UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia
Tuesday, October 21, 2008
ANDERSON COURT REPORTING
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MR. FARMER: Let's get started, everybody, unless there is any objection. My name is John Farmer and I am the Chair of the Trademark Public Advisory Committee, and I welcome each of you. We have a stout attendance today. This is the first time I'd chaired a TPAC meeting so I didn't know how many faces I would be able to look forward to seeing aside from the members of TPAC and the USPTO leadership. There appears to be a lot of interest, so I hope that we are interesting for you today.

Aside from that, I really don't have any comments other than to thank all the folks who made this meeting possible, not just to the TPAC members who came, but the tremendous support from the USPTO leadership in digging up documents and pulling together information and making a lot of time available so that in TPAC can do our job. I've discovered that a lot of times we have to call folks, such as I have to call Lynne Beresford.
to talk about stuff, and folks have been
ingenuinely available and we really appreciate
that.

Aside from that, I have nothing to day,
and so I will turn things over to the USPTO
leadership. I don't know in which order they will
wish to speak to make any opening remarks that
they have.

MR. DUDAS: I just want to thank
everybody for being here. There are a lot of new
faces on TPAC and I had the pleasure and honor of
swearing in three new members of TPAC yesterday
and I want to welcome them again to TPAC. I think
everybody who has been working on TPAC. Howard,
thank you. This is my first chance to officially
welcome John Farmer as the new Chairman of TPAC,
principal attorney for the Leading Edge Law Group
in Richmond and listed for the second time in 2008
as one of the best lawyers in America in the field
of intellectual property. I have a whole bio on
you. I also want to again acknowledge this is the
first time I'd had the chance to welcome you
officially, Professor Conley, so thank you for
being on TPAC. Gary, thank you again. I had the
opportunity to swear you in, and Tim.

I just wanted to talk a little bit about
what's happening in Trademarks, what's happening
across the board, and then I'm certainly happy to
answer any questions that you have. I'll give
some legislative updates, and again just make
myself available for what's happening from my
perspective as Director in the trademarks world,
what's happening here at the USPTO, and across the
board.

You're here at a time, if you came in
the main building and if you looked up at the far
day you see Welcome to the USPTO and a banner that
says Our Record-Breaking Year. So it's actually
an excellent time particularly for trademarks, but
for our office as a whole. The Government
Performance and Results Act is a statute that went
into place in 1993 that says you have to state
publicly to the administration and to the Congress
and most importantly to the customers and to the
American people what your goals will be. We've been on a path to improving. Several years ago, in the year 2000, we had only met about an average of 25 percent of our goals under the Government Performance and Results Act. It was a statute that was less than 10 years old. People were getting comfortable with how to do that. But we didn't find that to be acceptable at all and we went on path to make certain that we helped educate the Congress about bringing all the money into the Patent and Trademark Office, that user fees need to be spent here, an aggressive strategic plan, and setting forth our goals. Trademarks met 100 percent of their key goals. They beat by a large margin the vast majority of their goals. They're aggressive goals. They're stretch goals. And we actually have I think realistic goals, but this really goes down to what the examiners are doing, what people are doing. I will tell you what Lynne Beresford is doing because essentially when I first came to the office we missed about 75 percent of our goals.
that year and the year before for a variety
reasons and now we're meeting 100 percent of our
goals.

Trademark applications, first action
pendency was 3.0 months which is right on our
target. We're actually examining largely to what
we think pendency should be. We've talked a lot
about an accelerated trademark examination
procedure. But by and large an area that we're
trying to address we're getting to. Quality of
searching and examination has gone up. The actual
percentages attained were 97.2 percent compliance
for final action and 95.8 percent compliance for
first action. I like numbers. I don't
necessarily have to throw out all these numbers.
We're still getting national awards not for
government but just for being an entity that has
teleworking that's leading the world, leading the
United States, and we have 80 percent of our
trademark examiners teleworking from home who are
eligible to work from home. We have more people
who are working in more states. We have 20
examiners working in 12 different states and we're
talking about doing a whole lot more.

One of the things I wanted to emphasize
because I think everyone here on TPAC by
definition has been less than 3 years is that it
wasn't always this way. I've been here about 7
years, and as I mentioned, when I came into the
office we were missing about 75 of our goals. We
didn't have the strategic planning in place that
we wanted to have in place. There were a variety
of reasons. The money that we wanted from
Congress that you paid for wasn't coming in the
door. But we also had a situation where there was
a time with the dot-com boom we had a 33 percent
increase in applications and then the dot-com
bust, a 33 percent decrease in applications. At
that time things weren't great. We had I think
almost 100 examiners when I talked in the door,
trademark examiners, were spread throughout the
rest of the office because we simply couldn't take
in the fees to support what Trademarks was trying
to do. So we had people working in other areas of
the agency on details. I think as recently as 2005 we were having to bring money in from other areas of the office to support Trademarks because of what was happening at that time.

I think really that's one of the things I'm concerned about as we look at the economic times today, that the bottom line is with the strategic planning, with Lynne in place, with Howard working closely with everybody, with our examiners really being very open to change, what we've seen is a real turnaround. So as I mentioned, as recently as 5 years ago we had a RIF, a reduction in force, which is almost unheard of in government. And so we went from very tough times where we didn't have the funding that we needed, we didn't have people working the way they needed to work, to right now I would say it's as stable a time as we can possibly imagine. That's a real credit for Lynne, that's a real credit for primarily our examiners and for the office as a whole. Again, to go from meeting 25 percent of the goals to meeting 100 percent of the goals and
then each year stretching those goals out.

On the other front, that's also given us an opportunity to do more strategic planning. It's given us an opportunity to think about things like accelerated trademark examination, to think more about what we're doing internationally. For the first time in 10 years, the National Trademark Expo came to the office again and it was a great success, just an opportunity to let people know about the brands that are out there, how important they are. We see "Business Week" magazine talk about the 100 top brands. I think we had over 7,000 people attend, whole school busloads of kids coming in learning more about this. That's not only critical so that people understand what happens at the USPTO, but obviously people understand what brands are and they can respect that. This goes directly to counterfeiting and respect for brands and some of the types of things that we're trying to do outside of just examination.

I wanted to give you a little bit of an

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update on legislation. As you know, the patent reform debate is raging. What people don't necessarily know is there are a couple provisions in that patent reform debate as it ended up at the end of the Congress that may affect trademarks. One of them affects directly the Trademark Advisory Committee, and one is the clarification of fee-setting authority. There is a provision that was in the Senate bill that talks about clarifying fee-setting authority and it proposed to give the office more authority over authority over setting of fees, but that scheme they had come up with, there's recognition that the office might be in a better position to set fees than Congress generally particularly at a time when there are bills that are being held up for years and years on end. The scheme that was thought of, and I don't mean scheme in a negative way, but the format was essentially to have the office come up with proposals for fee setting, do a study on that. Go through the TPAC and have the TPAC evaluate that, and then have a certain time period
where Congress could reject the new fees, they could be raising or lowering fees, and then if there is no objection from Congress, the fees would go forward. So that's an important point. If that continues, that's something that TPAC will be directly involved in. Then there's great authority in accepting late filings. There's a provision in there that talks about that that I think could nominally affect what happens in the trademark area.

But otherwise, one of the more exciting things that's happening on the Hill is the issue of teleworking and the Telework Enhancement Act of 2007 which is S-1000. That's a bill that talks more about teleworking. The USPTO, Trademarks -- actually I wouldn't even say Trademarks in particular, following Trademarks' lead, Patents has had a huge up-tick, almost more than 1,500, between 1,500 and 2,000, patent examiners working from home. With such an established teleworking program in Trademarks, we know that as I mentioned before, 20 people working in 12 different states,
our program is more advanced than where the

government is and our program is more advanced

than where government regulations are. So there's

been a recognition in that bill or at least a
discussion among members of Congress, how can we

make certain that we push other agencies into
teleworking or help guide them or encourage them
is a better way to say it in teleworking. And how
do we also take the areas where teleworking is
advanced and give them the opportunities to go and
work elsewhere.

Our theory on teleworking is essentially

more flexibility and more opportunity. Let's give
people the choice to work from where they want to.

One of the issues that we've had with our Patent
Public Advisory Committee is some folks there have
said we want you to have examiners in California,
we want them in Denver, we want them here. The
office's position has not been that we want to
tell people you must leave and go to Denver, if
you're comfortable in Washington, D.C., pick up
and go to California because you know Silicon
Valley types of applications. We think that can be done remotely, we think that it can be done if this system works well.

What we do want to do is exactly what we're doing right now which is tell examiners if you want to work in California, you should have that opportunity. If you want to work in Kansas for whatever reason, you should have that opportunity. We don't want the office meddling with whether or not people make that decision. So our theory really has been what the office should do is say if you want to go somewhere else, that's fine. We can make your duty station there. And then after you move there, you should have the responsibility, however many times you needed to come back to that office, that responsibility would lie with that examiner to pay for the trips back to the office, but we should give that examiner a limit. The office has proposed we should have a limit of four times and only for certain circumstances so that people can make reasonable choices about where they may go and why.
they may go there.

But I just want to be clear that the theory that we have for teleworking so that people don't get concerned is not to tell examiners or other colleagues we have here you must go somewhere else. It's if you want to go somewhere else, you should have that opportunity and then you can make that decision for yourselves. We don't want to get in the position of saying, yes, you can move to Philadelphia but, no, you can't move to Montana because that's not cost effective. We want to give the examiner and other employees the chance to make that decision for themselves.

On the international front, I can talk a little bit about ACTA, the Anti-Counterfeiting Trade Agreement. There is a lot of progress along those lines. For those of you who are following that, you can see that there's also litigation involved and what discussions are underway, the Freedom of Information Act requests, et cetera. I think the great news is Australia, Canada, the European Commission, Japan, Korea, Mexico,
Morocco, Switzerland, the United States, and Uruguay are all involved in this Anti-Counterfeiting Trade Agreement and are having discussions. There was a time when it was thought it would only be the Northern Hemisphere, it would only be developed nations, and we're not seeing that. We're seeing a good number of nations that are interested in anti-counterfeiting. This is a good sign for all of us and we are looking forward to looking at possibly conclusion in negotiations at the end of this year is what we had hoped for and it looks like they might spill over into next year, but those discussions are actively underway.

The Pro-IP Act of 2008 was just signed into law by President Bush. Lynne can speak very personally about the Singapore Treaty on the law of trademarks. She's been a part of it from really the very beginning including the conception in a lot of ways and has taken it all the way to the end. Signing it was the first official act I think of the new Director General of WIPO Frances Curry. The treaty needs 10 accessions or
ratifications to enter into force, and with United
States there are eight instruments deposited so
far.

So again I'm trying to give just a very
brief overview of what I see happening at the
USPTO, and it's really a sense of pride and sense
of success and it goes directly to the employees
in the Trademarks area. Our examiners have seen a
lot of change, they've accepted a lot of change,
even at times where it's very difficult. That
change came off of a very uncertain time as I
mentioned before where we didn't even have the
collections we needed, where we didn't have
necessarily the work that was needed. But I think
there's a sense that it's both stabilized, that
it's not only stabilized, that this has been 3
years in a row of record-level growth in terms of
production, et cetera. I don't know if you talked
about it yesterday, filings are down, but I don't
think that's going to have a dramatic effect. Do
you know how far down they are?

MS. BERESFORD: I think we got about a 2
percent increase this year and we were expecting
about 6 percent.

MR. DUDAS:  Filings aren't done.

MS. BERESFORD:  They're down from our
predictions.  Lower than last year.

MR. DUDAS:  People have asked both on
the Patent side and on the Trademark side with
economics do you see this dramatic downturn in
terms of filings.  We have not.  Trademarks,
obviously if there's 2 percent growth, it's not
what was expected, but we haven't seen the kind of
drops we saw with the dot-com boom and the dot-com
bust.  And in Patents we've seen about a 5 percent
growth rate, but that growth rate is largely
requests for continuing examinations which is not
the same as growth in terms of original
applications in which that growth was largely
flat.

I am happy to answer any questions you
have to discuss more deeply, or otherwise just
thank you again for being here.  It's a great time
to be here on TPAC I think and there are a lot of
really important issues where if I could ask you
do one thing, just bring in all your experience
that you have outside, be constructively critical
of course, but please be critical. Help us figure
out where we can do more and what we can be doing
better. And let us be as open and as accessible
as we can possibly be.

MR. FARMER: Thank you, Jon. Are there
any questions from the TPAC members for Mr. Dudas?
Hearing none, I think that takes us into our
budget presentation unless there are any other
presentations from the executive leadership of the
PTO.

Before we start of under Article III of
agenda where it says budget matters, we're going
to reverse the order. So we're going to go C, B,
A, instead of A, B, C, because when I was chatting
with Ms. Garber before we started she said that
would be a logical flow of information and it
would build on itself better. So in that case
I'll turn things over to you, Wendy, and to your
colleagues, and you can start things off.
MS. GARBER: Certainly. Thank you very much, John, especially with the flexibility with the schedule. I realize we got the information to the members late yesterday so I do intend to walk fairly slowly through these presentations.

To tell you a little bit about myself, I'm currently the Acting CIO. My background is actually as a patents -- director so I've been in patents for about 17 years. I was asked about 6, 7, to 8 months ago to work with Under Secretary Dudas and Deputy Under Secretary Peterlin in the front office. They wanted me to look into two different things. I tell you my background because I think it puts me in a unique position to ask some questions that you may have.

One of the questions they asked me to look into in which our CFO will be discussing later today is the split between Trademark and Patents' costs. So they asked me to spend some time looking into those issues. So when Mark Olechowski is speaking with you later I will gladly share with you the things that I found.
during my inquiry into those issues.

The other thing they asked me to look into was the health if you will of our IT infrastructure, and so that was the second area where I spent some time. While I was working with them, an opening in the CIO position opened and I was in a position where I could fill the position until we found a permanent replacement. So that's where I have been for the last 4 or 5 months.

I was asked to look into those two issues because at the time didn't have a background in the CIO, I didn't have a background in trademarks, and I didn't have a background in finance. I didn't have a dog in the race so I was an objective person who could look into many of these issues.

So what I'm going to walk through with you now is this presentation. It looks like this. I had the opportunity to brief PPAC on the same subject matter a couple weeks ago so I would gladly tell you their response and any impressions that they may have had. They have heard this as

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well, but because this is I think a very crucial
subject to have both patents and trademarks
knowledgeable of because neither patents nor
trademarks will be able to meet their goals and
you're going to be discussing today goals and
strategic plans looking forward to trademarks and
without a healthy IT system, none of those goals
-- attaining them will be possible. So I want to	hank you for putting this on the agenda. I think
it is a very important issue for everyone.

I would like in our current situation,

owning a house where your roof is showing signs of
wear and tear and you want to address the problems
before you get your next rainstorm. The first
page on the slide there you will see some of our
current situation. It is the IT infrastructure
issue in which I found myself several months ago.
I do want to point out as any successful leader
will tell you, they surround themselves with
people more intelligent than themselves. So to my
left I have the Acting Chief of Staff John Owens,
and to my right I have the Director of our Budget

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and Finance area Keith Vanderbrink. I will ask
them to speak and help me if at any time they
think I could use the assistance.

But to tell you of the situation that we
found ourselves in, and I think it took us about 5
to 8 years to get in this situation, so what we've
come up with is about a 5 year plan to help
improve our situation or to get back on the right
track in terms of our IT infrastructure. Our
intermittent system failures have been rising and
so again I would analogize it to your roof that is
showing signs of wear and tear. In particular we
had an outage of patent systems that lasted for
about a day and a half not too long ago, several
months ago and we also had a power outage that
affected all of our employees. So with these
intermittent system outages rising it is time for
us to stabilize all of our IT infrastructure
before these system failures rise anymore.

We have right now 2,300 unique server
configurations and 5,700 desktop configurations.
I don't want to patronize anyone in the room but I
also don't want to presume that you have an understanding of what that means. What that means is all of us in our offices, all employees, have their own desktop work stations. If we in the OCIO want to manage, for example, we have to send out a security patch or we have to send out a software upgrade, or somebody calls from the help desk and we need to triage what their problem is, it is most helpful to us in the OCIO if everybody's computers look exactly the same. So they all have the same exact software on them, they all have the same exact versions of the software on them, and that way when somebody calls with an issue we can tell them how to fix their problem because we've seen the problem before and we know how everybody's computers will react to the fix.

What we have instead is we have 5,700 different computer configurations that have been deployed. What that does is it makes it exceptionally challenging for us to send out for example a security patch. So system vulnerability
has been recognized, we need to send out a
security patch. When you have this many different
desktop configurations, different ones respond
differently. Some of them may not recognize the
patch at all, thus they don't get upgraded. The
security patch may actually break some of them and
so now we're getting help desk calls because of
the security patch my computer is not working. So
having this many desktop configurations is
extremely problematic for us and so this is again
one of the environments in which we find ourselves
and it's important to move to industry standards
so we can start to fix these issues.

Our network which obviously is the
communication cables that allow all of our
computers to interconnect is well beyond the
maximum industry lifespan and most of our switches
and most of our network hardware was last
purchased in 2000 and 2001. I would analogize it
for those of you who have a home computer, imagine
the home computer you had in the year 2000 with
your dialup modem, et cetera. So you can see how
when you don’t update your own computer systems, you're unable to take advantage of things as they modernize. And especially in an area such as trademarks that relies very heavily on telework opportunities, we have got to have a robust, modern network or we won't be able to take advantage of the full telework opportunities. So this is actually one of our top priorities to replace the network.

You can see in the fourth bullet there that our network capacity is often times at or above 80 percent at peak and what means is it starts to impact the availability and the speed and efficiency of our own software systems to our employees. So it makes our systems work more slowly. The public has the demand to get some of our information and we respond more slowly to public demands simply because our network is reaching its capacity. It happens particularly near the end of the fiscal year because that's where employees' demands on our network are greatest. So now we are past the fiscal year and
that gives us a little bit of a slowdown in our network capacity or at least the demands being made on it by our own employees. But again the replacement of our network will help get this issue under control before it becomes a crisis.

Much of our data center hardware is beyond its maximum industry lifespan. Industry standards say that hardware and software are typically replaced on a 5 to 7 year cycle, and many of ours have not been replaced within that time period. So when you have something that is that old, it becomes more costly to maintain to it drives IT operations and maintenance fees up. It becomes more fragile so you need more people who are at hand so they can fix and in so many words apply Band-Aids or duct tape to these machines so that we don't show reduction in services to our employees or our customers.

I just thought of the idea right now so I'm throwing it off the cuff, John, and I apologize. I think if any of you would like maybe this afternoon if the agenda goes more quickly

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than we think it may, if anybody would like a tour
of our data center later today, we will gladly
give that to you because I think it will be very
instructive. At least for me I had never seen a
data center coming from Patents and so for me it
was very helpful, so I think we can make that
available to the group later today.

The next to the last bullet there is
very important. Right now we lack an offsite
disaster recovery capability. In the most perfect
situation you want a complete replication of all
of your data center and all of your capabilities
at a remote site so if something were to happen to
this site we could start back up immediately with
the other site, all of our data is there and we
don't lose much time and our employees can get
back to work. We however do not at this time have
such capability. As a matter of fact, we don't
even have all of our data stored somewhere
remotely let alone a complete replication of our
systems. So what that does is I feel like I'm
Chicken Little a lot of the times, the sky is

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falling, but you want to be prepared for the
disaster before it happens, not after it happens.
So this is a part of our modernization roadmap too
to make sure we have not only all of our data and
our systems stored remotely, but the ability to
fail over to it in the case we have some kind of
system failure here and today we don't have that
capability.

Many of our processes, and coming from
Patents I'm a customer, I've always been a
customer of the OCIO, so there's been a source of
frustration working many times with the OCIO. I
think in the past it was due to many of the
processes were done ad hoc or not according to
industry standards so they weren't repeatable.
What happens when you're a customer is it can
frustrate you because it lengthens the process, it
makes the outcome somewhat indeterminate. It can
be a random output so you can't necessarily see
where things are going. What it does is it causes
work-arounds. So for example, since OCIO did not
always have a robust process to buy new hardware,
think of Blackberry, didn't have a robust system for doing that. So our customers who have a need for a Blackberry know if they contact the OCIO not only does it take too long, by the time I get it my need for it is gone, but I don't know whether I'll ever get one and I don't know who's going to pay for it. So what you do instead is you say I'm in Patents, I have money, I'll go buy Blackberrys because I can go to Best Buy and I can buy it tomorrow. But the problem that those things cause the OCIO is when that thing stops working or when you need assistance for it, that's when you give it to OCIO and you say help me. It's IT, it's electrical, I need you guys to maintain it. So what has happened is we've ended up with a list of approximately 50 some different versions of laptops we have out there. Fifty versions of laptops. So instead of having only two, three, or four versions of laptops that OCIO knows how to fix and knows how to support, we end up with 50 and it drives up our IT costs. I think there's enough, I don't want to call it blame, but for
lack of a better word, there's enough blame to go
around where all the different business
organizations have been a part of creating this
problem, but I think it's OCIO's responsibility to
fix it. So what we've come up with and what we're
labeling our roadmap is our 5 year plan to fix it
and then make sure we stay on track after that.

On the next page again as kind of a
background, as I've already mentioned, I think our
current environment or our current state evolved
over time. I don't think anybody wakes up in the
morning and says I'm going to go to work and I
wonder what bad decisions I can make today. So I
think our current state evolved over time with
people making ad hoc decisions at the time without
really taking an enterprise or a holistic approach
to IT and what we ended up with is a house with a
bunch of additions and a bunch of upgrades and
none of it communicates with the others and,
again, it drive up the cost for everyone.

