

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, August 11, 2023

1 PARTICIPANTS:

2 TPAC Members:

3 DAVID CHO, Chair

4 ADRAEA BROWN, Vice Chair

5 TRACY L. DEUTMEYER

6 RODRICK J. ENNS

7 JOMARIE B. FREDERICKS

8 DEBORAH GERHARDT

9 DONNA GRIFFITHS

10 AMY HSIAO

11 DANA BROWN NORTHCOTT

12 Union Members:

13 CATHY FAINT, NTEU 245

14 HAROLD ROSS, NTEU 243

15 USPTO:

16 KATHI VIDAL

17 AMY COTTON

18 DAN VAVONESE

19 GLEN BROWN

20 SEAN MILDREW

21 GERARD ROGERS

22 CHARLIE THOMAS

1 PARTICIPANTS (CONT'D):

2 DAVID GOODER

3 GREG DODSON

4 DERRICK BRENT

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1 P R O C E E D I N G S

2 (11:02 a.m.)

3 MR. CHO: Good morning. Welcome
4 everyone, to the second public meeting of 2023 of
5 the USPTO Trademark Public Advisory Committee,
6 also known as TPAC. My name is David Cho. I am
7 the Chair, and in my other job, an Assistant Vice
8 President and Senior Legal Counsel for AT&T. I'd
9 like to take this moment to introduce my esteemed
10 colleagues of TPAC, beginning with my exceptional
11 Vice Chair, Andrea Brown. She is the Assistant
12 General Counsel at Harley Davidson Motor Company.
13 Following her in order of seniority on TPAC are
14 Tracy Deutmeyer, shareholder of Fredrikson &
15 Byron. Next is Jomarie Fredericks, Deputy General
16 Counsel, Chief Intellectual Property Brand Counsel
17 at Rotary International and the Rotary Foundation.

18 Next class of three is Rodrick Enns, a
19 partner at Enns & Archer. Dana Brown Northcott,
20 Vice President and Associate General Counsel of IP
21 at Amazon.com. And then our first term class
22 Deborah Gerhardt, Reef C. Ivey II Excellence Fund

1 Term Professor of Law at the University of North
2 Carolina School of Law. Donna Griffiths, IP
3 specialist at Cytiva Technologies and virtually
4 Amy Hsiao, a partner at the Eligon IP firm. I
5 also want to welcome our union reps, Harold Ross,
6 President of NTEU Chapter 243 virtually, and
7 virtually Cathy Faint, Vice President of NTEU
8 Chapter 245.

9 Finally, I'm very thankful, as always,
10 to Commissioner David Gooder, USPTO leadership,
11 and personnel for their incredible support. I'm
12 very fortunate and extremely honored to work with
13 such esteemed colleagues as well as my TPAC
14 comrades. We are, you know, going through
15 uncertain economic times, but despite that, we are
16 still shaping and protecting intellectual property
17 rights in the U.S.

18 Let me take this moment to remind you to
19 submit questions during our meeting today by email
20 to TPAC at TPAC@USPTO.gov. Again, it's
21 TPAC@USPTO.gov. Now, it's my honor and privilege
22 to welcome Kathi Vidal, the Undersecretary of

1 Commerce for Intellectual Property and Director of
2 the USPTO, who will provide opening remarks.

3 MS. VIDAL: Thank you, David. Really
4 appreciate the introduction. And thank you to all
5 the members at TPAC. I want to thank you for your
6 time, for your engagement, for your great ideas.
7 It really is a true collaboration that we have,
8 and I'm grateful for it as I know my colleagues
9 are as well. I also wanted to extend a big thanks
10 to the entire Trademark office and the TTAB staff
11 for your hard work and smart work over the past
12 year.

13 Our team has been busy making the
14 transition, as you all know, to the new Trademark
15 examination system, TM Exam (phonetic). It
16 combines several aging legacy systems into one
17 cloud-based solution. And as we meet regularly
18 and talk about the importance of moving off of
19 legacy systems, it is so critical to all the great
20 innovations we'd like to deliver in the future.
21 The team has also successfully introduced the new
22 pre-registration response periods under the TMA,

1 and they continue to explore with the unions how
2 to reduce the unprecedented inventory of trademark
3 applications that surged during the pandemic.

4 Thank you also to our unions and their
5 representatives who are here today. Jay Besch of
6 245, Harold Ross of 243, and Pedro Fernandez of
7 POPA. Really appreciate the great work that we've
8 done recently to rethink the relationship between
9 the Trademarks office and the unions. We know
10 that you want to support the employees within our
11 organization, as do we. It's critically important
12 to us that we do that while ensuring that we're
13 continuing to advance our mission and vision. So
14 thank you for the deeper collaborations. I know
15 you've spent a lot of time recently on this, and I
16 look forward to meeting with you next week to
17 continue our dialogues.

18 I just want to talk about, a little bit
19 about the role of the TPAC because I feel like the
20 importance of the TPAC is more critical now more
21 than ever. So, so excited that we've got so many
22 incredible people on it. You are providing

1 essential guidance as we continue to adopt
2 fundamental changes to trademark law. Your
3 suggestions are crucial as we improve our
4 operations and broaden our engagement with new and
5 aspiring entrepreneurs, as we deal with the
6 metaverse, as we combat scams and counterfeiting
7 both in the U.S. and across the globe. There's so
8 much attention to growing new businesses, and we
9 need to adapt to that. We need to adapt to new
10 technologies. We need to think about new ways of
11 working to ensure we better serve our
12 stakeholders, whether it be large companies that
13 are extremely successful in our country as well as
14 all the emerging ones. So thank you for all the
15 great work that you do.

16 In terms of innovation in America, it's
17 something that is growing now more than ever. I
18 just want to put what the trademark community is
19 doing into the larger context. So the U.S
20 Government has made one of the largest increases
21 in federal spending on innovation on
22 entrepreneurship in our entire nation's history.

1 This is due to the passage of the Chips for
2 America Act, the Chips and Science Act, the
3 Inflation Reduction Act and the Infrastructure
4 Bill.

5 I'm a member, as I believe most of you
6 know, of the National Advisory Council on
7 Innovation and Entrepreneurship. That has taken
8 on new meaning. That group is now working on a
9 national entrepreneurship strategy, and we are
10 doing that at speed and scale and working with the
11 Secretary of Commerce, Gina Raimondo on that. We
12 need IP protection to play an important role in
13 everything we're doing with that strategy. So
14 look forward to engaging with you on that and
15 making sure that IP continues to be a key driver
16 of entrepreneurship in our great nation.

17 The council also discussed the \$500
18 million that will be invested this year alone in
19 new regional innovation hubs that will be located
20 throughout the country. This commitment and new
21 innovation hubs will grow to 10 billion by 2025.
22 The USPTO is involved in working with EDA to set

1 up and select those hubs. In addition to the
2 hubs, new Manufacturing USA institutes will be
3 established in critical technologies, especially
4 semiconductors. And the National Science
5 Foundation has created a major new division aimed
6 at commercializing research. The Technology,
7 Innovations, and Partnerships Directorate or TIP.

8 Its goal is to ensure that U.S.
9 Investments in R&D are developed into new products
10 and services that are produced in the United
11 States. I just wanted to let you know that even
12 though a lot of that money has not yet been spent,
13 what we see over time is that when the government
14 invests, private industry follows. And we're
15 seeing that right now. The investment U.S.
16 Government is making is leading to a resurgence in
17 private sector investment in research and
18 development and new high technology manufacturing
19 capacity in almost every state in our country.

20 The White House has chronicled \$503
21 billion in private sector investments in new
22 domestic production facilities, including 231

1 billion for semiconductors and electronics, 133
2 billion for EVs and batteries, 103 billion for
3 clean energy, 19 billion in biomanufacturing, and
4 14 billion in heavy industry. The Reshoring
5 Initiative reported that Reshoring and new foreign
6 direct investments in new plant and equipment in
7 the United States increased by 53 percent last
8 year alone. This is a record level. 364,000 IP
9 intensive industrial jobs were brought back into
10 the United States. The Reshoring Initiative
11 projects another 400,000 new jobs will be brought
12 back in 2023.

13 So I just wanted to share some of that
14 because often I know we're dealing with the IP
15 ecosystem itself and how to make sure we're doing
16 everything that we can to serve our stakeholders.
17 But just wanted to emphasize the importance of our
18 work even beyond what we're doing in the IP
19 community. The importance of having a strong IP
20 ecosystem that can really support all of these
21 initiatives, to make sure that when we're out
22 there granting money, when private industry

1 invests, that we're protecting all of that with
2 IP, and especially, and importantly, trademarks.

3 It means there's a lot more businesses
4 that are going to be out there for all of us to
5 serve. So it's an exciting time. It means we
6 need to do more to get out there and reach those
7 businesses so that they understand the importance
8 of IP and what a trademark can do for their
9 businesses. I will say, and I apologize if you
10 hear my dog bark, I just got a new -- I adopted
11 another dog. So if you hear him barking, it's
12 because he's very new to the family. So I just
13 want to say I had a meeting recently in Florida,
14 and I met with a woman who had started a tutoring
15 business, and she was telling this great story
16 about how she started it locally in Florida, but
17 she didn't think to get a trademark. She didn't
18 think to get a U.S. national trademark.

19 So she was only protecting her brand
20 locally. And what happened was she was part of a
21 military installation and she moved, and she
22 wanted to take her brand globally and nationally.

1 And she realized as part of that she had to change
2 her name. So it just is one of the many stories I
3 hear about how people are realizing every day the
4 importance of trademark protection and the
5 importance of all the great work that you do. I
6 do want to also mention USPTO's Council for
7 Inclusive Innovation, appreciate the
8 collaborations we have with TPAC on that as well.

9 Our goal is to expand involvement in the
10 innovation economy and bring more innovation to
11 impact. And when we talk about innovation, it is
12 always about entrepreneurship, which trademarks
13 are critical to. It's about creativity that
14 copyrights are critical to, as well as
15 technological innovation and design innovation
16 that you need design patents for. So it's all of
17 it that we're working on. There's tremendous
18 enthusiasm for the work that we're doing and the
19 programs we're rolling out. Most recently, we
20 announced the IP Ambassadors Program here at the
21 USPTO where we can work across the country with
22 our workforce to make sure that we're getting to

1 everyone with education on IP, education on
2 trademarks.

3 I also want to let you know that we've
4 recently expanded our PTRCs. So these are our
5 Patent and Trademark Resource Centers that are in
6 libraries across the entire country. We now have
7 a campaign where I am sending letters to libraries
8 around the country that do not yet have PTRCs.
9 And as part of that, we're trying to get training
10 everywhere, especially in areas of the country
11 that we're not right now serving, so we can offer
12 those services through those libraries.

13 I was just last week, actually two days
14 ago at the Hagley Museum in Delaware, and I showed
15 up at the wrong entrance due to some issues with
16 traffic. The Uber dropped me off at the wrong
17 entrance, and as a result, I had the opportunity
18 to take a golf cart ride with the head of the
19 Hagley. And by the end of the golf cart ride,
20 when I finally got to the place that I was
21 speaking on our women's entrepreneurship
22 initiative, I had talked to him about the

1 importance of ensuring that when he's doing his
2 programming, that he's doing with Harvard
3 University to educate entrepreneurs and businesses
4 in Delaware, that we make sure that IP training is
5 there. And he agreed, and he was already doing a
6 lot of IP training. By the end of the session, he
7 was committed to setting up a PTRC at Hagley. So
8 there's just so much excitement. We're all
9 aligned right now to make sure that IP is playing
10 the important role that it plays in our country
11 and our economy.

