

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

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- 10 JEFFREY W. STORIE
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1 P R O C E E D I N G S

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

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

21 The informal arrangement that we reached
22 at the PTO at our last meeting was that we on TPAC

1 will try to get in the public meeting agenda at
2 least four weeks prior to the meeting, and then we
3 would ask that all written materials be provided
4 to us and put up on the USPTO web site at least
5 two weeks prior to the meeting. And we did pretty
6 well. We didn't get an A plus. Some of the
7 materials, I don't think, got up quite two weeks
8 out, but they should all be on the USPTO web site
9 now. And what we on TPAC have said is that we
10 promise to thoroughly read everything that's given
11 to us in advance so that we don't have to learn it
12 for the first time at the meeting, but instead we
13 can read in advance, the public can read in
14 advance, and thus, the meetings can be more
15 productive.

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

22 After that, I will go to any questions

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

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

1 it's perfect timing, because if you're ready, Mr.
2 Kappos.

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

11 MR. KAPPOS: Okay. Thank you very much,
12 no problem at all. I'm happy to be here. My name
13 is Dave Kappos and I'm pleased to be joining you.
14 I recently started here at the United States
15 Trademark and Patent Office as the Director coming
16 in to try and help on both -- all patent and
17 trademark related operations. I'm very pleased to
18 be able to join you here for a while this morning,
19 and thanks, John, for putting me on the agenda and
20 giving me a chance to make some initial comments.
21 And while I won't take a lot of time, there are
22 some really important things that I feel it's

1 really very, very critical that we start out
2 talking about. The first one is, sort of just
3 getting right down to business, the financial
4 outlook, and, you know, sort of the situation, if
5 you will, as we enter financially the year 2010.

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

15 2010, as we start the year, moving in,
16 you know, on October 1st, I suppose there's good
17 news and bad news, it's fair to say. The good
18 news is that it appears, at least at this point,
19 that our receipts, and this is mostly talking
20 about the patent side, have stabilized, and that's
21 a good thing, at least from what we can see at
22 this point. The bad news, if you will, is that

1 they tend to be significantly lower than they were
2 in 2008, and certainly at this point in 2008.

3 So, you know, as we enter financial year
4 2010, we're going to be very, very careful about
5 spending and we're going to be entering into an
6 extremely cautious posture, continuing not to be
7 able to invest in IT improvements, not to be able
8 to hire or do many of the other things we want to,
9 and it's the only prudent thing to do at this
10 point because we've got a budget to manage.

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

19 That being said, there was this
20 trademark fence legislation that everyone in the
21 trademark community knows about and is very, very
22 concerned about. And I commented on this before,

1 I'll comment again now. So that legislation, and
2 by the way, Congress did a wonderful job and was
3 extraordinarily helpful to us at putting a tool in
4 our hands that could ensure that we would not be
5 put in a position of having to furlough or even
6 having to get close to furloughing any employees,
7 and that's something that I hope we all share on
8 both the trademark and the patent side, that we
9 never want to be in a position of having to do
10 anything like that to our people here. So we are
11 very appreciative of Congress' quick action.

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

18 We want to respect the trademark funds
19 and enable the trademark community and the
20 trademark part of our operation to continue
21 functioning effectively, as it has functioned
22 extremely effectively, and we're not going to let

1 it get broken, okay. So we have no interest
2 except an extremist in using that insurance
3 policy. So hopefully that clarifies any concerns
4 people have relative to the trademark fence.

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

10 So here's why I could say, you know,
11 coming from an external perspective, and as
12 someone who, for many years, has been a filer of
13 many trademark applications on a global basis,
14 including here at the USPTO, and certainly
15 understands what I refer to as the sweet spot of
16 trademark pendency, I get that 2.5 to 3.5 months
17 is the appropriate and optimal trademark pendency,
18 balancing out the needs of applicants to be able
19 to file their specimens and gather those together
20 and not have to be too rushed on the one hand,
21 interaction with international treaties on the
22 other hand, and wanting to have U.S. based

1 applicants as much as possible on an equal
2 footing, and certainly not disadvantaged over
3 people coming in and filing under treaty
4 provisions.

5 And so one of the first things I did
6 when I got here is to clarify to the whole team
7 that we're going to have pendency goals of 2.5 to
8 3.5 months, and we're not going to go any lower
9 than that. And I know Lynne and the trademark
10 community are focused on not going any higher than
11 that, because that's what's appropriate for the
12 trademark community. So that's the, you know,
13 sort of simple story, very definitive relative to
14 trademark pendency goals.

15 I mentioned before the IT related
16 issues, and I want to come back to that and say
17 that, you know, whereas we have some really
18 significant funding challenges on the patent side
19 of the USPTO, and everybody knows about those,
20 we're a little more fortunate on the trademark
21 side, and as a result, would very much like to be
22 able to move forward on some IT projects for the

1 trademark community.

2 We always have a challenge there with
3 the fact that many of our systems are very much
4 interleaved, right, and so it's difficult to
5 untangle the trademark, the say banned with
6 utilization on the IT systems from the patent
7 utilization, and we want to always continue to
8 respect the principal that trademark funds get
9 used for trademark related purposes.

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

21 But the idea is, where we practically
22 can, if we can untangle those systems a little

1 bit, it'll enable us to make some of the IT
2 investments on the trademark side that I will -- I
3 think probably everybody in this wants to be able
4 to make, and you know, and meet a principal that I
5 have from a management perspective, which is that,
6 if you can, you don't want to hold back a
7 constituency that's ready to move forward in
8 productive ways because another constituency
9 that's also extremely important has some problems
10 it needs to work its way through.

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

15 So a couple of other things that I
16 wanted to mention, and then I'll stop here pretty
17 quickly, John, so I'm coming in new, as everybody
18 knows, to this job, haven't interacted with PPAC's
19 or TPAC's much before other than seeing them from
20 an external view point. One thing that's really
21 important to me is transparency, though. And I
22 think this has been a little bit of an issue,

1 particularly on the PPAC side, frankly, and I
2 don't know how much of an issue it's been on the
3 TPAC side, but I do want to stress and emphasize
4 to the whole PPAC and to everyone who follows this
5 community that it's important to me that as much
6 of these meetings be conducted in public, like
7 this meeting, as possible, and that the so called
8 executive sessions be limited.

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

18 And I do respect that there's some
19 things that aren't appropriate to be discussed in
20 the public sessions, but I really hope that TPAC
21 will do its best to minimize those and hold as
22 much of these meetings in public as possible. The

1 second thing, John and I have talked about this,
2 and I'm really pleased that, from what I
3 understand, the TPAC'S got sort of a good sense of
4 this, is that, you know, so I've read over the
5 TPAC legislation, the authorizing legislation and
6 all of that, and, you know, I get the statute and
7 the role that the TPAC plays, but I hope that
8 you'll see the role here as one of partnership and
9 a role that's trying to help Lynne and I to do the
10 very best we can for the United States Trademark
11 and Patent Office, if you will.

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

19 And I hope that you'll see your role as
20 one of partnership with Lynne and I so that we can
21 make things happen together, and that requires
22 rolling up sleeves and getting hands dirty and

1 actually doing things more than just at a single
2 meeting. If you're up to that, we're up to it,
3 and I hope we can have that kind of partnership.

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

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

21 I have been incredibly impressed in the
22 two and a half weeks that I've been here with the

1 intensity, the quality, the capabilities, the
2 skills, the intelligence, the dedication, the
3 knowledge of the entire team, both on the patent
4 and the trademark side, and particularly, you
5 know, for purposes of this meeting.

6 Everyone I've met from the trademark
7 side of our shop here are every bit as dedicated
8 and capable and working every bit as hard as
9 anyone I've ever seen anywhere in the private
10 sector to advance our nation's economic interest
11 and future through the innovation system, and
12 particularly the trademark system. I really hope
13 that we can all, in that spirit, participate in
14 the system. We need a lot of help here from this
15 community, the TPAC, and the larger trademark
16 community to supplement our very, very dedicated
17 and capable team. And I think that if we can
18 operate in that spirit and do things together and
19 all view our role, whether we're internal or
20 external, as working commonly to improve the
21 system, we can get the USPTO running the way we
22 all want it to run, and we can provide a

1 tremendous engine to help our nation's economy
2 regain the traction that we all want it to have
3 for the future.

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

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

18 MR. KAPPOS: That's an interesting
19 question, and frankly, it's not one that I've
20 contemplated yet. That's probably one in the
21 fullness of the meeting that John can help. We're
22 certainly happy to consider if there's some, you

1 know, sense or preference that the TPAC has.

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

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

22 MR. FARMER: Sure; and I didn't mean to

1 imply that TPAC on a particular conclusion was --
2 by the question, so I'm not implying that there
3 needs to be a set one, just that when it came up,
4 that was the next question that naturally occurred
5 to us, is, is it just a computer potential
6 separation or is it a broader one than that, and
7 so we'll just wait for that to roll out.

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

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

22 If it's okay, we'll go ahead and turn to

1 the first agenda item then. And just -- I don't
2 have opening comments on many of those, but I
3 thought I'd just throw in a few on the fence.
4 First of all, I probably shouldn't assume that
5 everyone at least that's watching at home knows
6 what the fence is, and so there is a part of the
7 U.S. code that essentially says that trademark fee
8 revenue can only be spent on trademark operations
9 and a reasonable share of the overhead
10 attributable to trademark operations.

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

19 And since our last meeting, as Mr.
20 Kappos mentioned, legislation was passed that
21 enables the patent operation to borrow under
22 certain circumstances from the trademark

1 operation, and I think that window is open through
2 June 30th of next summer, but if I'm misspeaking,
3 please let me know.

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

19 Obviously, we on the trademark side hope
20 that the borrowing will have to occur, although
21 we'll just have to see what happens there. And on
22 the trademark side, our highest concern would just

1 be that if borrowing must occur, if that day
2 should happen to come, that the financial analysis
3 have been done to make certain that enough money
4 is left in the bank to guard the trademark
5 operation against its worst -- well, its
6 reasonably worst possible day, because what would
7 be a sad outcome is if the patent operation needed
8 to borrow, and we, of course, would be
9 understanding there, but then it didn't leave
10 enough money in the bank for a rainy day on the
11 trademark side, and then the wave hits the
12 trademark folk a bit later, and then the trademark
13 folks are faced with possible rifts and furloughs
14 even though they've all been working in a very
15 financially well managed part. Again, I'm not
16 saying that I see any great likelihood that that
17 may happen, but that's one thing that we on TPAC
18 are just trying to be vigilant to make certain
19 that doesn't happen.

20 With that thrown out there, I wanted to
21 turn to the agenda that we have under III, which
22 is discussion of the trademark fence. And that

1 leads off with a brief discussion, the financial
2 status of the patent operation and a look forward.
3 I'm going to guess that Mark Olechowski will be
4 addressing that, but if I'm mistaken and it's
5 someone else, step on up to the mic and we'll be
6 glad to hear from you.

7 MR. OLECHOWSKI: Thanks, John. Dave has
8 really kind of set the stage for completing 2009
9 and how we're planning on entering 2010 here at
10 the USPTO. Most of you realize that 2009 has been
11 a difficult year for the Patent and Trademark
12 Office, seeing a reduction in our -- in both
13 patent and trademark fees, but most certainly
14 having the greatest effect on the patent side;
15 went through a series of cost-saving measures once
16 we identified the extent of what we thought those
17 fee collection reductions would be, and went
18 through some very serious and long and heart
19 wrenching discussions about what to cut. But the
20 bottom line is, one, we won't be using the
21 legislation that was offered as an insurance
22 policy so that we would not have to furlough any

1 USPTO employees, nor borrow from the trademark
2 organization to complete our work in FY 2009. So
3 we'll end up 2009, assuming we continue to collect
4 revenues in the way we have through these last
5 couple of months. We will end the year with a
6 small surplus on the patent side.

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

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

20 We have to date secured all overtime on
21 the patent side of the operation, so we will not
22 begin the year authorizing overtime. We're not

1 hiring anybody. We're not just not hiring patent
2 examiners, we're not hiring anybody from the
3 support organization. So if somebody leaves,
4 whether they leave the Patent Corps or the CFO's
5 office or our international office, we're not
6 replacing those attrits, we don't have the money
7 to replace the attrits, we need to take those
8 salary savings and bank them so that we can make
9 it through the end of the year.

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

17 We've entered discussions in the past
18 several months with DOC and OMB, in an effort to
19 try to seek other solutions rather than just
20 waiting for fee incomes to come and making other
21 cuts at the Patent and Trademark Office. While
22 there's nothing of substance to report, I just

1 want to let people know that we're not sitting
2 around waiting for something to happen, we're
3 actively pursuing other avenues to help ourselves
4 here at the PTO.

5 Just to make sure we address all of the
6 issues under number three, John, I think both Dave
7 and I have said that while we're very appreciative
8 of everybody's efforts and support, I'll say, even
9 from the trademark side on getting the
10 legislation, we certainly will not be using it
11 this year, and it's our goal entering 2010, not to
12 use it next year, the authority expires on June
13 30th, as you mentioned, John. I think it would be
14 hard pressed for us to know by June 30th what the
15 end of the year would look like even at that
16 point. But it's our goal not to use that
17 authority either in '09 or '10, and we'll do
18 everything we can in 2010 to make sure that we
19 don't have to use that borrowing authority.

20 So if there's any questions people have,
21 I'll be glad to try to answer any questions
22 concerning what we have planned, do not have

1 planned. I know there's other business unit heads
2 here who may want to talk, so if there's a
3 specific question about the impact of their
4 business units on the cuts we've had to make.
5 Subject to your questions, that's all I have this
6 morning.

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

14 MR. OLECHOWSKI: Well, we're going to
15 start the year, as I mentioned, John, our
16 financial plans and our revenue projections are
17 essentially the same number. We will be starting
18 the year with financial plans that essentially
19 equal our estimated revenue and carryover. So
20 something would have to change. And whether we --
21 I don't think we'll be spending more, we may
22 collect less, but -- and that would certainly

1 trigger discussions, just like there was in 2009
2 about what to do.