Technology, as you know, anybody who
owns technology, technology changes very rapidly
and if we want the most agile, robust system then
we need to cyclically replace our hardware and
software to stay on top of the modernization and
we haven't always done that. What we intend to do
with this roadmap is to modernize according to
today's standards and then get on a cycle where we
are constantly upgrading. So in the future we
don't intend to have oh my gosh, let's modernize,
it will just become a part of our standard
operations where no one will see that modernizing
is taking place and we won't have to draw this
kind of attention to this kind of effort because
it will just be built into the standard operation.

At the bottom of slide number 3 you see
that there are many parts of our IT infrastructure
that all the different business organizations
share. For example, email. Patents' employees,
Trademark's employees, CFO employees, HR
employees, everybody shares our email system today
and that's just one example. So there are many,
many parts of our IT infrastructure that people
share, and John Owens will be talking a little bit

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more about that because I know that is one of your
questions, Trademark's IT versus the rest of IT,
and so we will be addressing that. The bottom of
slide three just gives you an example of some of
the things that we all share.

The top of slide four as I've mentioned
already, what we expect what we're terming our
roadmap to do is to stabilize and simplify our
current environment. Again we need to make an
enterprise or holistic approach to this
modernization as opposed to ad hoc business
decisions being made in order to please our
customers. You're trying to make an individual
happy, but it's hurting the whole, if you will,
and so we need to take a more holistic approach.

What I've done in the middle there,
these are Trademark systems that are specifically
called out in our roadmap for 2009 that will have
efforts being placed toward them, and they're
FAST, TEAS, TRAM, TICRS, and X-Search, and if you
have any questions, I can certainly address these
at the end. Some of these systems are some of our
more older systems that have not been modernized recently and it kills two birds with one stone if while working on these systems not only gives you or gives Trademark additional functionality and additional stability, but it also helps the whole of our roadmap and modernizing our IT infrastructure at the same time. So by working on these systems, and there are some Patent systems as well we intend to do this with, it helps both. It helps Trademarks as an individual business unit and it also helps the whole of our infrastructure become more modern.

What I've done on slide five, our IT roadmap is actually this very long document here. I can make this available. I made it available to the PPAC members. What I'd done in slide number 5 is summarize it for you. It has nine interdependent initiatives. In no particular order they are organizational strengthening. In a nutshell what that means is we need to work on our workforce as well. Some decisions were made in the past to take money away from employee training.
for example. As IT changes we need to keep our employees knowledgeable about the most modern -- I'm an electrical engineer myself. When I went to school I learned BASIC and FORTRAN. I'm not very helpful today. So the same is true for our employees. We need to keep them trained. And if we don't do that, what we do is we have to rely more and more on contractors which drives up costs. So what we've done in this 5 year plan is we've front-loaded with contractors because we realize we don't have a lot of the knowledge in house that we need, but while we are training our employees up, our reliance on contractors will go down. So in a nutshell, that's what the organizational strengthening pillar means. It has other components as well including some of the budget and finance systems that Keith Vanderbrink will be talking about.

Process standardization. As I mentioned before, we want to get away from ad hoc decision making and ad hoc processes and move to industry standards. So we've recently created an SDLC
which is our system or our process through which we receive project requests and move all the way through the project, design, deployment, etc. So we've recently done that and moved it toward industry standards, away from ad hoc because ad hoc decision making has got us to where we are today. So in a nutshell, that's the process standardization.

Data center stabilization is to upgrade, modernize, and update our entire data center. As I mentioned, we'll gladly give you a tour and show you. It's interesting because we can show you some of our older equipment and we can show you some of the issues that our data center has including such things as heating and air conditioning issues. As simple as that sounds, these machines need cooling. They don't always get the cooling that they need. We actually have portable fans that we use to cool some of our equipment.

AIS stabilization. That in so many words is our software. So we need to upgrade all
of our software. Some of our software systems are very old and they require a lot of people to sit.

PALM is one of them, for example. I don't know if you guys are familiar with PALM. PALM is used by Trademarks, but it's used a lot by Patents. So for example if I'm an employee of the Patent Office and I want to look up where Debbie Cohn's office is, I can type her name in and PALM tells me where her office is and what her phone number is. PALM is a system that is so fragile, it has approximately 12 people working full time just to keep it up and running and that makes it very, very expensive. What these 12 people is they sit in a room, and trust me, they're staying busy, and wait for PALM to break because it breaks all the time. So that's just one of the systems that we intend to modernize. Trademarks, I think it is TRAM. TRAM is running its system on a very old machine using COBOL language. COBOL wasn't taught when I was in school. It was already outdated when I was in school. Finding people now to maintain and keep COBOL running is exceptionally
expensive, so one of our intentions is to
modernize those types of systems which decreases
the costs for everyone because we can't afford to
have systems that are so fragile that they keep
breaking and raise costs.

MS. BERESFORD: Wendy, may I just
interject that although TRAM isn't COBOL, it's not
fragile, it's one of the most sturdy systems in
the office, so Trademark folks, don't be worried
about TRAM. It's chugging right along.

MS. GARBER: I don't think that's
completely accurate.

MR. OWENS: It does cost an exceptional
amount of money. We have over 20 people who
constantly work on that system full time and
that's just contractor staff.

MR. GARBER: It's robust only because so
many people work on it all the time.

MR. OWENS: People work on it to keep it
up and available and add functionality to it
continuously.

MS. GARBER: Moving to our desktop

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stabilization, and I'll tell you that's not unexpected. When I was telling John Doll, the Commissioner for Patents, about our PALM system, he had a very similar reaction. He said, What do you mean? PALM works. PALM's great. Every time I go onto my computer PALM works. And he didn't know what was going on behind the scenes. And, frankly, business heads shouldn't have to be involved with what's going on behind the scenes.

Our desktop stabilization I mentioned to you already. It has to do with the number of independent desktops and images that we have out there, so we intend to standardize. What I met with the EPO I was telling them about the number of desktop images we had. Do you know how many they have for all their employees? One. Every employee in the European Patent Office has the same exact computer configuration. When I told them we had over 5,000, they were astonished we do as well as we do because that's just a vast number. So that is one of the elements that we intend to do.
Our service desk is one of our priorities. That's our help desk. We want to make that process quicker for our employees and our customers, being able to triage incidents more rapidly.

Disaster recovery I mentioned to you already. We do need to bunker all of our data and ultimately get to where we can have a fail over in case of a problem so that our employees don't lose any examination time in the incidence of any kind of disaster at all.

Network and telecom I mentioned as well. We intend to replace our network with a new network that will make our system able -- because I think both Patents and Trademarks have strategic visions for how they want for example telework to look in the future or electronic processing of applications or electronic examination, and we have to have a better network in order to meet those demands. Our network as it is today is able to meet the demands of our customers and the demands of our workforce, and as you know, Patents

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is vastly increasing every year in workforce and that puts additional stress on our network. So we have made a commitment to Patents that we will be able to meet the 1,200 hires for this year with the network we have, but at the same time we needed to start getting the funding and the prioritization to fixing it so they can happen in parallel, the upgrading of our network so that we never have to see an impact to our customers and our employees.

Enterprise architecture is so small it's a federal mandate for us to do and it sets forth industry standards for how you architect and create an IT system for an agency as large as ours.

If you look on the next page, we had to approach the business heads for this because it was such a large initiative for us that it required the approval of our Change Review Board and our IT Investment Review Board. It was interesting. I saw three responses. I think I can categorize the responses of both the business

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and the deputies into three different ones. There
was a very small minority who said problem, what
problem? We have IT problems? Because again when
you come in in the morning and your computer turns
on and you're able to do our email and you're able
to do our word processing, you don't realize that
your -- is showing signs of wear. So I think we
were quickly able to educate that group into
seeing that, yes indeed we have an issue that
needs to be addressed.

There was a second minority who I would
say when you're faced with an issue this large in
scope, it's easy to seize up. As John would say,
it's you work to get yourself toward Mount Everest
and now when you're at the base of it you look up
and say what a big mountain and it's easy to stop
there and not start tackling it. So I think we
also had a minority of people -- we had an OCIO
organization, granted it was none of the three
here, but we had an OCIO organization that for
many years was saying things are fine. For sure,

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I'll do that. I think as I mentioned they were making ad hoc decisions with the best facts they had in front of them at the time, but the business heads were never really told until recently that IT infrastructure needs to be modernized. It was more of an education really than anything else. And I think the majority of people felt in so many words it doesn't matter how we got here, here we are, we have an agency need to fix it so we can become more agile, so what do we need to do to move forward?

So what we did, if you look on slide number 6, for people who were in the second group and had a tendency maybe to seize up, what we did is create for them a series of help checks throughout the process. We certainly couldn't afford to let this be an invisible process where we say thank you, give us lots of money and we'll come back to you in 5 years and tell you how it went because there was a certain lack of confidence in our ability to do that where you come to them and say we maybe didn't give you the...
whole picture all along so we're having an issue, they can use confidence in the OCIO's abilities because they hadn't told them up to then. Nobody wants to just give us a pot full of money and tell us to come back in 5 years. So what we tried to do to mitigate any of those concerns, because we can't afford to let this turn into an endless planning exercise until everybody has the full confidence in our plan. So what we did instead is we told them your roof is showing signs of wear, we need to get started, and so as to help you overcome your lack of confidence based upon past OCIO performance, we have a series of health checks. This is just an example of what we've done and we will be reporting back to the IT liaisons, we'll be reporting back to the deputy business heads and the business heads as well as we are spending their money because they deserve to know how we're making progress and whether we're making progress.

I would draw your attention to the left-hand column where again we go through the

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nine initiatives. What you'll see there are the
2009 dollar estimates for the nine initiatives. I
would point out to you network and telecom is the
largest portion of it because as I mentioned to
you, that is our top priority. So while we
consider this to be a 5 year plan, our network is
our top priority and that's why you see more money
devoted to it in the first year. The same is true
for disaster recovery and the software or the AIS
stabilization. We believe all nine of these
initiatives must be undertaken at once. For
example, you don't replace hardware without
replacing software and vice versa. It doesn't
make any sense. So we believe all nine of these
initiatives must be attacked at once. However, we
have prioritized the nine against each other
chronologically. We realize that network and
increasing the scope and stability of our network
is our most important priority in the short run,
therefore we have focused more money at it
initially. Some of the other items such as the
help desk response for example will get more money

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devoted to it later. So there was a
prioritization although it was a chronological
one.

Moving on to page 7, it doesn't flow
real well from the subject of the roadmap, but
what you'll see in slide number 7 is an answer to
one of your questions. It is as you'll see at the
top, the 2009 estimated cost of the roadmap is
$38.9 million. We have received the approval of
all the necessary bodies to move forward with this
investment cost. What you see is the split
between Patent and Trademark's percentages at the
end is based upon the results of 2008 -- Mark will
talk more about this later, but what we use is the
2008 final split as a budgeting tool to guess the
future and it's only after actual costs are done
that we get back with the actual split, but I
believe in the past, Mark can answer this better
during his presentation, but our budgeting tool
and our actual costs have only been off by 1 to 2
percent at most. So what this split gives you is
our best estimate based upon 2008 information of

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what the Patent and Trademark split will be
between our roadmap.

One of the questions, if I can feel free
to anticipate what one of your questions may be,
I've heard questions as to why would the Trademark
share of the total be greater than its FTE
percentage or the percent of its employees versus
Patent's employees. Is that a question? What you
see there is a 78/22 split. The way I would
phrase it is that a computer doesn't care how many
people use it or software doesn't care how many
people use it. So to make a simplified example,
let's say USPTO has 100 employees, 90 of them are
Patent's, 10 of them are Trademark's. So 90
percent of the USPTO is Patent's, 10 percent is
Trademark's. If Patents were to come to the OCIO
and say we need a system that does A, B, and C, we
have to design the system to have those
capabilities, we need to procure the hardware, buy
the hardware that needs to be able to do those
things, and need to architect the hardware so it
fits into our overall data center and is able to
communicate back and forth. We have federal regulations related to security so we have to work out all the security costs, et cetera. So we have to do all of those things all the way through to deployment. Let's say it costs $1,000. So Patents comes and they ask us for a system and it costs $1,000. Later the same year, and I am simplifying things, Trademarks comes to us and they want a system that does X, Y, and Z. We have to go through all the same things. We have to design the system so it meets the capabilities, we have to architect and procure the hardware so it fits overall, we have to do the same security, go through all of our federal mandates to make sure our vulnerabilities are covered, and it too costs $1,000. If that's all that we were to do that year, the split between Patents and Trademarks would be fifty-fifty. We did $1,000 for Patents, we did $1,000 for Trademarks even though the split of employees is 90/10 because a computer system doesn't care how many people use it and it doesn't necessarily add to our cost. So Mark and Keith
can both talk more about this later, but at least
for me that's a good explanation as to why IT
costs -- it would be more surprising if they did
fall in a straight FTE percentage at least for me.

What I'd like to do before taking your
questions is to move on to John Owens. One of the
questions that is on the agenda, to answer your
question number one under C, I've told you our
2009 costs. We can't until the executive session
talk more about 2010 and beyond costs. But I can
tell you that overall it's a 5 year, $200 million
plan approximately. What I'll have John talk
about is this is an opportunity since we say we're
modernizing our IT infrastructure, it presents an
opportunity for you guys to ask the question is
this a good time to create separate IT systems.
So that's something that I'd like John to speak
about for you and then I'd happily take your
questions.

MR. FARMER: Thank you.

MR. OWENS: This is a simplified
diagram. I want to say one thing, just because
something looks complicated doesn't necessarily mean that it's wrong. If you've ever looked at the back of your television or your AV equipment or your computer you see a lot of wires hanging there and they're connected every which way and many of us don't understand how they're all interconnected or why, just the fact that it works. Technology doesn't have to look simple on a piece of paper to actually be correct. So please don't draw the conclusion that just because something looks complicated that it was built improperly.

We do have many systems here that could certainly use an overhaul. As Wendy said, over the last 10 years much has changed with technology. I've been here for about 8 months now and I came from a company who did nothing but technology for 13 years. I was the technical director there. In the late 1990s and early 2000s that organization went through a complete reform and we modernized all of our systems to build on efficiency and reduce the cost of maintenance. So
I'm going to go over here and tell you we're in much the same place. These are Trademark AISes. AIS stands for automated information system. Those are the actual applications that run. These are the servers that the applications run on. Some of the lines have been removed, particularly the lines -- we have other business unit AISes. For example, you heard about PALM. PALM is more than just looking up someone in the directory. PALM is our single sign on authentication authority. So when you log in we know who you, what your rights are and so on and so forth due to the information in PALM. It's what allows all of these systems to connect to the user and to know that the user has the authority to do what they're doing.

RAM is our billing system. It's how credit card information is processed right down to who was charged for what and it stores all the information of who's paid fees. So all of these systems are shared across business areas. I was mistaken the last time I gave this presentation.

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You all do pay for part of these systems. The network zones, these are the different networks. All the data transfers over. These are shared resources as well. You have external trademark interfaces. These are things like FAST and TDR. And these are the databases. Again, we removed all the lines because we just couldn't see anything. These databases actually store all of the trademark data. These are the servers and these are the --

This type of architecture is more monolithic. It grew over time. Business needs were met. I can tell you from my examination over the last 8 months it looks like more of the trademark system is automated end to end than the trademark system is today. In fact, trademark systems have been around much longer and they have always been on the cutting edge far above and beyond where I think patents have been. PFW which is being done for patents is going to catch them up significantly, but more -- for trademark over time. Any questions on this? Feel free to ask.

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anything. If I didn't explain something well
even. I'm happy to go back. It's hard to gauge
sometimes where everyone is.

MS. GARBER: Why I asked OCIO to create
a chart like this was to show that -- and if you
recall from my presentation, on the bottom of page
3 we do share all of the business organizations,
not just patents and trademarks, but we do share
much of our IT infrastructure and it's not as easy
-- what this chart is meant to show is to a lay
person it may sound very simple to separate, we're
going to separate, finance will have their IT area
over here, our CAO and HR will have their IT
system over here, trademarks here, patents here.
It sounds very simple possibly to a lay person to
make that separation. But in reality we don't
believe it's cost effective nor very easy. So
what this chart is meant to show is just how many
resources we share.

You have a couple of options. One is to
completely duplicate all systems so that
trademarks has a RAM system that only trademarks

uses and patents has a RAM system that only
patents uses, and I think all of us would agree
that a complete duplication of systems leads to
increased costs for everybody so it's not
necessarily cost effective to do that. Then the
other option that you have is to share all those
things that can be shared and that's where we are
today. What this is showing is that there are
some trademarks -- for example, if we show you the
data center, John can show you, these are
trademark servers and so there are some things
that are separate today and they are things that
only trademarks spends money for, but the things
that are separate today are the things that will
be separate tomorrow. So the things that are much
more difficult and increase costs to separate are
things that we don't recommend separating.

MR. OWENS: What we are going to do
during the roadmap is we are going to put industry
standard architecture to work for us, things that
have been proven in other organizations including
public and private industry. That is first we're
going to stabilize our environment. We're going
to go to each one of the systems and we're going
to document its interfaces, we're going to apply
those standards, we're going to review what we
currently have and we need to stop problems that
cause the crashes today.

While that is going on, we are going to
document those systems. Much of our documentation
has not been kept up to date. Then we are going
to remove the weakest links in those chains, all
of those arrows on there. Some of them are not
necessary. And the bigger piece of chain, you
only need one weak link to break the whole. So
when we talk about an end-to-end automated system,
it's a gigantic chain of links and as soon as one
breaks, the whole system does. So we shorten the
chains. That's the way modern IT works. We
shorten the chains and we make clean interfaces.
The shorter chains act independently. So it's
like instead of having one chain to pull your car
out of the mud, you attack six shorter chains.
You can still pull the same load, but with the
shorter ones, if one breaks you can keep going.

That's the type of modern architecture principle that we will be applying to this effort.

Over time we will simplify our systems to make them robust. We will make them redundant. We will have duplicative systems, one hot, hot spurs they call it. If one of them goes down, the other one is taken over. We have three systems that do that today, mail, patent search, hopefully soon X-search which rides on very much the same system, and the third one escapes me at the moment. These things that we talked about on page 4 answer your question that you asked us, is this the right time to do this work. Yes, it is. The roadmap states it, the presentation states it, this was planned.

I think the question is how fast can it happen. I equate this to what happened at AOL in the middle to late 1990s with the connectivity crisis that we had where people couldn't get on or get connected and it was very publicly known that that was a bad time. It's like crawling out in an airplane in flight and replacing an engine. You
can't stop. We have to continue to search and produce work product. So we are going to be replacing all of this infrastructure and modernizing all of these systems while in flight and that takes a lot of planning and a lot of coordination. It's a huge choreographed effort. Much harder than it might seem on the outside.

MS. GARBER: The last point I'd like to get across is I likened myself to Chicken Little before and I did have to run in the last 3 or 4 months and tell everybody the sky is falling, the sky is falling. We continue to meet our employee and customer demands so we don't have an immediate crisis where we believe we will stop being able to do that. Our crisis however is that we need to get started on the plan to modernize. Anybody who knows anything about IT knows that not only do you first have to get the money which takes time, then we have to go through the procurement effort which takes time, and then we have to architect and design everything which takes time. So my job in the last several months has been going around and
gathering support for us to get the money and get
started on the implementing so that we never have
to lose any of our abilities of our systems to
meet customers' both internal and external
demands.

So with that I'll gladly take any of
your questions. As I mentioned, I gave the same
presentation to PPAC probably several weeks ago,
so I can share any information with you. I know
it's a lot to digest.

MR. FARMER: Wendy, as far as the
possibility of separation of systems, I understand
the comment that there are certain systems that
are shared and thus it may be the case that it's
cheaper to maintain one than two although I don't
know if both systems are really if that's the case
or not, but assuming that that is, are there not
also systems that are not shared that are unique
to patents or unique to trademarks and those could
potentially be separately administered on the
trademark side of the house in the case of
trademark systems?

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MS. GARBER: I'll let John go ahead and answer that. He's more familiar.

MR. OWENS: What do you mean by separately administered?

MR. FARMER: As opposed to those trademark systems being covered in a central CIO function, they could be covered on a CIO function that falls on the trademark side of the house.

MR. OWENS: To what benefit?

MR. FARMER: So that the trademark side of the house would have greater control over its budget.

MR. OWENS: I don't believe that one would lead to the other. If you're saying that in our data center you would like different system administrators to work on those systems, maintain them, work in the centralized space, that coordination effort alone, the duplication of help desks, the duplication of monitoring, the duplication of all of those shared resources that are above and beyond here, would cost a significant amount of money, not to mention we
wouldn't have the space or opportunity to do it here. So I don't know exactly how to answer your question.

If you wanted to take everything ad hoc and move it somewhere else, that would be even more. I'd have to work on all of those shared systems and either duplicate them or build cleaner interfaces that would work over a long connection pipe depending on what area of the country you wanted to be in and that's even more complicated particularly for security. So could you narrow it down a little bit for me?

MR. FARMER: It's really not any more specific then item number 3 on the agenda, and the question is not presuppose an answer, it's simply that we see that there is going to be a tremendous expense incurred for a tremendous overhaul that appears to be very needed and this seems like an opportunity to examine all of the options as to whether the system should remain unitary or partially unitary and partially separate by patent and trademark sides of the house or entirely
separate which I understand you all say really
doesn't work, and thus we're just trying to fully
understand all three of those options.

MS. GRABER: It's important to point out
that we talk a lot about the roadmap. It answers
part of your question because I don't want to
exaggerate or overstate how much this is going to
cost for us, because while it is a very important
initiative and a costly initiative, it is less
than 2 percent of our annual budget, so to think
that you're modernizing your IT infrastructure for
less than 2 percent of your total budget. I don't
want to get out of control with how much money we
talk about this costing because relatively it's
not very much money. It's one of our goals to
keep this modernization effort very cost effective
for everyone. So that's part of your question
because you did mention how costly this effort
would be.