12 In addition to that, I just want to
13 touch on a couple other things. One, our women's
14 entrepreneurship initiative. I look forward to
15 working with TPAC and everybody here who's
16 attending on ways we can scale that work so that
17 we can get out there in more communities and make
18 sure that people have the support they need when
19 it comes to identifying their IP, either through
20 our IP identifier tool or otherwise, and ensuring
21 that they have the tools and resources to use IP
22 to support their businesses and to support growth.

1 Same thing with education. We're working on K
2 through 12 education throughout the entire
3 country.

4 So far in 2023, 340,000 students have
5 enrolled in programs like Camp Invention. The
6 work that they're doing there is phenomenal. I've
7 had the opportunity when I'm out in communities to
8 meet with these kids who are seven, eight, nine
9 years old and hear about what they're doing. I
10 know I've shared the story about the question I
11 got from the nine-year- old about how we can
12 protect his merch on the Internet. I have a new
13 story. I was in Boston recently, and I love what
14 they were doing, which was not only were they
15 teaching the kids about IP and trademarks and the
16 importance of brands, they were having them set up
17 stores and work on branding with their
18 storefronts.

19 In addition to that, they were working
20 on anti- counterfeiting. So they first had to
21 design a copycat that was going to steal their
22 idea, and then they had to design an invention to

1 catch the copycat. So it was just so interesting
2 to see these kids internalize what it means to own
3 IP, what IP can do for you, and then the
4 importance of making sure that we respect IP and
5 that we crack down on any of the copycats. Very
6 exciting. As you know, we have a big focus when
7 it comes to anti-counterfeiting efforts.

8 Again, working with the PPAC on that or
9 the TPAC on that. Really been engaged with U.S.
10 Stakeholders. We have our Go For Real campaign,
11 which has been phenomenal. We introduced for the
12 first time ever a request for comments so that we
13 can hear from stakeholders on what more we can do
14 to combat counterfeiting and piracy. So really
15 looking forward to reading through those comments,
16 having discussions with the TPAC on that and
17 figuring out a path forward. And then of course,
18 we have the Trademarks for Humanity, which was an
19 idea that came from the TPAC on what more can we
20 do to incentivize people to build brands, to start
21 companies, to solve world problems.

22 And so, that was a definite

1 collaboration between Trademarks and the TPAC and
2 just really appreciate the focus on that. This
3 year we're focused on green technology. So
4 looking forward to reviewing the submissions and
5 celebrating those who are using brands to advance
6 innovation in key areas that we need. You need to
7 look no further than what we experienced recently
8 in D.C. with a tornado watch that we had to send
9 everyone home to what's going on in Maui right now
10 with the fires. Every day we see the impact of
11 the climate. So it's just incumbent upon us that
12 we work even harder to make sure that we are
13 utilizing IP to the extent possible to solve for
14 these crises.

15 I know you're going to hear a lot from
16 Dave Gooder and Amy Cotton and others on all the
17 great work we're doing within the Trademarks
18 Department. What we're doing to reduce pendency
19 and inventory, that is a true collaboration with
20 the unions. There are a lot of great ideas we
21 have. We want to make sure we implement them in
22 the right way. We've done a lot of hiring, we're

1 revamping our training, and that's been extremely
2 effective and impactful, but there's a lot more we
3 can do. We see a lot more opportunities, and
4 we're working really hard with the unions to come
5 up with solutions so that we can do more with
6 resources, with creativity when it comes to
7 resources, with creativity when it comes to the
8 job of our trademark examining attorneys. So
9 really looking forward to all of that.

10 You'll also hear about us intensifying
11 our IT modernization. That's, again, extremely
12 important. We continue to phase out TRAM. We are
13 84 percent of the way there. We have a new search
14 tool for examiners that replaces XSearch, that's
15 been developed. We look forward to that. We have
16 new ideas on how trademark examining attorneys can
17 search more effectively, different algorithms they
18 can use. And we're always thinking about ways we
19 can improve the great work that we're doing.

20 And obviously, we also want to boost the
21 trademark register protection. And I know we're
22 working really hard on that. I know Amy's leaning

1 in on that. With sanctions programs, we're
2 thinking creatively about what more can we do
3 within our authority and we welcome any feedback
4 from the TPAC and from anyone, quite frankly, on
5 all of that. I will remind folks that I have an
6 open line of communication. If you have ideas,
7 please send them my way. I'm not going to solve
8 for anything by myself. I'm going to work with
9 all these amazing people that you see in the room
10 here today to vet those ideas, to think about how
11 we can do better. There's an Engage with the
12 Director web page, or you can just email me
13 directly at Director at @USPTO.gov.

14 And then lastly, Fee Setting Authority.
15 Thank you to the members of TPAC. I know that
16 when we go through Fee Setting Authority, which we
17 must do to stay up with all the technologies we
18 need to adopt, with everything that we need to do.
19 I know it takes a toll on the TPAC. It's a lot of
20 work. It's a lot of work for Trademarks, it's a
21 lot of work for the TTAB and a lot of work for
22 TPAC. So thank you for all your great work and

1 input on that. A big thank you to all of you.
2 I'm so glad that Derek can be in the room with you
3 today representing the front office. I'm on
4 travel. I'm going to Ohio to our National
5 Inventors Hall of Fame. Soon we've got a couple
6 days of programming to see what more we can do to
7 collaborate with them. Then I'm off to Southern
8 California to World of Barbie to do an INTA event
9 on the importance of IP. And then I go to Brazil
10 and Chile to work on infrastructure and IT, IP
11 systems around the world, which is critically
12 important to everything we're doing.

13 So I appreciate being able to tune in
14 here remotely and wish you a successful day.
15 Thank you again for all you do. MR. CHO: Thank
16 you, Kathi. Sorry about that. Dave, please take
17 it away.

18 MR. GOODER: Okay. Thanks, David.
19 Thanks, Kathi.

20 : Hi, everyone. Greetings. I'm David
21 Gooder. I'm the Commissioner for Trademarks here
22 at the USPTO. I'm glad you all could join us in

1 the room and virtually. So today, as we've done
2 in the past, we're going to cover a number of
3 things and -- does work, yay. In our trademarks
4 management report and the broad areas of which are
5 we're going to look a little bit at how things are
6 going for this fiscal year, which we are just
7 entering the third. Actually, we're not just
8 entering, we're a month into the last calendar
9 quarter of the fiscal year. So we'll look at how
10 our business operations are doing to date this
11 year. Then that has a lot to do with filing, new
12 filings, et cetera, and our staffing.

13 Then we're joined by Sean Mildrew, our
14 Deputy Chief Financial Officer, who's going to
15 talk a bit about how we're doing financially,
16 including some conversation about the progress of
17 the fee setting process itself, and a bit about
18 how Trademarks finance or the PTO's finance works
19 relative to all that. And then finally, we'll
20 have updates from trademark operations, which is
21 all about the examination and registration process
22 and then examination policy and administration and

1 IT who's going to update us on a number of IT
2 developments, which I think are really exciting,
3 and we're very happy. Kathi alluded to a couple
4 of those in her comments, and Greg and his team
5 will dig in more. So with that, let's jump in.

6 So the one thing that lots of people and
7 we all wanted to keep an eye on is how are
8 trademark applications going during the year. To
9 a private company that's sort of equivalent to
10 sales to us. That's what drives so much of what
11 we do. And the difference is that we are subject
12 to what's going on in the economy. So you can
13 have ups and downs, but as you can see from this
14 chart, by and large, for a long period of time, we
15 have been on a fairly steady growth pattern. You
16 all are aware of the massive spike in applications
17 late in 2020, early '21, and again in the
18 following fiscal year.

19 This year, fiscal year, we are now
20 projecting that we'll probably be about 730,000
21 classes. That's not applications, classes which
22 we track, which more closely aligns with the

1 actual workload as opposed to applications
2 themselves, which make sense to us on the outside
3 when they come into the office. It's the classes
4 that drive a lot of the work, and that's about 7
5 percent below fiscal '22. A lot of factors,
6 obviously, the economy and how things are in
7 various parts of the world, which we'll talk about
8 in a second. But that's our latest projection.

9 This is a monthly look at the same
10 thing. And what's interesting about this, if you
11 follow this, this goes back a number of years, but
12 if you look at this on the right- hand side,
13 you'll see a number of starting with the you see
14 the spike that occurred in '20, late '20, early
15 '21, and then you still see a lot of months above
16 normal. So it wasn't just one month of spike that
17 raised our inventory so greatly. It's been a
18 great deal of them. Now, this has been generally
19 trending down since then, back to more normal
20 levels. But you can see even in the last four or
21 five months, there were significant months of
22 filings. That has an impact on how quickly we can

1 work our way through the inventory of applications
2 and pendency that's related to that, et cetera.

3 So it's good news from a standpoint of
4 there's still a very healthy inflow of
5 applications. It does challenge us in terms of
6 workload. Now, if you break that down by the
7 parts of the world, which we think is important to
8 do, for the reason that we have people who file
9 here from over 200 countries and so just the
10 U.S.'s economy is while it's a significant part of
11 our situation, it's not the only part. And so,
12 you'll see the top line there is what's going on
13 with the U.S., the next line down, which is a
14 reddish colored line, is China. And then the next
15 line down, which is kind of goldish yellow, I
16 believe, is Europe. And that's a broad definition
17 of Europe. So not just the European Union, but
18 sort of everything on the continent that we would
19 think of. So including Switzerland, Norway, et
20 cetera. And then you see the green line, which is
21 Asia Pacific without China included in it. And
22 then the bottom line is the Americas without the

1 U.S.

2 So you can see a fair amount of
3 stability in a lot of areas. And at the same
4 time, you see, for instance, in Europe in the last
5 couple of quarters or last, a drop in China is
6 going kind of increasing and decreasing. Even the
7 U.S. is doing a similar thing. It's very up and
8 down. It is not consistent throughout the fiscal
9 year. So if you smooth all that out, you can see
10 that the U.S. accounts for about 64 percent of
11 filings. China is about 15 percent, Europe, 11,
12 Asia Pacific without China, about six, and the
13 Americas without the U.S. about 3 percent.

14 In terms of our people, we continue to
15 grow because our applications and work level has
16 grown. And all of the things that we do for the
17 trademark ecosystem, we're now at about 1137 total
18 employees, about 764 examining attorneys, and 87
19 of those were onboarded in fiscal '23. There's
20 now -- the most recent class Dan will talk about
21 has now started in the academy, and we are
22 currently planning to hire 50 to 60 more examiners

1 in fiscal '24. In fact, recruiting has already
2 started for that. The pie chart just gives you a
3 breakdown of how all of the people within
4 trademarks.

5 As you know, Trademarks was the first
6 organization in the federal government to start
7 teleworking about 25 years ago, maybe almost 26,
8 and continues that day by a statutory program.
9 Give or take about 90 percent of our people
10 telework full time. Great number of people will
11 telework a day, two, three days a week, depending
12 on what they need to do and where they need to do
13 it. What you can see in this chart, though, is
14 where our examiners are located, actually our
15 people, not just examiners, but where they are
16 located. And we cover a huge part of the U.S.
17 Including Alaska, Hawaii, Puerto Rico.