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

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

16 We feel fairly confident in our revenue
17 projections; they're certainly on the conservative
18 side going into 2010, as I mentioned, it's just
19 \$30 or \$40 million more than we had collected in
20 2009. So I feel fairly comfortable that those
21 projections are, like I said, on the conservative
22 side. But even so, even if we start collecting

1 more, I think there's many things that the Patent
2 Office, patent side of the office would like to
3 do, and those would be very difficult decisions.

4 I know we've already met with Dave on a
5 couple occasions, people wanting to do things, and
6 we're just holding off, we're being very
7 conservative as we start the year, so I think that
8 those requests for additional spending would be
9 taken very, very seriously.

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

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

22 MR. FARMER: I've gotten a feeling from

1 studying this that it's not as much a beginning of
2 the fiscal year hole, in other words, you're not
3 going to have cash drop right at the beginning of
4 the fiscal year, it's that at the end of the year,
5 you can't spend more than the amount that you
6 bring in, and so perhaps -- is your challenge more
7 towards the tail end of the fiscal year as opposed
8 to the beginning of the fiscal year?

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

18 We don't currently have borrowing
19 authority from the Treasury, we're not like a
20 private company where we could seek investors and,
21 you know, have current borrowing authority if I
22 needed to, you know, cover a bill that I just

1 couldn't pay right now. But it's -- at the end of
2 the year is where it has to happen, but it's a
3 year long evolution to make sure it does not
4 happen.

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

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

22 And we've worked hard amongst all of the

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

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

18 MR. OLECHOWSKI: No, I would say that's
19 an accurate assessments. Things always happen at
20 the end of the year. I mean peoples best laid
21 plans for trying to spend money as the fiscal year
22 progresses, lots of things happen. I mean the

1 negotiations you're doing to do certain programs
2 don't pan out; there's, you know, lots of other
3 things where you just don't get the chance to
4 spend the money that you thought you would.

5 And what we're seeing now as we start to
6 close out the month of August, we're seeing people
7 returning money that they may have planned a trip
8 and that, you know, the trip fell through for a
9 variety of reasons. So that money is starting to
10 come back into the PTO reserves, and I think
11 that's just normal at the end of the year. What's
12 at least a little bit different about the PTO, if
13 we were a normally appropriated federal agency,
14 everybody would be trying to spend that money,
15 because you're going to lose that money. We at
16 the PTO get to carry that money over, so there's a
17 different mindset here. People know that if they
18 don't spend -- they don't have to spend the money
19 because we'll lose it. So there's a culture, at
20 least certainly this year, that we've instilled,
21 you know, any dollars saved this year allows us
22 to, you know, apply it to a requirement next year.

1 But you're correct, I mean we're seeing
2 that number slowly come down, but the offsetting
3 pressure will be to try and spend it if we, you
4 know, once we turn the corner and everything else,
5 we'll have to make sure, as I mentioned, keep a
6 very close eye on it.

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

18 MR. OLECHOWSKI: Well, certainly if
19 there was no other avenues, you know, that could
20 certainly be an alternative. As I mentioned, I
21 think that would be our last alternative. I would
22 feel comfortable, though, that if our gap was that

1 small at the beginning of the year, and assuming
2 we collected revenues to what we think we would,
3 making up a small gap of, you know, in the small
4 millions of dollars would be quite doable.

5 I think the challenge, though, John, is
6 going to be that the patent side of the
7 operations, we're losing ground over there, and to
8 go through another year in 2010 like we did in
9 2009, I'm not sure sets it up for success for the
10 future, so I think that's the reason. Also, we're
11 trying to pursue other avenues with our DOC and
12 OMB counterparts to make sure that we cannot
13 continue to go backwards in 2010.

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

1 hearing about them. I don't know if you all can
2 tell us anything or not.

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

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

20 MR. FARMER: I understand. Speaking
21 just for myself, not necessarily for all of TPAC,
22 and I realize this wouldn't help you out in a

1 recession, but it would be awfully nice if, down
2 the road, if the PTO got to keep all the revenue
3 that it brings in, not just the amount of revenue
4 it's budgeted to bring in, so that you don't have
5 unintentional dollars flowing back out, because if
6 you all have a better than expected year, and you
7 get extra revenue, you're going to have extra work
8 because those are fee payments based upon people
9 who expect their work to be done, and so I just
10 personally hope that we'll reach the day where the
11 PTO not only doesn't have intentional rescission,
12 but unintentional rescission, because I think that
13 the folks who pay the fees that create that
14 revenue deserve that.

15 I've been running my mouth a lot.
16 Anyone else on TPAC want to jump in with questions
17 or comments on this before I go to Lynne's
18 financial forecast for the trademark operation?
19 Hearing none, Lynne, what's going on financially
20 in the trademark operation?

21 MS. BERESFORD: Thank you very much,
22 John. I'm going to call Karen Strohecker to the

1 table to give the details; I will give the big
2 overview here, which is, it looks, from our
3 forecasting models, it looks like we're going to
4 be taking in enough revenue in the next year to
5 certainly sustain our operations.

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

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

19 The CFO is actually projecting that
20 we'll have a surplus at the end of the year of
21 about \$72 million. We began the year with a
22 surplus coming in of about \$44 million, so that's

1 a net gain of approximately \$28 million in revenue
2 that we don't expect to spend this year, which is
3 good news for everyone.

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

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

14 MS. STROHECKER: A combination of a
15 couple of factors, one being that our projected
16 expenditures this year will be less than what they
17 were in 2008, probably by about \$7 to \$9 million.
18 I believe we spent combined \$202 million in 2008.
19 This year the forecast is running about \$193 to
20 \$194 million, so that's one thing.

21 The second thing is, we actually had
22 significantly more revenue from filings of

1 extensions of time in 2009 than we did in 2008.
2 Approximately 18 percent of our revenue comes from
3 fees collected from intent to use filings,
4 combinations of extensions of time and statement
5 of use, so it's not just the revenue from the
6 filings which is the biggest percentage of our
7 revenue income source that we collect revenues
8 for.

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

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

22 MS. STROHECKER: Well, the trademark

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

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

18 MR. OLECHOWSKI: I'm sorry, John, if I
19 could just add onto Karen. I think you're
20 correct. When we did cost saving measures across
21 the USPTO, certainly if we -- if we do not do
22 something in patents, that money is returned

1 completely to patents, but if we make cuts in the
2 support organizations where there's a split of
3 cost, a certain amount of the cost or the savings
4 goes back into the trademark bank account. So
5 you're correct that if we cut in CFO, CIO, PPE,
6 OGC, some portion of that will go back to
7 trademarks.

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

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

1 kind of dismal financial picture, there's some
2 real good news possible.

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

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

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

15 MS. BERESFORD: We've seen a gradual
16 improvement in July and August and September. We
17 were projecting, for instance, August to be I
18 think about 15 percent below August of last year,
19 it's only nine percent below. We were projecting
20 July I think to be about 12 percent below July of
21 last year and it was six percent below. So we're
22 seeing some flattening of the downward curve and

1 we think we're going to get to kind of a level
2 filing estimates next year. We'll be about where
3 we were -- we'll continue at the level we are near
4 the end of this year. So we're pretty confident
5 that we may have seen the last of this effect on
6 trademark filings.

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

19 MR. FARMER: Okay. I'm not sure if this
20 next thing is a question or statement, so I'll put
21 it out there, and if it gets a reaction, we'll go
22 for that. As I mentioned in my opening comments,

1 one of the things that's really on my mind and I
2 think all of TPAC's mind, is just to make certain
3 that trademark operation is guarded against the
4 worst reasonable possible outcome as far as the
5 economy is concerned.

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

10 And so it would be good to know if a
11 financial analysis has been or will be done that
12 looks at what that would be for the trademark
13 operation in terms of its needed habits and
14 surplus, you know. You wouldn't be able to run
15 off current dollars, you'd have to dip into the
16 bank, and when that's done, to look at what the
17 quantity of dollars needed is and when those needs
18 are likely to arise across the time horizon,
19 because it may not be immediate, and then to make
20 certain that information is out there to the whole
21 community so that on the other side, if it's
22 looking like they're going to need to tap patent

1 funds, then my guess is if trademarks is in that
2 big of a hole, patents is going to have an issue,
3 too, that everyone will know how much needs to
4 remain in the bank to guard against a possible
5 trademarks for a lower RIF, because obviously
6 that's one of the things that we're trying to
7 prevent, and it seems that perhaps priority ought
8 to be given to protecting on the trademark side
9 simply because -- there's no respect or disrespect
10 on the patent side, the trademark folks ought to
11 be guarded first because they're the ones who
12 generated the surplus. I don't know if that
13 produces a comment or a statement as to what's
14 going on, I throw the floor open in case it has.

15 MS. BERESFORD: Let me just say, we
16 should be called filing predictions are us over on
17 the trademark side of the house with respect, and
18 I apologize to the Toys-R-Us trademark folks, I
19 didn't mean it. And the trademark side of the
20 house has constantly working on its filing
21 projections, its income projections. And we've
22 been asked to consider what kind of a number we

1 would need that we would think would be a good
2 cushion, rainy day fund, you know, amount of money
3 that we think we would reasonably need in dire
4 straights, and so we are, in fact, working on that
5 particular issue. And I know that Nabil Chbouki
6 and Karen have come up with some numbers. I
7 haven't reviewed them yet, but it's -- but we are,
8 in fact, as soon as we have some competence in
9 what our prediction is, we will be happy to tell
10 everyone. You know, if it's an important number
11 and if we think this is really a number that
12 reflects what we absolutely have to have, of
13 course, we would be remiss not to tell people what
14 we think we need. So ---

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

21 MR. FRIEDMAN: I do; Karen, could you
22 just -- this was toward of your prepared remarks.

1 Could you clarify, projection-wise, where we would
2 stand at the end of 2010 versus where we probably
3 are going to be at the end of 2009?

4 MS. STROHECKER: Are you talking about
5 the surplus?

6 MR. FRIEDMAN: Yes.

7 MS. STROHECKER: Okay. The current
8 projection, as I said, for the end of 2009 would
9 be approximately \$72 million in trademark surplus.
10 The projection, likewise, for 2010 right now is
11 about \$82 million. And that represents a net gain
12 in income versus projected requirements of about
13 \$4 to \$5 million, with income being slightly less
14 than this year, as well as the carry forward of
15 the surplus for this year.

16 MR. FARMER: I guess it's -- this is
17 another one of those comments that could be a
18 question, but you really never know, and that is,
19 I guess the whole world is, in a sense, tied
20 together, isn't it, in that trademarks as a
21 surplus, if things go as we hope and anticipate,
22 we don't think it'll be lost.

1 We hope and somewhat anticipate the
2 patent operation may need to tap it, but it's a
3 bit of a safety blanket, but also because we're
4 hearing wonderful news that there may be some
5 separate trademark computer systems that will
6 allow the trademark operation to get to where it
7 would like to be quicker. That's a potential also
8 future need of some of those trademark dollars in
9 the bank and so that's just one more ball you've
10 got to keep in the air or keep your eye on as far
11 as the surplus is concerned. Back to TPAC, any
12 other questions or comments? Any questions or
13 comments from anyone who's come to visit with us
14 here today? I don't think any have come in from
15 cyber space, so, David, did you have anything else
16 on this?

17 MR. KAPPOS: No.

18 MR. FARMER: Okay. In that case, we're
19 going to take a five minute break. We will come
20 back five minutes ahead of time, which makes me
21 happy, and then visit with TTAB Chief Judge David
22 Sams, and for those of you who have been here

1 before, I really mean five minutes and we'll get
2 rolling. Thanks.

3 (Recess)

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

12 MR. SAMS: Thank you, John. And good
13 morning, everyone. To frame today's discussion, I
14 provide a couple of documents in your packet of
15 information. One is a workload production and
16 pendency chart and the other is a short article on
17 accelerated case resolution. Let me just hit a
18 couple of -- and it's a rather dense looking
19 chart, so let me provide a summary of the
20 highlights of the workload production and pendency
21 at TTAB through the third quarter of fiscal year
22 '09.

1 New appeals, first of all, for this
2 year, relative to last year, are down 15 percent
3 and through the end of the third quarter. New
4 oppositions are down 20 percent from last year and
5 our new cancellation petitions are down 16
6 percent. So we have had a falling off of receipts
7 that's somewhat parallel to that we've seen in the
8 application section.

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

18 Pendency, and this is good news in the
19 report, I think, final decisions on the merits,
20 our pendency from the time a case is heard in oral
21 argument or is submitted on brief, is now 6.7
22 weeks to decision. That contrasts last year of

1 12.9 weeks, so we made substantial progress there.
2 In the area of deciding contested motions before
3 the board in oppositions and cancellations, for
4 the first three quarters, we had a turnaround time
5 from the time the case was -- the motion was ready
6 for decision until it got decided of 7.1 weeks,
7 which is down substantially from the 17 weeks that
8 it was at the end of the third quarter of FY '08.

9 And in terms of total number of
10 decisions issued, the number of decisions on the
11 merits is up this year eight percent over last
12 year, and the number of decisions on contested
13 motions is up 21 percent over last year.

14 We've been encouraging also our
15 interlocutory attorney staff to handle as many of
16 contested motions as possible by telephone
17 conferences, and that percentage of cases so
18 handled has increased from ten percent in FY '08
19 to 22 percent for the period -- through the third
20 quarter of '09.

21 If we actually factor in the fact that
22 this for all contested motions, and some contested

1 motions we don't consider appropriate for handling
2 by phone, like summary judgment motions, and if we
3 put in just those that we will handle by
4 telephone, it's closer to 33 percent of cases are
5 now being handled by telephone. We're also
6 collecting statistics in conjunction with a
7 request by the TPAC over the last couple of years
8 to determine how long is the case, particular --
9 case -- oppositions and cancellations, how long
10 are they pending between the time they're filed in
11 the first instance and we get a decision, if it
12 goes all the way through trial to a decision on
13 the merits, to determine how long a case is
14 pending at the board in those circumstances.

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

20 Now, I should point out that 97 percent
21 of cases are settled or otherwise disposed of
22 before they get to that point, so it's a

1 relatively small number, but it's an important
2 number and it takes up a lot of our resources to
3 deal with that three percent of cases.

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

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

17 For those who don't know what it is,
18 it's actually a variation, and it's been given a
19 name, something that's actually been available for
20 probably as long as the board has been in
21 existence, and that is, if, by stipulation of the
22 parties, a trial can be avoided, if the parties

1 don't want to have a trial and want to have a
2 decision based on a much more truncated record,
3 that's always been possible.