MR. FARMER: To my fellow members of
TPAC, I have various questions I've written down,
but I'm not hogging the floor, so jump in when you

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feel that you wish to. How much overall risk do you think the computer system is at for a major failure in that the system could go down, be down 2 or 3 days consecutively or even longer?

MR. OWENS: I believe we had two outages of that scale last year.

MS. GARBER: I'll let John talk more to your technical questions, but for example, the software stabilization effort we're looking at, we're not doing it randomly and we're not doing it alphabetically. What we're looking at is this systems that we currently believe we have the highest risk of outage and we're addressing those first. So that's one of the efforts we're going through. John knows what the five systems are that we're looking at for this year more so than I, but we are trying to do it in the area that mitigates the most amount of risk.

Anytime you have a computer system, there is some risk of outage no matter how great. Even if everything worked perfect, there is a risk of an outage. So, yes, we believe there is a risk
of outage and what we've tried to do is get this roadmap underway before the risk gets any greater. The important thing to note is, yes, there is a risk but, yes, we have a plan to mitigate it.

MR. OWENS: I think the answer to your question where I started saying that we had two last year one of which I was here for and was it related to power, it knocked out every system, was to set the stage for what I'm about to say which is very much what Wendy said. There is always risk. That risk in modern systems is lowered by having redundant and resilient systems, which obviously you see the state of our systems that we've just told you we haven't modernized. That type of modern architecture didn't come about until the mid to late 1990s for the most part. We are prioritizing the work here and instilling -- the roadmap is our modernization effort to avoid system-level crashes, but there is always going to be risk.

MR. FARMER: I understand that with computer systems there are always risks. I ran a
small business. I know how that is. But obviously from your testimony, we're at an elevated risk right now of the systems going down because of the problems that you've described.

MR. OWENS: It's watching the problems slowly increase which I think back in late 2007 before I was here, many good folks at CIO said things don't seem to be going very well. We are going to do a much of independent assessments or what we call IVVs, independent verification and validation. And we did several which resulted in showing us many of the cumulative issues that we experienced. That in turn led to self-analysis which led to the roadmap which led to a 5 year plan to resolve the problem. We're being very proactive. It may not seem it, but over the last 2 years we have taken huge steps, whereas in previous years I'd say like Wendy said between the last 5 and 8 years, very little had been done.

MR. FARMER: I'm not trying to look backwards and assign blame to anybody, I'm just trying to see how much risk there is. Are we
under any material risk that the system would go
down and stay down? In other words, it wouldn't
be a day or two or 3 days, but it would just be
down for the count until it's replaced or are we
not under that kind of risk right now?

MR. OWENS: A disaster that took out
this building and the data center?

MR. FARMER: Sure. I'm just talking
about a failure within the computer system.

MR. OWENS: Barring that level of
disaster, down for an extended period, it is hard
to tell you how long things -- if we had a fire,
some massive flood, some disaster --

MR. FARMER: I'm not talking about
outside of the system, I'm just talking about a
system failure. I was just asking if you see any
material risk that the system itself would fail
and just stay down, that you wouldn't be able to
bring it back up in a day or two or three.

MR. OWENS: No, I don't believe so. In
the last year or so we've made sure that the bulk
of our systems and all of the trademark systems to

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my knowledge are all backed up and stored in a
collection management system. We're about to
duplicate that within the next 6 months in Boyers,
Pennsylvania, at our data facility.

MR. FARMER: Thanks for that answer.

Based upon this timeline, when do you anticipate
that we will have offsite data recovery that will
have an offsite system that we can turn to if
something happens here like a fire or something
like that?

MR. OWENS: The current schedule shows
that the data itself plus the configuration
management is going to be done by I believe the
end of Q2.

MR. FARMER: Excuse me?

MS. GARBER: The second quarter.

MR. OWENS: Fiscal Q2 of this year.

MS. GARBER: So soon, which is
approximately March.

MR. FARMER: I don't know if I'm asking
the right folks this question. If so, please tell
me ask somebody else. But when the system is down

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entirely, what does the PTO do to get its work
done? Do we just have to hang out until the
system comes back up or are there other work-
arounds that are in place?

MS. GARBER: It depends very much on the
system, and I'm talking to you from a patents
perspective and I trademarks is analogous from the
examining attorneys sitting in their offices
trying to do work. It depends on what the system
is. Some systems were they to go down are merely
inconvenient to not have. Some systems are more
short-term loss of work concerns. Again I'm
talking from patents so I'll let a trademarks
person speak up about the examining attorney. But
for patents, the average examiner uses a number of
different systems so usually if one of them isn't
working, there are other things you can do. For
example, instead of writing an office action,
maybe that system is down, the one that allows you
to write correspondences. So you have to put that
work aside and maybe start on a new application
and perform the search because the searching
application is still available. So often times it's a matter of convenience as opposed to everybody go home for 2 days and we'll pick back up work later. So at least for us on the patents side that's what our failures have been like.

MR. FARMER: What I take from that is whatever is down, that function in the office that needs that computer system just can't go forward.

MS. GRABER: In many cases that's true, but we've only had two in the last year outages that lasted more than an hour or so.

MR. FARMER: Is the PTO under any threat due to its computer system issues right now of data loss where the data would not be retrievable or are we in a pretty good situation there?

MR. OWENS: I think we're in a much better situation there only because all of the data is stored in RATA (?) databases which in English means that it's self-backed up here on site. What we are not prevented against is disaster.

MR. FARMER: This may be a question that
you tell me that I'm either not asking the rightolks or that we should take it up in executive
session, but do we have any sort of timeline on
when someone would be again in an appropriate
position in the CIO position? Because I think
Wendy you're acting right now. Correct?

MS. GRABER: I am. We actually have a
timeline that will be next Monday.

MR. FARMER: That's pretty doggone
quick.

MS. GRABER: I'm glad you asked.

MR. FARMER: Congratulations perhaps.

MS. GRABER: Not to me. John Owens will
be our next CIO.

MR. FARMER: Congratulations.

MR. OWENS: Thank you. A question on
the division. I just want to see if I have my
mind around the money side of this correct. And
this to my fellow TPACers this is the last
question I had on my list. That is, looking at
the full-time equivalence in the office in terms
of employees, it looks like about 65 percent of
the people are on the patent side, 5 percent are on the trademark side, and 65 plus 5 is 70, so that would leave 30 percent of the FTEs being in overhead so speak, they're neither on the patent or the trademark side. Then when I look at the division of cost, it's not quite 82/20. It's close to that, but not quite 80/20. So if I'm doing my math right, it looks like what that really means is that for the 30 percent of the FTEs who are in overhead, they're pretty much being split fifty-fifty between the patent and the trademark side, not quite because it's not quite 80/20, but it's pretty close to that. Do I have my rough back-of-the-envelope calculation right there?

MS. GRABER: I think what I'd prefer to do is turn that over to Mark, and I don't know whether he intends to cover that. That may be a question that very much deserves an answer, but I don't know if it should wait.

MR. FARMER: If that's something that we'll address there, then we can defer until we
MR. OLECHOWSKI: It will come up in the context of what I want to talk about, but if we don't answer the specific question, absolutely we can leave it.

MR. FARMER: I'll hold it until then. I didn't mean to hog the floor from fellow members of TPAC. What questions or comments if any do you have?

MR. STORIE: When you're working on -- sometimes it's hard to know what you don't know. We have people still around who know what it's going to take deal with the pieces that have been layered on top of each other over time. I realize this is a challenge, but this system has been built more like a living organism and has continued to grow and it's grown based upon need rather than being a central plan to actually build it from scratch. Do we have folks in house still who have the knowledge of how we got to where we are?

MR. OWENS: Some. Not in every
instance. There are some people here who have been here a very long time where we're trying to capture that institutional knowledge. In some instances we are going to have to pay people to come in as well as hire people to come in to work on this. Just to let you know, the CIO here has not had developers in years, actual people who write software. We are going through an effort right now. There are approximately 14 openings -- in fact, I'd like to say that Gary Cannon from trademarks helped this panel many of those people. We're trying to bring in developers of our own as well as hire solid contractor developers to reverse engineer much of the systems that we have lost that institutional knowledge on, requirements, documents, standard operating procedures, those things that modern computer organizations would have in many instances because we have grown organically or ad hoc we do not, but we working very hard through the stabilization effort to do that for our systems.

Again that effort is taking the current

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computer systems and stabilizing them when we can, documenting them, and then actually planning for their rearchitecture, engineering, and development based on modern standards, modern interfaces.

MR. STORIE: Does that have an significant on the budget, this first leg of the process?

MR. OWENS: I would say yes to be up front, but not totally for that reason but, yes, because we have up fronted many contractors. If you look at the scale, we've up fronted contractors that trail off over the 5 years to lower than today just because we have to buy expertise in areas, the particular type of operating systems, some of the software that we need to get rid of.

MR. STORIE: The challenges you have, you're in an environment where the architecture we're using now will be obsolete in 4 months.

MR. OWENS: Many times.

MR. STORIE: So you're at the spot where you're having to now anticipate what the systems
should look like 5 years from now because what you
can build today will be long since obsolete. Have
we been able to craft the target where we think we
want to be structurally 5 years from now?

MR. OWENS: At a very high level, and I
know these terms are industry standards certainly
I'm used to, but if you pay attention to the
technology you'll hear terms called service
oriented architecture or SOA. AOL had many
instances of SOA applications. What it does is it
breaks down a computer system into a list of
services with very clean interfaces and systems
can talk to one another not through very low level
protocols, bits and bytes that were of the past,
but messages, please provide me a list of people,
please provide me this docket, more friendly
language in between systems. We would like to get
them. Unfortunately our systems -- they're all
protocol level old style connected. That's like
wires instead of wireless. There's still a
connection but it's not the same.

MS. GRABER: And I think it's important

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to point out too that we don't intend this 5 year plan to be 5 years and then we refer to how we did it before. So this actually dovetails very nicely into the industry standard of doing a capital replacement every 5 to 7 years and it just becomes part of your doing business. I appreciate very much what John said earlier about I don't want to turn this into a finger pointing or a blame placing how did Susie Smith ever make this decision, how did we come to this, because I do think this is an opportunity and where we are is where we are and we need to move forward and fix it as an agency. Part of the lessons learned here is this is not a 5 year plan and then we all just sit on your hands and watch that organic thing grow again. So the fact that this is 5 years is no mistake because it dovetails into the capital replacement plan of 5 year cycles.

MR. STORIE: In terms of the overall structure, when you look at the size of the particular systems, if you're looking at it from the standpoint of total operational size of the

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system and what it takes to keep it running, what portion of that system would you say is shared versus what are the portions that are dedicated?

MR. OWENS: Shared with?

MR. STORIE: Shared between the trademark side and the patent side.

MR. OWENS: I'd say the bulk is just trademarks because of the fence, the servers that we have that you pay for, the AISes that only serve you all the stuff on the top. The very top box, there are many more than this, but these are all dedicated trademark AISes that run on these dedicated trademark -- serve as hardware. These are systems in and of themselves that are shared, but as far as trademark goes if you're looking for percentage I'd say the bulk is definitely up here. I don't want to give you a percentage because I haven't counted them. I know that this is much greater than this whole, but these are fundamental systems. This is website hosting. TR runs on that. PALM which we already talked about RAM, these systems are shared for a reason, and it's
not just trademarks and patents. Our business systems rely on -- as well.

MR. STORIE: So to make sure that I understand the implications of what you said, the systems that apply to trademarks, the system itself and the hardware assets, it's largely dedicated, a large portion of what we're using -- dedicated to the trademark side of the house, the critical operations that ties this together and allows it to run may be a smaller portion of the overall operations and it's critical because everything relies on the foundation.

MR. OWENS: Yes. Getting back to the earlier question which was related to cost, if you just think about the network, we have one network and we're about to put in a new redundant network here with dual paths which means that if one path goes down it's like hydraulics in an airplane, if one goes down you have a backup. We don't have that today. We're going to work on that. It's part of the plan. It's part of the network replacement. I couldn't put in a third and fourth
redundant network in the buildings. There's just
not enough physical wire, fiber actually. We're
actually going to use the fiber that's here. But
everything from power, cooling, floor space, I
couldn't possibly duplicate all of the overlapping
infrastructure in this building to support a
completely separate system. Physically it is not
possible. It's just not.

MR. FARMER: Unless there are any other
questions, so that we can keep the trains running
on time, I would now move over to item 3-B which
is the report on the review of the OCIO finances.

MS. GRABER: What I'd like to do to
introduce Keith to all of you is one of the
elements when I first took over that I asked for
was a complete audit of the OCIO's financial
resource management. How is it that OCIO manages
its own financial resources? So Keith and
Michelle Picard back here both helped. I used
them because they were outside OCIO so they didn't
have a dog in the race, so they just did an
objective look at how OCIO manages its financial

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resources. I've asked Keith to be here today to
tell you a little bit about what he found. Again
this is part of one of our roadmap exercises, our
organizational strengthening. I won't take away
his thunder, but I think a lot of what he found
had to do with how we plan for our IT expenses for
upcoming years. So I'll let him address it, and
I'm sure you'll have questions for him.

MR. VANDERBRINK: Thank you, Wendy.

Again my name is Keith Vanderbrink. I'm the
Director of Budget and Finance Division. I took
over about 6 weeks ago.

MS. GRABER: When he was finished with
the audit he did so well I put him in charge.

MR. VANDERBRINK: I don't know if that
was a job well done or what the deal was on that.
But it is important I suspect for you to know that
between 1998 and 2001 I served in the same
position, it was a different title and a different
office, but it was resource management for the
OCIO operation. Then I like to think I left and
things started to fall apart so now I'm back. I
offer that by way of some background.

The other thing that I think is important at least for me and so I'll share it with you is that while Michelle and I were doing this review, to some degree unbeknownst to us the roadmap effort had been launched at the same time. So whether Wendy had decided that that was going to be her plan of attack or not, I don't know, but you're going to see very quickly that one of the first things Michelle and I found in this review was that needs to get done and it needs to get done soon which is a plan to move away from this organic approach to actually determining our future and something that's more structured.

The last thing I'll say before I go to the first slide is when I can I kind of kick Wendy under the table. It was not an audit. Audit is a very specific term. It means very specific protocols, very specific, and that was not the case. It was quite clear to us that given the timeframe that we had, the need to come up with actionable information as soon as possible, not
we'll get back to you in 8 months and we'll go
trough every transaction ad nausea, it was a
review, and it was a review that resulted in
observations which clearly could then turn into
next steps and you're going to see that as we go
on here.

The first slide is as it indicates, and
by the way, I'll do what Wendy did, you should all
be looking at the slide presentation that has
green on the top that says the OCIO Financial
Resources Review. The observation summary was
that OCIO needed very quickly to return to some
fundamentals of resource management, and of course
the standing joke that I've gotten since I've
returned is you're the guy who's going to take us
back to the 20th century, and to some extent I'm
going to take us back to fundamentals, and that is
where IT plans are driving IT budget formulations.
What is it you want to do? What do we think it's
going to cost to do it? And then let's secure the
funds. As opposed to securing funds and then
through either an attempt to be very customer
service oriented delivering when we can where we

can, trying to promise to deliver, not deliver

because of some process problems that Wendy

mentioned, but again, here's the plan, everyone

knows about it, we know about it well enough in

advance, here's the estimates, and then executing

against that. That's the what, if you will.

The how is just as important as the what

which was the sound IT estimating controls.

Having a guesstimate is obviously useful, having a

rough order of magnitude is useful, but then as

you get closer to executing that project, having

some sound IT estimating controls so that you get

as it says here a reliable IT budget and not

something that you're going to execute where

everybody is standing around going I wish they

hadn't approved this because I'm not sure we're

all kind of on the same page relative to the

estimates and costs.

Then finally the who. What drives the

presentation? I believe it's the investors. It's

the folks who are actually going to pony up

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whatever the dollars are, whether it be patent
fees on the patent side, trademark fees on the
trademark side. I think it's important for the
budget to be presented in a format that's
meaningful to the individual who again is parting
with those dollars in making that investment, not
presented in an organizational structure for OCIO,
and obviously the folks doing the work need to
know where their money is, but we've sort of found
that most of the budget presentations in the past
were more organizationally driven, we're going to
give this to this office, this to this office.
You get a sense we're big on analogies at least
this current group. It's like when you bring the
general contractor in and you show them I'd like
my kitchen redone, my den redone, and my bathroom
redone. You have a conversation. He brings back
an estimate to you that says my carpenters will
need this much money, my electricians will need
this much money, my plumbers, that's not helpful
to you. You want to know I need this much for
your kitchen, this much for your bathroom, this
much for your den, so that if an estimate looks
like it's not what you had in mind, you can begin
to have a conversation about the kitchen. Why is
the estimate as high as that? Because your plan
was to use marble as opposed to laminate or
something. So again it's that planning really
driving the budget formulation, feeling confident
about the estimates, presenting in a way that
makes for a far more meaningful resource
management process. Before I get off of this
slide, you guys can probably get a sense that I'm
more analytically driven. This side was answering
the who, what, when, where, why, how. That's
another aspect for me of the fundamentals of
resource management. While there may be multiple
ways to mow a lawn, at the end of the day there
really are only like two or three ways, up and
down, left and right, that kind of deal. So for
me, resource management is not the area where you
practice your creativity, it's where you say these
are the fundamentals, everyone understands them
and we just proceed with them.
On the next slide it gets into a little more of what Michelle and I observed and our improvement plan and begins to give you a sense of where we are today, where I believe resource management should be -- is CIO in agreement and the presentation has been given to the USPTO Management Council. One of the first observations was IT plans are not driving budget formulation. You heard a timeframe from Wendy and John, that it took 5 to 8 years to get us to this point. We found that beginning in 2003 the IT plans that had been published and produced began to abandon milestones with dates. Obviously a plan needs to be meaningful. The folks who have to execute it need to be like it's very clear this is what we're supposed to do when we're supposed to do it, not something that's at a 70,000 foot level that's just sort of a vision if you will.

The new process is working with our quality management group, BFD is working with the quality management group, to produce in the second quarter an IT plan that looks like what the IT
plan used to look like at the turn of the century around 2000. It had very specific chapters in it, two that most folks know about, Chapter 5 and Chapter 6. Chapter 5 talked about the plans for the infrastructure. We've got that for the most part. That's our roadmap. Chapter 6 was what are the plans for individual AISes. That's where meeting with Lynne and her staff to talk about trademark systems, meeting with John and the patent folks to talk about patent systems, so that it's clear to everyone that over a 5 year horizon which is typically what the strategic plan is what it will be, forget typically, this is what we're planning on doing for the infrastructure, this is what we're planning on doing for the AISes that are going to ride on that infrastructure. You had brought up a question about what do we anticipate the end game to be. In looking at a plan like this it's going to be clear for you to see the end game out of the Chapter 5 work and the end game out of the Chapter 6 work. It's not magic. It's obviously a commitment. And it's necessary, and
that's just simply what we're going to do, turn
back to that commitment and it's necessary.

Plans are great, and as I said, you put
some resource estimates to it. That's the second
one. The resource estimates need to be
consistent, they need to be following some
standard operating procedures. I don't think it's
terribly helpful to the resource management
process if when Mark is asked to give resource
estimates he follows what he believes to be best
practices, John follows what he believes to be
best practices, and down the line. We want folks
to be following some standard procedures by which
we come up with estimates. And then as the
actuals are coming in, we have the ability to
refine those estimates because it's in a process
that makes sense. It's not just take all your
estimates to Mark because Mark just seems to be
lucky and stay away from John because John will
just end up giving you numbers that are -- we want
to get away from that sort of situation. And we
want again very much for there to be some
structure, that there be some processes, and also
for whatever tools are used, they're consistent
across the board, there isn't some data that one
is using that another is not using.

The third one that you see there is the
budget presentation is not intuitive for
investors. My goal in the second quarter of FY
2009 is to create a transparent budget both in
terms of execution, as well as in terms of
formulation so that it's quite clear when you look
at that budget you don't need a decoder ring, you
don't need me to explain it to you, you can look
at it, and to a certain degree you want a budget
that you can drill down to and when you get into
the weeds and you're like I need somebody here
with me, I should be able to at least at a high
level understand it, at mid level understand it.
Wendy will often say if you can explain it to me,
then it's good. If I still don't understand it,
go back and keep working on it.

This might be a useful time for me to
pause, and we'll talk a little about this, but my
plan for the Budget and Finance Division in the short term, and for me short term is usually something that's about 18 months, 12 to 18 months, long term is beyond that, is to structure the Budget and Finance Division where it's focusing on budget formulation, budget execution, and cost accounting which is obviously something that's very key here, and then also project funding, and those three areas for me that's where I think the resource management fundamentals need to be practiced with connections among them and I can discuss in more detail later on that organizational structure and that sort of thing for those of you who like organizational behavior and development.

The process by which I will be reporting and tracking against this work is not by launching some separate organic -- it's the roadmap. There's an organizational strengthening initiative within the roadmap. This work is required for that organization to be strengthened, for those employees to be set up to succeed, I know what I'm
supposed to do, I know the resources I have, now let me execute the plan. So you see at the bottom there that that's what I'll be tracking against is organizational strengthening.