18 And I think that's -- we view that as
19 quite important because the more diverse our
20 employee base is around the country, the better
21 our perspective and the more we can bring to the
22 trademark process itself. Now I want to switch

1 gears a little bit and introduce you to Sean
2 Mildrew, who is our Deputy Chief Financial
3 Officer. And we're going to pass him the remote
4 and we'll turn it over to Sean.

5 MR. MILDREW: Great. Thanks, Dave.
6 Good morning, everyone. Glad to be here with you
7 today. I have just a few slides that I'm going to
8 use for today's presentation. An update on the
9 financial management status. We're going to talk
10 about the fiscal year '23 status with quarter
11 three results and projections for the end of the
12 year based on quarter three results. Touch on the
13 new strategic plan that we've put a lot of effort
14 into and then talk a little bit about what's on
15 the horizon. The fiscal year '24 budget status,
16 fiscal year '24 starts October the 1st, and so
17 we're watching congressional action on that. And
18 then the planning for our new budget cycle for
19 fiscal year '25. We've started that effort in the
20 spring and formulation continues on and then touch
21 a little bit on fee setting.

22 So I'll try to be brief, but just by way

1 of scene setting for this financial management
2 update, I just wanted to for folks who might be
3 new or just a reminder for folks who've been here
4 for a while and heard us talk about the finances,
5 just to set the scene, I wanted to mention that
6 the USPTO in some ways is like a business, right?
7 So, for example, we're fully funded by the fees we
8 collect. We receive no direct general receipts
9 from the treasury. We're 100 percent fee funded.
10 Demand for our services drives both our workloads
11 and our revenue. So as demand goes up, our
12 workload and revenue goes up. As demand goes
13 down, our workload and revenue goes down, very
14 much like a business. And we plan over multiple
15 years for our budgets. Our budget planning
16 process spans many years and we actually employ
17 some private sector tools such as an operating
18 reserve, that gives us the flexibility to plan
19 within a range of potential revenue estimates.

20 And so, we have the ability, in addition
21 through regulation, to set our fees to recover the
22 costs of operation. Okay. So that said, so

1 that's the business side of it. But we're still a
2 federal agency, so we're an independent agency
3 within the Department of Commerce, within the
4 United States government. And so, as a federal
5 agency, we have some constraints. And while we're
6 funded by the fees we collect, spending those fees
7 that we collect requires an annual appropriation
8 from Congress. So that's a little bit of -- while
9 we collect the fees, we can't spend them until
10 Congress gives us an appropriation.

11 And when we adjust our fee rates, the
12 regulatory process, the rulemaking process,
13 increases the time that's necessary to actually
14 effect fee changes. So it takes over a year,
15 sometimes close to two years, to actually effect
16 fee and rate changes. And our fee structure
17 incorporates public policy considerations, right?
18 Something that a business wouldn't necessarily
19 entertain, but we do. And it doesn't seek to
20 maximize revenue, that's for sure. And in fact,
21 we can only set fees to recover the aggregate cost
22 of operations and we don't seek a profit.

1 And in addition, we're subject to many
2 government wide policies, regulations that impact
3 both our spending and our operations. For
4 example, when there is a government-wide pay
5 raise, we have to incorporate that, whether we've
6 planned for it or not. That is just part of being
7 a federal agency. So I just wanted to set the
8 scene a little bit by just describing a little bit
9 about how we're kind of like a business, but we're
10 also kind of like a federal agency. And it's a
11 bit of balancing act between those two worlds that
12 we arrive at operating from a financial
13 perspective, the USPTO. Which I have to say, as a
14 time budget person in the federal government, it
15 actually makes it very exciting. And I know
16 that's kind of a shock maybe to some people like,
17 wow, budget is exciting, but it is. And it's
18 definitely a pleasure to be a part of this kind of
19 an organization because we really do have
20 top-notch talent here in addition to the
21 complexities of our financing.

22 So it does make it a lot of fun. So

1 now, without further ado, let me go on to the
2 usual slide that I present at the TPAC public
3 sessions. It's a graphical representation of our
4 funding outlook for fiscal year '23 using our
5 third quarter data, June 30th of this year. And
6 you can see we have the usual layouts, right, the
7 patents business line, the trademarks business
8 line in the middle there, and then the total
9 USPTO, total. And that's just the addition of
10 those two columns.

11 So I'll just focus on the trademarks
12 column since this is the TPAC public hearing. And
13 so, we start off the fiscal year with our
14 appropriations level of \$542 million. And we've
15 updated that revenue forecast to be a little bit
16 lower than what the appropriation and what our
17 forecast when we put together the President's
18 budget for fiscal year '23 about 18 months ago.
19 So now that we have some current year actuals
20 through three quarters worth, we're able to adjust
21 those numbers down. And you can see we also
22 adjusted the patents number down as well off the

1 original appropriation.

2 So that gives us a projected year-end
3 revenue amount or fee collections of \$456.6
4 million for the trademarks business line, we add
5 back our operating reserve and other revenue to
6 add back another \$217.6 million, along with the
7 Trademark fee reserve fund amount of 8.2. And so,
8 you can see there was also an amount added back to
9 the Patents business line as well, the 23.5.
10 That's because we actually ended up last year in
11 fiscal year '22 collecting more revenue on both
12 the patents business line and the trademarks
13 business line than what was appropriated.

14 And so, that money gets then reserved
15 into the Trademark fee reserve fund and through a
16 reprogramming request, which is essentially a
17 letter to Congress asking to get that money
18 allocated to us. We received that money and so
19 you can see the agency received a total of \$31.6
20 million in addition to our numbers. And so, that
21 gives us the estimated funds available for the
22 patent and trademark business lines of the \$5.124

1 billion. And then looking at year end spending,
2 our projections there are in red. So those are
3 subtracted from our available funds to give us an
4 estimated year-end operating reserve of \$176
5 million, which is great because our minimum
6 operating reserve level is \$120 million. So we're
7 well above our minimum operating level.

8 And that's, again, part of that private
9 sector tools that we have available to us here at
10 the USPTO. Okay, so next slide, I'm just going to
11 talk very briefly about our strategic plan. Took
12 about a year and a half to put this together. Our
13 USPTO issued a press release on June the 7th
14 announcing our new strategic plan. It took so
15 long because the Director was very, very adamant
16 about receiving comments from not only the PACs,
17 both the TPAC and PPAC, but also from the general
18 public, from our stakeholders, and even from our
19 employees here at the USPTO. So many, many points
20 of feedback and input went into developing our new
21 strategic plan, which will take us out to 2026.
22 So it's driven by five major goals, and you can

1 see them there.

2 So if you have commented or provided
3 input or feedback on our numerous drafts over that
4 year or year and a half of crafting this plan, we
5 really do appreciate it. We think we ended up
6 with a pretty darn good product. And we'll use
7 that then for planning and for measuring our
8 results against our strategic plan. So our budget
9 for fiscal year '25, which we're formulating now,
10 will be incorporating those principles. But
11 before I get to '25, let me talk about '24, the
12 President's budget, which as the fiscal year '24
13 starts October the 1st, as I'd mentioned.

14 And so, Congress has taken the
15 President's budget for fiscal year '24, which was
16 delivered to Congress earlier this spring, and now
17 they're working on their version of what they
18 think the allocations should be for the federal
19 agencies. And so House and Senate committees have
20 had their hearings and that thankfully both
21 hearings focused on the other DOC bureaus and not
22 on USPTO. And we take that as a vote of

1 confidence that the Congress is happy with our
2 progress. So thank you very much, Congress.

3 And then switching over to the fiscal
4 year '25 budget formulation, we've already started
5 that. We kicked that off early this spring. And
6 that we're finalizing our fee estimates and
7 requirements so that we can put together an OMB
8 budget submission which will go to the Office of
9 Management and Budget, part of the Executive
10 Office of the President in September, early
11 September. But before that goes, our public
12 advisory committees, our PACs, will get a preview
13 at the draft document. Okay. And so I think my
14 last slide here is just a reminder of the six
15 major stages of fee setting through the public
16 rulemaking process. It does take a while and you
17 see we're in stage three right now. The public
18 comment period for the TPAC hearing closed on
19 Monday, June the 12th. The USPTO received written
20 comments from 101 individuals and/or
21 organizations, and the commenters represented a
22 wide spectrum of our stakeholder communities,

1 including individuals, practitioners, law firms,
2 charities and six IP organizations. So we really
3 do appreciate that feedback.

4 A second public comment period will
5 follow the publication of the Notice of Proposed
6 Rulemaking, which is we're anticipating sometime
7 to be late winter or early spring time frame. And
8 then you'll see we'll have three more stages to go
9 through before we actually enact. And so, I think
10 that's it. Unless there are any questions or
11 comments, happy to entertain those as well.

12 MR. ENNS: Sean, thank you.

13 MR. MILDREW: Yes.

14 MR. ENNS: I'm Rod Enns, Chair of the
15 Finance Subcommittee for TPAC, and I first just
16 wanted to acknowledge you and the entire OCFO team
17 and the really stellar job that you do in
18 supporting the Trademark office and of course
19 patent, too, but our focus is trademarks. And,
20 you know, just note that your office really does
21 represent the gold standard in many ways among the
22 entire federal government and has been objectively

1 recognized that for, what, going on 20-plus years,
2 I think now. So we at TPAC really value that and
3 acknowledge that.

4 Beyond that, you have been really
5 helpful to us. And trademark lawyers are not
6 known as being great with numbers. But in a lot
7 of ways, I've come to realize that the numbers
8 really represent everything that happens in the
9 office and all of the trends, all of the policies
10 that are implicated, everything that drives the
11 office and what it does and what it's striving to
12 do. They're all in those numbers, if you know how
13 to read them. And you guys have been just really
14 effective at helping us understand that and
15 interpret that. So thank you from all of us.

16 Let me ask just one question that maybe
17 you can elaborate for a minute on. I don't want
18 to get us off schedule, but you mentioned the
19 congressional budget negotiations, if that's an
20 appropriate word, and I think all of us, you know,
21 have read in the media there are all kinds of
22 predictions, some dire, some not so dire, about,

1 you know, how our leaders in Congress may
2 eventually come together or maybe not come
3 together. Could you just say a word or two from
4 your perspective about the potential impact on PTO
5 and specifically the Trademark office, depending
6 on what may happen this fall, as to whether the
7 congressional leaders are able to come together on
8 a budget or a continuing resolution, or maybe not
9 even a continuing resolution, and what impact
10 those possibilities may have on us?

11 MR. MILDREW: I sure can. Yeah. Rod,
12 thank you for those very kind remarks. I really
13 appreciate it. We've got a great CFO team here at
14 the USPTO. And a kind of really great partnership
15 with Dave Gooder and his entire team here. And
16 so, it really -- it makes -- even though we've got
17 some challenges, it makes it a pleasure to work
18 here and be a part of this terrific team. So I do
19 appreciate those very kind remarks.