4 In the past we have, on occasion, many
5 years ago even, taken cross motions for summary
6 judgments, gotten a stipulation by the parties for
7 us to treat that as the record in the case for
8 purposes of issuing a final decision on the merits
9 that's appealable to court, and they have done so,
10 and we have done so. We've never, until the last
11 couple of years, made a concerted effort to make
12 that option known to people. And we have, in the
13 last year or so in particular, taken a great deal
14 of effort to attempt to make this option known and
15 to get people to use it if it seems to be in their
16 best interest to do so. We have had only four
17 decisions issued this year which utilized
18 accelerated case resolution. But the process
19 itself is very flexible. The way it's structured
20 now, it's based on the agreement of the parties.
21 We will not force people into an accelerated
22 process unless the parties are in agreement to do

1 it.

2 What we're trying to do now is encourage
3 them to do it in certain situations. In those
4 cases where we now have -- we've been invited to
5 participate under our rules in the pre -- in the
6 initial discovery and settlement conference, the
7 interlocutory attorneys involved in those
8 conferences, if they believe this to be a case
9 that might benefit from accelerated case
10 resolution, will make that option known to the
11 parties. And we have had a number of parties and
12 cases that are now before the board seriously
13 consider taking that route.

14 We've also attempted to make known to
15 the public in general, that is, to attorneys and
16 to trademark owners, that this is a process that
17 might be of use to them. But preparing the
18 article that's in the packet of information that
19 you have for today's meeting, it's something in
20 the nature of a press release, it has been
21 distributed through the International Trademark
22 Association, the IPO, the AIPLA, and at least one

1 bar association, the California Bar. It has been
2 made available elsewhere, as well.

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

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

15 MS. DENISON: Well, I would just like to
16 start off with a big thank you to Chief Judge
17 Sams, the other judges, the interlocutory
18 attorneys, the entire staff of the TTAB. There's
19 been a great team effort made this year to reduce
20 the time it takes to make a decision. And we at
21 TPAC really appreciate all that you have done to
22 make this happen. And I don't think that -- if it

1 hadn't been a great team effort, that it would
2 have happened. So there have been a number of
3 contributing factors, but we're really, really
4 thrilled with the fact that you've gotten your
5 pendency down. And I'm sure that the private bar
6 would agree that the fact that you have cut your
7 decision-making times down to less than half in
8 some cases, and that's just a great thing. So
9 thank you for all your hard work and keep it up.

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

19 And what we have been talking about, Jim
20 Johnson and I are the subcommittee on the TTAB and
21 international for TPAC, and we have also been
22 considering whether it would be good to have a

1 faster track available where both parties did not
2 consent. And so that's one of the things we
3 wanted to talk about today, was whether the
4 public, the government, TPAC, everybody thinks
5 that it's a good idea, and how it would work, and
6 so we I think wanted to brainstorm. John, you
7 want to talk about your idea?

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

18 MR. SAMS: Well, I think it's a
19 combination of things. Obviously, when you have
20 fewer coming in the front door, it's easier to
21 catch up, but I don't think it's entirely that.
22 We put into place this year, among other things, a

1 new performance plan for the interlocutory
2 attorneys who have more than risen to the
3 occasion.

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

20 MR. FARMER: Do you all think that
21 you're going to be able to maintain the current
22 faster speed that you all have achieved as filings

1 kind of come back up to non- recession levels?

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

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

18 MR. SAMS: Well, we don't have any
19 anticipation of adding in fiscal year '10 or '11,
20 so I don't -- I can't say how much flexibility we
21 have, but based on our projections, we're probably
22 not going to need any additional staffing.

1 MR. FARMER: I wanted to go to ACR,
2 Accelerated Case Review, for a few seconds before
3 we go into discussing other ideas. For
4 Accelerated Case Review, just to make certain we
5 all understand what it is and isn't, my
6 understanding from reading the materials is that
7 it's not for every kind of case, and thus, if we
8 needed a faster track or the community thought
9 there should be a faster track, while ACR could be
10 a faster track for some kinds of cases, it might
11 not be for all.

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

18 It strikes me that if there could be
19 kind of cases that may need to go fast, and ACR
20 might not be the right vehicle for them just
21 because you may have counsel that's like this and
22 no one is going to concede an inch, or just

1 because it's the nature of the case that the
2 record is just not going to be the kind that can
3 go through ACR.

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

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

20 MR. FARMER: Sure; and we talked some
21 about it being brought up to litigants for the
22 TTAB. Presently, the way I understand, if I get

1 it wrong, let me know, is that in a case, you have
2 a required initial discovery conference and you
3 have to have that and your initial disclosures
4 before you can go out there and take active
5 discovery. And presently, there's no requirement
6 that anyone with a TTAB participate in it, usually
7 it's just one -- the counsel get in touch, they
8 set up a time, they talk, they go through their
9 checklists, file their initial disclosures and
10 they're off running.

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

20 MR. SAMS: That's correct. I believe
21 the last statistic we collected on this was that
22 the board is participating in only about two

1 percent of the cases after an answer is filed and
2 there's a conference for settlement and discovery.
3 So we're involved in very few of those, so the
4 opportunity for us to raise ACR as a possibility,
5 at that stage, at any rate, is rather limited.

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

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

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

20 MR. SAMS: I can't recall. My
21 colleagues back here tell me that it is in that
22 written statement.

1 MR. FARMER: Yeah, I've got a few
2 opposition cancellations going on now, and I
3 think, remembering language in there, but just a
4 thought that occurred to me in the -- at the first
5 time today is, maybe if you really break it up and
6 put it in bold and say thou shall consider ACR,
7 that might push some folks in that direction.

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

1 MR. SAMS: I can add a point on that.
2 Speaking of the trademark manual of practice, TTAB
3 manual of practice, we are in the process of
4 making a major revision to that manual, and one of
5 the judges has -- his whole assignment is to go
6 through the sections as they are edited and decide
7 whether or not it's an appropriate place to insert
8 some reference to accelerated case resolution.

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

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

1 to you for a few minutes.

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

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

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

1 degree that the TMEP is.

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

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

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

22 MR. JOHNSON: Thank you.

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

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

1 and what they have to track, and we're
2 sympathetic.

3 But, you know, we are looking at the
4 interest of the trademark community, and the vast
5 usage is, people prosecute marks are using the
6 TMEP, or people doing TTAB matters are using the
7 TBMP, and the more that can be up-to- date, the
8 less likely it is that folks are going to make
9 mistakes, because many of us practitioners, for
10 instance, with the TMEP, we don't always think to
11 go look through the exam guides, you know, we just
12 reflectively dive into the TMEP and off we go.
13 And so just a statement to the trademark community
14 that all of us are just trying to row towards that
15 eventual goal because we think it will serve the
16 trademark community. And again, it's not that
17 anyone is resisting us, I don't want that message
18 to imply that we've run into any obstacles.

19 Now, finally, I'll get around to what
20 Mary wanted me to talk about. Let me make it
21 clear at the outset that this is not something
22 that originated in the PTO. And so I don't want

1 the trademark community to be under the impression
2 that there's some movement of foot instigated at
3 the PTO to create a fast track, and it's coming,
4 and you better get ready. It's something that
5 we've instigated on TPAC. As a matter of fact, if
6 you want someone to shoe that, I'll take the
7 blame, because I'm the one who's really been
8 pushing this issue.

9 And we are just at the brainstorming,
10 would this make sense stage, we're just kicking
11 things around, that's all. And so, as a matter of
12 fact, for those of you who are here, those of you
13 listening at home, we are very interested in your
14 thoughts, and not only thoughts from major IP
15 organizations, many of them have representatives
16 here, but individuals. And, you know, we have our
17 email box, askTPAC@uspto.gov, and so let us know
18 what you think. Here's what's going on, and that
19 is, even when the TTAB process is fast, it's slow,
20 in that pendency has come way down, we're very
21 happy with that, but when you look at how long it
22 takes to go through the process, and our current

1 statistics for trials, for oppositions and
2 cancellations, the mean is 202 weeks, the meeting
3 is 162 weeks, the 25th percentile cases, in other
4 words, those that are only one- quarter of -- the
5 fastest are 107 weeks, and the 75th percentile is
6 257 weeks.

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

13 For example, David's folks wonderfully
14 produced us a little timeline that showed if there
15 were no delays at all, if everything just went
16 right through as the order requires, that it would
17 be 550 days from the initial filing of the
18 petition to the date upon which the rebuttal trial
19 brief is due. And then on top of that, the
20 current and good number for getting cases decided
21 is 6.2 weeks. And so if you add 550 days and 6.2
22 weeks, you end up with 84 weeks, which is not

1 quite two years, it's more like a year and a half
2 to two-thirds, not bad, not super speedy. But
3 practically speaking, you always have some delay
4 in a case, it just, you know, unless no one does
5 anything, and in that case, you have to wonder
6 what kind of briefs are going to be filed. You're
7 really probably going to be closer to the current
8 median number, 162 weeks, which is a little over
9 three years.

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

21 But my point was that sometimes there's
22 a need for speed, and sometimes, let's be honest,

1 there can be some strategic behavior on behalf of
2 an opposing party to take advantage of the lack of
3 speed because it helps them.

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

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

1 would think of other opportunities.

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

10 What I'm thinking is that it would be an
11 alternative track where it would not require the
12 consent of both parties, because it strikes me
13 that if both parties consent to go fast, when
14 there's a will, then there's a way, and you have
15 vehicles such as ACR. This is for the cases where
16 there's not agreement. I'm thinking about a
17 possible process in which a party can request the
18 fast track, and then I don't know if you would
19 have it be, well, if someone requested, they'd get
20 it, or if, instead, if someone requested, then
21 there's sort of a little show cause process in
22 which there's a determination as to what is

1 sufficient cause to get on that fast track, and,
2 of course, that then requires developing a whole
3 set of juris prudence as to what is sufficient
4 cause for a fast track and what is not.

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

13 If you're thinking super broadly, I'm
14 not advocating this, but hypothetically, you could
15 say, well, there should be a fast track and it
16 should be outside the USPTO, it should be
17 something available in the federal courts through
18 the Lanham Act. I'm not suggesting that, I'm just
19 saying if you think of the whole universe of
20 possibilities, you would sort of go first, is it
21 in the PTO or is it out of the PTO, and then if
22 it's in the PTO, you know, what shape does it

1 take, is it automatic, is it a show cause thing,
2 what are the grounds for it, so forth and so on.

3 And beyond that, I don't have really
4 specific thoughts, it's to introduce the topic,
5 it's to get thoughts that people have as to
6 whether there's even a need for one at all, since
7 I guess that's ultimately the zero question, and
8 that is, is this a road we should even
9 contemplate, and thus, I just throw that out for
10 discussion. And so I'm going to stop running my
11 mouth here, which is a challenge, and ask folks at
12 the TTAB, and on the TPAC, and then eventually the
13 audience, if they've gotten anything they want to
14 step up and say about that?

15 MS. PEARCE: Well, I'll go ahead and
16 inject an opinion here. And I guess this is from
17 someone who is concerned about being strong armed
18 often times. I don't mind when proceedings drag
19 out, because for the most part, I prefer
20 negotiating settlements anyway, I'm not looking to
21 litigate. So if things take a while, that usually
22 buys me some time to negotiate something that's

1 fair to both sides. My concern with anything
2 where both parties don't consent is the ease with
3 which that could be misused. If you've got to
4 show cause, you're going to wind up dragging out
5 the process anyway, so I don't know how much speed
6 you'd get out of it. And I certainly would think
7 you'd have to show cause, you couldn't just
8 unilaterally side for both sides, hi, this is
9 going to get speeded up because it's in my best
10 interest to go ahead and strong arm this other
11 side as quickly as possible.

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

19 MS. DENISON: John, I'd like to know,
20 you know, right now if you have a bad situation
21 with infringement, you could go into a court and
22 seek a TRO. So what advantage do you see to

1 having a separate proceeding at the TTAB when
2 there is, in fact, a mechanism in place in the
3 federal court system that you could presumably
4 use? Now, I'm assuming it's going to cost more,
5 but I'm just interested in your thoughts on that.

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

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

1 sufficient to get you into federal court.

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

15 The case law there is just getting
16 developed now, it's not fully formed. It's
17 appearing that that has increased opportunities
18 for folks who are stuck in trademark matters to
19 get declaratory judgments. I don't know if the
20 law is fully developed. My own read on the law is
21 that where it's going to end up is if you have a
22 use base situation, if you file an application and

1 it's 1A, or you're using the mark, that may enable
2 you to get some -- a good shot at getting your
3 case heard in federal court under a DJ action.

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

21 And so that's a long winded way, since
22 I'm always long winded, of me saying that it looks

1 like there are a substantial number of kinds of
2 cases where you don't have that federal court
3 option presently, under the present law.

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

8 MR. FARMER: I hadn't really thought
9 about putting such a limitation in, and so that's
10 something to contemplate. If you were going to,
11 it seems to me you would need to have some
12 certainty as to when you could get into federal
13 court, if that's what you wanted to do. And as I
14 mentioned presently, my view is that there's
15 haziness in the law as to when you can, even in a
16 use situation, because the Medimmune case law is
17 not fully developed on the trademark side, and
18 also, this is akin to the res judicata and
19 collateral stopple cases, and that is, as a body
20 of case law that talks about when a result in a
21 federal district court action will have a
22 preclusive effect on a trademark filing and vice

1 versa, flowing the other way. If you get show
2 down in the TTAB, what effect does that have on an
3 infringement action, for example.

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

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

21 MR. LOCKHART: Well, there's also the
22 cost consideration, too, isn't there? As you

1 mentioned, going into federal court is likely to
2 be more costly than pursuing something here.

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

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

20 And then this adds another potential
21 leverage point in that usually, while you may not
22 spend more money in the fast case, you actually

1 spend less, you're going to spend it quicker. For
2 those of us who litigate this stuff, like Tim does
3 and I do know, and so under this world, you would
4 accelerate the day upon which those dollars are
5 going to be spent, and so, yeah, that's an
6 additional leverage point. That doesn't mean it's
7 an undesirable leverage point, one that should be
8 eliminated, but yeah, that's candidly something
9 that's out there. Any other TPAC folks that want
10 to throw in thoughts or ideas? What about folks
11 in the audience, any thoughts out there as to
12 this?