The last slide attempts to try to take again being the analyst a timeframe across the top to give you a feel. You heard me talk about short term, long term. This is mainly a focus on the short term actionable items, hit the ground running, where do we expect to be at the end of FY 2009 heading into FY 2010. And down the left-hand side you see three areas that actually came up when Michelle and I were doing our presentation because we were not setting out to do an audit and look at every single invoice for the last 10 years or what not, we were focusing on processes, staffing, and tools, because again the resource management process that OCIO has that USPTO enjoys fundamentally rests with the processes, the staffs, and the tools.

On the processes side, we've already put in place a budget execution process that folks
within OCIO are following. It's following internal controls, recognizes the work that's expected of us, recognizes the dollars associated with the roadmap, making sure that money is not spent -- the story at the end of the year was an E for effort, but this project was supposed to perform this work, it was allocated these dollars, and as the project proceeds how is it doing. The IT plan that you see up there in the second quarter, that's very important for me particularly as we have to embark on producing the 2010 president's budget, revalidating, I'm sorry, the 2010 budget, and then also getting ready for the OMB budget submission which you'll see there for budget formulation. In that same process vein, assessing IT budget estimating in the project funding area project funding area, making sure that again we've got some consistency across projects, we don't have a situation where we're overstating costs for our trademark system, understanding for patents, again, there's a standard if you will. That's what you would
expect, that's what I would expect.

On the staffing side of it, Jon Dudas mentioned that a lot of change had been thrown at trademark examiners in the last several years. You can probably imagine in the last 6 weeks a great deal of change has been thrown at the Budget and Finance Division staff and assessing skills with them and working with them. I'm pleased to say that I have the utmost confidence in the staff that's there in terms of getting us, me, Jon, trademarks, USPTO, from where we are to where we need to be. There's going to be some coaching and mentoring and that kind of deal. This also looks at skills across OCIO because of the estimating. Obviously estimating for systems, the engineering work, the hardware work, software development work, it's not happening by 5, 6, 7 people in the Budget and Finance Division, it's happening by the software folks and engineering folks, bringing them up to speed and making sure that they're aware of what the expectations are and that kind of deal.

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Then finally the tools. For quite some time now USPTO has kept a checkbook where it keeps track of the obligations and so on and so forth.
The core financial system is the official record, but because of this need to slice and dice to some extent we had been keeping a system and we're going to continue with that short term one, but our long term as you can see down there is to participate in the system, the corporate planning tool, that the CFO's organization is going to be launching this fiscal year and move into that along with the rest of USPTO and not maintain anything that is as I said separate as has been the case.

At the very end of this slide you see a vertical block that says continuous improvement with the lines. Obviously you've heard Wendy say the roadmap doesn't just end and then someone else comes along and says I'd like to now start the next 5 year. The same deal here is to continuously improve in areas of cost accounting, in areas of budget formulation, budget execution,
project funding and that kind of deal to truly get
a sense as we're moving through this of the things
that are working and not working. I mentioned to
you that I have a fairly good idea from 10 years
ago of what was working then and some of the stuff
doesn't change. The environment has changed.
Things are far more complicated now, whether it be
that, or whether it be some of the financial
requirements. Make no mistake, OMB does require a
lot more from a federal agency for IT reporting
than it did 10 years ago, but again just being
prepared for that. And I believe that what I've
just presented to you certainly does set us up to
succeed in that vein and to be able to prepare
that stuff. Mr. Farmer, I'll take questions at
this point.

MS. BERESFORD: I have a comment, Keith.
When you gave this presentation to Management
Council, the thing that certainly got my attention
at the beginning of your presentation was the
statement that looking at the OCIO financial
records was like digging through bad concrete and

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you had to keep digging and digging and digging
until you found something that was solid and that
meant going back to 2000 I think was the year you
mentioned.

MR. VANDERBRINK: If I say, you were the
one who as I gave it had indicated that what I was
presenting, you were like this sounds like how
things used to run about 10 years ago.

MS. BERESFORD: Absolutely.

MR. VANDERBRINK: And I mentioned to you
when Michelle and I started our review we thought
5 years. You got to start somewhere. Someone
hands you a task of a review.

MS. BERESFORD: Right.

MR. VANDERBRINK: And we were like we
need to probably let's look at 6, 7, we needed to
go to a point where we were able to say here is
going to be our jumping off point. So you're
absolutely right, Lynne. You had identified that.

MS. BERESFORD: I'm not looking for --
identified the problem early on, what I really am
looking at, I'm thinking about -- do we have --
just I'm curious, how much money got spent in that
period? I mean, what was OCIO spending in that 8
year period or 7 year period?

MR. VANDERBRINK: That was one of the --
we certainly did look at those numbers. I don't
have that specific number in front of me over that
10 year period but I can certainly get you that
number.

MS. BERESFORD: I'm just curious because
it really shocked me when you said that. It
really shocked me.

MR. VANDERBRINK: The other thing that I
should mention is one of the reasons -- and if I'm
overemphasizing this then guilty as charged, we
had to go back as far as we did to find an
instance where there were solid plans where
everyone inside USPTO and even externally because
we used to publish the IT plan, it was clear here
is what we said we would do, here is what we said
we would spend, here's what we did, here's what we
spent, that kind of deal, and then kind of work
our way up to the present on that.
MS. PICARD: Lynne, I guess there was never any question about the financial records. Keith had mentioned that the core financial system is still the system of record and there were never questions about that. It was the plans.

MR. VANDERBRINK: I can say we didn't find any hanky-panky that is helpful. Michelle and I weren't tasked to find the smoking gun, find the evidence against a person or that kind of deal, help us -- but by the same token, one of the reasons why Michelle and I were asked was because of our reputation. So it was clear that we were going to look at stuff. We did not find anything that drew a red flag to us in terms of speculative obligations or unusual activity or that kind of deal.

MS. BERESFORD: I wasn't implying we had anybody that bought an island in the Caribbean and retired there.

MR. VANDERBRINK: I didn't think you were.

MS. BERESFORD: It was just a concern to
me that the level of the lack of records and other
things that I think are important.

MR. FARMER: Keith, thanks for your
presentation. A couple of questions.

MR. VANDERBRINK: I'm sorry. I was
asked by my colleague here, you had mentioned,
Lynne, lack of records, and there was certainly no
shortage of financial records for us to pour
through, it was the lack of plans that indicated
to us that this was what we had set out. I
apologize, John, for interrupting.

MR. FARMER: No apology necessary. Just
for the purposes of looking forward and not
looking back, I want to see if I've got a grip on
things, and that is it sounds like we'll be seeing
improvements going forward in the transparency of
all of the budgeting process for CIO so that going
forward we on TPAC who are charged with looking
after the trademark interests will be able to get
an easier feel as to this is how money was
budgeted and how the cost was allocated between
the trademark and the patent side of the house
because of the improvements that you're going to
be working on.

MR. OWENS: And what money was actually
spent.

MR. FARMER: Right.

MR. OWENS: It's our intention to bring
to our customers, Lynne being the representative
of trademarks --

MR. FARMER: Did my rhetorical question
make sense?

MR. VANDERBRINK: The word I liked in
that rhetorical question was the transparency. It
shouldn't be a mystery to Lynne when I come to her
and say next year I'm going to need this much of
trademark fees for her to have to know where it's
going to. So definitely that transparency, that
understandability, that clarity, is where I'm
headed. You had asked specifically to the extent
that the information would then be shared with
TPAC and whatever the rules are that govern
sharing that information with you I'm not that
familiar with, but certainly if the rules say,
yes, it's appropriate, this time frame or
whatever, executive session, the material will be
available, but I don't know specifically.

MR. FARMER: I probably didn't ask my
question very clearly which is a problem, and that
is one of the things we feel charged with doing on
the trademark side of the house is we're one of
two roommates living in the house. We're the
trademark roommate and there's the patent roommate
and we realize that the PTO has to do its overall
mission well, but also as one of the two roommates
we want to make certain that the split of the
overhead costs is fair to both sides, and of
course it's a challenge when you can't always
understand the overhead accounting, so to speak,
and it's sounding to me like that accounting
should become clearer in the future so that it'll
be easier for both sides of the house to look at
it and say, yes, that division looks fair or that
division may not, but I can now point more clearly
as to what about this or what about that. Is that
a fair statement where we can get to a point where
we can now on each side of the house, the
trademark and patent side of the house, look at it
and assess it more easily?

MR. VANDERBRINK: I appreciate your
restating it because what I heard in that one was
more akin towards the cost accounting, the ABI
model, the division if you will of what are called
allocated costs. For me there is clarity there.
What I'm going to be doing in 2009 and 2010
through my participation on the ABI Steering
Committee is to continue to see what can be done
to improve, to refine. I've never gotten the
impression that the model is the way it is and you
have to move heaven and heck to make a change to
it. There is a trademark representative, Karen
Strohecker, who is on it. I have a good working
relationship with her. So, yes, in those senses
if there are ways to be more specific to determine
using the roommate analogy that if the half gallon
of milk can perhaps be more refined. But at this
point for me there is clarity in the ABI model and
I do have confidence in it. It's a question of
continuous improvement and moving forward on it is where I'm coming from going into 2009.

MS. GRABER: Right. I wanted to clarify that it's easy to confuse the issues between budget formulation and planning along with cost accounting. One's the front end and the other is the back end. Keith's job and the OCI's job in terms of improving is on the front end so your customers know what our budget formulation is. We have greater insight into our budget formulation which allows us to give better estimates for how much different development projects will cost. So Keith does the front end.

The back end in terms of the allocation and the split is something too that I mentioned to you that in the front office I was asked to inquire into. I too am confident in the model that we currently have, but that's not what this is. This does not determine the split. What this does is give transparency into our budget formulation and estimation, so I don't want to mix those two things up.
MR. FARMER: Thanks for clarifying that.

Turning a bit back to what we were talking about a few minutes ago, if TPAC wanted to be able to come in at just the right time of the year in a budget cycle for a budget that's still being formulated, I guess maybe now we're talking about 2001 perhaps, what's the right time of the year for us to be briefed as to what a budget looks like when it's still malleable so that if we had feedback and you were interested in our feedback in assessing your budget, that it would be coming to you at the right time?

MR. VANDERBRINK: I think that's a fair question but Mark and the CFO determined the budget formulation schedule at a high level for USPTO and obviously it's my job to lead OCIO in a coordinated way to meet those requirements and deliverables that Mark has. So Mark's probably in a better position to answer that question in terms of factoring in what input if any would come from the TPAC.

MR. OLECHOWSKI: Keith, I appreciate you
giving me all the credit for setting the schedule,
but actually our schedule is set by the Office of
the President so we follow the normal federal
guidelines. We do enjoy the opportunity here
because it's an election year to delay the
development of the FY 2010 budget because there's
going to be an administration transition no matter
who wins. So our direction from the Office of
Management and Budget at the Executive Office of
the President is to submit a new 2010 budget in
the early winter timeframe, January, February time
frame. So our schedule which I will publish
actually at Thursday's deputies' meeting will
allow us to generate a draft 2010 budget by
December 15 for ultimate submission in accordance
with the plan that's yet to be published by the
new administration, but sometime in the spring.
Normally the president submits a budget to
Congress the first Monday of February. That's not
going to happen this year since a new president
won't take office until January 20, so normally
it's in the March/April sometimes even May
timeframe. So while we have a little respite this
year to develop our 2010 budget, normally the
process would be in the summer timeframe of the
year before is when we're doing the budget
formulation process because we do owe our draft
budget to OMB in the September time frame. I can
certainly publish actually a slide that looks
similar to Keith's last one that will list several
different budget years and when you're executing
and when you're formulating and when you're doing
some strategic planning.

MR. VANDERBRINK: But normally, John, as
you see on the slide, our OMB budget submission
like in this case for 2011 goes to OMB in the
fourth quarter of the fiscal year which is your
July/August/September. It's usually in the month
of September. So all T's are getting crossed, I's
are getting dotted, all countries being heard from
so to speak in that sort of summer timeframe
moving towards the September.

MR. FARMER: I got it maybe in my own
slowness, but if you could just point me toward

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specific months and years in which the budget internally within the PTO would still be fairly malleable so that we could have our input. Like you might say, TPAC, if you wanted to comment on the 2010 budget that will be revised, a good time for us to chat would be February, or the 2011 budget, a good time to chat would be July. Part of that's because we have to schedule our own public meetings and there may be an opportunity to try to match those up with those malleable spots in the budget so that we can stick our nose into your business.

MR. OLECHOWSKI: I can do that. That would be easy.

MR. FARMER: Thanks. I appreciate it. Any questions from other members of TPAC? Hearing none then I think we can go as we continue to work up our agenda to item 3-A, the report from the CFO.

MR. OLECHOWSKI: I wanted to take a few minutes of your time to introduce myself and also members of my staff. We had mentioned Michelle's
name several times. I think it would give credit
to Michelle and the expertise she brings.
Michelle works for Barry and I in the Office of
the CFO as our senior adviser for the past year.
However, prior to that she was our Director of
Finance for the past 7 or 8 years, and she's been
a PTO I'm guessing 10 or 12 years, so she
certainly has been around the block several times
and comes to us with great both private sector and
public sector service. I also have people from my
Office of Corporate Planning. Brendan Horrigan is
a new employee of ours who came from TSA and prior
to that Treasury, and Jonathan Frupp is our
trademark budget analyst. Steve Porter, maybe you
have seen Steve before in these meetings. Steven
runs out of the Office of Finance our ABI Section.
And then Mark Krieger is our new Director of
Finance and has been in that position for about
the last year, maybe 11 months, and prior to that
he worked in the ABI division in finance and prior
to that was CFO of a small business. So I think
we can answer any of your questions that you may
have. There always seems to be an abundance of
them for the CFO so we enjoy the opportunity to
participate again.

Let's just get right into the slides.
Again I'd ask that you ask any questions along the
way if we're either not being clear or we're
certainly generating more questions than we're
trying to answer. I'm going to make sure we do
that to your satisfaction. The first slide, I
guess it's slide 2, I'd really just like to read
because it seems to be the question of the day
about how we allocate costs to not only patent and
trademarks but across all of PTO. And I'm sure
you're all familiar with the language of the
trademark fence, but the -- section seems to be
the most applicable part, that all fees available
to the director under Section 31 of the Trademark
Act of 1946 shall be used only for the processing
of trademark registrations and further activity,
services, and materials related to the trademark
and cover a proportionate share of the
administrative costs of the Patent and Trademark
Office, and certainly the key word there is a proportionate share. This language certainly is not lost on anybody who works at the USPTO. We generate along with the Office of Finance what we call a daily fence report. It gives us an accounting on a daily basis of the fees taken in all the way up to the day before as well as all the obligations and commitments that are on the books so that any particular requisition that comes through the system, we have a checkbook that we can check to make sure that there are adequate fees to cover the requisition that's in our hands. And that may be a requisition as small as buying supplies or a large CIO contract that's been negotiated.

Slide 3 is certainly what we consider to be the issue at hand based on the agenda that Mr. Farmer, the Chairman, sent to us. That is if the revenue streams for patent and trademarks is at typically has been over the past several years at the 11 to 12 to 89 to 88 percent rate, how come the costs associated within each individual
business unit may be larger than the revenue share that is generated by the office between patents and trademarks? I just bring your attention to we've looked at a number before. If you look at the OCIO split, the patent share is 78.1 percent, the system share is 21 percent. So hopefully at the end of this we'll be able to answer and at least put to rest anybody's concern that there are questions about how we do the splits and how we assign costs and allocate costs across the PTO.

Slide 4. The costs are not always dependent on revenue organizational size. I think you'll see when Mark starts to talk about the model itself. There's not an input into the model that is determined on what the revenue size is or how much money either the Patent and Trademark organization brings in. Wendy gave an example and I'd like to actually have a slightly different example to show you, that just because you're procuring goods and services, it's not really not a factor in how much your revenue is. If Mark and I live next to each other and we're going to go to
Best Buy and buy a computer and it's my wife and I and eight kids and just Mark and his wife, we go to Best Buy and we procure a system, the geek squad comes in and sets it all up, it's wireless, it's great, my kids are doing homework, Mark and his wife are working on their master's degrees, the cost of the system to each one of us was $4,000. On my $100,000 salary for instance, that's only a 4 percent investment on my part to procure that computer system, whereas Mark is only making $40,000 and that $4,000 to Mark costs him 10 percent of his salary. Best Buy certainly doesn't ask us what my annual salary is to determine what the cost of that system I'm procuring it. It's more what system did I procure, what goods and services did I procure, not what the revenue stream is that's going to ultimately pay for those services. I think another example might be if you're looking to associate why a proportion of trademark dollars a larger percentage of a function than patent's would be, another example I
think that would be very close to everybody who's in this room is that we have two public advisory committees as we've mentioned before, patent's and trademark's. They are of the same size. They have an equal number of members. And we do pay your salaries, we pay your travel, we pay your per diem, and we pay all of your expenses related to you participating and help out this agency. And those costs over a year are about the same for both patents and systems, yet the TPAC is a greater percentage of trademark dollars than the PPAC is for patents. If we wanted to have an equality in the percentage of dollars spent relative to the income stream, TPAC would have to be maybe one and a half or two members and PPAC could be 12 members. So it's not always easy to say that because revenue streams are greater or less than that the split between business units should be relative to those incomes, it really has to do with costs and services procured. So the question is how can we accurately and reasonably account for those costs of goods and services.
Page 5. This is a chronology and I really don’t want to spend a great deal of time going over each and every line on it, but the purpose of the slide is to try to explain the activities that the USPTO has gone through over the past year and a half to 2 years as some of these issues about cost allocation methodology and the model has been raised, and to the extent that we have engaged with not only trademark’s organization and patent’s organization, but all the business units to explain and have transparency in our processes. So the first block between January and May, we spent a great deal of time with not only the trademark executives but also all of the other business units explaining the model and I think in very excruciating detail. We have documented all of those presentations. I think it was Wendy had mentioned and Keith had mentioned what the CIO model is. We have models for each and every business unit that drives those costs and how we split the allocation of those goods and services down into the patent and
trademark. So we went through each and every
model with not only the trademark organization but
the individual business units, took notes, took
action items, brought those issues. If we
couldn't resolve them there, made sure we took
action items to resolve those issues at that time.

I mentioned in the June and August
timeframe we expanded from not only the CIO model
but to each and every business unit. We reviewed
each and every business unit's ABI model down to
really the individual people and the individual
activities that they were doing to try to explain
and get some transparency to the business units
about the model and how it was developed. Once
again, those issues that were raised that we could
not resolve at the table, we reconstituted an
organization called the ABI Steering Committee.
The ABI Steering Committee had existed several
years ago to address the same sort of concerns.
We reconstituted that. We wrote a charter. We
know what our roles and responsibilities are. And
that ABI Steering Committee has addressed each and
every issue that came up in the months prior as well as any issues that a business unit may have with cost accounting, with budgeting, with the financials and everything else. And we have a team room which documents all of the issues, all of the resolutions, and every business unit has a voting member on the committee. So that if a particular business unit brings an issue, consensus has to be gained prior to us either implementing the change or evolving into a new portion of the model. And every issue that's been brought to the ABI Steering Committee -- our documentation which actually most of this has been sent to our professor member of the committee so that we can have an engaging conversation. We enjoy the opportunity for him to review the model. My point is in bringing this up is there's been a great amount of interaction between all the business units to answer all of the questions and to get the issues out to have an openness and transparency in the process. I think the end result of the ABI Steering Committee is that over
the past year since it's been reconstituted there
has not been an issue that's been brought to the
table that has not been unanimously agreed to.
While some of those issues have been very
difficult to work through, we've always managed to
gain unanimous consent on all of the items.

Slide 6. There has been a times over
the past at least year or two since I've been here
a question about validity of the system for
allocating costs here at PTO. We're quite proud
of the fact that we believe that our ABC or ABI
system or ABM, there's lots of different
terminology for it, whether you call it activity
based costing or activity based information or
activity based methodology, but it is the system
of choice and it's actually encouraged by several
financial management standards that are imposed on
the government for managing costs, managing
financial information. It is the system of choice
and there are many, many agencies that are using
it already. I mentioned the GAO study here on
which agencies are and are not using it and you
can see that across the board there are many
agencies that do use some form of ABC to not only
track their costs but allocate them to their
various business units.

The next three slides I'd actually like
Mark give an overview of. And please just like
Wendy mentioned, if we're insulting anybody's
intelligence because we're all very, very smart
people here and we're at too high a level, please
let us know. We'd be able to dive into any amount
of detail on the model. If you've been at TPAC
for the past year or two, you've certainly been
able to formulate your questions and your
concerns, so we can take those from new members
where we can provide an education to answer any
detailed questions that you may have.

MR. KRIEGER: Thank you, Mark. I would
like to piggyback on your request if in February
TPAC members would like to come and look at our
ABI system and look at how we do these models I
would encourage that. We could do it at the same
time in February at any time at your convenience.
MR. OLECHOWSKI: I would even go a step further. We'll travel to you. If you truly have a concern of learning the system and everything else, I'll send my people to you whether it's at your lunchtime because I know we're all busy people or after your normal working hours, we'd be glad to come and visit and have a sit down with you. We're certainly willing to learn. I know Mr. Conley has a great deal to offer from his background. We're absolutely willing to learn and make changes if people have concerns and improvements. We'd love the opportunity.

MR. KRIEGER: This is our basic waterfall methodology and what we do here is we take the costs in each bucket and we split them and we go down through different activity drivers. For example, if you look at the top you see MGE which is general expenses for the entire agency and we drive those costs to patents, trademarks, policy, resource management with CFO and CIO, and then we keep going down a step until we drive it to the ultimate two way split which is patents and...
trademarks. A good example is OPM payment. We have to make an OPM payment which is all future pension benefits, life insurance benefits for anybody that's an FTE or full time fed. What we do is we go through painstaking detail. We get every employee data download and we split those costs based on that actual information so that we know we're doing it accurately because some organizations are inherently higher salaries than others and that's just the way it is. And that's a good example to take. That then gets driven to CIO where it -- the activities in CIO and we take it down to the two way split.