20 With regard to the next fiscal year,
21 fiscal year '24, which, as I mentioned, starts on
22 October the 1st, there is some consternation going

1 on about funding levels for federal agencies, and
2 that's a ripple effect of the debt ceiling
3 negotiations that went on earlier. And I'm sure
4 many of you saw in the news and other outlets that
5 those were kind of contentious and there weren't
6 really a strong consensus of how to move forward.
7 And so, we're seeing that kind of playing out in
8 the funding levels that agencies are receiving, at
9 least with their committee marks out of the House
10 and the Senate.

11 The good news is that for the United
12 States Patent and Trademark Office, both
13 committees have funded us at our request level,
14 which is great, and it makes a lot of sense since
15 our funding comes 100 percent from the user fee
16 communities, those folks who get services through
17 the USPTO. And so, that makes a lot of sense that
18 the Congress would allow us to fund our operations
19 from our anticipated projected collections. So
20 that's good news.

21 Other agencies that receive direct
22 appropriations out of the general receipts of the

1 treasury, not so much. And that's where I think
2 there's going to be some pain felt across the
3 federal government in the future, at least with
4 the marks that we're looking at currently from --
5 coming out of the committees from the House and
6 the Senate. We anticipate that Congress still has
7 enough time, even though they're on August recess,
8 to -- to do their work and put appropriations
9 bills in time for the beginning of the new fiscal
10 year, October the 1st. But if they don't, we're
11 also anticipating that we'll probably be under
12 continuing resolution, which means Congress would
13 allow agencies to continue to operate, but funded
14 at their current year levels. Fiscal year '23,
15 not fiscal year '24 levels.

16 If that were the case, then, Rod, you
17 know, I think we're in good shape noting the chart
18 that I show that our operating reserve for
19 trademarks is well above our minimum. So, I don't
20 see -- I really don't see any impact for us in a
21 negative way whatsoever. And because of that
22 operating reserve at the \$170 million level, we

1 should be able to continue on our normal planned
2 activities without skipping a beat. And again,
3 it's great that we're kind of a quasi private
4 sector, quasi federal agency. We get to maybe
5 have the best of both worlds, but then we also
6 have constraints that one group or the other
7 doesn't necessarily have either, so it cuts both
8 ways. But with that operating reserve, it makes
9 me sleep a lot easier at night. So I hope I've
10 answered your question.

11 MR. ENNS: Yeah, that does. Thank you
12 very much, Sean.

13 MR. GOODER: Any other questions for
14 Sean? All right, well, with that thank you, Sean.
15 Appreciate it very much.

16 MR. MILDREW: Thanks, David.

17 MR. GOODER: I'm going to turn the mic
18 over to Dan Vavonese, who is the Deputy
19 Commissioner for Trademark Operations. Dan.

20 MR. VAVONESE: Good morning. Happy to
21 be here today. And I'm going to take a few
22 minutes to talk about operations, where we are

1 with the examination, review of applications and
2 registration filings. So quick recap on our
3 targets. Our metrics for this year that we set at
4 the beginning of each fiscal year, we have our
5 pendency goals of First Action and Disposal
6 pendency at eight and a half months and 14 and a
7 half months, respectively, and our quality goals
8 for First Action and Disposal compliance, as well
9 as exceptional office actions. And like I said,
10 we set these goals at the beginning of each fiscal
11 year. We look at what our workload, our
12 projections all across the board, any anticipated
13 impacts we're going to have during the fiscal year
14 to come up with these goals.

15 Now, starting with our quality goals
16 through the third quarter, I'm happy to say that
17 we continue to far exceed our quality goals in all
18 three of those metrics. And those first two,
19 regarding compliance, did the examine attorney
20 make the right decision on the case? We continue
21 to do very well in that area. You know, we
22 provide updates to all of our examining attorneys

1 on recent case law to make sure that they're well
2 versed in any changes in the law so that they can
3 make these proper decisions.

4 And then when it comes to exceptional
5 office actions, the way to look at this is, you
6 know, did we provide the right level of legal
7 argument and support - support, evidence,
8 whichever that is, so our customers can make
9 informed decisions about the next step in their
10 process. So if they're refused or if there's
11 requirements that they make -- make, do they know
12 what their options are to move forward. So again,
13 we do very well in that area and that's kind of
14 the focus behind that.

15 On our -- getting to our pendency goals.
16 Again, this has been a challenge for the last few
17 years. You know, we've talked over the last
18 couple of years about the rise, rise, rise in
19 pendency, the rise in inventory. And we are very,
20 very close, very, very close on both of those
21 pendency goals. But what I want to stress here is
22 that really since the beginning of this calendar

1 year, we have stabilized pendency. So this is the
2 first time we've stabilized in a couple of years
3 now. And, you know, I know we keep talking about
4 when that's going to turn down, but the important
5 thing here is that we are stable as we are going
6 into FY '24. We should be able to start to see
7 that downward trend. But that's been a big focus
8 for us is, okay, we are finally getting stabilized
9 here.

10 It's kind of the same thing with the
11 inventory. You know, and similarly over the last
12 several months we have been stabilizing at our
13 inventory levels. We have been hiring, I'll talk
14 about that in a minute. We have been looking at
15 efficiencies within the office as well. And
16 again, we hope that we can start to turn this
17 inventory down. But as Director Vidal talked
18 about, you know, we have had changes in
19 examination. We had a brand new examination
20 system that we had to roll out to all of our
21 examining attorneys this fiscal year. It's a new
22 web-based system, so great for the future, but

1 there's a big transition to move over to that new
2 system.

3 We also implemented the Trademark
4 Modernization Act, which also has impacts on
5 examination. So everybody is more up to speed
6 with a couple of those changes. And we have
7 another one coming up in a few months with XSearch
8 that we'll talk about more at the next TPAC
9 meeting. And this is kind of referring to what
10 Commissioner Gooder was talking about. With each
11 month we have differences in filings. You know,
12 some months we have higher filings than others.
13 So, but you look at it over the entire fiscal year
14 and we have -- when months are higher in filings,
15 you know, it's harder for us to drop our pendency.

16 We anticipate certain times of the year,
17 we have higher filings, but we really track
18 closely where we are. And this is a way to look
19 at how many filings are coming in versus the First
20 Actions going out. And, you know, we track this
21 at -- you, know, we report it at the monthly
22 level, but we track it weekly and almost daily

1 where we are with our -- with our pendency. A
2 couple of months ago we added a new tool or widget
3 to our website regarding our -- regarding where we
4 are with First Action examination. We have a
5 metric for monthly average First Action pendency
6 that looks at monthly. It also looks at certain
7 other files that may go to the head of a queue
8 based on, you know, some Madrid filing dates, as
9 well as if the same applicant files several
10 applications, we combine those together for
11 consistency purposes. This new widget we have
12 here is actually the applications that are on the
13 examinee attorney's desk at that moment.

14 We update this weekly on our website so
15 it's more accurate for what the customers really
16 want to know. Hey, when is my application going
17 to be examined? And we just added some more
18 language on the website to explain this a little
19 more, but we think this is going to really help.
20 We've gotten positive feedback and we think this
21 is really helpful to our customers so they know
22 exactly what's going on in the process. And

1 actually the -- it's now October 13th, October
2 27th, because I just looked at it this morning.
3 So that's where we are right now.

4 On our staffing, and that number is
5 incorrect. It's actually 87 examining attorneys
6 this fiscal year, you know, we continue to hire
7 examining attorneys. And what we have been
8 focusing on is this new trademark academy that we
9 are now one full year done with the academy, which
10 means two of our classes have graduated from the
11 trademark academy and we have two more classes
12 currently in that trademark academy. This has
13 been a great way to centralize our training and
14 then after about the first year, then they go to
15 their home law offices and continue the rest of
16 their career. But it's been a great way to
17 centralize our training and we continue to make
18 tweaks and updates to it, but it's been very
19 successful for us.

20 And also regarding our hiring, we are
21 hiring more trademark professionals throughout our
22 trademark services area to assist with the

1 backlogs and inventory in those areas as well, and
2 post registration specifically. We hired up to
3 ten new specialists to assist with all the
4 maintenance filings we've been receiving in they
5 were just hired two months ago, so they're all
6 getting up to speed and we're so happy to have
7 them. And we are also in the midst of hiring in
8 both our exam support units and in our
9 pre-examination unit to help with the incoming
10 responses and applications that are being filed.

11 The last thing I want to mention, and
12 Director Vidal talked about it as well, is our
13 continued internal collaboration on how to improve
14 the examination process. How do we become more
15 efficient in what we're doing in examination. We
16 work closely with both of our unions on this and
17 looking at not only what we can do within the
18 process itself, but also for the future, what
19 other IT tools we can add to help us with the
20 process. We've been looking a lot at First Action
21 examination lately and trying to balance how much
22 between pendency and quality, where that proper

1 balance is, so that the office actions are getting
2 out, the decisions are getting out as soon as
3 possible for the applicants, again, so that they
4 can their -- they can get the information they
5 need to make the decision moving forward on their
6 cases. That was a quick update on operations, but
7 that's kind of -- that's kind of where we are
8 right now.

9 MR. CHO: So Dan, I want to acknowledge
10 all the effort that's being undertaken on
11 operations on the front line. I don't think we do
12 that enough. It dawned on me that there's a
13 couple graphs. This one the bar graph and then
14 the other one showing the filings. So we know
15 about the surge, but, you know, we've been here
16 for a while and just me personally, I didn't
17 realize until this moment that the average filings
18 were exceeding the average level. So that
19 compounded, I think, trying to address the
20 pendency. So that's a credit to you all
21 acknowledging that and readjusting that once, but
22 I think twice your pendency goals. And

1 personally, we were hopeful of actually a downward
2 trend, right? I think the public was. But the
3 realistic picture is, okay, looks like maybe we're
4 stabilizing and if the, you know, months continue,
5 then okay, that's a huge, huge, I guess, setting
6 of the next stage. Because the other part I want
7 to uplift to you all too is all the changes that
8 you're undergoing. There is, how can I say it, a
9 cycle of time required to process that. And so,
10 the big search one coming up, that's going to be a
11 big one. The IT automation tools, maybe the
12 efficiency isn't as what was desired, but it's
13 still incremental. It's all building up. So in
14 other words, real time changes while you plan for
15 it when you actually put it into play takes a
16 while.

17 So I want to commend you all. That I
18 want to lift that up to the public to kind of
19 understand that. My very specific question. Now,
20 it's just a small one on the hiring because the
21 academy has been central. So you hope for better
22 efficiency and uniform training but also quicker

1 overall effectiveness of the examining attorneys.
2 I mean, not to focus on production, but the hope
3 is that they can produce, right, sooner than
4 before. So I was just wondering, in general, has
5 that been playing -- coming into play the way you
6 were hoping about what you expect maybe below
7 expectation or above expectation on these first
8 two classes now that I think it's been over a
9 year. So just curious.

10 MR. VAVONESE: Yeah, it's been about at
11 expectations. You know, I mean, it's a process.
12 You know, it doesn't matter whether you are a very
13 experienced trademark attorney or if you're fresh
14 out of law school. This process of examination,
15 it takes time, the amount of refusals, the amount
16 of requirements that the examine attorneys have to
17 learn. And then the bigger -- the more important
18 thing is that they have to -- they don't have a
19 lot of time to work on each application they have
20 to go through.