13 I think then, the way I will leave it
14 for now is, I've thrown the idea out there, and we
15 really would like folks to stew on it and then
16 throw their ideas and responses in to us. And so
17 for the folks listening at home, for the folks
18 here at present, for the folks at the TTAB, for
19 the folks in the General Counsel's office, for my
20 fellow TPAC members, let's give this some thought.
21 Obviously, there's a lot to be decided, and the
22 first question is whether we need it. I've asked

1 the question, and I look forward to every answer
2 that someone may have to offer.

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

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

1 MS. DENISON: John, could I add one more
2 thing ---

3 MR. FARMER: Please do.

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

11 As Jim said yesterday to me, you know,
12 sometimes you don't want to appear weak, and so
13 you don't want to suggest settlement, but if there
14 were a TTAB ordered settlement conference, gee,
15 you'd be there and you'd be happy, and I think
16 that that's the case many times. Both parties
17 kind of want to settle, but no one wants to bring
18 it up, because then they think they're going to be
19 in the weaker position because everybody is going
20 to think, oh, they're desperate to settle. So we
21 will hope that the TTAB will give that some
22 consideration and perhaps some -- if people in the

1 broader trademark community have any interest in
2 the subject of TTAB involvement in settlement
3 conferences, we'd like to hear about that, too.
4 Thank you.

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

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

1 previously the Director of Finance. So, Mark.

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

12 This is a joint project between the
13 CFO's office and the trademark organization. What
14 we want to do is identify the cost of work
15 performed for fees generated, and there's a couple
16 reasons why we want to do that, the first of which
17 is OMB circular A-25, and that mandates that every
18 other year basically we have to do a fee study.
19 Now, we're going to more than meet that
20 requirement with this fee study, because, as I
21 will get to this, there will be three years of
22 data.

1 It also makes good business sense,
2 that's an obvious reason to do this. And TPAC
3 requested this, I think in, what was it, October
4 of last year? Okay. Some of the objectives that
5 we want to accomplish is, we want to map our
6 resources to the activities and then to the fee
7 codes, which are the cost objects that we have
8 revised. That's the main goal of this study. But
9 we're hoping that there will be some byproducts of
10 that, because when you do these fee studies, some
11 things come out and come into like, and I'm
12 hopeful that we will see some opportunities for
13 management to look at some of the costs that are
14 occurring in the trademark organization, as well
15 as some of the shared service organizations.

16 The current time frame, we conducted an
17 executive level kickoff in January of 2009, and we
18 completed that, and then we had a formal cost
19 study team kickoff in March of 2009. We have also
20 during that time frame met with subject matter
21 experts, as well as process owners within the
22 trademark organization, as well as some of the

1 shared service providers, and were able to
2 identify some of the activities that are
3 performed.

4 The costing model is -- we are on track
5 to finish that by the end of this month, which is
6 Monday or Tuesday, and then we will complete the
7 fee cost analysis by September 30 of 2009. Now,
8 that will be for 2008 data. What we plan on doing
9 in October is, performing the calculations for
10 2007 and 2009, and that will give us three years
11 of data, and we'll be able to do some trending
12 analysis and see what that looks like. We have
13 completed phase one and phase two of the trademark
14 model revision. The first phase was planning and
15 the second phase was actually revising the model.
16 We're currently in the third phase.

17 We did lose some time in July. There is
18 a patent, a full blown patent fee study that's
19 being conducted concurrently, and unfortunately
20 some of the fee team are performing on both sides,
21 and so we have competing resources, but we are
22 making up that time. And I think we did a good

1 job in the planning phase that is able to mitigate
2 some of that.

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

11 We've accomplished a lot since the study
12 began. We validated the trademark processes and
13 activities by meeting with the process owners, as
14 well as subject matter experts. And what we have
15 done is, we've mapped activities to fee codes, so
16 when we collect a fee, we know what activities are
17 triggered. We have also determined how to
18 allocate cost from inside the trademark
19 organization and outside the shared service
20 organizations. And what I mean by that is, for
21 example, in the trademark organization you have
22 the Commissioner's Office, and that cost needs to

1 be allocated within the trademark organization, as
2 well as the shared service organizations which are
3 outside of the trademark model. Both of those
4 have to be incorporated and allocated
5 appropriately, and we've done that.

6 We have also -- there's 67 fee codes,
7 and we have mapped those as cost objects in the
8 model. So the activities that are performed, we
9 use an activity driver to then split those to the
10 67 fee codes.

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

17 Our next steps are to finalize the
18 model. Did we map everything appropriately? Did
19 we validate it, does it make sense? We want to
20 make sure that we have developed proper
21 relationships between the activities and the cost
22 objects. We also need to figure out the display.

1 Like I said, we think we have a good methodology
2 of what we're going to show in the final results,
3 the direct cost, as well as the indirect cost.
4 And then we need to validate those costs. There
5 needs to be some sort of check sum, some overall,
6 that we account for all the costs.

7 Then we want to incorporate 2007 and
8 2009 data, like I said, so we have three years
9 worth of data, and that will provide some good
10 trending analysis, and then we will deliver the
11 results to the executives, as well as TPAC, of
12 course.

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

17 This will be fully burdened cost, and
18 like I said, we will have the direct component and
19 the indirect component of both. And we'll be able
20 to slice and dice that data in many different
21 ways. And we're going to a more granular level.
22 For example, CFO's office, instead of just having

1 a CFO lump sum, we're going to have Office of
2 Finance, Office of Procurement, et cetera, so that
3 will give a little bit more granular detail. We
4 have had some challenges. I would say the hardest
5 challenge was the beginning, when we were defining
6 and formalizing the methodology. But that has
7 paid dividends in the end, because we are moving
8 speedily now and we are on schedule to meet the
9 9/30 date.

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

20 MS. PEARCE: I'd like to thank everybody
21 for all their hard work on this. We've made a
22 tremendous amount of progress I think since this

1 study was first recommended last October. And I'd
2 like to thank, as I always do, Mark and Michelle
3 and their excellent team for their hard work, and
4 also for the beautiful job they've done in
5 presenting this to us. This is by no means easily
6 digestible material. I was given a slightly more
7 complicated version of it in subcommittee, and
8 there are materials beyond that that have to be
9 condensed down. I would also like to thank the
10 trademark organization for the amount of time
11 they've put into this, notably Karen Strohecker
12 and Debbie Cohn have done a beautiful job I think
13 of providing a lot of input and making sure that
14 every eventuality was covered.

15 I would also like to let the trademark
16 community know that these fees are being studied
17 from both an electronic and a paper point of view.
18 The reason there are 67 different fee codes is
19 because it's going to be broken down from paper
20 filings, electronic filings, TEAS and TEAS Plus,
21 and the various components of the prosecution
22 process.

1 I have asked the OCFO team to have
2 actual recommendations on fee adjustments for us
3 for our October meeting. That's going to be -- we
4 haven't set the date yet, but it's going to be
5 probably mid October. So we hope to have some
6 specific fee adjustment recommendations at that
7 point. There will be, of course, a presentation
8 to the trademark executives the end of September,
9 so that seemed reasonable. We won't lock them
10 into these, these will be suggested adjustments.
11 There can always be a little bit more wiggle room
12 if we need it. But I'd like to be able to, at the
13 end of one year of working on this project, be
14 able to show the trademark community what it's
15 going to mean to them. I think that's what
16 everybody always wants to know, is the bottom
17 line, what's in it for me, so I'm hoping we'll
18 have some help for them on that. And it may
19 encourage people to continue with the electronic
20 filing process, which I know is what Lynne would
21 like. I'm expecting that that will definitely be
22 one of the points that will come up.

1 I don't believe I have anything else to
2 contribute at this point, but if anybody has got
3 any questions or any concerns, if there's anybody
4 out there in the trademark community that would
5 like to send in an email question, we'd love to
6 take your questions also.

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

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

14 MR. FARMER: Yes.

15 MS. DENISON: So the recommendations
16 that are going to come out are say TEAS actually
17 costs less than \$275, so we might do a fee
18 reduction for TEAS, but we -- it'll cost \$500 to
19 process a paper application? I mean is that the
20 kind of thing that you're going to be looking for
21 in the recommendations, or is it going to look at,
22 you know, are the extension fees too low, too

1 high, I mean is it going to look at every single
2 fee that's charged along the way?

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

6 MR. FARMER: That's correct.

7 MR. OLECHOWSKI: Well, we'll certainly
8 look at everything. I mean I don't think it's a
9 CFO recommendation in a vacuum. I mean there's --
10 obviously, the trademark organization is going to
11 have a big say in what they believe the fees ought
12 to be, whether it's just pure cost recovery or
13 behavioral changes and everything else. So I mean
14 I think that's a team effort to make a
15 recommendation. And we'll certainly provide the
16 cost data for everybody to review in trademarks
17 and CFO, but I think there's a lot of other
18 considerations just in pure cost recovery.

19 MS. BERESFORD: Yes; I think one of the
20 issues at the beginning was whether A-25 even
21 applied to our fees because we have the ability to
22 collect fees in the aggregate, unlike the patent

1 side of the house, where it's clear A-25 applies.
2 So the need for this fee study was questioned in
3 the beginning. Now that we're going to collect
4 information that is, in theory, going to tell us
5 actually what our particular services cost, still
6 does not change the nature of the fact that we
7 don't have to set our fees just to recover cost.

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

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

19 MS. PEARCE: Absolutely, it's going to
20 be an agency-wide decision. What I wanted was to
21 have the information out there so that we could
22 see what the costs are. I realize that, you know,

1 there are incentive reasons why an extension of
2 time has a higher fee than a statement of use, and
3 I think that's perfectly acceptable. And there
4 will be other considerations along the way. But
5 I'd like to go ahead and get that raw material to
6 the trademark office so we can go ahead and start
7 making some analysis of that. The trademark
8 organization obviously is very well run and very
9 well funded, and we appreciate that. And this is
10 a way I think of being able to provide greater
11 transparency for the trademark community about how
12 those fees are calculated and what they're getting
13 for their money. So I think this is something
14 that'll be much appreciated by the community.
15 But, yes, it will be a joint effort to make the
16 final decision, there's no question about that.

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

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

1 what Mark just briefed you on.

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

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

22 Given that the ABI program at the USPTO

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

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

21 So we had them come in and actually look
22 at the technical aspects, I'll call it, of the

1 model, which was, you know, far more than my
2 knowledge of dealing and digging into the actual
3 software, how we collect the cost, how the -- what
4 drivers we use, how they're allocated, so all the
5 way from coming from our normal core financial
6 system and driving all the way out to the outputs
7 that you will see in October as to what the costs
8 of services are and those that are calculated.

9 So they also looked at it when -- they
10 kind of, from a technical perspective of how the
11 program was established, meaning how was it
12 managed, how was it operated at the USPTO as a
13 whole, and then they also looked at it from the
14 usefulness of the information that the models
15 produce, and also, how is the agency as a whole
16 using the information, is the agency using the
17 information. They, as I said before, in looking
18 at the third bullet, they brought a lot of
19 knowledge and history and resources to the USPTO
20 and also compared what we do to industry best
21 practices and kind of tried to benchmark us, where
22 do we fit against other organizations that they've

1 seen. So given the time constraint, we want to
2 leave time for questions, I don't plan on going
3 through every slide, so I will just let you know
4 which ones we want to go to.

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

11 So if you flip to the next slide, you'll
12 see that what I'm going to be talking from is
13 actually excerpts of the presentation that they
14 briefed the USPTO executive management on on July
15 20th.

16 So from a mechanic's perspective, when
17 the contractor came in, we used the activity based
18 information steering committee as the conduit for
19 all business units from a liaison perspective, so
20 members of every business unit had the ability to
21 review the information, ask questions. All
22 business units were present during their briefing

1 on July 20th and had the opportunity to ask
2 questions there. As a part of their -- I
3 mentioned that they actually got into the
4 technical details of the model. They also went
5 out and met with all business units, from an
6 interview perspective, trying to get a perspective
7 of how the information is used, getting into the
8 application and use. So they met with executives
9 at executive level, they met with the financial
10 level folks, and the operational level folks in
11 every business unit. So we can just skip this
12 slide.

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

21 They talked about our technical approach
22 in program management, said that we had a very

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

19 We are also -- they also talked about
20 that while the models were technically sound,
21 complex, very well built, and the program
22 management, we had a steering committee, we have,

1 you know, a team that leads it, all of the model
2 documentations was there and clear and concise
3 from a technical perspective.

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

1 strategic and operational management at the
2 organization.

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

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

18 They said that, from their experience in
19 the federal government, that that was probably the
20 reason for the success from the length of the
21 program, that it's been in place for so long, it's
22 been recognized, it's been established. They said

1 they see a lot of things in federal agencies where
2 they come in and they set up an ABI model or
3 program for a particular reason, to answer a
4 particular question, and then the person who
5 wanted that question is no longer at the agency,
6 the model dies, people forget about it, it costs a
7 lot of money to pull it back up again when
8 somebody has a different question, and they were
9 impressed that ours has been in place for a long
10 time.

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

16 The other thing they thought was, they
17 were pretty impressed with was our enterprise-wide
18 time management capture system. With the PTO,
19 given that, you know, we are more production
20 oriented, what they see in a lot of, not just
21 federal agencies, but private sector companies,
22 too, that the way that time compensation costs are

1 allocated are based on a survey, random -- they go
2 and survey employees once a year, once every two
3 years, what percentage of your time has been spent
4 on each of these activities, and the fact that
5 USPTO had an integrated time and attendance
6 system, where the data used, where they were
7 capturing that on the kind of activities people
8 were working on, the business units that were
9 being supported by those activities are integrated
10 into the model they said was -- we were far and
11 above -- ahead of most federal agencies, and a lot
12 of private sector agencies.

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

21 This is where they told us that we have
22 some room for improvement, the application and use

1 of our data. I won't go through all these
2 bullets, but again, this is that we use it for the
3 financial and performance reporting. Our
4 financial statements, some of the required GPRA
5 measures, and also providing and forming the fence
6 calculation, as you are all aware.