The next slide is also a good methodology or a good picture view of our methodology where we talk about what was spent, how was it spent, and what was produced. So you see that column that says resources. That column will agree in total to the activity column that will agree to the cost object. There's no different in dollars, they're all the same, it's just the different slice or a different view of

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the information. A good example for this is the help desk where we have salaries and we have contract costs for the help desk. That is driven by a PPA code or a program project and activity code that I use on my time sheet, I'm not in help desk, but that's an example of someone in CIO who would record their time to a PPA code. That would then be the activity and we would sum all that up. Then we have the number of help desk tickets by system.

    MR. OLECHOWSKI: Let me try to maybe explain that a little more. We have a cost for what the help desk costs the USPTO to run. It's people's salaries, it's contracts, it's buying equipment, it's phone systems and everything else. So we collect those costs and now we have to allocate those costs across the USPTO.

    MR. KRIEGER: Exactly, and that's what we do. It's as simple as that. Some of the drivers are very good usages like for example gigabytes of storage. Those are very good usage based drivers that we can use.
The last slide talks about where we can get the information. There's a couple of inputs. We have WebTA which is where I record my time. Every federal employee records their time in a system called WebTA. That gets processed by NFC who is our payroll service provider. We also have inputs from our contracts. They have to record their -- what they call a receiver which is I received the goods and services, they record a transaction in our core financial system that tells what activity they were performing. We take that information along with the information from our payroll services and that gets into our activity based information system, and from the other side comes the workload drives that we have and that makes up our activity based information system. Up top what you see there are some of the outputs which is fee setting, financial statements, budgeting, performance reporting, we have cost efficiency measures that are really good that are good indicators of where we stand. That's our ABC or ABI methodology in a nutshell.

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If you have any questions, we would be happy to answer them. Steve and I have been involved in this for a while and we've looked at it in painstaking detail.

MR. OLECHOWSKI: I'd like to tie the loop on what the original question though is why aren't business unit costs tied directly to the revenue stream, it's because there's a more accurate way of determining what those goods and services are that are being procured. For instance we mentioned help desk. It would seem unfair at least to us and many who are familiar with the model to charge the help desk strictly on the revenue stream. If the help desk receives 30 phone calls from the trademarks organization and only 20 from the patents organization and maybe from the support organizations, there has to be a better methodology and a more reasonable way to allocate those costs based on those drivers. The same thing where Mark mentioned on the OPM payment. The Post Office does it as well. We're the only federal agency besides the Post Office
who actually has to pay that bill. When we became a PBO, part of the deal was that we would pay postretirement benefits for our employees so that's a more accurate methodology. We know exactly where everybody works and what organization they go to so that's a much better driver to determine where those costs should be allocated.

I think the last slide, what's important about the last slide is, there are opportunities here to improve the model all the time. The places where we have these little people are where people have to input into the system. So that's an opportunity on a daily basis for not only the workers, the managers, and the supervisors to make sure that the input that's going into the system is accurate. Also when we talk about drivers and resource objects, that's another opportunity to say is that the most reasonable way to drive costs. Maybe help desk tickets is not the most reasonable way, but that's what the ABI Steering Committee is for. It's for somebody to raise
their hand and say I'm just now sure that that's a
good way to drive the costs into patents and
trademarks and those kinds of issues are addressed
and resolved to consensus in the ABI Steering
Committee.

So the model is a living document, a
living system that we're certainly always trying
to improve. That doesn't mean that as we make a
change that meant the model before was wrong, it
just means that we've gotten more information. I
think one of the things we've talked about is CPU
usage. If we're going to share a piece of CIO
equipment between two organizations, it would be
nice to know how much the CPU is running what
system. We don't have the ability to
automatically gather that type of information so
that may be something in the future where we have
automated tools for gathering those workload
models and workload drives. So that might be an
example of something that's in the future for PTO
to better allocate costs.

MS. GRABER: If I can interrupt real
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quickly, Mark, as I mentioned to the group, one of
the things I did for the undersecretary was to
look into this model and particularly the drivers
as they concerned the IT costs in the OCIO. One
thing to point out is when you do modernize your
IT equipment, you do get better insight into the
drivers. As Mark said, the thing that impressed
me the most about this ABI team and these models
is that they are indeed living in that you can
improve them, so there might be a time where you
only have a coarse insight into what the drivers
are. A good example is the number of gigabytes of
storage that Mark mentioned. We may have a piece
of equipment and we know that trademark data and
patent data are both stored on it, but we may not
have because the technology is older -- for
example, in the past we may not have had insight
into what percentage of the total gigabytes of
available storage are used by trademark data and
what percentage are used by patent's data. And so
maybe at one we had a coarse drive that was all
discussed and agreed upon that the size of the
underlying system will be the drive for dividing
up the cost of this storage unit. But as our IT
modernizes, we get finer and finer drivers and so
now we have the ability to know how many gigabytes
of storage is trademark's, how many gigabytes is
patent's.

So I think what you'll find with the ABI
model and the thing that impressed me most about
it is that these drivers are constantly revisited
and as our IT modernizes we get more insight into
actual usage, like Mark said, CPU usage of this
box. We're better able to determine each time we
modernize the equipment as we go along.

MR. OLECHOWSKI: I guess my final point
is that the drivers are only used to allocate
costs that can't be strictly identified to patents
or trademarks. It's very easy to conceive that if
Lynne's examining attorneys are examining
trademarks, that's a direct PPA code that says I'm
working on trademark stuff. When Wendy's and
John's gang are doing development or fixing TRAM
or TEAS, there are PPA codes that drive that thing
right directly to a trademark cost center. It becomes a little more challenging, John has this chart up there, when you have infrastructure systems that are shared. When somebody goes and works on RAM because RAM went down last night and your customers couldn't get in and pay their fees, how do we drive that cost to patents and trademarks? How do we split the HR people's time when they're doing their stuff? Or how do we split the CFO time when we're generating financial statements which are done for the entire PTO? How do we split a lawyer's time when they're reviewing our appropriations bill? That's the key to having a solid ABI system and drivers that's a living, breathing document to constantly review that information to make sure we're as accurate and reasonable as we can be.

MS. PEARCE: I'd like to say something. John came up with a good analogy and I was trying to put all of this in my head in terms of the roommate analogy that you came up with where you're sharing the rent. A lot of times with
roommates, one's got a bigger bedroom than the
other and the rent will be based on who's got a
bigger room. But there are certain shared costs.
The electricity that runs the refrigerator for
instance. How do you allocate that? Does one
roommate cook more than the other? Do you really
want to have to keep track of that sort of thing?
Can you do it fairly? The electricity that runs
the cable TV, that runs the air conditioner,
everybody benefits. Does somebody benefit more
than another? If you're sharing an apartment with
a flight attendant who's only there 2 weeks out of
the month, maybe, but if you're both living there
full time, you got eggs in the refrigerator and
nobody's a vegetarian. I've known roommates who
broke up because they started initialing the eggs
as to who bought what and what belonged to whom
and everything in the refrigerator got labeled.
You could do that with cleaning supplies. You can
do that with a lot of things.

I am impressed that you're really making
an effort with the drivers to drill down where you

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can and pleased that as you are updating the
system you'll be able to do more and more of that.  
But I think there are times when it's just the
cost of doing business for shared services.  You
can try to do a better, fairer job about that in
the future, but essentially nobody wants to do
without electricity in an apartment because you
can't figure out how to divvy it up.

Some of it is just what you have to live
with and you try not to be unfair to people.  If
one roommate is a vegetarian, then clearly that
person doesn't need to be paying for the eggs if
they're not being used.  But otherwise, you just
hope that people are as fair as they can be about
it and any transparency in the reporting that you
can do that you can explain to us so that we just
feel like we've being vigilant, that makes a huge
different.  But I think I'm getting a better
understanding now of how difficult it can be to
take some of these gray areas and really slice
them and dice them to perfect.  You really can't,
but I'm glad to see that probably going forward

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you're going to be able to do that with more and
more precision just because of the drivers that
you've built into the system. It's very
electrifying to hear.

MR. OLECHOWSKI: I appreciate your
comments, Elizabeth, and it is hard and it is
complex and I think we are open and transparent,
and to pile onto the roommate analogy, you not
only have two roommates in the room, you actually
have three other ones who aren't even paying rent.

MS. PEARCE: I see you met my husband in
college.

MR. OLECHOWSKI: So you're not only
discussing between yourselves what the patent and
trademark share should be, you're arguing about I
have to pay the CFO, CIO, CAO, OGC rent also. How
much of my hard earned $10 should go to paying his
portion of the rent. So it is a very complex and
moving piece of equipment that needs to be
addressed. But I do think we do a good job of
managing those cost allocations. We're certainly
open as I mentioned before to improvements.
want to get as much automated. We want to drive as many costs directly to the patent and trademarks business lines as we can. The challenge as you mentioned always is those other organizations that are shared between the patents and trademarks.

MS. PEARCE: Another thing to keep in mind if you're concerned about the price of electricity in the apartment, perhaps if you both chip in and buy an energy efficient air conditioner. Everybody benefits. There are always things that you can do better. Perhaps you're paying a little bit more up front more than you feel like is completely 100 percent your share, but in the end the cost savings will get passed along to you. So sometimes you have to bite the bullet on that a little bit too. Combining your cable and internet and the phone service wound up saving us a lot of money also when we moved into a new apartment. So I think you're taking all of that into account. There can be some efficiencies in throwing your resources in...
together. And perhaps separating these things out
is not going to be as cost effective for either
group as we might have hoped.

This was a very good report. I
understand a whole lot better this year than I did
last year about what the different factors are and
how you reached your decisions. And I'd like to
take you up on that tour. I know John. John's
going to schedule us for a tour in February.
Right?

MR. FARMER: Yes, we're going to be a
lot of touring.

MS. PEARCE: We're going to be doing a
lot of touring. But I think that that would be
helpful and I'd like to take you up on that.

MR. KRIEGER: And those are the types of
questions we want to answer with ABC, how we can
combine resources, how we can do things better and
more efficiently. Those are the questions. We
want to raise the questions and try to get answers
and try to get better.

MR. FARMER: Before I ask any questions,
let's reverse things. Do other TPAC members have questions or comments that they wanted to jump in with?

MR. STORIE: I had one. I think certainly there are a number of circumstances where we could look at the two offices and see where trademarks might have a disproportionately higher portion of costs. For instance, even using your example of help desk. If we are a system as we've talked about before that is more highly automated than the patent side, then it would make sense that we might have proportionately more calls to the help desk because we've got more people -- more often perhaps. In terms of we're looking at the drivers, are there areas that come to mind as the committee looks at drivers that you still see are being most subjected in the process? Are there places in terms of costs where we still use a fairly subjective means of determining what that is?

MR. KRIEGER: There is one area that is subjective and that would be in the policy

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organizations. Some of them that cannot be driven
directly are based on a survey split. For
example, enforcement in the policy organization
splits their time by survey fifty-fifty saying
they spend an equal share of time on patents and
trademarks.

MR. STORIE: And that's a survey of the
personnel?

MR. KRIEGER: People who do the work.

So once again we want to encourage the Office of
External Affairs and OIPPE too when they're
working on a patent issue, when they're working on
trademarks, when they travel with Lynne to the
Singapore Treaty, that's a trademarks function and
they should be charging directly to trademarks.
But when they're out talking just about general IP
and enforcement IP policy, it becomes a little bit
more subjective, what percentage of your work do
you believe is patents or trademarks? So that's
just another methodology of getting information
into the system. While we'd love to have
everybody's time directly charged, we know where
the CIOs work and we know where the CFOs work, and
there are those things where things are more
subjective. So instead of having a pure PPA code
or a driver, we use the survey to determine how to
drive those costs.

MR. STORIE: Do all of our FTEs actually
use a PPA code for all of their stuff?

MR. KRIEGER: Yes, and there's a fine
line there. Do you want people spending an
inordinate amount of time on their timesheet or
would you rather than do the work and there is a
gray area there where you need to draw the line
somewhere.

MS. LEIMER: This is Jackie Leimer at
Kraft Foods. Our organization is going through a
restructure now whereby we're adopting a shared
services model and we're just beginning some of
the work related to the allocation of costs for
the various functions including the legal function
which I'm a part of. One of the things that we're
doing is is discussing a lot of the same things
that you raise here in terms of drivers that lead
to these costs. But the corollary of that are the contracts if you will that we're entering into with the buyers of our service for service level expectations and a whole variety of terms. That gives the buyer of our services some flexibility in choosing whether, A, they want the service. Some services are required others are lines that cost. If you want to turn around a 24 hour legal service, you pay more than if you can wait 3 days. So we're going through a very in depth discussion about service level requirements and I was curious as to what you do here on that side, what I would call the flip side of this coin, in terms of entering into agreements so that the functions have -- the buyer pays, but the function has to serve.

MR. STORIE: Accountability.

MS. LEIMER: And accountability, yes.

So I'm curious about that side and what you do on that. Perhaps that's for another day. That may be a complex methodology as well, but I'd be curious to have a top line I think if you could
today.

MR. OLECHOWSKI: Thanks, Jackie. I'm going to answer the question, and if it's not the question you asked please either restate it or we'll certainly for an action. All of the business units who perform services for the Patent and Trademark organization, the CFO, the CIO, OGC, the CAO, actually have service level agreements for the products and services they provide and those are tracked. The CFO tracks those on a monthly basis and reports out. It's actually part of my performance plan and it's part of the people in OGC. They may be a straightforward as I have one day to get a requisition into the system. My Office of Procurement has 24 hours from when a requisition is entered into or assign it to a contracting officer and get it working down its path. I'm sure Wendy can talk about the SLAs that are within the CIO as well as OGC. OGC, I'll pick one off the top of my head, when we ask them a question on appropriations law or something like that, they have a 5 day turnaround and those are
monitored. They're actually reported out to our Deputies' Committee on a quarterly basis. We report out on how well we did on our SLAs.

I'm not so sure if that ties into cost accounting in terms of if that's where your question is, but we do have agreements with our business units and we're held responsible for delivering our products and services. And we can certainly provide you copies of those SLAs to give you an idea of what types of agreements we have with our business units.

MR. TOUPIN: I'm not speaking as a lawyer but as a business unit person, in terms of what Mark was saying about the relationship of the SLAs to cost drivers, we just went through a situation in the Office of General Counsel which concerns administrative law advice from which he gets the fiscal law advice. We said at our current staffing level we will not be able to make these SLAs next year. So we went to the deputy the choice to either change the SLAs or fund additional staff for that office and they made the
decision to fund the additional staff. So to that extent the SLAs are a driver of costs.

MS. LEIMER: That's helpful. Thank you.

MS. BERESFORD: Yes, but I will say if they aren't met they -- a driver down of cost.

MS. LEIMER: That's an interesting point and I guess that gets to the linkage because in the model we are developing at my company we clearly have a decrease in costs if we don't receive the services and vice versa. We certainly are adopting mechanisms for election as you point out and that's important. We can choose to upgrade the service by paying more, but we have the flip side of that as well. So perhaps that's a discussion we should take on another time, but I think it's important to discuss the linkage between the service agreements and the cost.

MR. OLECHOWSKI: I agree. I think it's certainly a worthwhile topic to talk about. Once again, there's a lot of moving pieces as Elizabeth noted on our other discussion. Mark can attest to this and all of my directors, we've entered into a
discussion at the CFO level about SLAs. We've been able to meet our SLAs this year for the most part and my question to them is at what cost. I know you're not spending overtime on it. Are you using uncompensated overtime? What's not getting done? If you're spending all your time getting this stuff done, what's not getting done? So I think it's a little bit more complex. And Jim can certainly attest to it, to bring in to a group of people who are going to make a funding decision and say here's the data. I can't get this stuff done. I think it hits home because we're customers of the Office of General Counsel as well and we can see that, so it's certainly worth the discussion whether it drives the cost down or drives the cost up. It's day to day things that need to be addressed and we're certainly willing to report back or have that discussion.

MS. LEIMER: Yes, I think it would be useful to have more discussion that. And the other point that I think it would be interesting to discuss at that time would be to what extent do
the business units have an option to decline services, and that's again part of our model, what are mandatory services and what are optional services. In the context of the General Counsel's office when we were having this debate on can a business unit in my company decline compliance service? No. That is a mandatory service. It must be provided and the business will pay. There are other services it can decline. So I think it's an interesting dialogue and I think it's something that's very current in business and something perhaps we could pick up at -- discussion about agenda setting. I don't mean to take over that part, but I think it's an interesting topic.

MR. OLECHOWSKI: No, I think that's a great topic about what should our core businesses be not only in terms of patent and trademarks, but what services should we be providing, whether they be outsourced or not done at all. I think that's certainly worthy of review.

MS. BERESFORD: For those who are new to ANDERSON COURT REPORTING
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the committee, one of the reasons that the issue
of overhead and indirect costs is to vital to the
trademark organization is because in the past
we've spent less than half of our income on direct
costs. So the majority of trademark fee money is
paid out to units that support trademarks and
that's been a big issue for us. If you're in an
organization where you have 10 percent overhead,
it's less important, but when you're in an
organization where you have 50 percent overhead,
then it becomes a cost that you have to be really
concerned about. So for the trademark
organization, the allocation of costs is an
extremely -- it's as important as our business
model because it spends as much money. So for new
members who aren't conversant with why are we
talking about ABI so much, this is one of the
reasons we're talking about it.

MR. OLECHOWSKI: Let me just take a
minute, Lynne, to respond to that. While Lynne is
correct that the direct trademark cost is less
than 50 percent, that's not all the direct charges
to the trademark business line. When I charge
directly to trademarks, if I have a PPA code
that's charged directly to trademarks that's not
included in Lynne's number. When the CIO does
work, when the OGC does work, when HR does work,
those in our cost accounting are still allocated
direct costs. So if you add the Office of
Trademarks in what Lynne terms as direct plus
those allocated direct costs, it climbs upwards of
70 percent which I think may provide a little bit
better overview of what truly is direct. And why
I said in the ABI model what we want to make sure
people are doing is charging direct to patents or
trademarks as much as they can so that those
costs, there's no intermediate driver or research
driver, it goes right to the patent or trademark
business line and then it's only those unallocated
or indirect costs that truly have to be driven to
a business line.

MR. KRIEGER: I would also like to give
a couple more examples. We fund things for
efficiency. For example, rent. Rent is paid out
of MGE and it's driven, but that's actually treated as a support cost. But you need rent. You need power. All that stuff is funded out of MGE. It's a little misleading because it's the way we fund things for efficiency purposes. We don't want every office to do a requisition in here for rent. It's inefficient. So we do one overall for rent and then we drive it. On the surface it looks like it's a support cost, but it's directly related to trademarks or patents.

Another example of that is server space. You need a place to put the servers. Right? So you have rent and that's another example. These are things that we just can't do without.

MR. OLECHOWSKI: I think a really great example is this room. This room today is being used exclusively for trademarks but the costs for this room, we do not charge today's activities directly to a trademarks cost code. It's bundled up into EA. This rent space actually belongs to External Affairs, and so that's driven to the patent and trademarks line by the EA split.
essentially. So in this case, I don't know what
the EA split is off the top of my head, it's
probably like 75/25 or 2 to 1, so actually the
commissioner of patents is paying a good portion
of this bill today for us to use this space. But
the point is that we have to make sure we have a
cost allocation methodology that is reasonable,
that will drive costs in a reasonable method
without burdening everybody to go measure how many
minutes of a day some office is being used and
then directly charge that. We still have time
when it's down and in the middle of the night.

MS. PICARD: May I give a point of
clarification? I've heard us talk about two
different terminologies and I think that we've
done a really good job of explaining the
difference between allocation and percent of
income. I get back to Mark and Wendy's examples
earlier in their presentation. Lynne is
absolutely right that given the income in
trademarks is smaller, it is a bigger concern on
the shared services that are allocated to the
trademark organization, but it's not that the
allocation to the trademark organization is 50
percent. The allocation is the split between the
two organizations. On that first chart Mark
showed it's the 7921. That's your allocation.

Back to Mark and Wendy's example that for the
trademark organization the percentage of their
income just happens to be higher than the patent
one. So I just wanted to make that we're talking
apples to apples and we're using the word
allocation.

MR. FARMER: I wanted to go back to see
if I had bring up that -- calculation I was doing
earlier just so see if I'm off base. That is,
looking at some numbers, it looks like the full
time equivalents side of the patent side of the
USPTO has about 65 percent of the full time
equivalents in terms of employment, and the
trademark side has 5 percent of the full time
equivalents, and that leaves roughly 30 percent
that fall in neither, it's somewhere in the
overhead in the administration of the office and
functions that see over both parts. When I look
at the OCIO division of costs between the two
sides it's roughly 80/20. And if I'm doing my
math right, that would mean that roughly that cost
for the overall function, that 30 percent, is
being fairly evenly split between the patent and
trademark side. I'm not saying that that's wrong
or not properly determined by our models, but is
my back of the envelope calculation roughly
correct?

MR. OLECHOWSKI: I'm not so sure I
follow the back of the envelope calculation, sir,
but the slide on page 3 will show you that the
split among those support organizations if that's
what we're going to call them are not fifty-fifty.
If you look at policy, it's 21 to 78. The CIO
it's 22 to 78. The CFO is 21 to 78. So I think
the important point would be to make sure that the
model is as accurate as it can be, that it's a
living document, that if there are concerns
whether they be from TPAC or the trademark office,
the Office of General Counsel, or even within the
support organizations, that the costs are properly
driven to the right business line. So I want to
make sure I answer your question, Mr. Farmer, but
I want to lead us away from doing back of the
everse kinds of calculations because it really
has to do with the goods and services procured and
how those costs are driven from the goods and
services that are procured.