21 So, so much of it is about not just
22 spotting the issues but about spotting them

1 quickly and being able to make quick decisions and
2 then supporting your decision with, again, the
3 proper legal argument and evidence moving forward.
4 So it is a process and we make sure to spend that
5 time up front so that it's right and that they get
6 really good at it so we don't have to do more
7 training later on. So it's been at expectations.
8 I mean, we have been very happy with how the
9 consistency of that training has gone so far.

10 MR. GOODER: Thank you. Any other
11 questions for Dan? Thanks, Dan. With that, I'm
12 going to move next to Amy Cotton, who is our
13 Deputy Commissioner for Trademark Examination
14 Policy, which covers a huge number of areas,
15 actually not just policy, but policy and a whole
16 lot more. So turn it over to you. Oh, we did
17 move that around, didn't we? You thought you were
18 going to get off easy, Greg. Going to switch
19 gears. My apologies. Going to Greg Dodson, who's
20 a Deputy Commissioner for Trademark
21 Administration, which oversees a lot of
22 departments as well. But significantly, for

1 purposes of today, IT for Trademarks.

2 MR. DODSON: Fantastic, Dave. Thanks.
3 I'll do a terrible job representing Amy. She's
4 leaving. She doesn't even want to listen to me
5 say it. But thanks, everyone. Hey, I just wanted
6 to say a few things, and then I'm going to
7 introduce our guest speaker. But welcome, TPAC
8 members. It's great to see everybody again and
9 everybody out there that's watching today live.
10 Very much appreciate you joining us as well, too.
11 Director Vidal mentioned a lot of the great work
12 that we've been doing on the IT side.

13 We're going to talk about the TRAM
14 retirement process and where we are at the fourth
15 quarter meeting. But we are just really ecstatic
16 that with our CIO colleagues, we are where we are
17 percentage wise on the retirement. So kind of a
18 teaser for the fourth quarter meeting to join us
19 and listen to where we are on TRAM retirement.
20 Today, we're going to take a few minutes of your
21 time, and we're going to introduce our customer
22 experience administrator, Mr. Charlie Thomas,

1 who's joining us live from North Carolina.
2 Charlie is going to walk us through just a very,
3 very short demonstration of the new e-filing
4 system that is the TEAS replacement that we're
5 calling Trademark Center. And so without any
6 further ado, looking at the time, gentlemen, in
7 the back, if you could call Charlie up on the
8 screen and over to you, Charlie.

9 MR. THOMAS: Thank you so much, Greg.
10 Let me start sharing my screen to see if this
11 starts working. All right, can you let me know do
12 you all see my screen, which I am zooming in?

13 MR. DODSON: We've got you, Charlie.

14 MR. THOMAS: All right, sounds good.
15 Thank you so much for having me. You are looking
16 at the Trademark Center beta. The future vision
17 for Trademark Center will become that central
18 platform that you come to do business with the
19 trademarks organization. That is a significant
20 multi-year effort. We are beginning with where
21 you all begin, the initial application. So today
22 I'm going to give a brief walkthrough of the

1 current beta of the initial application. And
2 within that category, we have a TEAS Plus
3 equivalent that is a 1B, intent to use filing
4 basis with standard characters. And this is
5 because we're taking an agile iterative
6 development process where we're developing testing
7 with customers, getting employee input to refine
8 it as we add functionality. For example,
9 additional mark formats. That's kind of the next
10 big release tentatively in October. And then
11 we'll be tackling, adding much needed additional
12 filing bases like 1A and 44E and D.

13 So, without further ado, one thing I did
14 want to note is we looked at customer feedback and
15 survey results on TEAS because we didn't want to
16 start from scratch. We heard loud and clear from
17 you all you want more robust save functionality.
18 While you can do that in TEAS near the end,
19 downloading locally, reuploading. So from the
20 start we built this my applications and
21 registrations area where you can see draft,
22 currently just applications but eventually

1 additional forms. This has autosave capability,
2 save button at the bottom of the page and as you
3 navigate. So that was a huge pain point that we
4 heard loud and clear and we've made sure to
5 address upfront.

6 So let's get into the application
7 itself. Now because this is a beta with limited
8 set of functionality currently, we wanted to make
9 it upfront crystal clear what those requirements
10 and criteria are. Future state once this is fully
11 built out and in production, you won't start with
12 a wall of text. But we want to make clear and get
13 people over to TEAS if their specific needs don't
14 align with what capabilities we currently have.
15 So I am showing you a test account. I am not a
16 trademark attorney, which is probably clear, but
17 as an attorney, one thing that we wanted to do was
18 make it a little bit easier to enter information.
19 We already know your name, for example, associated
20 with your account. So here you can import that
21 information, you can modify the information if you
22 needed to, but just saving a little bit of time as

1 you fill it out.

2 Again, you know, we need that
3 affirmation you are in active and good standing
4 and we'll continue. Here I want to note I'm not
5 going to go through each form field. You don't
6 want to watch me type those things. But here
7 we've used a progressive dynamic form that as you
8 enter information, it is progressively asking the
9 next question or set of questions based on what
10 you previously entered. This design choice was
11 made in large part because we want to do a better
12 job of bringing in high quality complete
13 applications for our examining attorneys. We want
14 to reduce the number of applications that are
15 coming onto their desk that have something that
16 might be a procedural issue. So we're trying to
17 design it, add educational information in it to
18 encourage more complete or better application data
19 coming in to make their lives a little bit easier
20 to focus on the substantive work.

21 So here I'll just make a couple of
22 selections so you can see that. And here we do

1 have the domicile address. I'll enter just a
2 couple of fields. And at the bottom of the page,
3 if someone would like to provide a separate
4 mailing address for the public record, they can do
5 so here. Continuing on, here's an opportunity for
6 correspondence information. And now I do want to
7 note one thing. We also heard from customers,
8 both in that T survey and we've been doing
9 iterative prototype testing with small number of
10 trademark attorneys, paralegals and pro se or, you
11 know, business owners and entrepreneurs. You all
12 wanted flexibility in the navigation. You want to
13 see what I want to look at the filing basis page
14 and not have to fill out everything first. Now,
15 this is just a 1B, so there's nothing to enter
16 here.

17 So we heard that and we made it so that
18 you can navigate through the full form, looking at
19 any pages without completing the entire
20 application. So since we're on goods and
21 services, let's enter that here. And again,
22 because this is currently TEAS Plus, you have to

1 select from the ID manual. We will be adding that
2 capability. So let's get shoes. Let's get some
3 dog shoes and snowshoes, since I have some as
4 well. We'll add those selections. Here, we
5 wanted to make sure that the cost of an initial
6 application is more transparent. And this is
7 something we heard from you all.

8 So we created this summary panel that it
9 is persistent throughout the application and now
10 that it's populated, meaning we've selected goods
11 with unique classes. And this was in large part
12 to help our business owner, entrepreneurs filing
13 on their own behalf to better understand the total
14 cost and how that is calculated for them. And in
15 our series of testing, this has performed pretty
16 well. And then we need to enter a mark. I'm sure
17 that would get through. Here I do want to note
18 we're also-- if there's words in a language other
19 than English, we have the opportunity to, you
20 know, fill out that information. Again, we want
21 to encourage a complete application if we can.
22 But of course, we're looking at TEAS Plus

1 requirements.

2 Similarly for name consent, I won't go
3 through those. We want to encourage that. And
4 then we'll jump down to review and sign. Now,
5 here are a couple of areas I wanted to note, for
6 example, disclaimer previous designs. We had this
7 more prominently in the trademark details, but in
8 fact, that generated more confusion, particularly
9 for our small business owner and entrepreneur
10 filers. Because these are much less common and
11 you can -- there is a strategic misstep that could
12 occur here. So we wanted to set it aside, provide
13 additional step to make sure people are making an
14 informed decision on this. So that's why they are
15 kind of set aside here.

16 And then the review and edit page. You
17 can see everything that you have entered so far on
18 this page, double check your work, and there is
19 some, you know, form field validation. At this
20 point, you can't proceed at least under the TEAS
21 Plus requirements until you enter all that
22 information. Some of them you can enter directly

1 here, like the owner information, but something
2 like goods and services, if you attempt to edit,
3 you'll be routed back there because there's more
4 functionality, it affects the cost. So you click
5 that and here you can go, we can -- let's go down.
6 And we're actually not going to sell dog shoes, so
7 let's remove those. You can see the total cost
8 changed. So with that, that concludes my
9 demonstration. And so, the remainder of the time,
10 I'm happy to answer any questions now or later on.

11 Speaker C: MR. CHO: Any questions for
12 Greg or Charlie?

13 MS. BROWN: No questions. Hi, this is
14 Adraea. I did want to comment and say thanks to
15 both you, Charlie, and you as well, Greg, as well
16 as the entire team. For one, making the effort
17 for this, and two, being able to show this. This
18 might be one of the first public TPAC public
19 meetings where we've been able to preview what's
20 to come from all of the work that's happening. So
21 I think it's exciting to see the new e-file system
22 show it to the public. Certainly, I think it

1 looks fantastic. It's easy and simple, at least
2 for the eye, and very exciting for it to come into
3 effect very soon. So thank you for all your work
4 and looking forward for more. So thank you.

5 MR. THOMAS: Appreciate it. It's a
6 large team effort, and so thanks to the
7 developers, user experience, team analysts, a lot
8 more work to come.

9 MR. GOODER: Thank you. Thanks,
10 Charlie. And, yeah, it is light years ahead of
11 where we've been, which is exciting. Okay. Greg,
12 anything else?

13 MR. DODSON: No, sir.

14 MR. GOODER: All right. Now, without
15 further delay, I'm going to turn it over to Amy
16 Cotton, Deputy Commissioner for Trademark Exam
17 Policy. Amy?

18 MS. COTTON: Thank you. Good afternoon,
19 everyone. Can we get the slides back up when
20 conference services has a chance. Today, I'm here
21 to talk a little bit about a bunch of things, but
22 I'm going to start with an update on our register

1 protection program. The slides are really cool,
2 so I hope you can see them eventually. I like
3 smart art. So our administrative sanctions
4 program is just one of our register protection
5 initiatives, but it sort of has three parts in it.
6 Here we go. Three parts in it. And the first
7 part is what we call administrative review. This
8 is where we are looking at suspicious filings.
9 We're sort of tracking them through common data
10 elements and finding a particular scheme that has
11 the same characteristics, the same credit card,
12 the same IP address, whatever it is. So we sort
13 of, you know, are able to identify a series of
14 applications or registrations that really were
15 filed by way of rule violations, signature rules,
16 certification rules, representation, domicile,
17 whatever it is.

18 So we have a group of policy attorneys
19 who are using outside contractors to identify
20 common data elements that suggest that there was
21 someone or something behind a large scale scam
22 such that the applications that were filed are

1 most likely invalid and should not be able to
2 continue on to registration. Once we've done
3 that, then we identify those files, then we move
4 forward to sanctions and may terminate those
5 files. We may terminate or suspend USPTO.gov
6 accounts from which those applications were filed.
7 And we might also refer the practitioners that
8 were involved in these rule violation scams to the
9 Office of Enrollment and Discipline.