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

17 So the fact that we're not doing that
18 isn't a bad thing, but just for us to have --
19 think about where we want to go with this data in
20 the future, do we want to just stay as we are
21 today, which is fine, or do we want to actually
22 move to -- from a more operational perspective,

1 which from I think the CFO's opinion and the -- we
2 agree with the independent assessment, and they
3 came in saying, wow, there's a wealth of
4 information here, you should begin using it for
5 some of those operational decisions.

6 So the bottom line is that we just need
7 to decide as an agency strategically where we want
8 to go as an organization. And I'm going to --
9 this is just the three options that they talked
10 about. And you can see that their recommendation
11 was option three, leveraging the capacity and
12 capability that's in -- that's there today, to
13 expand the applications and use. They also, you
14 know, consideration, you've got to weigh your
15 needs against the level of detail versus the level
16 of effort required. In a model like this, you can
17 count every little nook and cranny, and is that
18 really value added. You know, the more you count,
19 the more detail you get, the more granular, the
20 more it costs for the organization as a whole, so
21 you have to decide if you're using the information
22 or not and where you want to go with it.

1 I mean as you saw from the last
2 presentation, we definitely have a need at the PTO
3 to use it for speed setting, which they recognized
4 we were already doing, and then with that tends to
5 come some of the more operational decisions. If
6 you can turn two more slides, the next one.

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

15 They said that we built a credible model
16 in line with best practices, great foundation for
17 moving forward. And they also kind of related to
18 the third bullet, they said that where we are, you
19 know, we have to focus on resolving where we want
20 to go from a strategic direction of that and that
21 that is very typical of both government and
22 private sector, when they come in and see a model

1 like this, that this next hump that PTO is
2 presented with to get over is very typical as to
3 where they see with model building. That's all I
4 have for this presentation. I don't know if
5 anybody has any questions.

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

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

18 MS. PICARD: I think, if I can go ahead
19 and answer, I think that one of the things that we
20 had discussed a little bit in our steering
21 committee is, probably what we need to do as a
22 steering committee is, go through the information

1 that was in their final report, which was, you
2 know, many pages long, and decide where those
3 nuggets of information are. They said room for
4 improvement, and then they gave us these three
5 options, pros and cons for a way forward.

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

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

18 MS. BERESFORD: Let me just say that one
19 of the conclusions of the study that you saw
20 briefly mentioned there was, the system is overly
21 complex for what we're using it for right now,
22 also, overly expensive for what we're using it for

1 right now. So one of the challenges, given our
2 financial situation, one of the obvious questions
3 that will have to be answered is, is this the time
4 to put more money into this system, or is this the
5 time to simplify the system and cut our costs, so
6 that's going to be one way of going forward here.
7 And alternatively, of course, my understanding of
8 ABC is that it's for business decision-making, and
9 it's clear from the results of this that it's not
10 being used for making business decision, we don't
11 have the information we need to make, as a
12 business owner or leader or manager or whatever, I
13 don't have the information I need to make certain
14 decisions.

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

22 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 MR. FARMER: Is there a game plan
17 existing or one that will be formulated for
18 getting to the answers to the questions she just
19 posed, Lynne?

20 MS. BERESFORD: As far as I know,
21 there's no time line at all or plan. I think one
22 of the things that would have to be considered is,

1 we'd have to have an estimate of what the cost
2 savings would be to have a more simple model. And
3 we would also have to have an estimate of what the
4 expense would be of having the model actually
5 capture and give us the useful business
6 information, and then some kind of an idea of what
7 the savings could possibly be gotten from that.

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

13 MR. FARMER: Michelle, go ahead.

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

21 In making that decision, the one thing
22 that the USPTO needs to consider, which makes the

1 balance -- even though we may not be routinely
2 using the model for operational and tactical
3 decision-making, it's not integrated into our
4 day-to-day lives, we do use it to answer those
5 operational decisions on an ad hoc basic.

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

16 So it's the balance for the USPTO in
17 figuring out how much we -- I think -- knowing the
18 cost of our fees is a must have, that's something
19 that we cannot do without, and making sure that
20 the complexity in the model is commensurate with
21 at least that, and then deciding whether we should
22 be leveraging that for the more operational

1 tactical decision-making, and how to integrate
2 that into the day-to-day lives of the USPTO.

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

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

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

17 The steering committee was actually set
18 up to talk about drivers and other things of that
19 nature. I don't know that its charter or its
20 expertise would be in that area. It's just not
21 something I would have thought would be something
22 that the steering committee did. And again, it's

1 just something we need to think about and figure
2 out what the best way to do it is.

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

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

14 MS. PICARD: I think that one of the
15 things we referred to, the desire for a shared
16 services study is probably looking at some of the
17 specific cost areas that we as an organization may
18 want to ask ourselves questions about. That's the
19 beauty of activity based information is, it gives
20 you data and then it allows you to be able to ask
21 yourself the decisions on how much it's costing in
22 specific processes.

1 I think what this topic is related to,
2 as I understood better in the subcommittee
3 yesterday, is interested in understanding the
4 shared services costs as they may be driven to the
5 patent and trademark business lines, and is there
6 improvements that could be made in the
7 organization from a cost improvement perspective,
8 process improvement perspective in having cost
9 savings in some of those areas.

10 So I think what we had agreed to is that
11 we'll start going forward, making a list of what
12 some of those things are that as a steering
13 committee we want to get into. And I think I
14 referenced earlier that the steering committee in
15 2009 has already began looking at some of those
16 areas, and I think is very much eager to go -- to
17 take the ABI program to the next level of looking
18 at the output of the models and actually doing
19 some analysis of the data.

20 And there's just kind of one correction
21 I would like to make for the record, that the
22 charter of the ABI steering committee is to kind

1 of funnel the direction of the program as a whole.

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

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

20 MS. PEARCE: I think what we decided was
21 that there was not really a need for a full blown
22 separate shared services study, that a lot of the

1 information was already contained within the study
2 that we've just done in the Pil-bar report, and
3 it's a matter of taking the areas that are of
4 particular concern and being able to analyze that
5 data and then trace it back to see whether or not
6 the offices that we're most concerned about are
7 operating in the most effective possible way.
8 Maybe that's what's creating an end result that's
9 not what everybody wants to see.

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

19 MS. BERESFORD: So I have a great
20 interest in what shared services cost, because as
21 we've gone through time and trademarks has gotten
22 smaller, as an organization, we've often seen our

1 absolute cost of shared services go up. So
2 trademarks has always been interested in how much
3 it costs to hire someone, how much it costs to
4 process the 52, how much it costs to do the things
5 that shared services does, how much does it cost
6 OCIO to support one person on our work at home
7 process, on and on and on, those are the kinds of
8 shared services.

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

20 MR. FARMER: If there's nothing further,
21 we will go ahead and take another five minute
22 break, then come back for our last session. So

1 five minutes, and we'll chat then with the OCIO.

2 Thanks.

3 (Recess)

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

13 MR. STORIE: Thank you, John. For those
14 of you all who have followed the activities of
15 TPAC over this last year, you're familiar with our
16 concerns over the IT challenges that the agency is
17 facing. The trademark office has, as everybody
18 knows, enjoyed some amazing -- an amazing track
19 record for the course of the last five and six
20 years. We've seen unprecedented success in
21 productivity, we've had gains in both quantity of
22 work and quality of work, we lead the federal

1 government in making available telecommuting
2 opportunities to our employees. We've seen
3 pendency rates drop steadily, and so for us, as
4 members of TPAC, I mean we're very proud to be
5 here. And the things that have happened are
6 testament to the drive and the talents of our
7 examining core and to the skill and diligence of
8 our Commissioner, Lynne Beresford, and her capable
9 management team and the support staff.

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

20 And the policies of the previous CIO
21 over the past six to eight years have left the
22 system in a very precarious position. And we were

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

17 And so under John's leadership, a five
18 year plan was established, often referred to as
19 the road map, and you'll hear that phrase used
20 today, and the road map was a very ambitious plan
21 to give us a world class system. And it was not
22 just about rebuilding the hardware and the

1 physical infrastructure, but also about rebuilding
2 the human resources necessary to run the office of
3 the CIO, and it's a plan that we have applauded
4 and also followed closely and encouraged, and it's
5 one that, for those of us on this committee, has
6 taken most of our attention over the course of
7 this last year.

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

21 Recently, with the admin of our new
22 director, we had a chance to see some changes.

1 And one of the first acts of our new director was
2 to sit down with John and give him some new
3 priorities for this plan. And these are
4 priorities that will have a significant impact on
5 the trademark community, something we think would
6 be very much of an interest to the community.

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

16 MR. OWENS: Thank you. So just to the
17 very high level, the road map that laid out the
18 modernization of our infrastructure here at the
19 USPTO and the desires to stabilize it and increase
20 its capabilities to a more modern level had nine
21 initiatives. Three initiatives are what we
22 consider not on schedule. This is an update to

1 what I said back in June. So out of the nine very
2 aggressive stretch goals that we had, six are
3 totally on track, and these are delayed mostly due
4 to funding.

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

11 The OCIO shop for the fourth year
12 running took the biggest brunt of the collections
13 of budgetary dollars to fuel other parts of the
14 agency, and we gave back 60 million out of budget,
15 mostly on business projects and operations and
16 maintenance and compensation while trying to keep
17 the road map projects to improve and stabilize our
18 infrastructure -- but even with those reductions,
19 approximately seven million, the aforementioned
20 items were lost or behind. I was also asked to
21 briefly mention hiring. We are still down on
22 vacancies. Though we were graced on having some

1 hires this year, we are still down 92. This
2 includes all of my attrits out of my organization
3 for all types of reasons. But we are still
4 interviewing and trying to hire the few that we
5 can for next year.

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

16 I also have one librarian from
17 trademarks helping me out, and two more folks on
18 their way, which I am very happy to have, as well,
19 two examining attorneys with some IT knowledge
20 that are going to be helping us manage the future
21 IT next generation projects for trademarks.
22 They'll be starting I believe in just a few weeks.

1 So now we get down to the big plan. The
2 strategic IT plan, which I was hoping to release
3 chapter seven which pertains directly to
4 trademarks with you, I'm not, and the reason I'm
5 not is because, as we've all discussed in the last
6 few minutes, Mr. Kappos, in his very first
7 official meeting with me, sat down and we had a
8 long conversation about priorities. And to uphold
9 the tradition of trademarks going first, which has
10 been a long held tradition here at the USPTO, and
11 braving new frontiers, Mr. Kappos asked me to,
12 now that we have put a year in to the road map,
13 and the road map called for a year and a half
14 basically of stabilization before taking on work,
15 he said, put aside that idea, you've gotten a
16 year, why don't we use trademarks as the example
17 of where we want to go. He said, why don't we
18 break away their systems, isolate them, stabilize
19 them, host them virtually in the cloud, and I'll
20 explain what that means in a minute, and really
21 make them the prime example for not only the
22 USPTO, but the rest of the federal government,

1 embracing the new technologies that President
2 Obama and OMB and the Department of Technology
3 there are trying to embrace.

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

20 Unfortunately, most of the trademark
21 systems today are not capable of being hosted what
22 we call in a virtual environment, they are

1 dedicated systems built a long time ago that don't
2 suit a modern hosting environments. What does
3 that mean? That means that the technologies used
4 to host them link hardware and software together.
5 Modern technologies don't do this.

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

12 The concept of the cloud fully embraces
13 this. The cloud is this technological concept
14 that says if I have distributed computers all over
15 the globe, potentially, and they are all
16 interconnected, and they can all run any
17 application, any software application you want, as
18 long as it's written appropriately, then I can
19 dynamically allocate resources to meet demand, in
20 other words, scale, to be redundant, in other
21 words, if something fails, there's always a
22 service there to take it over, and to be dynamic,

1 which means if I need to increase or decrease or
2 dynamically allocate more resources or less
3 resources, I can do that.

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

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

17 This is how big companies can rapidly
18 scale for events and search, you know, like
19 search, for example. Google can increase one
20 minute, where, you know, where it's text search
21 and another minute where it's picture search and
22 so on. It helps to dynamically allocate very

1 generic resources that are very cost effective and
2 get away from the concept of main frames,
3 dedicated hardware, and dedicated environments.

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

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

16 This will provide you with that
17 redundancy you want, the scalability that you
18 desire, as well as the robustness. At the same
19 time, Mr. Kappos has asked the CIO to look at, in
20 partnership, of course, with trademarks, all of
21 the different areas of the system that are not
22 currently electronic and plug those holes. Of

1 course, we will do this meeting with the industry
2 standards, not only those embraced by NIST, but
3 also OMB, Department of Technology, as well as the
4 industry standards available for doing this, which
5 are widely known. This isn't cutting edge, it's
6 actually been going on for about seven years,
7 eight years now, and we will embrace those
8 standards as we move forward to keep as agnostic
9 as possible. So if, during the time the system is
10 here, it can be hosted here, and later it could be
11 hosted anywhere in the world. That's all. If
12 anyone has any technical questions, I tried to
13 help smooth that over. Some of these concepts are
14 a little -- it seems kind of magical; well, yeah,
15 they are. So I'd be happy to entertain any
16 clarifying questions.

17 MR. LOCKHART: Do you have any
18 questions? Okay. Well, first of all, I'd just
19 like to thank John and Scott Williams and the
20 whole OCIO team for doing such a great job,
21 preparing this briefing, and spending three hours
22 yesterday briefing us in detail about what's been

1 going on in terms of moving the road map forward
2 and now to embrace this opportunity, which I think
3 is a very exciting opportunity, a great
4 opportunity.

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

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

22 I realize you just got these new

1 marching orders recently, and I realize that there
2 are a lot of details to be filled in, but we
3 certainly look forward to getting more information
4 about that going forward.

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

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

21 So I guess the only question I have at
22 this point is, I know you're now revising chapter

1 seven, the strategic IT plan, to reflect the new
2 marching orders that you got from Mr. Kappos; do
3 you anticipate that you'll be able to share that
4 with us in October?

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

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

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

22 MR. OWENS: It would be one of my goals

1 to share.

