

then maybe we could take a look at it when we meet

next time and then decide is an article the best

route, should we request comments, should the PTO

request comments, should INTA request comments.

   MR. FARMER: What do you think?

   MS. DENISON: I'm happy to do that. I

mentioned yesterday I could ask the committee and

see what kind of reaction I get to people, more on

the faster track.

   MR. LOCKHART: Yes; and I mean,

obviously, you would know better than I would just

to do this, but one way might be the email, the

folks that are going to be coming to those two

meetings and say, this is something I'm going to

want your feedback on, think about this.

   MS. DENISON: Well, we always do the

agenda.

   MR. LOCKHART: Okay.
MS. DENISON: So that's not a problem.

MR. FRIEDMAN: You really get first step, I think.

MR. FARMER: Maybe that for a first step, although I'm thinking down the road, there's a lot of -- when I explain it, there's a lot of potential for confusion, and that is, folks can think it's something than at least what I've got in mind, so I'm thinking at some point it's probably going to have to come down to an article just so that there's something more specific out there, although maybe the feedback we'd get would allow us to -- that. That's sort of like what Judge Sams put out there with the ACR, and that is, he wrote something to tell the world about something, we're not really telling them about our specific procedure, but ultimately we want our message clearly understood as to what it is we're thinking, or at least I'm thinking. And what we would love to have commented on, I guess we'll have to be specific, not a specific proposal, but write in our own words how we describe what we're
thinking about so it doesn't get misinterpreted.

Does that sound like a path forward that everyone is fine with?

MR. LOCKHART: Would it be worthwhile asking the interlocutory attorneys if they've got any input on this or any thoughts?

MS. DENISON: Well, they were at the meeting yesterday actually.

MR. FARMER: Yeah, they were represented.

MS. DENISON: They were represented, so they know what's going on.

MR. FARMER: I'm sure Cindy, is that her name, Greenbaum?

MS. DENISON: Cindy Greenbaum is the head interlocutory.

MR. FARMER: Yeah; I'm sure she'll be talking to folks about that.

MR. FRIEDMAN: Well, Cindy is management, so --

MS. DENISON: Oh, okay.

MR. FRIEDMAN: -- they weren't
MS. DENISON: As opposed to the -- they were not?

MR. FRIEDMAN: No; I mean she's a manager, I represent them.

MS. DENISON: Well, you're here.

MR. FRIEDMAN: Yeah; the only problem is, I don't know what the hell we're talking about. But that aside, and all kidding aside, she's the manager, but they're the ones who do the work, and I think where Tim is going is, should we talk to the people who are actually doing the work, and I'm always going to say yeah. So the question is how -- and I'm in contact with them, so the question is, do we want to engage them, and if so, how do you want me to do that?

MS. DENISON: Well, the problem I see is that the interlocutory attorneys, it seems to me she's running a later stage, and I'll tell you why, because we have to decide if the buyer wants it. If the buyer doesn't want it, it's dead, because the General Council told us yesterday.
they're not going to do anything unpopular, okay.

If the buyer does want it, then we have to find out, is it feasible and is it going to change the interlocutory attorney's life and how does it effect their path and all that kind of stuff.

But, to me, that's sort of the second step, because we really have to engage the level of interest. I know John think it's a fabulous idea, but I'm hearing from a lot of other people that it's not. So that's why we have to check out what people want.

MR. FRIEDMAN: I don't know if it makes a difference to Tim. I'm fine with not engaging them if the results come back and no one wants to do it anyway. I just want to make sure, if it is an idea that's percolating that they get involved sooner rather than later.

MS. DENISON: I mean it's fine with me to tell them; I'm just saying I don't know that they need to spend a lot of energy on it yet, that's all my point is.

MR. FARMER: My view is, I consider the
floor to be wide open, and that if anyone wants to comment on it to us or to the world, that it's not premature for them to do so. I'm really hoping to get a conversation started and as many people speaking up as they feel appropriate. And it's not always even to us. I mean I'm hoping that the trademark community as a whole will think about this issue because I think it's a significant problem that should be addressed, although I realize that's my individual view.

MR. FRIEDMAN: Well, at any stage, whatever is shared with me, I'm going to share with the interlocutory attorneys and they can decide when to turn them in.

MS. DENISON: Yeah, that's fine.

MR. FARMER: Got it.

MR. LOCKHART: And, Howard, I mean, obviously, you can always put it to them that, you know, we're not absolutely sure that the trademark practitioners are going to want to push for this, but let's assume they did want to push for it, what practical issues or problems or concerns do
you see, and then we get that on paper, and then
ideally you come back from these two meetings with
something on paper, and then, you know, then we
see where we are.

MR. FRIEDMAN: Fine.

MR. FARMER: Okay. Let's call that --
so that's going to be the game plan for now. That
means that issue is going to circle back around to
us at the next public meeting or the next set of
meetings, including public meeting. And I think
at that time we'll assess whether an article or
something like that is the best way to go forward.

MS. DENISON: Well, I can report on the
23rd, from a TPAC call, what happened on the 16th
of September.