10 So there's sort of three different
11 prongs that we use as part of this process. And I
12 wanted to give you some numbers to show. I
13 recognize this chart is a little messy, but just
14 sort of bulk numbers. Since we started this
15 program in 2019, we have issued 600 show cause
16 orders that's the preliminary order. And then the
17 final orders are 308. We have then touched 19,000
18 applications and terminated them because they were
19 invalidly filed. We have sanctioned over 3000
20 registrations. We have suspended 407 USPTO.gov
21 accounts. Now recognize though, that we did not
22 institute ID verification, one person, one account

1 until 2021. So we were terminating a lot of
2 accounts that were multiple, you know, accounts
3 held by one person. So you see that the numbers
4 go down after '21, because then it's one person,
5 one account that we're eliminating. Just wanted
6 to clarify that.

7 And overall we've referred 51
8 individuals over to OED who are in various stages
9 of investigation by the Office of Enrollment
10 Discipline and possible suspension discipline, you
11 know, that sort of thing, by OED. So these are
12 our sanctions programs by the numbers.
13 Specifically on attorney discipline, I know we get
14 good faith attorneys who get really upset with the
15 bad faith attorneys. So I wanted to point out our
16 wall of shame. So these are attorneys that have
17 undergone OED investigation, and have -- which has
18 resulted in discipline of some form. Now
19 understand that the discipline that these
20 particular folks have gone through, they have
21 entered into a settlement agreement with OED. If
22 they're on my next three slides, they've entered

1 into a settlement agreement and admitted to
2 certain rule violations and undergone, you know,
3 discipline from OED.

4 What I really want to point out though,
5 is you can see in the bolded where certain people
6 have also faced then discipline from their state
7 bar. So the USPTO can -- sends our discipline to
8 the state bar of the person who's been
9 disciplined, and that that state bar decides what
10 to do with it. So in several cases we've had the
11 state bar do something with the discipline that we
12 have issued. So we're tracking that and following
13 up on these to see what the reach of our OED
14 process has been. Let me go through just, you
15 know, same thing here, you can see on these
16 slides, and we've had two more recently that we
17 have disciplined that OED has entered into
18 settlement agreements.

19 There are, you know, cases that are in
20 litigation with OED that we can't talk about, I
21 don't even know about, they know, I don't know.
22 So there's more in the pipeline that we'll see at

1 some point in the future pop up if they go before
2 an administrative tribunal, but we don't have them
3 yet. But I just wanted to say that there are
4 attorneys who are violating our rules, and we are
5 going after those attorneys who are violating our
6 rules. Now, to the extent that one of these
7 attorneys has touched files, once they come
8 through the OED process, then we go and look at
9 those files, and we determine whether those files
10 are now invalid, they should be terminated. So we
11 follow up on the discipline, you know, we
12 initially refer based on suspicion of filings.
13 They go to OED, OED does their work, and then
14 something pops out. And then we follow up on that
15 with sanctions against the filing firm that hired
16 the attorney and go after the applications and the
17 registrations that were implicated and that are
18 sitting there riddled with rule violations and
19 should not be blocking you when you come in with
20 your good faith applications.

21 Okay, so just sum up. Slide again.
22 These are the big numbers that we like to report

1 out when you're looking at sanctions. So I'm
2 going to keep on trucking here. The next of our
3 registered protection tools that I just wanted to
4 update on today is Trademark Modernization Act
5 nonuse cancellation. So these are the expungement
6 and reexamination proceedings before the director.
7 Not before the board, but before the director.
8 And there's two parts to it, the third party
9 petitions. This is where a third party can
10 request institution of one of these proceedings.
11 We also have director initiated proceedings where
12 the director, on her own initiative, can institute
13 proceedings without a petition. By the numbers,
14 again, you like my red charts. What to focus on
15 here are, are the petitions working? Are
16 petitions coming in? Are they good? Are they
17 meeting the evidentiary burden of a prima facie
18 case of non use? As we proceed, that rate
19 fluctuates depending on how we're able to move
20 these petitions through the system. Right now,
21 the institution rate is about 59 percent, but when
22 we institute, the cancellation rate is 90 percent.

1 We're batting 1,000 here, or 100, I
2 guess. We have -- everyone that we've gone after,
3 we have been able to terminate and cancel the
4 goods and services on which we instituted
5 proceedings. So that's pretty good. When you add
6 in our director and our petition proceedings,
7 we're, you know, upwards of almost 3,000 goods and
8 services that have been canceled. So we're pretty
9 happy with these proceedings. You should know
10 that we, actually, Dan graciously allowed us to
11 pull in five examining attorneys to work on TMA
12 petitions and eventually audit petitions on a
13 detailed temporary basis. And we have been able
14 to get our backlog of TMA petitions down to we're
15 about 20 right now, which I'm very happy about.
16 So there should be a little bit of a bump in
17 average pendency or decrease in average pendency
18 with these petitions. So we're trying to get the
19 backlog down.

20 So a little bit about specimen farms.
21 So this is what a specimen farm will look like
22 online. And so, an examining attorney will get

1 this picture. And one of these particular goods
2 and services are supposed to be, you know, the
3 mark is supposed to be on there, like, COVID or
4 something like that. And so, the examiner is
5 looking at this going, you know, what is this?
6 What do I do with this? Is this use in commerce?
7 And when you look at it, okay, maybe it is use in
8 commerce. But when you start drilling down a
9 little bit more and thinking about it's, like, why
10 is a website selling a tour bus and skirts? It's
11 a little odd, right? And so, this has put alarm
12 bells out for our examiners for years. And
13 they're like, what do we do with this?

14 So we started digging in a little bit
15 more and trying to figure out what are the
16 characteristics of these things. This just shows
17 you we've instituted a bunch of director initiated
18 proceedings against one specimen farm by Q- Seal.
19 We have another one that we're working on now,
20 which is Pets to Need. And you can see where we
21 found evidence of nonuse as to the applications
22 that came out of these specimen farms. What we

1 find is that the specimen farm applications, when
2 they issue as registration, will pop up on auction
3 sites. Not always, but it seems to be part of a
4 business model where a filing firm, a foreign
5 filing firm, generally will file a huge number of
6 applications. They use a specimen farm website,
7 which is an e-commerce website with all these, you
8 know, disjointed products on them. Weird jibber
9 jabber marks and a lot of missing information, on
10 the, you know, in the very -- like contact
11 information or, you know, the phone number is
12 12345 or whatever it is.

13 Very weird stuff, but looks like what
14 they're trying to do is register 10,000 marks, all
15 at once, as fast as they can, and then sell them
16 on these auction sites, and get them, you know,
17 whoever wants to buy a registration to get on an
18 e-commerce platform can go to these auction sites
19 to do this. Now some of these auction sites will
20 actually sell you never been used, mark has never
21 been used. And you're like, oh, that's not a
22 selling point for U.S. Trademark law. Okay, so

1 actually, after we started instituting on QCL,
2 that went away. They took that down. So we're
3 just trying to raise some awareness of the
4 business model that we're seeing. And we're also
5 then trying to let you all know what we're seeing.
6 And to the extent that you are finding one of
7 these blocking you, you may want to file a
8 petition for -- TMA petition for reexamination or
9 expungement and raise this if we haven't already
10 initiated a proceeding on it, because you can't
11 count on us to find all of these and to have the
12 resources to go after all of them. But if you
13 want to go ahead and request a proceeding, then
14 this web page will give you a lot of the
15 characteristics to point to that we have found and
16 we have used as evidence in our proceedings.

17 So if you go to this web page, you can
18 see some helpful tips about how to do it. We also
19 are raising caution about auction sites. Don't go
20 to auction sites and buy an unused trademark,
21 because I'm hoping at some point we will terminate
22 all of those and get them gone because they're

1 invalid. Okay, this TMA takeaway is just the sum
2 up slide which you all have, just so you can see
3 what the numbers look like. Okay. I also want to
4 talk a little bit about communications and
5 marketing. You might have seen a news brief from
6 USPTO about the new welcome letter that Kathi and
7 Derek have been putting out to new patent and
8 trademark applicants. This is actually just our
9 -- I didn't put the welcome letter up there, I
10 probably should have. But this is our filing
11 receipt.

12 We refreshed our filing receipt for a
13 lot of different reasons. What we wanted to do
14 was definitely make it friendly, a lot of
15 exclamation points, and, you know, hey, this is
16 great, welcome to the family. This is really
17 neat. We wanted to elevate scams up higher. We
18 wanted to alert, particularly new filers about the
19 scams that we're seeing and, you know, the
20 spoofing that we're seeing of our employees'
21 names, phone numbers, our website. Everything is
22 getting spoofed. It's really difficult. And to

1 say, hey, call TAC. If you have any questions
2 about whether what you received is legitimate,
3 call the trademark assistance center right away
4 and find out. If it is, they will tell you.

5 And we're also providing in the blue box
6 there resources for new applicants. That's the
7 link to the welcome letter. And the welcome
8 letter will, you know, direct new filers to the
9 trademark web -- basics web pages, which are -- we
10 have revamped, and they are fantastic. I don't
11 know if you've looked at the trademark basics web
12 pages. Our trademark toolkit, you know, lays out
13 the trademark process and everything that you need
14 to know if you're a new filer. The welcome letter
15 also talks about our IP Identifier tool, DOC
16 resources for entrepreneurs, our PTRCs, and of
17 course, our Trademark Assistance Center when you
18 have any questions.

19 So we even put faces and names to show,
20 you know, hey, we're real people, and we're here
21 to help you. So hopefully that refresh filing
22 receipt does some real, you know, good to

1 encourage folks to use the trademark system and
2 the patent system here at the USPTO. One other
3 thing is, funny, I asked my staff, I was like, I
4 want to be able to find trademark alerts. I can't
5 find them unless I save them in my inbox. And
6 they're like, Amy, they're on the subscription
7 center. If you go to the subscription center, you
8 can search for trademark alerts by year, and then
9 you can find what you're looking for. So I
10 thought I'd help you because my staff helped me to
11 answer that question. So I do want to actually
12 make it a little bit more accessible on the
13 trademark pages eventually. You know, so we will
14 probably migrate this over so it'll be easier for
15 our customers to find them there. But if you want
16 to see all the trademark alerts and get all the
17 links to the web pages that have been subject of
18 alerts, then there they are.

19 And lastly, let me talk a little bit
20 about guidance and notices. You may have seen the
21 new software sign documents exam Guide. We heard
22 you. You wanted to be able to use DocuSign and

1 whatever other software signing to file
2 submissions, so we heard you, and we were able to
3 do that. I heard from a stakeholder that it may
4 be a little clunky now, but we'll see if we can,
5 you know, streamline it. Certainly with Trademark
6 Center, we should be able to build it into the
7 system as well. So I think it'll get a little bit
8 better. We are soon to issue a domicile address
9 examination guide. In the next few weeks, we
10 should be issuing that. It's basically to address
11 work steps for our examining attorneys about how
12 to handle domicile address issues. A lot of
13 issues swirling around there.

14 In particular, the issue of virtual
15 offices has become difficult for the USPTO for
16 trademark examining attorneys. People were
17 claiming that they don't have a domicile address
18 because they work virtually. I understand that,
19 but that has become a vector for fraud. People
20 are claiming that they don't have a domicile
21 address so we can't identify whether they're a
22 real person or not, and if they really exist, so

1 they have been claiming that virtual offices. Our
2 examiners were taking explanations, you know, on
3 the record, trying to explain that it was a
4 virtual office, it wasn't working, it was too
5 difficult for the examiners to manage. And I will
6 tell you that what has been requested in those
7 situations is a waiver of the domicile address
8 rule. Examiners cannot waive the rule. The
9 petitions to the director are aware the rules are
10 waived, and that's how we're going to be handling
11 going forward. So when this exam guide issues,
12 there'll be, you know, information about that
13 process in the guide.