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

10 MR. FARMER: Jeff.

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

20 MR. OWENS: Well, of course, the CIO
21 shop will look to hire a team of contractors
22 dedicated to this effort, drawing upon the best

1 that we can get a hold of for actual development
2 work, UI design, of course, support and all.
3 There will be a significant portion of -- of
4 course, there is a significant portion of my team
5 currently dedicated to trademark work, and we will
6 take those folks that are working on common hosted
7 parts of the system, whether it be RAM, which is
8 our financial system, or our networks or hardware
9 environment and make sure we build the appropriate
10 environments here with resources that we either
11 already have or that can be purchased.

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

17 This does accelerate that approximately
18 six months, but I think that the benefits
19 definitely outweigh the negatives in this case,
20 because it was always part of the road map's
21 intention to replace some of these aging, as I
22 told you before, systems that cost us a lot of

1 money to maintain, that don't meet anything near
2 modern standards with modern ones.

3 This shift in priorities basically said,
4 instead of trying to do it all at once, everyone
5 equally, because of patent's limited budget, why
6 don't you not pay attention to that for a little
7 while, we've got other issues to deal with there,
8 and make sure that trademarks, because you do have
9 fees that you can use, is put at the forefront of
10 being the pioneering effort, so that's what we're
11 doing. It should not impact the road map too
12 much, and where there is some overlap, we will, of
13 course, mitigate. But because it fits so closely
14 in line with the plan, other than that six month
15 acceleration, it is certainly something that I was
16 more than happy to embrace.

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

21 MR. OWENS: There are several TTAB --
22 TTAB systems that trademarks may not consider part

1 of the trademark system, but when you look at the
2 overall architecture, we at CIO do consider to be
3 a significant overlap. At this time, we are
4 concentrating on the core trademark systems,
5 including all the user interface and customer
6 interface. We will be looking at what
7 enhancements need to be made to TTAB, hopefully
8 automate some of it that's manual today. I don't
9 know if many people realize, but TTAB, the systems
10 there do take some manual intervention to get
11 things done.

12 We would -- if you look at the effort of
13 engineering, a much more robust automated system,
14 but that, of course, will have to be discussed at
15 the time, and which organization would pay for
16 those infrastructure improvements and so on. So
17 is it part of the scope? Yes, because those
18 systems directly plug into the trademark systems,
19 they are core. If the trademark systems suddenly
20 change, they would all break. So we can't go
21 touch it without breaking, you know, the TTAB
22 system, and we wouldn't do that, we're being very

1 careful not to do that. But it will be a separate
2 plan or addendum plan to the overall trademark
3 system in general.

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

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

16 So using that experience, I promise you,
17 we will be very careful on what we touch. We will
18 be very careful to keep the focus on trademarks
19 and the costs of fixing systems that we have to
20 break connections to a minimum. But we will not
21 forget those systems. If we have to touch it, if
22 it has to break, we will make sure that we do what

1 we can to make sure that it does not impact the
2 business, because just as trademarks wouldn't want
3 to overly effect any other part of the business,
4 including TTAB, we wouldn't want that to happen
5 either.

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

11 MR. OWENS: I would definitely hope so.
12 In fact, it's one of the goals of my office to
13 fully embrace what's called the Web 2.0
14 environment. Web 1.0, just to reiterate, was a --
15 very much the user goes to the web and it's not
16 very interactive. You can request information,
17 read information, post information, and that's it.
18 The Web 2.0 revolution was more about the
19 interactions with the web; can I go to Google maps
20 and query something and then send that to a friend
21 and manipulate it in a bunch of ways, can I look
22 at my financial data at the same time as I'm

1 customizing the environment. If any of you are
2 familiar with igoogole or any of the other i
3 products either done by Apple or the My products
4 is done by like Myspace and so on, it's all about
5 taking parts of the internet and making it
6 interactive to the users. That's really taking
7 what was a flat view and making it an application,
8 a web based application, and you might have heard
9 that term, as well.

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

21 So if you had a multi tiered
22 organization, there could be set up some hierarchy

1 where you could view those applications of your
2 subordinates and so on and so forth, and that type
3 of environment is all possible, and I am hoping to
4 explore all of those possibilities with
5 trademarks, but relying on that common
6 infrastructure that is well used throughout the
7 industry and has been for well over ten years, to
8 enable us to take all that work that has been done
9 before and embrace it to help not only you, but
10 the -- as well as the application, but our own
11 examining attorneys use tools that are much more
12 flexible over a longer internet connection than
13 some of the ones we have today, which are, well,
14 not capable of that and all the time have issues.

15 MS. PEARCE: A typical question from
16 somebody who cheers the Budget Subcommittee. Do
17 you think you'll have numbers for us in October
18 about what this is going to cost? I mean the
19 Trademark Office is going to have to fund this
20 solely, I assume, this is not going to be a shared
21 cost, so I think it would be helpful to have some
22 idea.

1 MR. OWENS: What we are hoping to do,
2 and what our current plan is to do is, we will
3 complete intake by the end of next month, that's
4 gathering up all the high level requirements and
5 the high level plans and starting off the process.
6 We would like to complete concept and definition.
7 When we do that, at the end of the month, we will
8 have a very high level estimate of what it will
9 take to get requirements and prototypes done.

10 Those, of course, will further clarify
11 for us what it will cost to fully build out and
12 deploy the system. So it's going to come into two
13 parts; the first one will be a high level
14 estimate, prone to a large amount of error,
15 because we don't know, right. We have a couple
16 concepts floating around a table, a couple
17 discussions, there is no magic key that derives
18 that to funds. What we're going to do is, put a
19 very educated guess in on what that will cost.

20 And then we're going to go through the
21 process of gathering requirements, writing
22 requirements, doing UI design, building actual

1 working prototypes, aka systems that work but are
2 not ready for deployment, and making sure that
3 we're all happy with it and then deriving from
4 that preferable a fixed set of costs from
5 releasing fixed price contracts out to vendors to
6 actually build the particular parts as we do here.
7 And not going for time and materials, I will be
8 going for more of a fixed price methodology, so I
9 can much more tightly control the contractor and
10 hold them responsible for the quality of the
11 delivery.

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

21 MS. DENISON: John, can I ask couple
22 questions? First, I understand when examiners are

1 filing briefs to the TTAB on appeals, they're
2 using the TICR system, which can't be then
3 digitally used, it has to be rescanned into the
4 TTAB system, so I wanted to make sure that you
5 were considering addressing that issue when you do
6 this upgrade, because that would I think help
7 modernize the whole TTAB function. And the second
8 thing is, just going to the cloud platform
9 actually to save money.

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

22 Your other question about cloud

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

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

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

20 Like Amazon, for example, has a big
21 cloud computing center, and they sell excess time
22 to people, and they're able to, you know, leverage

1 that to reduce their costs quite a bit, because,
2 as you might understand, Amazon, when it gets to
3 be like Christmas, needs a lot more capacity than
4 they need during the middle of the year. So being
5 able to go to another vendor is important, and
6 that, of course, would help us out, as well. But
7 I don't know all of the economics about the cost
8 today, cost hosting it, the security requirements
9 put on by the federal government. For example,
10 I'm meeting with the CIO GSA next week, I think
11 it's next week, it might be the week after, where
12 we are going to be discussing the federal cloud
13 computing initiative that's currently underway.
14 And I don't know what those costs are because
15 right now that's a brand new concept, as well.

16 I can tell you for the short term, we're
17 going to be developing a small cloud environment
18 here. Why is that? Some of the systems that we
19 have to talk to are not able to embrace long
20 connections outside. For example, TRAM, the main
21 frame system that I've talked about before running
22 COBOL, will be one of the last things to migrate.

1 There have been a couple of past
2 attempts at migrating it all for that platform
3 onto something else, those big bang initiatives
4 failed, I don't want to repeat the mistakes of the
5 past. So we will keep it close because there are
6 limitations of how TRAM interacts with the rest of
7 the system and slowly migrate that functionality
8 off over a period of time. I don't have specifics
9 on that yet, I will hopefully soon, but all of
10 that has to be taken into account short term. But
11 the long term goal would be to be able to not only
12 separate the systems, but host them in such a way
13 that we could optimize for cost and efficiency by
14 putting them anywhere that met the CNA federal
15 requirement that met the guidelines that are
16 dictated by the federal government and so on. So
17 --

18 MR. FARMER: We're going to move on now.
19 Thank you, John, for your presentation. We could
20 ask a lot of questions, but we just need to move
21 on with our agenda. And I think what I've learned
22 is, because we have this new initiative, people

1 have to give us a bigger block of time for our
2 technology chat when we come back in October, and
3 we look forward to that.

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

8 MS. BERESFORD: Thank you very much, and
9 thank you for the information, John. To add to
10 this just a few comments; John has a real
11 challenge, because not only while he's looking at
12 how to migrate us to the cloud, he has to keep all
13 our card systems running in a way that trademark
14 owners can use them, and he has to keep improving
15 those systems, so when we see improvements, it can
16 really help them, instead of saying, okay, wait
17 two years and then we'll do something. So he's
18 got all of the challenges he has right now with
19 running our systems, and added to that, coming up
20 with a wise plan for moving sequentially things
21 into this environment so that we don't have to
22 redo anything after we've done it once. So he has

1 got his work cut out for him, to put it mildly.
2 It's going to be very, very challenging. But it's
3 a very exciting -- I mean the door of opportunity
4 has opened, and it can be a very exciting time for
5 the trademark organization.

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

13 I just have a couple -- three little
14 things I want to tell people, because I think you
15 might want to know them. We have been talking
16 about the global electronic form, the form with
17 the drop down menu that has a whole list of
18 somewhat rarely used forms that we can -- that we
19 want to make available electronically for routing
20 purposes, and we've talked about this in the
21 meeting before. That is -- right now we're
22 thinking that form will -- that will finally come

1 up in September, so we think this is going to be
2 very useful. For trademark owners, it's certainly
3 going to make the office a little more efficient.
4 In mid September, we're also planning to start
5 issuing our new registration certificates.

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

15 We'll be printing them in-house, without
16 alliance on a contractor, it's going to save us
17 about \$600,000. They'll be eight and a half by
18 eleven, they will have a gold seal, for those of
19 you who have expressed an inability to live
20 without a gold seal on your registration
21 certificate. But there will be no more cover
22 buying. So those new certificates are coming.

1 We will have a two week period during
2 which we produce the old certificates and the new
3 certificates, just to make sure that the process
4 works before we shut off the old process, and so
5 that's -- but that's -- all of this is upcoming.
6 The only other announcement I have is --

7 MR. FARMER: Hey, Lynne --

8 MS. BERESFORD: Yes.

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

11 MS. BERESFORD: Yes.

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

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

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

20 MS. BERESFORD: No, because they're
21 still tied to the OG process, the paper OG
22 process. However, we see that that process will

1 soon be coming to an end. Our link to the paper
2 official gazette, and we think that in the next --
3 certainly within the next year, but probably
4 sooner rather than later, there will be a three
5 month -- three weeks are taken out of the process
6 because we will stop being tied to waiting for,
7 you know, we send the postscript file to the
8 government printing office, and three weeks later
9 they print the official gazette, the paper
10 official gazette. We think we're going to break
11 that link and tell trademark owners that the date
12 of the official gazette is the date it goes up on
13 the web site, and that the paper official gazette
14 may or may not be ready that day.

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

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

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

11 MS. BERESFORD: It's been posted for
12 quite some time. Sharon, I see you nodding your
13 --

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

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

1 myself to see it.

2 MS. MARSH: Right.

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

7 MS. MARSH: Okay.

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

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

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

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

22 MS. MARSH: Yeah.

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

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

14 We are also in the process of signing
15 agreements with some other countries, Korea, for
16 example. And as we sign these agreements, China,
17 the Philippines, Vietnam, and Singapore are also
18 lined up because they all want to join. As we
19 sign these agreements, those ID's will start
20 appearing in our ID list, in our very own manual
21 of identifications, and they will have appropriate
22 notations as to where they're acceptable. Of

1 course, they're acceptable here. But that will be
2 adding to the usefulness of our ID manual. And,
3 in addition, we're still working with OHEM to post
4 translations of the ID so they're acceptable and
5 have available translations in all the OHEM
6 languages and eventually in Korean, Chinese, and
7 other languages, so that they can be available on
8 our web site for folks that are looking to get
9 information about ID's and what ID's are
10 acceptable in the various countries that join this
11 trilateral ID list.

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

17 As you can imagine, each country has
18 some resource restrictions. I mean the ID list
19 has hundreds and hundreds of ID's in it. For
20 instance, Canada gets this list, they have to go
21 through and approve or disapprove the ID's that
22 are already there before they start adding their

1 own ID's. So most countries don't have a large
2 staff to do this, it's usually one person who
3 already has a full-time job. So this will be a
4 relatively slow process, but I think, you know,
5 slow and steady, we will eventually have what is a
6 very, very useful tool on our web site for all
7 trademarks owners, not only filing in the U.S.,
8 but filing into other countries. So I think
9 that's it, the news in brief.

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

20 MR. OWENS: None.

21 MR. FARMER: Thank you.

22 MR. OWENS: Actually, no, the power of

1 cloud computing is dynamic scaling and the
2 distributed model, which will not only help our
3 distribution of our work force across the entire
4 United States, hopefully, but it will certainly
5 allow multiple paths, instead of being
6 bottlenecked here in, you know, getting in and out
7 of just the USPTO, we, of course, would allow
8 access anywhere from anyone, and it will fully
9 embrace the way the internet works, so dynamic
10 load balancing is part of the whole plan.

11 MR. FARMER: Okay.

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

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

22 We're trying to take to heart the

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

9 What will happen is, after the lunch
10 meeting, we'll come back, and I'm going to ask the
11 TPAC members whether there's anything that needs
12 to be conducted in executive session, for
13 instance, are there any agency personnel sort of
14 issues that we need to talk about, anything that
15 relates to the content of future budgets, and so
16 we could be in executive session. After that, we
17 will -- and, of course, we'll vote to go in if we
18 need to, and after that, I'm going to call a
19 public meeting, but it's not going to be broadcast
20 or transcribed, and all we're going to be doing
21 there is, we're going to be doing some nuts and
22 bolts stuff.

1 We, on TPAC, will be identifying any to
2 do items for individual TPAC members flowing from
3 this, like look after this, look after that,
4 follow this. And we're going to plan logistically
5 how we're going to get the annual report produced,
6 because that's one of the biggest lifts we have on
7 TPAC every year, and so it's just going to be
8 trying to figure out schedule-wise what our
9 milestones are going to be like in order to get
10 that report produced in the time that's necessary,
11 and we'll try to work on picking a date for an
12 upcoming TPAC meeting or two.