One of the examples, when we started
talking about the IT split, could we have
trademark's IT and patent's IT, I think the
example is the same in cost allocation for all of
the business units. We absolutely as I mentioned
want to drive costs as much as we can directly to
patents and trademarks. The question is what do
we do with those costs that are unable to be
driven because we don't want to have people doing
things to 5 minute timeframes or they're doing
something on behalf of the whole office, they're
preparing financial statements or they're
providing a question on appropriations law. I
want to make sure that the model itself will drive
those costs appropriately to patents and trademarks.

There are certain things that are absolutely FTE driven. Off the top of my head, I'm sure Mark or Steve can give you an example, the OPM transfer is a really great example. We know exactly where people work. That cost which I believe is close to $5- or $6,000 a year per person are driven right to the person who is in our retirement system. So the 5- or 6,000 patent employees and the 700 trademark employees are easy, but then when you get to Wendy's, I guess next week when she goes back to patents, John's retirement benefits, mine, Mr. Toupin's, those still have to be driven to patents and trademarks because they're the only two income streams we have.

MS. PEARCE: I have a question I'd like to ask and I'm not sure you're off the hook, Mark. It's actually for Karen who is my statistician. She and I were going to talk at some point, and you may not know this off the top of your head,
but I just thought I'd ask because it might be interesting to make it a public record. Looking at page 3 here which is 2008, Karen can you tell me whether or not these numbers are in line with 2007? My instinct is that the trademark percentage has gone down a smidge from 2007 for a lot of these offices. Am I wrong about that? And if you don't know, that's perfectly all right. You and I can talk about it later. But I was wondering if you would happen to know.

MS. STROHECKER: My name is Karen Strohecker. The actual cost, the $202 million that's reported here for 2008, is actually lower than the cost for 2007 reported to trademarks. So it's a decrease of about 5.2 percent I believe. But the actual percentages are pretty close to the same in terms of the splits.

MS. PEARCE: That was something that I've got to do, the budget section for the annual report, so this is why I knew Karen was working on this material for me. But the overall amount did go down a little bit which is good.
MS. STROHECKER: It did. It actually increased on the patent side because overall for the PTO the actual costs in 2008 were higher than they were in 2007. I think I've already sent to you, and if I haven't I can give it to you again, the actual distribution on a percentage basis of the different organizations showing the patent share and the trademark share based on the cost allocation from the ABC model.

MR. FRIEDMAN: There's been a lot of talk about the cost allocation. Particularly for the new members at TPAC, I'd always viewed this as two issues. One is the one we've been talking about for the past 2 hours which is are costs allocated fairly between trademarks and patents. And then the issue that we always drill down to is in particular are costs allocated fairly when it comes to the OCIO department. But the other issue I want to raise more as a comment than a question simply goes like this. Even assuming the cost allocation is fair or especially if we still have questions about how fair the cost allocation is to...
trademarks when it comes to OCIO, are we getting
the kind of service that trademarks deserves where
we're spending $55 million? I would suggest if we
circle back from your presentation to the
presentations of John, Wendy, and Keith and
Michelle and others, is that since TPAC for a
number of years has been very concerned about the
level of service delivered to trademarks when we
thought the OCIO shop was doing pretty well, you
can imagine at least sitting in the cheap seat
that I'm in as a nonvoting member, but I assume
that voting members agree also that I would be
much more reluctant to accept at face value that
at least for 2008 the $55 million that we're going
to spend is going to deliver the type of service
that we hope.

We were always concerned, it's always
great when I can speak for the commissioner, I
assume Lynne in all seriousness has always
expressed concern about whether she was getting
value for her dollar, and we were doing that in an
environment where we thought things were okay in
the OCIO. So the only thing I would add if we
combine this presentation with these presentations
is I'm that much more skeptical that at least
speaking on behalf of trademarks we're going to
get or expect that we're going to get what we
deserve. Yes, procedures are being put in place,
there's a roadmap, obviously there's a lot of
cleanup that has to take place, but I think we all
agree that that cleanup takes time and I'm
conscened in 2008, maybe I'll be a little less
conscened in 2009, and maybe it will abate
completely in 2010 though I doubt it. But a lot
of concerns in view of the fact that we have cost
allocation issues and wondering what value we get
even if the cost allocation is fairly on spot.

MR. FARMER: Thank you, Howard. Are
there any other comments or questions before we
wrap up the morning session?

MR. STORIE: Just one quick question.
In the reporting would it be a significant task
for us to be able to see in calculations like this
what the allocated direct costs were from the

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shared departments?

MR. OLECHOWSKI: Absolutely.

MR. FARMER: Anything else? In that case we'll take a lunch recess until 12:50 p.m. and at that time we will kick off Section IV of the agenda. Also before we break in case there are -- specially on the financial side and the CIO side that won't be here if that's the case, I'd like to thank each of you for your time and your service and your preparation to come and speak for us. We really appreciate it and don't think that our tough questions implies to anything but total respect and gratitude for your services.

(Whereupon, a luncheon recess was taken.)
AFTERNOON SESSION

(12:56 p.m.)

MR. FARMER: We are now on for the afternoon portion of our agenda and my goal is to wrap it up by 3 o'clock, and if we get done earlier that's a bonus for all involved. Some people here have traveled for quite a distance and the TPAC members have an executive session after this. So we'll just try to move things right along.

I'm going to turn the floor over to Lynne Beresford to kick off our afternoon agenda.

MS. BERESFORD: Joining me will be Sharon Marsh who is sitting between Elizabeth Pearce and John Owens. She is the Deputy Director for Trademark Policy. The first item on the afternoon agenda is the Madrid Protocol. This is a treaty that the United States is a member of and we have a number of filings both into the U.S. and out of the U.S. under this particular treaty. In the international context there is a great deal of comment about how Madrid could be changed to make

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it a more useful filing treaty. What we wanted to bring to the TPAC today to get comments on were some of the suggestions that are currently being vetted at WIPO. I don't particularly expect that you will all come down with a final answer today, but we are interested in hearing at least your perspective on how you view these changes at least as a first cut. We may come back to this at the next meeting when folks have had a chance to talk to other trademark holders that they know or other organizations that they know about these proposals.

Having said that, you were all sent this little paper in advance to look at the various suggested changes such as getting rid of the requirement for basic application or registration, things about linguistic diversity, and other items. And you may have ideas of your own. So I just open the floor for discussion. Sharon, do you want to say anything?

MS. MARSH: Sharon Marsh, USPTO. Maybe I'll give them just a little bit more information

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about the proposal that's outlined in this paper
which everyone may not have had a chance to read.

There's a series of working group
meetings of the Madrid members, both agreement and
protocol countries. Amy Cotton from our
international office as well as someone from
trademarks attend those meetings. Under this
proposal to end the requirement for a basic
application or registration, the trademark owner
would still be able to file one application with
one set of fees in one language, and also after
they obtain international registration and
extension to the various countries, have a
centralized place for renewal, so that all would
remain the same. The change is that the trademark
holder would no longer have to have a basic
application or basic registration in their country
of origin.

I think we've identified probably four
major ways that would change the current Madrid
system, and I'll just briefly run through those.
One, if the international registration is no
longer dependent on a basic application or registration in the home country, the concept of central attack disappears. Central attack was the idea that a trademark owner could seek to cancel or oppose an application or registration in the country of origin and if they were successful then all of the countries to which the trademark holder had extended, the registrations in those countries would also become inactive so that that feature would disappear if you are just filing directly into each of the countries. You would have to go after registrations in each country.

The other function that disappears we think is what Amy has labeled the gatekeeper function where now when someone gets into the Madrid system, they've been through the application process in their country of origin so if they filed an application that doesn't even have the basic information in it, if they have filed for a mark that's generic, theoretically those get weeded out of the system by the country of origin and then none of the designated
countries have to address those problems. Again
if instead you filed applications directly into
each of the countries to seek to register in,
those offices would have to deal with the problems
individually.

The third issue I think this affects is
the issue of identifications of goods and
classification. Under the current Madrid system,
the IB sets classification, number one, and number
two, once they've done that you can't add classes
or move goods around too much or add goods. So
that would be gone under this system. You would
be able to file individual applications and
presumably you could add on to applications in
each country as you needed to. Perhaps more
importantly, one of the complaints we've heard
from U.S. trademark owners about Madrid is that if
you file through Madrid, they are limited by the
USPTO's very strict policy regarding information
of goods and services so that because if you limit
your goods in the U.S., then you also must limit
the goods in all of the countries you've extended.
to. That would disappear if you could file
individually into each country.

Then the last potential issue, our
colleagues from the Japanese issue have raised an
issue in the working group meetings about a
problem that they face along with other countries
that use languages that have non-Latin characters
like China, Korea, et cetera. The trademark owner
in the home country files in their own characters,
so Chinese characters, Korean characters,
Vietnamese characters, whatever. But then when
they want to do business in other countries, they
frequently are not using their native language.
They're going to use the language, either a
transliteration or a translation of the term in
the other country and so the Madrid system doesn't
work for them because their basic application
isn't for the same mark. So that's another issue
that's before the working group. It could be
attacked either through the current Madrid system
or this idea of getting rid of the basic
application would also address that problem. So
that's just a little bit of background. And like Lynne said, we don't expect you all to have decisions or opinions today, but we are desperately seeking feedback from users as to what you want the Madrid system to be in the future.

MR. FARMER: Comments from TPAC?

MR. LOCKHART: What would be the advantage --

MR. FARMER: Wouldn't that be the elimination of central attack in that for example you might be hesitant to take a U.S. -- tell me if I get this right, Sharon, you might be hesitant to take a U.S. application to make it the base application for a Madrid filing because of the various and sundry ways that that U.S. application could get knocked out or because you're going in with a narrower description of goods and services than you might otherwise have to?

MS. MARSH: I think central attack can work both ways. If you're going after the bad guy you can file one opposition against their home country application and kill off all the
applications in the other countries. But it's also what you describe, if your home country application gets attacked and cancelled for some reason, then everything else dies as well.

MS. BERESFORD: Some people view central attack is like a safety valve against really bad registrations that somehow get in the Madrid system and get spread across a number of countries. Others see it as you've just described it, as maybe my own basic application or registration is a little shaky and if central attack weren't around I wouldn't have to worry about this. So really it's depending on which side of the fence you're looking at.

MS. LEIMER: And to add, I think the central attack period right now is pretty long and so there's a long period of uncertainty 5 years where we're not sure whether we might be subject to a central attack when we're the applicant and that doesn't give us the kind of certainty that our businesses need. In some of the countries the registration could issue much, much sooner than
that period so that has prompted some of us to
have what I think are redundant portfolios. We
have international registrations and we have
separate national registrations which is really
kind of a crazy to proceed, but that central
attack has been the reasons cited for that.

MR. FARMER: Since right now all that
we're really talking about is we'll be interested
in taking the next step so that a dialogue can be
engaged in with I guess other Madrid partners so
that we could eventually down the road see what
language may look like, and of course the devil is
in those details.

MS. MARSH: Yes, and I think what Amy
has said is we don't want go to Geneva and
encourage this discussion to continue to take
positions on proposals and then find out that
that's not what the U.S. bar wants. So it would
be really helpful to us if we have a sense going
into this what the needs of users are.

MR. FARMER: Are there any TPAC members
who feel that it would not be productive to go
that next step and just to start seeing what these
changes would look like? In other words, are
there any TPAC members who feel like we ought to
consider freezing things now and not looking
further? I'll now state it in inverse to give you
a chance to knock it down that way, and that is do
you share my sentiment, and this is just my
individual sentiment, that it's worth taking the
next step and see what it looks like because it's
an intriguing concept, and of course the devil
will be in the details?

MR. JOHNSON: I see no reason not to
continue to pursue it. I don't see any down side
for U.S. trademark owners. The one comment I
didn't understand and maybe you can help me with
is about the language diversity issue. If there's
an exact translation of the Japanese mark, why is
that stretching the foreign equivalency doctrine
beyond the breaking point?

MS. MARSH: I think that was just a
comment that to try to apply this theoretically to
every case that might come up could result in some
results that we hadn't anticipated. Amy, do you want to address that?

MS. COTTON: The Japanese delegation has issued another paper in exploring this linguistic diversity idea and talking to other delegations informally. What they decided was that linguistic diversity really can't be addressed within the existing system because of this idea of sameness between Japanese characters and English, that in some cases it might be exactly the same but in other cases it might be different. If you look at Apple versus pomme in French, it could very well be a different commercial impression and so for us it's not equivalent on the doctrine of foreign equivalence, but it's really going to depend on a case by case basis. So you couldn't say every time that just a strict translation is going to be same mark and the same commercial impression, and from what I understand, translations are an art and not a science. So I think from that perspective that's what I meant when I was saying it might stretch the doctrine of foreign
equivalence to have a rule saying, yes, you can file your international application in a translated form of your basic every time. It might very well be a different mark in most of those cases and it could be that there's going to be gamesmanship of the system to do that, here's my basic and a slight difference here, or with transliteration there's many different ways to transliterate a mark with Japanese or Chinese characters in particular how it sounds, they use the characters but it sounds -- like when you speak it those characters -- when you say those characters. So there's just too board of an area that the sameness of the mark is not going to be something that can be applied across the board consistently without stretching the rights or expanding the rights when you really didn't want to do that to the system.

MR. JOHNSON: So your position would be against this language diversity?

MS. COTTON: Actually, Japan came back and said we don't think we can address linguistic
diversity within the existing system and the
existing rules. We think the best approach is
probably going to be to get rid of the basic
requirement, the basic -- requirement. So the
extent that somebody with linguistic diversity in
their system has said that, that's very persuasive
to me that there may not be a way to approach the
issue of linguistic diversity within the existing
system and therefore a diplomatic conference would
be in order in order to change the system to
accomplish that. The question for you and for the
U.S. Bar is do we want to entertain the notion
that linguistic diversity is an important element
to consider in going forward in addressing the
Madrid system and so we want to accommodate that.
For us for the most part we're using English --
basic mark is in English characters and it goes
out in English characters so it's not as much an
issue, for those countries that have different
language requirements it is a bigger issue. So do
we care? Do we feel for those countries that this
is a problem enough so that we want to address

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that -- maybe, maybe not, but I put that question out there.

MR. JOHNSON: I guess I worry about the translations and meanings and trying to -- trying to figure out is this translation accurate, but that's the same you face anyway.

MS. MARSH: Jim, if we move to getting rid of the basic, they would just file individual applications for the Japanese version, the English transliteration or translation of that.

MS. BERESFORD: Just allow me to make one more comment here. I looking at changing Madrid I hope you will not limit your thoughts to the ones that are presented here. Would Madrid be better if WIPO had a universal application, for example? And you fill that out and that was a way of dealing with transmitting your marks and how would that application have to be tied to the basic application or registration? Could it be partially tied? Do you have to have everything that's in the basic application? Or can you add classes? You really have to I think take the
bricks apart and start sorting them in a variety of ways and saying if I were writing this treaty today in this day and age how would I do it to most take advantage of both the ability of computers to do things but also in a sense the smallness of the world where trademarks are concerned where there are so many folks registering in so many places? This is a treaty based over 100 years ago when paper was the medium and it's also a treaty based on an international model of trademarks. It's really not based on common law model at all. So think this is a time when you can actually really think outside the box. If there's a way that we could set up a filing treaty which is what Madrid is starting over, what would you want in that treaty? Here's an opportunity to really think about what would be the most effective way to have one of these treaties and maybe the answer is just simply get rid of the basic application or maybe it's something else. But here's an opportunity to think about is there some other way that we could
have a model here that would be really, really
useful to U.S. trademark owners.

MR. FARMER: Are there any comments from
TPAC based on Lynne's comment?

MS. LEIMER: I just want to say thank
you very much all of you who have brought this to
our attention and gave us this opportunity. I
personally think that the Madrid system is a good
one and an important one and to the extent that we
can improve it and therefore make more people use
it, it will be better. So I certainly an
couraged, and thank you that we're having this
opportunity and we'll certainly want to talk to
our colleagues and come back with other ideas.
And I think, Sharon, you mentioned that you will
be reaching out to other associations and I
certainly encourage that to get as broad a view as
possible from as many owners.

The Europeans are much more familiar
with this system than U.S. practitioners because
of their long history and if you have an
opportunity to speak to European mark owners, you
might get some other ideas, and I would encourage you to do that.

MR. FARMER: Than you, Jackie. To put a bow on this issue though, I think your basic question was should we continue to explore this and pursue it or not and I think that the answer of the committee is yes. And if you need us to say that in any other way except right now orally just let us know and we'll find a way to do that. I think that takes us down to item IV-B which is fee setting, should the USPTO postregistration Section 9 fee? Perhaps the topic will end up being a little broader than that, and I'll turn to Lynne.

MS. BERESFORD: We've talked about fee setting here in the Public Advisory Committee off and on for a number of meetings. I feel that trademarks should be run as efficiently as possible and that we should in fact end the year with maybe a little bit of surplus but not too much and have good budgets so we know we have enough money to fund our various requirements in
the following year. This year trademarks is going
to overcollect and have a surplus. When we
initially sent this information to the TPAC
members we had a different number for this
surplus. This number keeps changing from as we go
through tying up the budget in the spending
numbers. But we also had a different economy even
more importantly than we have at the moment. So I
think things have changed radically.

Again if I am confident that we can
support ourselves with the fee money we're
bringing in and I have access, I'm willing to
lower fees. That's what I want to do. At the
moment we change the application fee which is our
big income fee because it's considered to be
statutory and we have to get Congress to change
that fee. But all the other fees that trademarks
charges are set by rule making and it can be
changed. One of the suggestions was that we look
at our postregistration fees and talk about
changing those fees and there's a lot of
discussion within the office about doing a fee

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study about how much we're spending actually doing
postregistration work. The obvious thing is the
fee right now is I believe $400 and it used to be
renewal actually included an examination of
specimens and other things, but with the change
that we made in our law to make renewal a mere
request for renewal and the examinations actually
with the Section 8 affidavit that's filed at or
around the time the renewal request is filed, the
renewal fee didn't change even though the amount
of work associated with the renewal changed rather
dramatically.

So with that background TPAC input on
this matter, we're looking for you input on this
matter. Again, we're in a little shakier economic
times than when we first proposed this, but still
something that we're interested in getting
feedback on.

MR. FARMER: Lynne, do you have any
feeling given the economic slowdown we may be
experiencing or are about to experience whether we
will be in a position to cut fees or whether it's
uncertain enough that we can't really go there yet?

MS. BERESFORD: My own view, we keep redoing our filing estimates which is a big income driver is how many people file, and we are now expecting actually about a 2 percent drop in filings next year. So the original income estimates that we had for next year are quite a bit different than the estimates we're having now. At this point in time I'm not sure whether we can sustain a fee cut at this point. I think we'll know more maybe in February, but I'm not sure. Again I remain committed to trying to put the fees at a level where we pay for our services and pay for our infrastructure costs and that's it. We are in the business of making money, I don't want to make money, I just want to pay for things.

MS. PEARCE: We did discuss this in subcommittee yesterday, I think James will back me up on this, we really urged that there be a fee study done so that we can figure out what the actual cost is for doing an -- declaration or a
renewal or statement of use so that we can
determine which of these fees are out of line
which helps justify where cuts might be made.
They seem to think that we could make great
headway on that study by February, that we'd have
more information by then. Apparently they've
already done this for the Patent Office and indeed
had started doing it or considering it doing it
for the Trademark Office. So they were well aware
of the need for it.

I also think that we wouldn't have to do
massive cuts right away, that there could be a
period where things were done one at a time in a
measured matter just seeing how the economy is
going to go. There probably is going to be a drop
in filings next year, but at least historically
things do not continue to drop. There will be a
drop and then things come back. My feeling
representing a trademark owner is the filing fees
are pretty fair. You get a lovely discount for
filing electronically and for using TEAS Plus. I
feel like those are pretty much in line. The fees
that had never been examined have been the
postregistration fees. So I think that the study
which we've asked for will give us a lot of
insight there.

And I believe that we are going to be
able to make some inroads there. We've not quite
sure what yet and I think it's going to be over
time. You want to be wise about this. But I
think it's a wonderful testament to the Trademark
Office that this can be done in an economic
climate where the cost of everything else is going
up to be able to legitimately reduce the cost of
something makes a great deal of difference. It's
also my understanding, Lynne, that for the
Trademark Office, a whole lot less income is
dependent on postregistration fees than it is for
the Patent Office. The Patent Office, that is a
huge cash cow for them. They would have major
problems if they had to cut their maintenance
fees. It is a less drastic matter for the
Trademark Office.

MS. BERESFORD: Definitely. Most of our
income comes from our application fee. Again, we've made every effort to make electronic filing attractive, so in fact we've lowered our application fees twice in the not too distant past so we have addressed that to some extent. But we're more than willing to do a fee study and we'll be happy to see the results.

MS. DENISON: I wanted to add that the proposal was 400 to 100. Is that right?

MS. BERESFORD: Yes.

MS. DENISON: If there's concern, you could go to 200 or 300. It doesn't have to be that.

MS. PEARCE: This was my question originally Mary. If a statement of use costs $100, and that's not to say that's what it costs, but that's what you're charged for it, what is the difference in effort between a statement of use, an 815 declaration, and an 89? There didn't seem to be a tremendous amount of difference in this electronic age, and that was purely where the 100 came from. That was why she was using it as the

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basis. But you're correct. There's no reason we've got to go to 100. Maybe all we can do is go to three and that's three per class and a lot of times with these older registrations that saves a significant amount of money. Perhaps in these economic times where people are not filing as much they will be especially if it were affordable a lot more likely to renew what they already have.