14 Lastly, upcoming Federal Register,
15 actually, one is already issued. The attorney
16 recognition public roundtable Federal Register
17 notice issued went into public inspection on
18 Wednesday and it issued yesterday. We are doing a
19 roundtable on the attorney recognition issue and
20 how it relates to our correspondence rules. I
21 have heard and Dave has heard and Dan has heard
22 for, you know, for a while that there's a lot of

1 consternation in the community about the
2 disconnect between our correspondence rules and
3 our representation rules. And we want to hear
4 from you. So we want to bring you all together at
5 a roundtable and hear your views on how we should
6 address the issue of whether the attorney
7 recognition should end at abandonment and
8 registration or whether it should be presumed to
9 continue on post registration. And that way then
10 we would send correspondence only to the attorney
11 and not to the client, which is, I know, something
12 that you all have been talking about, but we would
13 have to change the rules to do that.

14 So that's certainly an issue and we want
15 to have that conversation with you all. So please
16 read that notice and come prepared with comments
17 to our roundtable on the 26th of September. And
18 then lastly, look for an upcoming Federal Register
19 notice on ID verification for attorney sponsored
20 accounts. We have been relying on attorneys to ID
21 verify their support staff for purposes of
22 USPTO.gov accounts. That is not working. We are

1 getting attorneys who are sponsoring people who
2 are not eligible to have a sponsored support staff
3 account. Particularly foreign agents are not
4 allowed to have a sponsored support staff account
5 and we're getting a lot of suspicious filings
6 through those accounts. So we are clamping down
7 and we are now going to be requiring ID
8 verification for those accounts just like
9 everybody else that will have a, you know,
10 phased-in implementation. We're looking right now
11 about October for a, you know, voluntary ID
12 verification and then mandatory would be probably
13 next January. So look for that notice. It's
14 still in clearance and it should be popping out in
15 the Federal Register notice in the coming months,
16 a couple of weeks, months. And that's all I have,
17 unless you all have questions.

18 MR. GOODER: Any questions for Amy?

19 MS. FREDERICKS: No question. I did
20 want to say thank you. I'm always impressed with
21 learning about the efforts that you guys are
22 taking towards scams. The specimen farms are new

1 and I know a lot of it has to be reactive, but it
2 also feels like you guys are being as proactive as
3 you can be. So I just wanted to say thank you for
4 that. And now I know that I don't have an
5 upcoming business for a specimen farm, I'll cancel
6 it right now. And the other thing is a small
7 note. I look forward to the day -- I look forward
8 to the day, Amy, when your face is on one of those
9 notices, that you took down some type of site and
10 it's like gotcha.

11 MS. COTTON: That's fun.

12 MS. FREDERICKS: All in a little fun.
13 But no, seriously, thank you for all of the work
14 that you and your team do.

15 MR. CHO: Amy, one small question. On
16 the attorney discipline, are you seeing that
17 starting to taper off now or is still pretty
18 prevalent?

19 MS. COTTON: Well, I can't answer that
20 question because we would -- we're looking at tens
21 of thousands of files that have been in the system
22 for a while and so --

1 MR. CHO: Understood.

2 MS. COTTON: -- they're older at this
3 point. So to say that we don't have new
4 impressionable attorneys or older shady attorneys
5 who are going into these deals, I don't know the
6 answer to that. So we're looking at the backlog
7 and trying to address that. I would like to think
8 that there's a deterrent effect and there's got to
9 be, right? You know, I mean, people are getting
10 suspended, they're getting a black mark against
11 them and that's not something people are going to
12 rush into innocently anymore, I would think.

13 MR. CHO: I appreciate that because I
14 wasn't going to ask, but now I think I can. There
15 was a slide that showed like a two-year lag in
16 sanction orders coming and I wonder if there was
17 some correlation with, you know, action being
18 taken and how long it takes to investigate.

19 MS. COTTON: It takes a surprisingly
20 long --

21 MR. CHO: Yes.

22 MS. COTTON: -- time because we're

1 dealing with tens of thousands of applications at
2 once and we have to put together the evidence to
3 be able to say that these were invalidly filed,
4 does take a long time. The lag there is we issued
5 a lot of show cause orders early on and never
6 followed up. They abandoned or what have you.
7 And I said, you know, we need to close that loop
8 and make it clear that, you know, there is a show
9 cause order. So my staff is trying to, you know,
10 get those -- we call them the stale show cause
11 orders, issue final sanctions orders. So it's
12 clear what happened in each case and there's a
13 record, so they are doing that. A lot of those
14 have abandoned and are not moving anyway. But we
15 want to make sure that there's a full story in our
16 numbers.

17 MR. CHO: And I appreciate that.
18 Another reason I did this is to show that the
19 numbers reflect one thing, but there's so much
20 more going on in this area and attorney sanctions
21 is just an example with the registered protection
22 efforts that are happening. So I know there's a

1 lot of public information given on what's done,
2 but I think on this particular set of meetings, we
3 have really understood and appreciated the breadth
4 and scope that you're dealing with and it's still
5 playing itself out.

6 MS. COTTON: Yes.

7 MR. CHO: And so, that's what I wanted
8 to make sure the public was aware of. Despite all
9 that, there's great effort being made in this
10 because in my career here, attorney sanctions were
11 such a very small tool, you didn't see very much
12 of it. But right, the last year and a half? It's
13 quite a bit. So it's a reflection of the times,
14 in addition to everything else that the office is
15 dealing with. So I appreciate that.

16 MS. COTTON: OED used to have very
17 little work on trademarks. It always was patent
18 practitioners, and now it's, you know, tripled on
19 the trademark side for them, for sure.

20 MR. GOODER: Yeah. And on that, I think
21 we are actively encouraging that OED really look
22 at the agreements they enter into and are they

1 tough enough to really produce the result that I
2 think the trademark community wants and that we
3 certainly want. I'll just make one comment on the
4 proactivity part of this. If anybody's instituted
5 any kind of anti-counterfeiting program in their
6 company or for clients or brand protection
7 program. It takes a huge amount of resources and
8 time to go from being sort of reactive to
9 proactive. And it's not a switch you can just
10 flip, it's a matter of time. And I think Amy and
11 her crew have gone -- have leaped an enormous way
12 towards productivity in the last year, year and a
13 half. It's somewhat resource restricted too. So
14 one of the things we have to do is make sure they
15 have enough resources and technology, et cetera,
16 to keep doing more, especially on the
17 investigative side and then the enforcement side.

18 I also want to bring this up that it's
19 these small items that in the grand scheme of
20 things, doesn't seem like it's going to be a big
21 deal, but it is very impactful, right? So from
22 the large filing numbers to now seeing this

1 questionable activity, the specimen farms,
2 attorney discipline. It creates havoc when you
3 really have to dig into it to clean it up because
4 it has really affected the integrity of the
5 register. So I applaud the office of trying to
6 get ahead of it, but as you're digging into it,
7 you realize it's just much bigger than anyone ever
8 thought and it's really having such an effect.
9 And it's a moving target.

10 MR. ENNS: Could I just ask a quick
11 follow-up question on that, David?

12 MR. GOODER: Yeah.

13 MR. ENNS: Amy, superb work on a lot of
14 this stuff, specifically on the specimen farms.
15 To the extent we members of the public run into
16 specimen farms in the wild. Do you all want to
17 hear about it, or is that something that you're
18 doing your own investigation and our input is not
19 really going to aid that?

20 MS. COTTON: There are a couple of
21 different ways that you can report things to us.
22 Now, the one we like the best is if you file your

1 own reexamination petition under TMA, and that
2 makes sure we're addressing your issue on a timely
3 basis. Other ways that you can do it, if it's not
4 immediately blocking you and a pressing issue, you
5 can certainly send an email to TMScams@USPTO.gov.
6 You can highlight these things, don't necessarily
7 expect a response because we're getting a lot of
8 emails to that, but we do have people following up
9 and checking on it. Is this on fire or can this
10 be, you know, put on the list or however that is.

11 Another option is a letter of protest to
12 the extent that you find evidence of nonuse. You
13 know, if you find in the specimen form, you
14 collect evidence that this mark is actually not in
15 use in commerce, you can file a letter of protest.
16 Prepub, most likely, but, I mean, you could do it
17 post pub, too, and bring that evidence to us, and
18 we can determine whether it's relevant and can be
19 sent to the examining attorney if it's at the
20 right stage, you know, of prosecution. But, yeah,
21 those are three different ways you can bring it to
22 our attention.

1 MR. ENNS: Great. Thank you.

2 MR. GOODER: Yeah, and we appreciate it
3 when you do see them, you know, sending them in.
4 Okay. Thanks, Amy. And now I want to turn the
5 mic over to Chief Judge Gerry Rogers from the
6 Trademark Trial and Appeal Board.

7 MR. ROGERS: Thank you, Dave. I will
8 just briefly bring you up to date on some staffing
9 issues, some filing issues, and mention in
10 conjunction with Charlie Thomas's presentation,
11 TTAB Center, which is going to, we hope, look and
12 feel a lot like Trademark Center that you saw
13 because we -- a demonstration of, because we know
14 that most of our stakeholders are using both TTAB
15 and trademarks websites and services and portals.
16 And so, I guess we'll have to find ways to make
17 sure the TTAB Center looks different enough so
18 that you're not filing an opposition when you
19 think you're filing an application. But I'm sure
20 we can work that out.

21 Let me start by pointing out that since
22 the last meeting, we now have three of our judges

1 lined up to work career development training
2 details in the Deputy Chief Judge position at
3 TTAB. And Judge Melanie Johnson, who's here with
4 me today learning about how TPAC operates, is the
5 first of the three who will be filling that role.
6 And then Tom Shaw, Judge Tom Shaw and Judge
7 Cynthia Lynch will also be cycling through the
8 role. So in future meetings, you will be meeting
9 the other detailees who will be filling that role.
10 Eventually, of course, we will be filling the
11 position on a permanent basis. But this is a
12 great opportunity for us to give an opportunity to
13 our judges who are interested in possibly joining
14 management to see what the work is like.

15 So let me -- and then as I go through
16 some of the filing slides, I will tie that into
17 other staffing changes. This slide is really
18 just, you know, what's our total inventory? How
19 many cases of all types? All three major types,
20 oppositions, cancellations, and appeals are
21 pending at any one point in time. And the only
22 significance of the slide I wanted to point out is

1 that oppositions are the top line on the slide and
2 they are trending down. So that means the total
3 number of oppositions that we have has been
4 decreasing some, not really substantially, but
5 slowly and steadily over the last couple of years.
6 But we still have 5,000 oppositions pending at any
7 one point in time. So that's the major part of
8 our caseload.

9 The bottom two lines are cancellations
10 and appeals, and appeals are the bottom line. And
11 you can see appeals are trending upwards. So they
12 -- for most of the past two years, there were
13 fewer total appeals pending at any one point in
14 time than cancellations. But it looks like they
15 may be at an inflection point where they're going
16 to start becoming more than cancellations as we go
17 forward. And I'll show you that on another slide
18 in a moment.