13 And so if anyone really wants to come
14 back and listen, they're welcome to. And then
15 going forward, one of our to do items is to make
16 certain we have processes in place for making
17 certain that we are doing all that we can as far
18 as transparency, and so I ask your forgiveness and
19 we'll try to make certain in the future we have
20 agendas up two weeks in advance for even those
21 sorts of meetings. I had one other question come
22 in for John Owens, and that is, have any other

1 federal agencies migrated to cloud; do you know
2 that?

3 MR. OWENS: There is a cloud initiative
4 that has been going on for quite some time, to my
5 understanding, with the Department of Defense and
6 other agencies, associated agencies. For the rest
7 of the federal government, there is an initiative
8 that just got underway with GSA, as I had
9 mentioned. But, to my knowledge, we would be one
10 of the pioneers.

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

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

22 (Recess)

1 MR. FARMER: We're back on the public
2 record for TPAC, and we're now going to have
3 another public session. And the plan that I have
4 is, first, to talk about the construction of the
5 2009 fiscal year annual report to get that process
6 down. Then I'm going to go to assessing our
7 meeting today and identification of any to do
8 items before our next meeting. And then I'm going
9 to go to scheduling both our next telephone
10 conference, and yes, I'll be addressing the public
11 meeting aspects of that, and our next in person
12 set of meetings up here in Alexandria. And so
13 first let's go to the annual report and getting
14 that done.

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

20 What I understand is that, in addition
21 to needing to get in our report statutorily within
22 60 days of the end of the fiscal year, the other

1 deadline, although this deadline was not put on us
2 last year, so this is new, is to have it in it
3 time to make the official gazette, and it's the
4 paper version, and so that adds a lot of time
5 there.

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

20 There are other requests from the office
21 as to how quickly we give things to them, but I
22 think there that there's room for us to squeeze

1 that because PPAC squeezed it. And no offense to
2 the folks at the office, but this is our annual
3 report, there shouldn't be a lot of office rewrite
4 of it because they have their own annual report
5 they can issue, and so it's not our duty to fully
6 carry their message, it's their duty to carry
7 their message, we'll carry our message.

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

22 And so this is what I'm thinking; let me

1 just -- let me lay out the whole thing before you
2 comment and then let's get comments on it. We can
3 amend it as we need. And these are just the
4 steps, and once we've got the steps finalized, I
5 think then we can plug in dates as to when each
6 step needs to occur.

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

10 And so the way I have it is, and I used
11 bullet points, I don't even know how many I've
12 got, it looks like eight or nine steps. Step one,
13 I send out a frame for the annual report, and that
14 doesn't contain any commentary in it, it's just
15 what the frame work looks like, and, you know, who
16 comes first, who comes second. And one of the
17 things I'm going to put into the frame work is
18 items that I feel that we should report on that
19 we've been tracking or pushing as TPAC members,
20 because we've said we're going to start commenting
21 on what we've been pushing and now we're going to
22 start that. So item one, let's send out the

1 frame. Item number two is, when first drafts are
2 due from writers, and by writers I mean
3 individuals on the committee who are responsible
4 for individual sections of the report. In some
5 cases it may be sort of a team thing, in some
6 cases it may be a single person thing, depending
7 upon your circumstance.

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

16 I'm not looking to get grammar corrected
17 at that stage, I try not to get too picky, but
18 comments in the nature of, do you think we really
19 need to go into as much detail as we're going into
20 here because the PTO is going to issue its own
21 annual report, or do you think we should address
22 the issue which we haven't, or do you think you're

1 too harsh, too soft, not really hitting the target
2 on those sort of substantive comments, so that's
3 step three. Don't worry, I'll go back and I'll
4 recap this. Step four will be revisions from
5 writers, in other words, everyone has kind of
6 heard what their fellow TPAC members think by
7 email, and then they go and they make revisions to
8 their sections based upon what they've heard back.

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

19 After I do that, then it goes back out
20 for substantive individual review and comment by
21 members who may want to send stuff in. At that
22 stage, I'm still not looking for grammar or turn

1 of a phrase stuff, but more, okay, now that we're
2 getting close to final, did we leave out
3 something, did we pull a punch, did we not punch
4 hard enough kind of stuff. Then after we get all
5 of that in, I think we have to be a little
6 flexible. My plan next step is that I would then
7 make revisions, so if you've already been through
8 two drafts by individual writers, although it's
9 hypothetically possible, that we could be back to
10 square one or closer as far as major changes to a
11 section, or hopefully it will be beyond that at
12 that stage. I'll send out a draft. Then you send
13 back any detail, grammar, turn of a phrase
14 comments you may have, or things that I've missed,
15 and then I make those changes and I pop it out to
16 the PTO.

17 So, to review, let me add up the dots,
18 one, two, three, four, five, six, seven, eight,
19 none dots. And a real quick recap; dot one, I
20 send out structure, dot two, first drafts from
21 writers, dot three, substantive comments to those
22 writers, dot four, revisions by the writers, dot

1 five, I had my gloss, dot six, substantive review
2 of my gloss, dot seven, I make revisions, dot
3 eight, detailed grammar, turn of a phrase review,
4 dot nine, I clean that up and I send it in. Does
5 anyone have any comment on that critical path?
6 Okay.

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

20 Now, we may end up finding out that by
21 the time we give everything the time it needs,
22 that we're going to have to go back and do some

1 compression. So that's October 27, okay.

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

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

15 (Discussion off the record)

16 MR. FARMER: A telephone conversation on
17 a transcript, I'm sure there's some sort of
18 statutory issue there. Okay. So Friday, October
19 23 is when I've got to get out my detail. So I
20 make revisions and send out. So now what we're
21 talking about is, how long after these substantive
22 review -- hold on.

1 MR. STORIE: (Off mike)

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

15 So now if I'm getting out my substantive
16 -- my revisions based upon your substantive
17 review, what we're now calculating here is, after
18 I add my gloss, no, what are we calculating here,
19 how long I need to make revisions after you give
20 me substantive comments on my gloss to the report.
21 So this is my time that we're talking about here.
22 I might take a little more time. I'm going to try

1 to put that down for -- that could take some time,
2 I'm going to say Wednesday, October the 14th for
3 now. Again, we may end up having to squeeze this.
4 Okay.

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

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

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

21 MS. DENISON: Also, John, to the extent
22 we need year end statistics, we're not going to

1 get them until after the year end.

2 MS. PEARCE: Yeah.

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

5 MR. LOCKHART: Well, no --

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

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

12 MR. FARMER: Well, that or you just use
13 year to date statistics, because again, we are not
14 the annual report of the PTO, it's not our job to
15 give a comprehensive review on their performance
16 as much as it is to give a review on the things
17 that -- to give a review on the things that we've
18 been following. So, all right, let's go after it
19 this way. It's the 28th. Let me put myself down
20 for sending out the structure by Friday, September
21 4th.

22 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 MR. FARMER: Okay. Well, I guess what
20 will happen is that we pretty much know what we
21 want to say, we just don't know the exact
22 quantitative value, although I realize I'm a

1 broken record. I think last year we had more
2 detail than we needed on the performance for the
3 office, and I think we can reduce that some,
4 because they needed their annual report. But,
5 yeah, we may have some blanks we have to fill in
6 later.

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

12 MR. LOCKHART: Two weeks.

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

19 MR. LOCKHART: That's drafts due?

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

1 MR. LOCKHART: Yeah, I understand.

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

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

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

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

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

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

20 MR. FARMER: How about the 14th; let me
21 look at that, Wednesday the 14th. Although
22 sometimes you want a little bit of time so you

1 know it's going to fill every day you've got.
2 Okay. So, yeah, that has put us in a tough spot
3 then, because then I've got substantive review by
4 you all on the 14th, so yeah, we're going to have
5 to do some squeezing and so forth and so on.

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

8 MR. FARMER: It's my gloss.

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

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

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

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

22 MR. LOCKHART: Well, that's okay.

1 MR. FARMER: Yeah; so as everyone
2 probably saw last year. So if I back -- I'm just
3 doing some math here. If I back myself down to
4 the 9th for getting out my substantive version,
5 then if we stuck with the present thing that we
6 worked out from the other end, then you all would
7 have a weekend plus three working days to the 14th
8 to give me substantive comments, then my revisions
9 -- I think I then made -- I've given myself too
10 long there because I didn't give myself until the
11 20th. So, let's see, maybe give you all until the
12 15th.

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

17 MR. LOCKHART: Yes.

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

21 MS. PEARCE: Okay.

22 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 MR. LOCKHART: I'm just going to throw
4 this out on the table, and I think about, you
5 know, our TPAC meetings are usually two days; if
6 we blocked out three days and we left that third
7 day just to work on the document all day, and we
8 could get a lot done in one day, like if it's just
9 final edits and things.

10 MR. FARMER: Yeah.

11 MR. LOCKHART: We can all bring our
12 laptops and --

13 MR. FRIEDMAN: Sit in different rooms.

14 MR. FARMER: Sometimes -- I don't know.
15 Sometimes I'd just like to be able to just sit in
16 my office and get it done, but --

17 MR. LOCKHART: But for a final scrub,
18 you've got everybody all in one place.

19 MR. FARMER: I mean I've written
20 proposals, you know, doing it that way, and you
21 can get a lot done in one day. I don't know.
22 Thanks for the comment. I'm not sure if I want to

1 go that way, but okay, let me look down here. So
2 I have my gloss, and then your substantive review
3 is due then, and then I make -- oh, come on --

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

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

15 And then we go a week, we've got two
16 weeks for first drafts for you all, until Friday,
17 September the 18th, and then we give ourselves --
18 25th, I just wrote down the wrong number, to the
19 25th to get in substantive comments, so that's one
20 week, and then we go one more week to the 2nd, to
21 revisions by writers, then we go one more week to
22 my gloss being due on the 9th, and then we go not

1 quite a week for a substantive review by TPAC,
2 pretty much six days until the 15th, and then my
3 revisions based up the substantive review, are due
4 the 20th, and then detail grammar review the 23rd,
5 and then ship off to the PTO on the 27th, so
6 that's roughly -- and don't worry, I'll be --

7 MS. DENISON: John --

8 MR. FARMER: Yeah.

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

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

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

21 MR. FARMER: Okay. And I'll clean it up
22 and I'll email it out to you also. That will be

1 that process. It seems to me, while we're talking
2 schedule, though, that now let's just go ahead and
3 talk about scheduling that public meeting because
4 that may cause us to mess with this.

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

10 MR. FARMER: Push it back that way.

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

14 MR. FARMER: Yeah.

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

21 MS. PEARCE: Well, the CFO's office will
22 be delighted the later we go in October so ---

1 MS. DENISON: Why don't we do it in
2 October?

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

9 MR. FRIEDMAN: You beat me to the punch;
10 I was just -- this is more yours and everybody
11 else's call. The answer is, I don't -- the answer
12 is, no, the short answer. The long answer is,
13 just to throw out some options, if you meet in
14 early -- let me go through the different
15 scenarios. If you meet in early October, then
16 you're going to get -- relatively early October,
17 then you're going to get the end of the year stuff
18 that may or may not help you write the report,
19 though, of course, they can send that material.
20 If you're not going to meet until later in October
21 ---

22 MR. FARMER: Or later than that.

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

8 MR. FARMER: Yeah.

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

21 MR. FARMER: I'm now beginning to wonder
22 if we shouldn't push it. I mean you've got to

1 watch out for Thanksgiving until late November, or
2 even early December, because the other practical
3 reality is that we're going to all be spending a
4 lot of time on getting this report done, and it
5 takes a lot of work to properly prepare for these
6 meetings that we come here to Yes, Ann.

7 MS. FARSON: We have two new members
8 also that -- going down to the department, so the
9 likelihood could be that we can -- the next couple
10 ---

11 MR. FARMER: That's one point. In case
12 you couldn't hear that on the record, Ann just
13 pointed out that we could have two new -- members.
14 My gut is that we're at least 60 days out from
15 seeing them, and so that's going to be roughly end
16 of October, so that might be another reason to
17 look at late November or early December, so that
18 we've got time to get them sworn in then actually
19 have them usefully participate.

20 MR. FRIEDMAN: The other thing I would
21 add is, if we're going to meet later, that will
22 take up less of Lynne and everybody else's

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

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

13 MS. DENISON: 26th.

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

16 MS. PEARCE: Yes.

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

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

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

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

22 MS. PEARCE: Thursday is the 26th.

1 MR. FARMER: Okay. Well, I'm going to
2 guess that you all are going to complain if I
3 schedule it for Thanksgiving for the public
4 meeting, and so -- see, if we don't do that, then
5 we have ---

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

8 MS. PEARCE: No.

9 MR. FARMER: There you go.

10 MR. BUDENS: (off mike)

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

21 MR. LOCKHART: I think from August to
22 December is a long time.

1 SPEAKER: I think November is --
2 November date is literally the next morning after
3 --

4 MR. LOCKHART: Oh, the leadership
5 meeting?

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

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

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

15 MR. FARMER: That's a good point.
16 December 3rd and 4th? What about November
17 6th/7th?

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

20 MR. FARMER: We're not going to find a
21 clean time, we know that. What about the first
22 week in November? Are we a little concerned of

1 being -- is there any special activity going on at
2 that very beginning of --

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

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

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

13 MR. FARMER: Why?

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

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

22 MS. DENISON: She was saying that the --

1 a few people will have been out of town; is that
2 right?

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

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

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

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

17 MS. DENISON: Yeah, Lynne always comes.

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

20 MR. FARMER: I mean --

21 MS. DENISON: The federal holiday is
22 what day?

1 MR. FARMER: It's the -- well, the 11th.

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

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

10 SPEAKER: The meeting has typically
11 always been in October.

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

17 MR. LOCKHART: Well, let me ask you
18 this, would it be possible for us to phone Lynne
19 right now and say, if we did it those days, is
20 that a conflict given for the trademark folks,
21 given the leadership meeting, see how much of a
22 burden or a conflict that is. Maybe she'll say,

1 oh, yeah, that's fine, it's not a problem.