MR. FARMER: Okay.

MS. DENISON: So we'll get an initial
read.

MR. FARMER: Got it, okay. And then --

MS. DENISON: Wait, I might not be on
the call. Well, Jim can.

MR. FARMER: We'll figure it out. And
then the only other two things I have are just routine, and that is just a reminder to Jeff and to Tim to please put your heads together regarding the computer tasks, please allocate them all to either you or the other because we're going to move Megan over to sort of advising us on how the government works, and if there's consolidation, that's fine, so just get back to me on that. And for anything that's not computer there or elsewhere, I'm going to look at whether we should keep that in the computer committee or break it out to a separate subcommittee. So I'm going to give some thought to that overall.

MR. LOCKHART: There's one other computer related thing we talked about a little bit yesterday, which is, we've been asked to solicit input from trademark practitioners about what they would like to see the future processing system look like, if they could just start with a blank sheet of paper. You got that, okay.

MR. FARMER: Yeah; that's one of the things that you all are going to look at
allocating.

MS. DENISON: And I'm going to bring that up at the USPTO subcommittee --

MR. FARMER: I'm probably going to leave things at three people per subcommittee and try to keep people staggered just for survival of human capital. But I'm going to sit down and study it with an open mind and a fresher mind than I have right now and we'll see how it looks. Are there any other to do items that people have before we wrap it up?

MR. FRIEDMAN: I raised this months ago, we got busy, and then I got neglectful in raising it, but I think there was general interest in doing it, I think there's even -- should be stronger interest in doing it in view of the CIO changes, and that is -- and I think Robert has done it on the PPAC side; during the proverbial day in the life of an examiner, because I think, particularly whether it's an interlocutory attorney or a trademark examiner, I think it's, timing-wise, it's probably a great time if you all
agree to have an interest in doing it, in trying
to perhaps follow an examining attorney, because
we're getting at the forefront of this trademark
initiative for CIO, and the more you know about
what we do, along with the people we represent, I
think the better our subcommittee can be.

And it doesn't have to be an eight hour
day, it doesn't even have to be a three hour day,
but I could probably pull somebody like the new
Commerce Committee, have you sit in his room for
an hour, everybody, but primarily the
subcommittee, to see what the different tools are,
how they interface together, how they put an
office action together, and I think that will just
make us a better subcommittee.

Similarly, even though most of the
interlocutory attorneys work at home, if we could
find somebody, it may not be a bad idea, Mary, and
for Jim, if you were at all interested in meeting
with one of our interlocutory attorneys, if not
more, see how they again interface
automation-wise. Yours may be a little less
focused on automation and more documentation, how they go about doing their job, along with the automation tool, and I think that would make that subcommittee a more effective subcommittee. And maybe it could be done on that first day of November 19th, in the morning or afternoon, depending upon what the scheduling is. But I think it's okay that we haven't done it before.

MR. FARMER: I'm interested in it; the problem is just finding the time. I mean I feel like we get -- we're so busy, just dealing with what we have to over a two day period is -- and I'm trying to think that if we do that, how we get everything else done.

MR. FRIEDMAN: Perhaps maybe even if you're not, because the mic is on. I mean just one option. And I hear you, John. One option at least for this subcommittee, and it's going to be up to you, Jeff and Tim, is if they're going to meet from 9:00 to 12:00, even if it's a half hour or 45 minutes right off the bat during the day in the life of an examiner, I think you just would
get a better idea of how all these tools work and
what the potential is and what we're trying to do.

MR. BUDENS: I can tell you, if you want
to know what goes on on the PPAC side, I'll be
happy to tell you. We usually do this once a year
when the new appointees come onto the PPAC, and
the day, you know, they come in early to be sworn
in and stuff, what we'll do is, we'll schedule
usually the morning of a two day meeting. And
management has actually put them together.
They'll line up people and then we just go around,
and we take them around, we show them the EIC's,
the library, we take them over to Jack Harvey's
office usually and have an examiner and a clerical
support person there, showing them the tools that
we use, what they go through.

It has been mind boggling -- it's been a
mind boggling event for pretty much everybody
we've taken through it to find out, one, how
antiquated some of our tools are, you know,
especially when we have a bunch of computer guys
on PPAC, but it's also been eye opening to see how
much -- how many different things are all playing
together to try and make the job work.

It got to the point where actually Kevin
Rivette and I were talking, and we actually tried
to arrange one -- we invited some of the House
staff, House and Senate staffers to come down and
join us. We were going to walk them through the
same -- along with the new PPAC appointees.
Unfortunately, management cross scheduled that
with the deferred examination thing and we had to
cancel it. But it's been highly informative I
think for the members of PPAC. I think they've
really gotten a good feel for what, you know,
where some of our obstacles are, where some of our
good points are and stuff. I mean I would
encourage it. If you guys have never done it
before, I would seriously encourage trying to find
the time to do it, you know, end of story.