MR. FARMER: The other thing that I would be curious about is that presently we have a fee for filing a statement of use even though you don't get a discount for filing a 1-B application or a 1-A application. And I would be curious to find out whether there is an increasing cost when someone doesn't put in their proof at the time of the filing of the application but puts it in later during amendment to alleged use or a statement of use, whether that adds costs to examining the use or not. Are there any other questions or comments?

MR. LOCKHART: In the context of doing this I hope too we could look at the fee for
requesting an extension of time which has always seemed to me to be the one that maybe could use some adjustment.

        MS. PEARCE: I'd like to speak to that because we discussed this a little bit yesterday. Ordinarily I would agree that you want the fees to only be more or less what it costs the office, but since trademark rights in this country are based on use, anything that encourages people to go ahead and use that mark and not use their full 3 years' worth of extensions I think is better for the trademark community. So that is personally my justification for it being a little bit higher than it needs to be. If it is cheaper to go ahead and file your specimen and it's possible we could even wind up reducing the statement of use cost, do that. Don't keep extending which ties everybody else up particularly for something that you may never intend to use. It's a little bit more of an incentive where some of the rest of them are carrots. Maybe that one's a stick.

        MR. FARMER: Elizabeth are you saying
that folks might just reflexively keep extending
if they didn't have to pay to extend?

    MS. PEARCE: I think they're doing that anyway and I think it would become even more
prevalent, and I'm speaking as somebody who
represents AIG who has to use that stick to beat
the business units over the head, if I can tell
them how much it's going to cost them to extend
versus letting it lapse because they're admitting
now that they're never going to use that mark,
they'll use something else instead, it reduces my
cost and it just makes more sense. That needs to
go back into public domain, that mark does if
we're not going to do anything with it. There is
no point in our keeping somebody else from using
it for what might even be different services.
They're even in our space but it could be a
potential conflict. So I think it's just a way of
keeping people a little bit more on their toes.
I'm not saying it always does that, but I think
that if we cut that fee we would wind up with even
more people who just coast through for 3 years

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before they make up their minds.

MS. BERESFORD: I agree. I think one of the things that has to be considered is the policy behind the fees and what the fees do for the trademark system because obviously we're all interested in having the system operate as well and efficiently as possible, so that's something that has to be considered too.

MR. FARMER: Anything else on this issue?

MS. BAYLOR: I wanted to say something. I agree with Elizabeth. I work in the Trademark Assistance Center. That is one of the common issues that we have when assisting customers is that they never have intentions on actually showing use of their 1-B application and therefore once they found out how much the fee costs, they'll say I'm using the mark differently anyway so they'll go ahead and allow the application to abandon and just refile. But also in reference to what John said as well, once we're assisting customers of the procedures of filing a trademark,
when they know that they have to pay an additional
fee to filing a statement of use later on as
opposed to just paying the initial filing fee. If
they're filing on a 1-A they're more likely to not
file a trademark at all until they're actually
using the mark to save from having to file that
additional $100 later on in the process.

So we explain the process to them they
are more so -- even though they are attracted by
filing online because there are cheaper filing
fees, they recognize the fact that all of the
requirements for TEAS Plus is not applicable to
them so they're looking for other avenues to save
money with the economy. So what they'll do is
because I cannot file on a 1-A, then I'll just
wait until 6 months or a year from now once I'm
actually using the mark and just go ahead and file
then and then that will save me having to file
requests for an extension of time for $150 or
either the statement of use later on for $100. So
that may be also a reason why filing applications
is not as much as it used to be because they're
looking at ways of saving money.

MR. FARMER: To put a death grip on that obvious point, it means that by having a fee for an SOU later you discourage folks reserving marks they're never going to use and it keeps more marks available for others to use.

MS. BAYLOR: Yes.

MR. FARMER: I'm slow, but I -- thanks. That's a good comment. Any others from TPAC? I think we can go on to the next issue then. Item C, should the USPTO accept a geographical indications registration of another country as the equivalent of a trademark registration?

MS. BERESFORD: I'm going to turn this issue over to Sharon who will discuss this, or is it Amy?

MS. MARSH: I'll start it off. I don't know that we have to get into a lot of detail. You have a paper that was given to you that has some of the issues laid out. The question is under Section 44, as you know, that's the basis for application or registration based on the
application or registration you have in your
country of origin where you have either a domicile
or a commercial establishment and that applies.
The way we've always applied is that you have to
have a trademark registration or a service mark or
collective or certification mark registration in
your home country. The question that's come up
recently is whether or not an applicant who has a
registration or a geographical indication in their
country of origin, should they be allowed to use
that as a basis for application or registration
here under Section 44. When this issue came up,
our International Office was cheering because we
go around the world. The geographical indication
issue is a hot international issue. Our standard
way of approaching it is saying that we have
trademark registration and geographical
indications are trademarks and you can use our
trademark registration system to protect your GIs.
So accepting GI registrations under Section 44
would I think further that line of thinking.

So we are seeking opinions from TPAC,
and again it doesn't have to be today, on whether you think that that would be acceptable or not.

In your materials we copied the relevant provisions of the Paris Convention and Section 44 of the Trademark Act and you can take a look at those at your leisure.

MR. FARMER: Any comments or questions from TPAC? I know that the International and -- Subcommittee did some listening to and thinking about that yesterday. So especially if there are any comments from that subcommittee from those members.

MS. LEIMER: This is Jackie Leimer at Kraft. Thank you, Sharon, for that report. I think there are a lot of questions about how this would actually be executed, the devil is in the details, if you will, and so I think we would appreciate to have continued dialogue as you development further refinement on this. But I think as an interesting issue it certainly is consistent with the U.S. Government's view that GIs are protected in the United States as
trademarks and to execute this would be further
reinforcement of the U.S. position and it's a
position that Kraft Foods shares, that GIs can be
trademarks and should be protected as trademarks
in the United States. That means going through
the rigors of the trademark examination and
meeting all the other statutory requirements in
the United States.

So that being said, from a personal
Kraft point of view, this is certainly something
that we'd like to hear more about as you answer
some of the questions that I know you have.

MS. BERESFORD: I don't think there's
any idea that we're not going to examine these
just like we examine everybody else who comes
through the door asking for a registration. This
isn't a shortcut to registration. This is just
are these acceptable under Section 44 as bases for
either a priority claim or as basis for ultimately
a registration under Section 44. And it's a very
interesting issue, one we faced some years ago
with registrations and applications coming from

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OHED and I think we consulted the Public Advisory Committee many years ago on that topic and they ultimately decided that it was okay to use an OHED application and registration as the basis for filing into the United States. So it's a similar issue but also slightly different.

MR. FARMER: Any other comment on this issue? James?

MR. CONLEY: I just have one question. This is James Conley from Northwestern. I know that this is just being discussed but in looking downstream, could this applicant who is the owner of the GI take the U.S. Registration and then subsequently take it to the country where the GI is not a vehicle for trademark prosecution but use the U.S. trademark status to achieve trademark registration in that country where the GI was not grounds for trademark registration?

MS. MARSH: They'd have to meet the country of origin requirements. They've had to be doing business in the U.S. or be connected to the U.S. in some way.
MR. CONLEY: The assumption is that because we go through this that they get trademark registration in the U.S. Could they take that and use that as their basis for getting around the law of the land that as stated here would not accept a GI?

MS. MARSH: Right, but probably to use their U.S. Registration to obtain registration in another country they'd have to show that they were connected to the U.S. Because they were a national or have a domicile or a commercial establishment here. If they could do that, maybe. I don't know.

MS. BERESFORD: The Paris Convention requirements would still apply. You have to have domicile, nationality or a real and effective industrial or commercial establishment in that country where you're claiming your trademark rights from. So if you've come into the U.S. With a GI and you get a registration but you actually don't have use here which of course you can do under Section 44, then it would very hard
for you if anybody looked at your trademark
application in another country to argue that you
effectively those rights in that country because
you don't have domicile, nationality, or an
effective industrial or commercial establishment
in the U.S. So there's a built-in check in the
terms of the Paris Convention.

MR. FARMER: Any other comments there?

I'm going to gather that the sense of the
committee is keep us posted. Let's go on to IV-D,
proposed rules. Should there be a fee for a
certificate of mailing? I guess that's -- more
than one option.

MS. BERESFORD: Right. I think we sent
you a paper on this. When we put out our proposed
rule to amend certificate of mailing and
certificate of facts transmissions to exclude
certain documents in February, we got a lot of
feedback, some of it negative, some of it
positive, all over the map, from various trademark
owners and various bar groups. Of course, we take
all those really seriously. One of the comments
was that in certain circumstances it's very, very
important to continue to have certain options
available. Of course, the office's horse in this
race is we continue to nudge people as much as we
can toward electronic filing of all documents. We
aren't going to force anybody to file
electronically but we keep nudging them toward
that because from our experience it's good for
everybody in the long run. Maybe in the short run
it's not so easy, but in the long run we get
better quality. Applicants once they learn how to
use our electronic systems are quite happy with
them and want to continue that. And it totally
improves the quality of the data in our database.
Makes it a much stronger place to find out exactly
what's in applications and registrations.

So the proposal here was instead of
eliminating certain options, we would just simply
charge a fee because essentially we're still
handling paper in those options if you want to
continue to use those options. Sharon, do you
want to add anything to that?
MS. MARSH: I don't think so. We put this issue before the committee back when we did the initial rule making proposal to just eliminate certificate of mailing and the response was quite negative from the public. It seems that the bar wants a safety net. They raised questions about what happens if I'm trying to file my paper at 11 o'clock on the day before it's due and TEAS goes down or my computer goes down? They wanted to have a way to feel confident that they would be able to get a timely filing off even if something happened to the computer system. So this is one alternative that came up of we'll let you file paper and use certificates of mailing but you have to pay an extra fee if you're going to do that.

MR. FARMER: And you would probably just pay that fee at the time you're submitting your filing by certificate or mailing, just put the check in there?

MS. MARSH: That would be one question. Would we accept the paper if you forgot the extra fee? I know again for the safety net factor,
people would want to say that I can file my paper
and if I forget to include the extra fee for paper
that the PTO will give me 30 days to pay the fee.

MR. FARMER: A safety net with a safety
net.

MS. MARSH: Yes.

MR. FARMER: If hypothetically TPAC was
of a mood that it sounds like a sensible proposal
to encourage electronic filing by charging a fee
so that you still leave that option open, what
would happen next in the process to try to make
this the rule? Would there be a proposed rule
making along that line?

MS. MARSH: Yes, I believe so.

MR. FARMER: Does anyone on TPAC
disagree with the concept of potentially charging
a fee there to encourage electronic filing while
still keeping the option --

MR. STORIE: Personally I don't think
that the charge is going to have the effect in the
sense that the only thing that's been penalized is
filing at the last minute because if I mail this
thing 2 days before or 3 days before, it's still being handled on paper. So it's really just this question of my having used this stamp that gives me this extra day. So it's really just a penalty for utilizing the last day. It doesn't change the work whatsoever at least from the best I can tell.

MS. BERESFORD: I think it will change the work because what will happen is folks who right now routinely use paper filing, when they get into the situation that they're filing at the last minute, will have to make that difficult decision, do I fire up my computer and file this online or do I pay the extra money. Some people will say I can't really genuinely justify a $50 fee, I will grit my teeth and I will file this electronically. I think eventually that that will in fact change behavior.

MR. STORIE: You've always got this question of how sophisticated this user is, whether or not his computer system is reliable, whether or not the network or their online access is reliable. Sometimes you get on and it works

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well, sometimes it doesn't.

MS. BERESFORD: They still have the
option of filing on paper with the fee. But I
think this will a rather gentle but over time
behavior changing process. I could be wrong about
that. I've been wrong about many things.

MS. DENISON: But it just encourage
people to file by FedEx 1 day earlier.

MS. BERESFORD: That's exactly right.

MR. STORIE: But you don't get the same
protection with FedEx. You may feel confident
that FedEx is going to arrive because you trust
FedEx, but you lose the legal protection.

MS. DENISON: I understand.

MS. MARSH: Could I just clarify? I
think we're hearing that you think that we're only
charging a fee if you use a certificate of
mailing. The fee would be for a paper filing
whether you have certificate or mailing or not.

MR. STORIE: That was not my
understanding.

MS. MARSH: So if you file 2 days early
on paper you would still have to pay the paper filing fee.

MR. STORIE: So any response on paper that could be filed electronically would have this $50 fee or whatever it's going to be?

MS. MARSH: Yes. If you're filing electronically there is no fee.

MR. STORIE: So anything that's filed on paper that could have been filed electronically regardless of when it's filed.

MS. MARSH: Right.

MR. JOHNSON: Does $50 cover the extra cost? Is the $50 fee based on the additional cost to the office? That's what you've calculated?

MS. MARSH: Yes.

MS. BERESFORD: I'm sorry I explained that wrong. My apologies.

MS. MARSH: The other thing I think we should mention, in the comments to the original rule making notice the other complaint in addition to the safety net issue was that to file a TEAS response to office action where you have many

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attachments was cumbersome and that there are
limits on the size of each page that you attach to
a TEAS response to office action form. So they
felt that it was a lot of extra work to use the
electronic system and so that was another reason
that they wanted the option of paper filing.

MR. MORRIS: Craig Morris, USPTO. I'm
not sure if my list was written actually because
this is referencing extension of the 3 megabyte
location and we've already expanded it to 5
megabytes, so we did try to address that concern.
In the middle of that fourth paragraph though
there is unfortunately an overstatement of what
we've done where it says that we -- there is
currently on TEAS form for that purpose.
Certainly that's something that we want to do in
the future but we have not in fact implemented
that -- look on TEAS for request to divide form,
it does not exist at this point.

MS. BAYLOR: I wanted to make the
statement that I think like Lynne said it would
just be a gradual process. Normally customers who
call in if they have to submit it in paper form and utilize the certificate of mailing it's because not that they waited -- yes, they waited until the last minute along with maybe something is wrong with TEAS or something is wrong with their computer and they're pressing for time. So I don't think they'll be really too concerned about paying the fee having to send it by paper but you do have those customers who are really just stuck in paper filing and they will call way ahead of time before they have more than enough time to submit their documents but you have those customers who are not computer savvy or they don't have access to a computer and they're set in their ways to do a paper filing so they have no problem with paying whatever fee the agency puts on the limitations as far as submitting a paper filing. So I think that if the concept is to charge a fee so that will use the electronic base, we won't see too much of a change, maybe later on down the line, but more so now we'll just see the change of paper filings being paid for by maybe attorneys or
pro se applicants whose system crashed or it got stuck or something of that nature and they have to pay the fee but for those who are continually filing documents by paper, we won't see that change probably for a good while because they're just set in their way of paying whatever the agency sets so that they can continue to file a paper filing.

MS. DENISON: When you have a large 2F submission, frankly it's a whole lot cheaper to pay the $50 and submit it on paper than it is to pay the paralegal to sit there if it takes a long time to break it up into different things and get it all ready for an electronic filing. So I don't that's going to be a deterrent for that sort of filing.

MS. MARSH: And that does come up periodically. I love the electronic system. We use TEAS Plus for absolutely everything we can, but every now and then like Mary said we've got a 2F or something that's very much the exception to the rule and sometimes those 2Fs because they're

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waiting for evidence from business units, the stuff gets to you at the last minute or you've held out to the last minute hoping you could get more that's clearly not coming. It's easier just to go ahead and ship it off in paper form and let somebody else handle that, but we don't begrudge anybody the extra fee and we only do that once in a very blue moon, but there probably are going to be some exceptions like that that are always going to turn up. And we would pay for whatever the cost is of the administrative work and we don't at all mind doing that, and we try not to abuse the system of course, but there will always be some.

MS. BERESFORD: I think it probably would be useful for the committee to know I think the last time we looked at the percentage of electronic filing of responses to office actions was at about 60 percent. So we know that 40 percent of the filings come in on paper and 40 percent of them don't have large attachments, 40 percent of them aren't being filed at the last minute. I understand everyone's concerns because
nobody wants to lose an option, but in looking at it from the perspective of can we move people more toward this system because there are some really systemic advantages both to trademark owners and to the office for this. We think that there are reasons to go forward with this, but of course that's why we're talking to TPAC about it.

MR. MORRIS: The flip side of that issue, do you think it would be fair where you in fact you are submitting a voluminous amount of paper we in turn have to scan it.

MS. MARSH: Absolutely.

MR. MORRIS: So should we be able to charge a fee for our cost to get it into our system?

MS. MARSH: Yes. I completely agree with that.

MR. LOCKHART: Actually arguably that's provided for in your fees now because there is an hourly charge for work that doesn't fall within the four corners of the individual items that are listed up above and you could say if you submit

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more than X number of pages of attachments or exhibits and we have to scan it, it's going to be at the hourly rate.

MS. BERESFORD: That is another way to look at the fees. Again we are proposing a fee for the paper filings because having an across the board fee encourages electronic submission and in a sense it spreads the cost of paper filing onto everyone who chooses to file. So if you file a 100 page paper filing you pay the same amount as the person who files the 2 page paper filing. So it's just another way of looking at it, but again there's nothing wrong with thinking about -- except it's kind of hard to administer a per page type fee. Then you have to start keeping track of the pages in individual paper filings which has its own administrative cost, but it's something certainly worth thinking about.

MR. FARMER: I'm not trying to cut off anyone's question. I'm gathering that the sense of TPAC is that we find this concept interesting enough and don't such a big reason to try to spike
it now, that it would be reasonable for it to go
onto the next step where there would be a proposed
rule to look at.

MS. BAYLOR: I just have one more thing.
Sharon spoke earlier that if the paper filing came
in and they say they didn't submit the fee, would
it still be processed or would they be able to get
a letter and be able to submit that fee within 30
days. That's somewhat the same concept if they
were to have to revive the abandoned application
and they needed to file a request, they have to
file their request for an extension. So the
office would send them a letter letting them know
that they have to submit this payment by a certain
timeframe if they want their application to
proceed forward. I think if that option is
somewhat available and if they are filing on
paper, we'll be more prone sending out more 30 day
notices requesting the fee as opposed to if they
know they send in this request by paper and they
don't submit the fee that it will not be processed
if it's not done timely. So I think it would be
more work for the agency if we do accept the
paper, give them a letter you have to submit this
money within 30 days, and then we can go ahead and
proceed forward, it's going to put more work on
the office because I think we'll be sending out
more letters than getting rid of the concept of
them filing by paper, period.

MS. MARSH: And I think that's one of
those things you've got to build into the fee
time.

MS. BAYLOR: Right.

MS. MARSH: We need to think about all
of these costs. There's absolutely no reason you
need to be cutting people a special deal for
anybody out there particularly a trademark
practitioner who's responding to a 2 page office
action response which may be something as simple
as a clarification of goods and services or a
disclaimer and they're filing by paper and their
client is getting charged extra for that. The
clients need to wake up and take notice. All of
that, but all of the costs should be built into
that, and you're right, there are additional back
and forth costs unless something has been charged
to a deposit account or something along that line
and all of that needs to be taken into account.
But there are times, yes, we have filed those
voluminous 2Fs by mail. Mea culpa.

MR. FARMER: Let's go on to the next one
then, accelerated examination.

MS. BERESFORD: This is a rule that's
still in house. It hasn't been published for
comment because of some fee issues that are
associated with accelerated examination. For us
the sticking point I think in house is this
proposal has been discussed and we've looked at it
as being exception processing. Someone makes an
accelerated examination request, somebody gets
assigned to it and they shepherd it along. In
general the view of the office is we shouldn't
have exception processing, if we're going to have
a process for accelerated examination it should be
planned to be where you file a particular type of
application, he's handled by the computer, it's
identified by the computer, it moves through the
computer system. So when we initially wrote up
this rule, and I think we shared the rule with the
committee at the last meeting, we had a $500 cost
which was associated with doing exception
processing, assigning a human being to the
application and having that human being shepherd
the application along.

We're now considering what the cost
would be if we modified our IT systems for this
cost and I would assume that given the costs of IT
in this agency that the cost would be considerably
higher, but until we have those figures and until
we can go forward with this, the rule is still in
house and we're still considering it. Sharon?

MS. MARSH: The other update, we did a
draft rule and OMB has designated the original
draft rule with the $500 as significant and they
have some questions about whether this is
necessary given our very low pendency rate
currently and also the impact on all applicants
because if a few applicants are getting
preferential treatment that might slow down everybody who's behind them. So we're really just at a point where it's a wait and see. We're answering questions from OMB and as matters progress we'll keep you updated.

MS. BERESFORD: We're just trying to keep everybody on the committee up to date on where we are with this proposed rule.

MR. FARMER: Go ahead, Jeff.

MR. STORIE: Given the nature of our examination process and the need for publication and those kinds of things, I have clients who I think would like this idea. As was talked about I think in one of the pieces we got about the dynamics of trademark filing, ICUs are filed a lot of times emotionally. People get tied up in their new business venture and they're really pumped up and they're convinced they have to race their competitors to the courthouse and the only thing you can tell them is you're going to have your registration in a year they're completely undone.

No matter how many times you tell them, they still
don't get the fact that it necessarily doesn't
mean -- that they don't have in hand before they
go do their business. Those things are hard to
get them to understand sometimes but the emotional
part of that, I can see some people saying $500
and I can get in front of the line, let me do
that.

The thing I'm curious about though is
really how much benefit can we really give them in
light of the opposition, in light of the
publication requirements and how things are going
to work? Are we really just talking about saying
we'll have you respond back or first action back
in a month or is it going to be a whole different
kind of process? I don't think we can change
fundamentally how we examine a trademark so I'm
just not sure how much of a benefit we can create.