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

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

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

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

20 MR. FARMER: Yeah; and also -- that's a
21 good point, Tim, although also, the trademark
22 stuff tends to just roll right on because it's

1 easy, it's just an updated current statistics and
2 stuff. Let's do this, I don't want to make a
3 regular habit of making phone calls on the public
4 record, and so let's tentatively set it for the
5 19th and 20th. And I'm going to check with Lynne,
6 we might take a brief recess in a minute, but
7 we're tentatively going to set it for then.

8 Now, if that's the case, then I
9 recommend that -- hold on. We've got to revisit
10 the schedule. What I was going to say then is
11 that we need to have monthly telephone
12 conferences, and what I'm initially planning, and
13 I have not had a chance to think this through
14 carefully, is that we will have a monthly
15 telephone conference where we start out with going
16 on the public record, there will probably be a
17 dial-in, I've got to figure that out with the
18 General Council's office, and then we would have a
19 separate dial-in number for any executive session
20 items, we would have our public meeting, we were
21 ascertain in our public meeting if we cannot even
22 in advance, whether there are any executive

1 session items, we would go to executive session,
2 hang up, redial in, do any executive session
3 stuff, if any of it has to be done. I've still
4 got to go back -- to see what that means as far as
5 agendas is concerned.

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

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

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

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

22 MR. FARMER: You're out Monday -- you're

1 gone the whole week, so it just is what it is.

2 And you're out Monday and Tuesday, Elizabeth?

3 MS. PEARCE: Yes, I am.

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

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

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

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

16 MR. FARMER: Well, that's hard to do
17 since you always over perform. But, yeah, let's
18 -- so let's say that -- and then that would mean
19 9/23, 11:00 a.m. eastern telecom. Don't worry,
20 I'll go back and recap this. And if we do that,
21 and then if we have one in October, let's see, how
22 does this fit in? I'm going to be making

1 revisions based off the substantive review that
2 you all give of my gloss on the 20th. And so --
3 and then on that Friday is when -- I'm going to be
4 getting out on the 20th, okay. What does the 19th
5 look like? Looking at an annual report schedule,
6 your substantive comments and my gloss are going
7 to be due on the 15th, and I'm going to be making
8 revisions, and I'm going to be getting them out by
9 the 20th. So I'm thinking if we have a conference
10 around the 21st, even though you're going to give
11 giving your grammar comments on the 23rd, there's
12 still a chance that I will have greatly offended
13 somebody or just blown it, and you might want to
14 tell me about it.

15 And so I'm kind of looking at October
16 the 21st or the 22nd for an October conference.
17 Any thoughts on those dates? Okay. Let's say the
18 21st, so 10/21, also 11:00 a.m. And then, let's
19 see, we have a meeting on the 19th and 20th.
20 Generally it's a good idea to have a are we
21 getting ready enough phone conference not too far
22 out from that, like no more than a week, and so

1 I'm looking at the 12th and 13th of November,
2 roughly. It could be -- it's not that far, but
3 just I want something that's not too far away from
4 there to come to your meeting, if it's, indeed, on
5 the 19th and 20th.

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

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

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

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

14 MS. DENISON: I'm already tied up.

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

18 MS. DENISON: That's fine.

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

22 Let's do this then, let me -- let's take a brief

1 recess, I'm going to go see if I can get Lynne on
2 the phone to check that public meeting date with
3 her as we suggested. And while I'm out, while
4 we're in recess, I'd love for you all just to pour
5 over your notes to see, one second, to identify --
6 I'm sorry to cut you off.

7 All right. Hopefully this is short.
8 Now I just want to go back on the record and
9 figure out what else we need to do to make certain
10 that we pick up all the loose ends from our
11 meeting today.

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

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

20 I have a few loose end items and then
21 we'll see what else we have. Here's an idea I
22 had, Mary and others, tell me what you think of

1 this. I started a conversation, if not a brush
2 fire today, about whether there should be a fast
3 track in the TTAB.

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

18 MS. DENISON: Well, the first thing is
19 to formulate what the proposal is before the
20 article is written, because it's not totally clear
21 to me what the proposal is. I mean are you just
22 going to say is this is an involuntary fast track

1 option at the TTAB, are you going to say, you
2 know, the two step thing, you know, you are
3 required to approach the other side, see if
4 they'll consent, if they're not, they show cause,
5 you know.

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

12 MR. FARMER: I envision sort of neither
13 of the above in that, what I envision is something
14 that identifies the need and the thinking about
15 various options you could use to address the need
16 and then seeks comments on whether there's a need
17 worth addressing at all, whether they wanted to
18 address it at all, and if so, have them suggest to
19 us what they would like to see things look like.
20 And we could throw out some ideas, but I wouldn't
21 want to have only one path forward illuminated.
22 And so you could throw out ideas that, you know,

1 if you're interested in this, potentially it could
2 be a process that one party seeks, and if the
3 other party doesn't consent, cause has to be
4 shown, then you could mention the fact that that
5 opens up the box over what constitutes cause, and
6 then you can get into -- there are all sorts of
7 options for what the procedure could be like, and
8 you might mention a few, but it would be non-
9 exclusive, and you probably mentioned it, if
10 you're really thinking broadly, you could even
11 make it a federal court option other than may not
12 be -- for that, I don't know.

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

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

22 MR. FARMER: Yeah.

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

3 MR. FARMER: Yeah.

4 MR. STORIE: Pretty much.

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

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

20 MR. FARMER: Yeah; I guess I just don't
21 see this as a -- survey, and that this is more of
22 a -- what I would hope that would come out of this

1 is that we might actually get some feedback from
2 the organizations, but it might also spur
3 individual interested parties maybe to write on
4 the subject. You know, they might write comments,
5 articles, journal things.

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

9 MS. DENISON: Yeah.

10 MR. LOCKHART: Your committee ---

11 MS. DENISON: Yeah.

12 MR. LOCKHART: -- is going to meet?

13 MS. DENISON: September 16th.

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

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

22 MR. LOCKHART: Okay. Well, I'm sorry

1 then if I'm plowing already plowed ground. But,
2 you know, if you could -- at those two meetings,
3 if you could get peoples' preliminary thoughts and
4 they put them on paper and give them to John and
5 then maybe we could take a look at it when we meet
6 next time and then decide is an article the best
7 route, should we request comments, should the PTO
8 request comments, should INTA request comments.

9 MR. FARMER: What do you think?

10 MS. DENISON: I'm happy to do that. I
11 mentioned yesterday I could ask the committee and
12 see what kind of reaction I get to people, more on
13 the faster track.

14 MR. LOCKHART: Yes; and I mean,
15 obviously, you would know better than I would just
16 to do this, but one way might be the email, the
17 folks that are going to be coming to those two
18 meetings and say, this is something I'm going to
19 want your feedback on, think about this.

20 MS. DENISON: Well, we always do the
21 agenda.

22 MR. LOCKHART: Okay.

1 MS. DENISON: So that's not a problem.

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

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

1 thinking about so it doesn't get misinterpreted.
2 Does that sound like a path forward that everyone
3 is fine with?

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

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

9 MR. FARMER: Yeah, they were
10 represented.

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

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

15 MS. DENISON: Cindy Greenbaum is the
16 head interlocutory.

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

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

21 MS. DENISON: Oh, okay.

22 MR. FRIEDMAN: -- they weren't

1 represented.

2 MS. DENISON: As opposed to the -- they
3 were not?

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

6 MS. DENISON: Well, you're here.

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

17 MS. DENISON: Well, the problem I see is
18 that the interlocutory attorneys, it seems to me
19 she's running a later stage, and I'll tell you
20 why, because we have to decide if the buyer wants
21 it. If the buyer doesn't want it, it's dead,
22 because the General Council told us yesterday

1 they're not going to do anything unpopular, okay.
2 If the buyer does want it, then we have to find
3 out, is it feasible and is it going to change the
4 interlocutory attorney's life and how does it
5 effect their path and all that kind of stuff.
6 But, to me, that's sort of the second step,
7 because we really have to engage the level of
8 interest. I know John think it's a fabulous idea,
9 but I'm hearing from a lot of other people that
10 it's not. So that's why we have to check out what
11 people want.

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

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

22 MR. FARMER: My view is, I consider the

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

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

15 MS. DENISON: Yeah, that's fine.

16 MR. FARMER: Got it.

17 MR. LOCKHART: And, Howard, I mean,
18 obviously, you can always put it to them that, you
19 know, we're not absolutely sure that the trademark
20 practitioners are going to want to push for this,
21 but let's assume they did want to push for it,
22 what practical issues or problems or concerns do

1 you see, and then we get that on paper, and then
2 ideally you come back from these two meetings with
3 something on paper, and then, you know, then we
4 see where we are.

5 MR. FRIEDMAN: Fine.

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

13 MS. DENISON: Well, I can report on the
14 23rd, from a TPAC call, what happened on the 16th
15 of September.

16 MR. FARMER: Okay.

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

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

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

22 MR. FARMER: We'll figure it out. And

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

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

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

1 allocating.

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

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

12 MR. FRIEDMAN: I raised this months ago,
13 we got busy, and then I got neglectful in raising
14 it, but I think there was general interest in
15 doing it, I think there's even -- should be
16 stronger interest in doing it in view of the CIO
17 changes, and that is -- and I think Robert has
18 done it on the PPAC side; during the proverbial
19 day in the life of an examiner, because I think,
20 particularly whether it's an interlocutory
21 attorney or a trademark examiner, I think it's,
22 timing-wise, it's probably a great time if you all

1 agree to have an interest in doing it, in trying
2 to perhaps follow an examining attorney, because
3 we're getting at the forefront of this trademark
4 initiative for CIO, and the more you know about
5 what we do, along with the people we represent, I
6 think the better our subcommittee can be.

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

16 Similarly, even though most of the
17 interlocutory attorneys work at home, if we could
18 find somebody, it may not be a bad idea, Mary, and
19 for Jim, if you were at all interested in meeting
20 with one of our interlocutory attorneys, if not
21 more, see how they again interface
22 automation-wise. Yours may be a little less

1 focused on automation and more documentation, how
2 they go about doing their job, along with the
3 automation tool, and I think that would make that
4 subcommittee a more effective subcommittee. And
5 maybe it could be done on that first day of
6 November 19th, in the morning or afternoon,
7 depending upon what the scheduling is. But I
8 think it's okay that we haven't done it before.

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

15 MR. FRIEDMAN: Perhaps maybe even if
16 you're not, because the mic is on. I mean just
17 one option. And I hear you, John. One option at
18 least for this subcommittee, and it's going to be
19 up to you, Jeff and Tim, is if they're going to
20 meet from 9:00 to 12:00, even if it's a half hour
21 or 45 minutes right off the bat during the day in
22 the life of an examiner, I think you just would

1 get a better idea of how all these tools work and
2 what the potential is and what we're trying to do.

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

17 It has been mind boggling -- it's been a
18 mind boggling event for pretty much everybody
19 we've taken through it to find out, one, how
20 antiquated some of our tools are, you know,
21 especially when we have a bunch of computer guys
22 on PPAC, but it's also been eye opening to see how

1 much -- how many different things are all playing
2 together to try and make the job work.

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

19 MR. LOCKHART: Well, I'd like to do it,
20 but I think we probably ought to defer until the
21 first meeting in calendar year 2010, because we've
22 got a lot on the agenda already for this November

1 meeting. And we probably ought to try to plan it
2 in a way that would be the most efficient. But I
3 mean, you know, I'd be willing to come in earlier
4 and do it maybe, you know, do it like 8:00 to
5 10:00 and then have the subcommittee from 10:00 to
6 12:00 or whatever. So we can talk, but I think
7 it's a good idea, but I just think we ought to
8 defer it until meeting after next.

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

22 MR. BUDENS: I think they're going to be

1 highly interested to find out about the new
2 trademark system.

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

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

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

17 MR. FARMER: I'm thinking how it may
18 come down may be that we may have to create
19 something like even an optional third day or
20 something. I'm interested in it, but I think
21 realistically, to do enough of that to make it
22 worth it, and to do what we generally have to get

1 done here, it's just hard to conceive of doing all
2 of that in two days.

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

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

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

19 MS. DENISON: One issue, if we're -- if
20 the subcommittee meetings are considered private,
21 should we then have each topic that is covered in
22 the subcommittee meeting put on the agenda each

1 time so that there can be some sort of a report on
2 what's going on? So, for example, this time there
3 was no Madrid, no classification discussion, that
4 was actually discussed in the private session, so
5 do we need to put a subcommittee report as part of
6 the public meeting each time or something -- I'm
7 just wondering, so that the public can be kept
8 informed about -- because we don't necessarily
9 know, things may come up in the subcommittee
10 meeting the day before that maybe would be of
11 interest to the public that aren't confidential
12 that we could report on, so I just raise that as
13 an issue.

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

20 My preliminary thinking there, Mary, is
21 that, let's not quite go that far, but that's just
22 my thoughts, and that is that let's always try to

1 make certain we put important issues on the public
2 meeting agenda, that they get discussed. I'm a
3 little concerned that if we try to -- even if we
4 say briefly touch on every issue at the public
5 meeting, we're back to full day public meetings,
6 if not more, and those are just incredibly
7 draining. And I think, after a while, folks just
8 kind of wear down and they lose their stamina for
9 really being effective. So that's my preliminary
10 thought.

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

19 And I think related to that, we then
20 more or less make the cut, in part, the PTO,
21 what's most important to be discussed publicly,
22 hopefully acknowledging that some business can be

1 taken care of in subcommittee meetings that are
2 still being done transparently, but that the most
3 important issues are coming before here. So I
4 think it almost meets, if not -- I think it meets
5 both legally and in spirit what I guess the memo
6 was trying to set out to do, which was to more or
7 less make sure we're minimizing the number of
8 times we're meeting in executive session.

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

1 (Whereupon, at 3:11 p.m., the
2 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

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3 I, Carleton J. Anderson, III do hereby certify
4 that the forgoing electronic file when originally
5 transmitted was reduced to text at my direction;
6 that said transcript is a true record of the
7 proceedings therein referenced; that I am neither
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11 am neither a relative or employee of any attorney
12 or counsel employed by the parties hereto, nor
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15 /s/Carleton J. Anderson, III

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17 in and for the Commonwealth of Virginia

18 My Commission Expires: November 30, 2012

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