MR. LOCKHART: Well, I'd like to do it,
but I think we probably ought to defer until the
first meeting in calendar year 2010, because we've
got a lot on the agenda already for this November
meeting. And we probably ought to try to plan it in a way that would be the most efficient. But I mean, you know, I'd be willing to come in earlier and do it maybe, you know, do it like 8:00 to 10:00 and then have the subcommittee from 10:00 to 12:00 or whatever. So we can talk, but I think it's a good idea, but I just think we ought to defer it until meeting after next.

MR. FARMER: Well, the other thing that we have coming is, we don't have to do this, but when I've spoken with the interim PPAC chair, Danny Matteo at Xerox, they're very interested in having a joint meeting at some point because of -- at least a meeting at which there could be a joint meeting just because of common issues that we both watch. For example, computer systems, although maybe that need is lessened if we're going to have our own. So I -- that's true, we may -- they may want to have a joint meeting with us, but maybe not -- way around. I say that tongue and cheek. So --

MR. BUDENS: I think they're going to be
highly interested to find out about the new trademark system.

MR. FARMER: Yeah; and that's another thing to keep your eye on.

MR. FRIEDMAN: Again, as I said, I would defer to the committee, one way we might be able to work it along Tim's lines actually is, the timing may work out such that by the time the new members first come on board, they may be able to join whatever subcommittee they may be a member of and do that trip along with existing members.

MR. LOCKHART: Yeah; and in that regard, it probably makes sense to wait until we have our new members to do both the grand tour, and if we're going to have some kind of co-meeting with PPAC, wait until we have our full compliment.

MR. FARMER: I'm thinking how it may come down may be that we may have to create something like even an optional third day or something. I'm interested in it, but I think realistically, to do enough of that to make it worth it, and to do what we generally have to get...
done here, it's just hard to conceive of doing all
of that in two days.

MR. STORIE: I certainly think that, at
least for Tim and I, because of the importance of
our task, I'm not opposed to coming in maybe a
half day early and be able to knock part of that
out the day before.

MR. LOCKHART: Yeah; I'd do a three day
meeting or two and a half days or whatever, that's
fine.

MR. FARMER: Yeah, I would try at some
-- I can't make a promise from myself individually
just because of all the stuff we've got to do. I
think that's the way we're probably going to have
to play it, Howard. But, you know, it's not a bad
idea, it's not a lack of interest, it's just all
the things we've got to accomplish. Anything else
before we all go sit in traffic?

MS. DENISON: One issue, if we're -- if
the subcommittee meetings are considered private,
should we then have each topic that is covered in
the subcommittee meeting put on the agenda each
time so that there can be some sort of a report on
what's going on? So, for example, this time there
was no Madrid, no classification discussion, that
was actually discussed in the private session, so
do we need to put a subcommittee report as part of
the public meeting each time or something -- I'm
just wondering, so that the public can be kept
informed about -- because we don't necessarily
know, things may come up in the subcommittee
meeting the day before that maybe would be of
interest to the public that aren't confidential
that we could report on, so I just raise that as
an issue.

MR. FARMER: That's a good one to think
about. Overall, I'm going to be thinking through
the details of how we make certain we comply with
the law as far as openness is concerned, and I
will have more to say on that. That could even be
a public agenda item for our next public meeting.

My preliminary thinking there, Mary, is
that, let's not quite go that far, but that's just
my thoughts, and that is that let's always try to
make certain we put important issues on the public meeting agenda, that they get discussed. I'm a little concerned that if we try to -- even if we say briefly touch on every issue at the public meeting, we're back to full day public meetings, if not more, and those are just incredibly draining. And I think, after a while, folks just kind of wear down and they lose their stamina for really being effective. So that's my preliminary thought.

MR. FRIEDMAN: I think the other thing is, and all of you, particularly John, are much more familiar with the memo than I, but I think the focus of the memo, without mixing TPAC and PPAC, was having this group getting together, discussing things in executive session, as opposed to the focus being individual members or groups of our members discussing with PTO what's going on.

And I think related to that, we then more or less make the cut, in part, the PTO, what's most important to be discussed publicly, hopefully acknowledging that some business can be
taken care of in subcommittee meetings that are
still being done transparently, but that the most
important issues are coming before here. So I
think it almost meets, if not -- I think it meets
both legally and in spirit what I guess the memo
was trying to set out to do, which was to more or
less make sure we're minimizing the number of
times we're meeting in executive session.

MR. FARMER: Yeah; I think overall we
won't have a final answer today. It's something
certainly to think about and it's just going to be
a matter of balance. We want to be open, we're
not trying to hide things, we're just trying to
keep our public session so that it's doable and
we'll do the best we can. And I realize that it's
the tired John Farmer who's also answering your
question. You might have gotten a much more
perky, zesty, let's do it answer if you had asked
me Thursday morning, and so part of it is my
fault. Anything else we need to cover? In that
case, I declare the public meeting closed and
we'll have fun next time. Thanks everybody.
(Whereupon, at 3:11 p.m., the
PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the foregoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/Carleton J. Anderson, III
Notary Public # 351998
in and for the Commonwealth of Virginia
My Commission Expires: November 30, 2012

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