MS. MARSH: If I remember correctly too
from this, the onus is on them to respond to
office actions within a month also. So the
applicant bears some responsibility for moving the
process along too. It's not just a matter of
sitting back passively and waiting for the office
to do all of the work.

One thing I was thinking of, and this is
a little bit how our economy has changed, we're
somewhat victims of our own success. Many years
ago, and are some young people in this room who
may not remember this, IP work was not considered
glamorous, it was not considered interesting.
People did not want to talk to you about it at
cocktail parties. Now thanks to the glories of
branding, everybody's new favorite word, this is a
hot, hot thing. What this means is if somebody is
starting up a new business particularly if they
think they might be selling that business of
they've got interested investors, they want to
file at least a provisional patent application to
protect something. They want to be able to brand
the name of the company plus any notable products.
They want registration as quickly as they can get
it because they understand that looks good in the
eyes of the public. Even to be able to say that
they've applied for accelerated examination,
anything along that line that will look good in
front of investors or potential buyers is
something that this is chicken feed compared to
what they're hoping to get that kind of payoff on.

That's how the economy has changed. Ten years ago
this would never have come up. But this is the
way in the internet world things work now.

Initially I thought accelerated
examination, why do you need that? Things have
gotten so great. But as Jeff said, there may be
people out there who are seeing it differently
from a business point of view than we do and there
may be a market for that. We have to make sure
the system does not get abused and that may be
setting a realistic fee, maybe $500 is too low,
and it may be a matter of not getting more than an
extra month or two just because pendency is so low
anyhow, but there may be times when that's worth
it to someone as long as they understand what
their responsibilities are and realistically what
the timeframe could be.

MS. COHN: If I could just add onto
that, Debbie Cohn. The proposal as it currently stands I believe really calls for accelerated examination and then publication in less than 6 months hopefully, but not necessarily registration in less than 6 months, and the answer to that question really depends on your consideration of the next issue which is what are our obligations under the Paris Convention and it is an issue because right now we're at the point with TEAS Plus where we're publishing applications in less than 6 months and in a few cases they're actually going to registration. So we need to consider that issue anyway, but certainly in the context of accelerated examination and what it would mean if the acceleration only leads to publication and then things stop. So that's something that we would certainly want to consider.

MS. BERESFORD: And just for this committee's information, I believe that last month about 3 percent of our applications that were published were published in less than 6 months and the number is growing. We are in fact getting...
faster and faster as the workflow continues to be very efficient. So there are at least 3 percent of our people who are already getting to the publication stage prior to the 6 month timeframe and we expect to have that happen more and more often which is one of our issues.

MR. FARMER: Before we go to the next agenda item which is that 6 month issue, to continue the conversation on the previous one, one thing just speaking for myself individually and speaking for the committee that I like generally is anything that makes the process go along quickly because those of us here who experience trademark -- things are going pretty doggone fast right now and that's a credit to your administration. But folks in the business world still are here a year or 13 months and it's longer than they -- they shouldn't have expected that. I see opportunities for speed aside from this simply when you can realize your 21st century plan and so that things from notice of publication assuming on opposition through registration issuance go
faster, and I'm very interested in electronically
issued certifications of registration so that you
can just pop it out and it doesn't have to go to
printing and maybe you have an option that if
someone really wants the sheepskin so to speak
they pay an additional fee and they get a nice
looking little certificate, but still you can get
your PDF which you may need for certain domain
name reasons or other reasons right away and then
you're getting your registration faster even if
you don't have accelerated examination and if you
do and it doesn't mess you up on your regular
speed applications, that's gravy.

MS. BERESFORD: Of course the issue of
electronic certificates is one that's also under
discussion in the office and has a lot to do with
the roadmap that you heard about earlier. In
terms of our processing mapping, let me say that
we still have parts -- we've done this 2 year
processing mapping in trademarks, there are still
parts of that processing mapping that we're
putting into place which are going to further
reduce the time after publication. I fully expect that in the next year we will see back end pendency dropping further -- the registration pendency dropping further and some drop-off in the time between examination and publication. So I fully expect we're going to get faster. I think that is something realistic to expect.

In terms of electronic certificates, in internal discussions, one of the things that we've discovered is that as the way the roadmap proceeds, doing electronic certificate in kind of a rational way which means doing it as part of the improvement of trademark systems means putting it off for a while because the cost of doing it and doing it kind of out of order will slow down other parts of the roadmap. So that's been put on hold although we're still discussing and trying to realign things internally. But it's not something we've given up, we just think it will happen but the electronic certificates isn't going to happen right away, and that's where we are there.

MR. JOHNSON: I have a concern and it's
all about educating your client, but if you start charging them $500 on expected review, their expectation is going to be they're going to have the certificate in hand and not just get -- faster. All you're going to get is a refusal from the trademark office or an opposition and they're going to say but I paid my $500. It's not a reason not to do it but it's just managing that expectation which as we try to explain things to them as Jeff says he explains over and over that your trademark rights are based on years and not registration, it doesn't matter if you get the certificate today or tomorrow. I've spent my life telling clients that too and it doesn't seem to register. I just know that if they hear about this expedited process or even experience it -- even get one fast, faster you're now setting yourself up for the next 10 times when it doesn't go through that fast and they'll say why did I pay my $500?

MR. FRIEDMAN: Probably a related issue is if I exhibit it 5 weeks after it's submitted
and I give you a refusal then we're going to have some hurdles to overcome with the client as far as expectations. Obviously you can talk until your face is blue, but the fact you get to pay more money -- relationship to getting publication and registration but you're going to have to manage some more difficult expectations when they get that refusal in 5 weeks instead of 3 months.

MR. JOHNSON: That's what they're hearing, so I paid $500 to get to no faster. That's what you have to explain to them. That's just something we'll have to worry about.

MR. MARSH: That's when you tell them if they were filing a patent how bad it would be. This is how I manage expectations in my office. Every time the trademark whine, I tell them about patents and I tell them about Venezuela. Always my favorite example of how slow a trademark office can be. And that does at least let them see how much progress we've made in the United States.

MR. FARMER: Mary, you had a comment?

MS. DENISON: When I first heard about
this I did an informal poll of some ENTA (?) members and there was not very much interest in the procedure. Since then I personally have used the U.K. accelerated system twice for clients. When I told them it was going to save them a month, they still wanted to pay the money because in one case they had a potential licensing deal and they wanted to move it forward as quickly as possible. In the other there were some infringement issues. So in both cases they thought it was worth the extra money to pay the extra $100 even though I told them I didn't think it was worth it, but they made that call and they did it. So there may be more interest than I originally thought there was going to be.

MS. MARSH: And you actually got those a month earlier than you would have expected to?

MS. DENISON: They're in the 3 month transition period.

MR. FARMER: Sometimes you want to quicker for litigation purposes too because you want to get those presumptions as quickly as you
can that come with having an issued registration.

MS. BERESFORD: I think one of the other thing that -- needs to perhaps think about is if you have accelerated exam, what should be the limitations on it. Clearly we would have an accelerated examination process where you had to show exceptional circumstances to get accelerated exam, and maybe that's going to be in litigation or something is happening in your business model that your really need a registration for that purpose. If you limit it that way then you really limit down the demand and you make it a special process. On the other hand, if you pay us enough money and you get accelerated exam then you have the whole other set of issues that go with that because I don't want to have accelerated exam if it affects pendency for the person who's paid the regular application fee. They shouldn't have to suffer because of accelerated exam. Again as with most things in life, there's a whole array of ways that this could be done. The question is do we need to do it and how should we do it, and of
course this is why we're getting input.

MS. MARSH: The petition to make special
-- patents, didn't you used to have to give a
reason and you no longer do? Does anybody here
know?

MS. GARBER: I can speak up. I was in
charge of accelerated examination patents so I
know a little bit about it. In the old petition
to make special which wasn't completely replaced,
you had to give a reason, but you just had to
state it, here's my reason, I'm old. I'm sick.
There were reasons. What -- we replaced it, we
kept age and health as reasons for old
applications to make special, but under
accelerated examination now you no longer have to
give a reason, but what you have to do is the
preexamination search and the examination support
document where we ask the applicants to help bear
some of the burden of the examination, if you
will, before they come on board. But the old
petitions to make special aren't completely gone,
but you did have to state a reason. It wasn't
merely paying a fee. It was more than that. Does
that answer your question?

MS. MARSH: Yes.

MR. LOCKHART: I believe the Copyright
Office had an accelerated registration procedure
in anticipation of litigation and I realize they
don't do anything like the -- examination of
applications done here, but I wonder if it would
make sense for somebody to talk to the folks at
the Copyright Office and see what percentage of
those applications are requested to be done on an
expedited basis, how they handle it, does it cause
problems.

MR. FARMER: There's a big multiple
though isn't it, Tim, compared to copyright based
application fee to the accelerated?

MR. LOCKHART: The base fee is $40 per
work, so what it is for --

MR. JOHNSON: Isn't it $1,000?

MR. FARMER: I think it's at least a
multiple of which is a big difference than just
knocking it up 25 or percent.
MR. LOCKHART: But I'm just wondering if it would be worthwhile since they do it so they've got some real world experience to maybe just see what their experiences were. And I realize it's not an exact --

MR. FARMER: They don't look at right in those --

MS. MARSH: But they would have some understanding of the administrative costs and that kind of thing that might be useful.

MS. BERESFORD: We can call Mary Beth and ask her.

MR. FARMER: We're just at the exploratory stage. Would it be fair to say that the sense of TPAC is that we realize that we're at a very exploratory stage of this and it's worth exploring it further to get an idea as to what the fee would be like in the recommendation of the office and whether you feel that you could pull it off in a way that wouldn't create pendency problems for the general applications because I think that I would be surprised if there were
support on TPAC for slowing down regular applications to speed this up? Does anyone disagree with what I just said?

MS. BERESFORD: That's fine. Thank you.

MR. FARMER: Let's go on to the 6 month issue then.

MS. BERESFORD: We gave you some background material for this, but essentially under the Paris Convention we give priority rights to anyone who files based on a foreign application or registration if they file within 6 months of their first filing in their home country. One of the advantages of course is that you have advantages over maybe an earlier filed U.S. application. That application might be suspended and your priority based application would go to publication and possibly registration ahead of the later filed U.S. application. Let me rephrase that -- the earlier filed U.S. application filed after your priority period. Is that too confusing? Should I start over from the beginning? Does everybody understand because I
didn't say that very clearly?

The question of course is do we have an obligation as we publish more and more things before the 6 month priority is up -- do we have an obligation to check and see if anything has been filed with an earlier priority date? Do we have an obligation to hold those things if we find something with an earlier priority date? What are our obligations under the Paris Convention? It's a serious issue in this country mostly because in Lynne's opinion it changes the costs of opposition which can be a fairly hefty amount of money. If you give the priority filer the right, then the later filed -- the earlier filed but with no priority right U.S. applicant has to bear the cost of the opposition and this is serious money here. So making this decision is one where you're balancing what do you think are obligations are under the Paris Convention. Do we have an obligation to these priority filers to check and make sure we're really honoring their priority?

I can tell you from my own experience in
a number of countries, nobody cares about this. They register and if you have priority rights you are expected to come in and defend those priority rights. So there is certainly precedent in other countries for just saying you have a priority right but that's your problem and your cost if the U.S. applicant manages to get to publication or registration ahead of you.

MR. JOHNSON: So Lynne you know of no trademark office that does this check that you're talking about from around the world, any other Paris Convention?

MS. BERESFORD: I do not know of any other -- that would be a fair question. Let's face it though, I don't know about that many -- there are hundreds of trademark offices, I only know of a few, and various trademark offices and various trademark systems have various ways of allocating costs. Here it's pretty clear that there are very serious cost consequences to doing this one way or the other as all of you know better than me. But I do know of no country, even
common law countries like the United States, that
have examination processes -- I know of no country
off the top off my head where applications are
held up in order to publish and register or
there's a check done at the 6 month period to make
sure that there is no priority filing. Amy?

    MS. COTTON: I do not know of any.

    MR. FARMER: Sharon?

    MR. JOHNSON: So there's no obligation.

Maybe some people would consider it a service to
be alerted that there's now a pending application
that's there, but you'd have to pay an extra cost
to have you go back and check.

    MS. BERESFORD: If we wanted to have a
service alerting people, that would be something
we could offer if wanted to do that and of course
it wouldn't be a free service, we'd have to charge
for it, but the question here is are we meeting
our Paris Convention obligations, and again we
sent you all the language out of the Paris
Convention and out of Section 44 so you could look
at it and make sure that we are all on the same
page about whether or not we have an obligation to
check at the 6 month period to make sure there are
no Paris Convention obligations out there and then
if we find something, if we find a priority filing
for the same or similar mark or for the same or
similar goods and services, do we have to hold up
the U.S. applicant and go forward with the Paris
Convention filing. So those are the questions for
TPAC. I haven't been clear, but hopefully all of
you know enough about this subject matter that you
can answer the question.

MR. FARMER: Lynne, has there been or
would there be any analysis from the General
Counsel's Office and the -- Office as to what they
think of this or do you think it's really best for
only TPAC?

MS. BERESFORD: Jim's office would
necessarily be the office that would do this. It
would probably come out of our Office of
International Affairs that would be the office
that would go analysis of this. Have they asked
you for a statement on this, Amy?
MS. COTTON: Not formally, no.

MS. BERESFORD: Amy Cotton has just indicated that we have not formally asked for an opinion out of our International Office on this particular issue.

MR. FARMER: The reason I asked that is that I wonder if we may not be better advisers on policy as opposed to writing a judicial opinion. We're all lawyers and practice trademark law, but I think the feedback that's going to come from us is probably going to be more in the nature of what would work well. Does anyone have any thoughts on that concept before we discuss the merits generally of this issue? It was discussed some yesterday in International Subcommittee and there were some good thoughts there. I sat in on that for a while and I'm interested in the reaction of the other TPAC members to this. When I actually started running hypotheticals in my mind where someone would end up losing their opportunity in the Paris Convention it became hard for me to come up with a line of circumstances where it would
actually be a problem because you figure if
someone is filing a U.S. Application that gets to
registration in 6 months, it's probably going to
be a 1-A application where they file their proof
up front. If they go 1-B, it would be almost
impossible them to get through in time. Which
means that unless they're lying or mistaken that
they have a usage date that predates their date of
filing and if that's the case it just seems like
the entity that the Paris Convention writes is
rarely going to be in a circumstance where they
can win. So even if we put them in a position to
have to file a petition to cancel, they're rarely
going to look at it and say, yes, we can win that.
Or at least they wouldn't know that they'd have to
gather information through discovery to find out
that it would be difficult to win. So it was just
hard for me to see.

MR. JOHNSON: Not if you had an intent
to -- application.

MR. FARMER: Those wouldn't tend to get
through in 6 months.
MR. JOHNSON: It would get published in 6 months, it's possible to get published, and then they're gone. There's no opportunity to oppose them. I worry about that, and you try to again remind your clients about this possibility that there's -- I only recall a couple of times that it's happened that somebody's shown up, but I don't know if we have an obligation to do anything. That's why I asked Lynne the question do other trademark offices see it because nobody else seems to see this obligation and all the other hundred and -- worth looking at, but if there are 190 signatories to the Paris Convention and none of them see this obligation, that would answer the question for us.

MS. BERESFORD: Maybe we would query WIPO on this issue and see what they have to say about it because again it's just my experience with the offices that I've seen, I don't know of any that hold up applications for this Paris Convention reason.

MR. FARMER: And not only that, but if
we were not going to put them in a position of
filing a cancellation petition, you'd have to stop
before publication.

MS. BERESFORD: Right.

MR. FARMER: So I don't know what
percentage of applications get to publication or
approved for publication within 6 months.

MS. BERESFORD: Three percent right now.

MR. FARMER: That's going to climb.

MS. BERESFORD: It's going to climb.

MR. FARMER: And I don't think we want
to slow down our system that Lynne has worked so
hard to speed up.

MS. BERESFORD: That is definitely a
consideration that it's going to add to our
pendency.

MR. FARMER: To take us into TPAC, I'm
not sensing anyone throwing up stop signs saying
that we should try to stop now and keep things
from going to publication within 6 months. Does
anyone see that differently?

MS. BERESFORD: We'll look more into the

legal -- we'll get an official legal opinion if we can and we'll talk to WIPO about this and see if they have any sense of how this particular clause of the Paris Convention operates in countries around the world.

MR. FARMER: Shall we go on to the next issue? Hearing no objection, we're off to V, report of recent changes/events, A, consistency mailbox.

MS. BERESFORD: Our consistency mailbox. That is a mailbox that we put up. We put out an announcement about it, and in limited circumstances where it's the applicant that it believes that it's getting inconsistent treatment in two of its applications or in an application it recently published in a recently registered mark, they can email the mailbox and under the procedure we've set up we will put together a little committee that will look at the complaint essentially. This was an attempt, and at the moment it's very limited as to who can file into this mailbox. It has to be an applicant with two
applications or an application -- or three
applications or something, or a recently
registered mark can do this. We limited this
because over the years probably the most
consistent quality complaint we've had is our lack
of consistency and we thought here's a possibility
to actually start addressing this in another way.
But we didn't want to make it too easy because we
weren't sure we wouldn't get a thousand things
dumped into it and we want to be prompt in
addressing these issues. So we've very narrowly
defined what could come into the mailbox, and as
of last week we had two items in the mailbox. Now
we have four. It opened on the last day of
September and we're now 20 days into October and
we have had four items in the mailbox which I
assume we're dealing with in the way that we said
we would. So I'm just giving the committee a
heads up on this what we thought was going to be
maybe the flood of complaints has turned out to be
the trickle. Of course, it may be just that
people haven't -- we sent out a mailing about this
to all the people who are on our trademark mailing list. We have several thousand on that mailing list. We sent that out. We put out an announcement about it, et cetera, but sometimes it takes a while for people to figure out that this process is available. But just to let you know, we haven't had a lot of action in the consistency mailbox as yet.

MS. PEARCE: Lynne, we were talking about this one at lunch which is one of the great virtues of lunch, you get lots of different points of view, and one thing that came up was that those of us who've had issues with this in the past usually have been able to work them out fairly easily with the examiners. Is there a requirement that they discuss this with the examiner first or is it encouraged that they discuss it with the examiner first before they go to the consistency help line?

MS. BERESFORD: You mean in terms of our announcement? Everyone is always encouraged to talk to the examiner first because if you can work
it out with the examiner then your problems are solved. Sometimes you have two different examiners and you can't get the problem solved easily and that is again something that we get occasional complaints about, examiner A won't do what examiner B is doing and they won't talk to each other and they both insist they're right and so on. So this was one of the objects of this mailbox, although again business hasn't been good in the consistency mailbox which I'm happy about. But we do encourage the applicants to talk to the examiner first.

MS. COHN: That was actually in the announcement itself, that encouragement. Also this is limited to substantive issues and we specifically excluded identifications of goods and services issues because those things generally are worked out between the examining attorneys and that would be just a humungous flood into the mailbox if every --

MS. BERESFORD: Although if business doesn't pick up, Debbie --
MS. COHN: Actually, Lynne, and Cynthia, you said that four messages were in that mailbox. Actually one of those messages was from an internal examining attorney just simply copying the mailbox on a message to this manager, so really it's even fewer than four.

MS. BERESFORD: So we're not doing too well on the consistency mailbox business. Again the plan was that if we went through a period of time and we didn't get much response from the public to this mailbox, we'll expand the criteria so that more things can come into it because again we want to expand what we consider and when we talk about consistency we want to keep moving the bar up and getting the feedback.

MR. FRIEDMAN: Since business is slow, do I hear a motion to -- consistency mailbox or do we wait a few months? I know the first two -- was the fourth one earmarked to the committee or is it still being --

MS. COTTON: I think it just came in today so I don't think anyone has looked at it.

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yet.

MS. BERESFORD: So we encourage you if you encounter inconsistencies in your practice, please feel free to email the consistency mailbox. We'll be happy to hear from you.

MR. FARMER: Shall I go on to the next item?

MS. BERESFORD: Rule packages. I'll turn this over to Sharon. We've talked about almost everything that's in progress. Is there anything?

MS. MARSH: There's not a lot to report. We talked about the accelerated examination rule and a certificate of mailing rule. Earlier this year we issued notices of proposed rule making, a housekeeping package, and some rules on signature requirements, most of that just codifying current practice, and we're developing responses to the comments and are moving forward with the final rule and the committee of course will get a copy of the final rule at the appropriate time.

The only one I think that's still
pending is the proposal to change the request for
reconsideration after final procedure. If you
recall, our initial proposal was that you have to
use TEAS and respond within 3 months or request
for reconsideration after final. Response to that
was pretty uniformly negative and we're still
considering what options we should move forward
with.

   MR. FARMER: Anything in response to
that? Legislation?

   MS. BERESFORD: I think we already had a
legislation report from John Dudas.

   MR. FARMER: We can check that one off?

   MS. BERESFORD: Yes, we can check it.

   MR. FARMER: Are there any questions
from TPAC members, if any, on any other issues
before the office? Any other information that
Lynne sent out or other things?

   MR. LOCKHART: I do not have anything
else.

   MR. FARMER: In that case, let's go to
VII. Are there any members of the public who've
joined us or other who work for the office who
want to make any comments or pose any questions to
TPAC to the folks here? In that case, I will
thank you all for coming. I want to thank all the
folks at the PTO who put so much time and effort
into preparing reports, talking with us on the
phone, educating those of us who are new, and we
thank you for your service and look forward to
working with you more, and I'll declare the
meeting to be adjourned, and after we can clear
the room, TPAC would like to reconvene in
executive session just to do some planning stuff.

(Whereupon, at 3:00 p.m., the
PROCEEDINGS were adjourned.)

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