19 Filings by quarter kind of illustrate
20 that total inventory that we saw on the previous
21 slide. These are just the new incoming cases on a
22 quarter-by-quarter basis. And you can see on the

1 top line oppositions, you know, up and down,
2 quarter to quarter, but generally trending a
3 little bit down. And the blue line, again,
4 showing the appeals going up through, steadily
5 going up in this fiscal year, the first three
6 quarters of this fiscal year. And on this slide,
7 this shows you the rather dramatic change in the
8 filing of ex parte appeals, which is probably a
9 result of the fiscal '21 filing surge of trademark
10 applications.

11 And so, we were wondering how long it
12 was going to take before those applications were
13 going to hit our shores. And we saw gradual but
14 steady increases in ex parte appeals for about six
15 years. But then last fiscal year, we saw almost a
16 10 percent decline, which was kind of mystifying
17 to me because I wasn't sure why we were seeing a
18 decline when trademarks was seeing such a dramatic
19 increase in the number of applications being
20 filed. But the mystery was solved pretty quickly.
21 So once we got into this fiscal year, everything
22 changed rather quickly. And so, a 10 percent

1 decline last year is looking like it's going to be
2 a 15 percent increase this year.

3 And given the amount of time it takes
4 trademarks to work through that inventory and for
5 final refusals to issue and notices of appeal to
6 be filed, this could be the start of a trend. And
7 I don't think we're going to be seeing bump ups,
8 bump downs, you know, alternating year to year.
9 I'm thinking we're back into that steady upward
10 trend on applications. And last year was just a
11 down year for applications being appealed. So our
12 goals, our processing goals, given that we have
13 seen an increase in the new cases, you're
14 wondering, well, how does that affect our goals
15 for processing? Well, we're not really -- our
16 goals don't get affected dramatically by the
17 number of cases coming in the front door. It's
18 the ones in the pipeline that are affecting these
19 goals.

20 And so, for the trial cases already in
21 the pipeline, we have a goal of deciding motions
22 in 12 weeks or less for any cases that come out

1 the other end of the pipeline, appeals or trials,
2 we have respective goals, different goals for
3 processing final decisions on the merits in
4 appeals and trial cases. For the first goal,
5 motion processing, contested motion processing.
6 The blue line shows the goal that we want to stay
7 below. We don't want to exceed 12 weeks
8 processing time on average for contested motions.
9 And our interlocutory attorneys from NTEU 245 are
10 doing a great job. We're below the goal, which is
11 where we want to be, and pushing it down as far as
12 we can, because we know that even though those
13 oppositions I showed you on an earlier slide were
14 trending down, we still have at any one point in
15 time, 7,000 trial cases pending.

16 So motion practice is not going away
17 anytime soon. And in fact, in some respects, on
18 an anecdotal basis, when we talk with the managing
19 interlocutory attorney, we can see, you know,
20 increases to some extent in certain types of
21 motion practice, in certain types of cases. The
22 appeal processing means the processing of final

1 decisions on appeals from the time they become
2 ready for decision, that we were pushing it down
3 for the last couple of fiscal years because we
4 thought that trademark filing surge was going to
5 be eventually pushing more appeals through the
6 pipeline that would require disposition on the
7 merits. And so, that's why you see this trend
8 line going up, because we are experiencing more
9 trial cases that need to be decided on the merits.
10 And that on this slide, you can see the trial case
11 pendency is going up.

12 And the reason the increase in the
13 number of trial cases that require disposition on
14 the merits causes both the trial and appeal lines
15 to go up is because the trial cases take more
16 time. And some of them are very large record
17 cases that can take a panel of judges months to
18 get through 10,000, 20,000 pages of evidence and
19 decide those cases on the merits. And so, if
20 panels of judges are working on trial cases like
21 that, they're not getting to some of the X party
22 appeals. And so, that's why both of the lines

1 seem to have gone up in tandem, even though the
2 case is ready for decision on the merits. The
3 bottom two lines, the top line is combined, and
4 you can see it going down a little bit, but the
5 middle line is the number of appeals coming out
6 the other end of our pipeline requiring
7 disposition on the merits, they are going down.

8 So we're getting a lot of appeals filed,
9 but they're not far enough in the pipeline yet to
10 be ready for decision on the merits. So that line
11 eventually is going to turn around and start going
12 up that middle line. But in the meantime, the
13 bottom line is trial cases. And that has been
14 going up. And we will experience this year, the
15 second consecutive year with more than 200 trial
16 cases requiring disposition on the merits. And
17 that's after two years of well under two
18 consecutive years of well under 200 trial cases
19 requiring disposition on the merits. So that's a
20 significant change that's affecting our workload.

21 Let me just go to TTAB center and point
22 out I don't have the flashy demonstration that

1 Charlie showed you, but we will be able to show it
2 to you at some point in the future. So we're
3 calling it TTAB Center, just like Trademarks is
4 calling Trademark Center. The notice of
5 opposition form is the first one that we will
6 deploy, and what we will do when we have this form
7 up and ready for beta testing and then eventual
8 use, is have TTAB Center running concurrently with
9 ESTA, our online filing platform that you're all
10 very familiar with.

11 But if you are faced with a choice, am I
12 going to file a Notice of Opposition through TTAB
13 Center or through ESTA? We will be promoting and
14 extolling on our website the benefits to all of
15 you of using TTAB Center. But you will have to
16 have your MyUSPTO account, which is not necessary
17 to use ESTA, but you will need it to use TTAB
18 Center. And you will be able to, as Charlie
19 showed you in the demonstration, just import some
20 information from your MyUSPTO account and other
21 databases pretty easily by checking boxes. And
22 you will be able to access TTAB records and pull

1 in other information when you're completing your
2 Notice of Opposition filing form.

3 And as Charlie said, their first
4 application that they were working on is a, I
5 think it was a TEAS Plus application, standard
6 character mark, you know, very minimal
7 requirement, and that's going to become the basis
8 for development of other forms later on. Same
9 with us. We're developing the Notice of
10 Opposition form, and we'll later develop the
11 petition for cancellation form and other filing
12 forms for both trials and appeals. And we hope
13 that we will learn a lot during the beta testing
14 of the Notice of Opposition form that will
15 influence how we develop and fine tune the rest of
16 the forms.

17 And you are going to have better
18 protection, better security in TTAB Center, there
19 is going to be two-factor authentication in place.
20 You will have the same kinds of tabs that you
21 could see in Charlie's demonstration, where you
22 will have draft notices of opposition, plus new

1 ones that you want to create. And you'll have the
2 ability for a support staff person to work on a
3 form and then later on send it to an attorney for
4 review or signature, so it'll be -- it'll
5 facilitate that collaborative process. And you
6 will not have to go through the entire form all
7 the way to the end for fear of losing something
8 that you've entered, which is more of what you
9 experience in ESTA. So you'll be able to save
10 things like kind of partway through and then come
11 back to them later on.

12 So that's all I really wanted to cover
13 today, and if you have any questions, I'm happy to
14 take them, but otherwise, we'll see you again at
15 the next meeting.

16 MR. GOODER: Thanks very much. Any
17 questions?

18 MS. DEUTMEYER: Judge Rogers, this is
19 Tracy Deutmeyer from TPAC, and I just have a brief
20 question that has come up among TPAC this morning.
21 It's actually about the final pretrial conference
22 pilot.

1 MR. ROGERS: Sure.

2 MS. DEUTMEYER: And the question is
3 whether parties can request to become part of the
4 pilot or at least make a suggestion that they'd
5 like to be a part of the pilot? What are your
6 thoughts on that or direction for the public if
7 they want to become a part of the pilot?

8 MR. ROGERS: I would never tell any
9 party to not ask for assistance of the board. If
10 they think that the board can provide assistance,
11 then you can always try and arrange. And I think
12 the reason why parties are going to be thinking
13 about whether we should go into the pretrial
14 conference pilot is because they're having some
15 difficulties, or they expect that trial is going
16 to be rocky in some way, or that the record is
17 going to be really large and the board could help
18 the parties figure out what to possibly stipulate
19 to as to facts or stipulate to as to the
20 introduction of evidence into the record.

21 And that kind of discussion is something
22 that should be available by asking the

1 interlocutory attorney assigned to the case to
2 have a phone conference with the parties. I mean,
3 you already have the option of asking for board
4 involvement in a settlement and discovery planning
5 conference or requesting a phone conference with a
6 board attorney whenever the parties have reached
7 some sort of impasse and need help breaking that
8 impasse. This sounds like it would be more, not
9 so much a request to break an impasse, but more
10 forward thinking about how we prepare for trial.
11 And I don't see why we shouldn't be open to those
12 requests coming in. Now, I'm not sure all the
13 judges and attorneys at the board, if they're
14 listening, wanted me to say that, but I'll go back
15 and make it right with them.

16 MS. DEUTMEYER: Thank you.

17 MR. GOODER: Yeah, thanks very much.

18 We've come to the end of the program at this
19 point, so I will turn it back over to David. No
20 questions online?

21 MR. GOODER: There are two that I've
22 seen and one more. Oh, it's two questions in one.

1 Right, yeah, I'm sorry, you're right. Thank you.
2 Just jumping ahead again. Wanted to -- to open up
3 the microphone to Cathy Faint who is here
4 representing NTEU 245, I believe. If she's still
5 online and if conference services you can pull
6 down the slides and put up the participants, that
7 would be great. And Jay Besch, who's usually
8 here, was on vacation this week, I believe.
9 Cathy, I think you're muted.

10 MS. FAINT: Thank you, Dave.

11 MR. GOODER: There we are.

12 MS. FAINT: Hello, I'm Catherine Faint.
13 I am Vice President of NTU 245 and an
14 interlocutory attorney with the Trademark Trial
15 and Appeal Board. And I'm glad to be here
16 representing our examining and interlocutory
17 attorney members of NTU 245. Our president, Jay
18 Besch has been working very hard with our
19 executive board and our several volunteers who
20 work on committees to meet the many challenges
21 inherent with the pace of the changing electronic
22 examination systems and all of the many electronic

1 systems that we now use.

2 Our examining attorneys are currently
3 facing the first of these changes with the new
4 XSearch system, which has become -- is not easy.
5 It's hard to use. It's a new language that we're
6 trying to learn and we're working quickly to learn
7 that and keep the same level of quality that is
8 our standard. And we share many of the concerns
9 with you, our external customers, as we all work
10 to try and make this system effective and useful
11 for all of us in the future. We are heartened by
12 a renewed commitment from Trademark management to
13 work collaboratively with NTU 245 as we try to
14 hammer out how we will do our work with the
15 changing electronic tools that must be updated and
16 must be updated quickly. And we are all committed
17 to speaking frankly and honestly to work out
18 solutions while meeting the needs of examining
19 attorneys in the office. And I want to thank
20 everyone here today who's obviously working also
21 very hard as we all try to face this new future
22 together. Thank you.

1 MR. GOODER: Thanks Cathy, very much.
2 And next is Harold Ross from NTEU 243, but I don't
3 believe he's online. Just double checking. No.
4 There it is. It's telling me no. Okay, at this
5 point we'll move to questions and we usually just
6 take a couple of minutes here to make sure we've
7 checked and that we have all of them, et cetera.
8 So if you all can just pause for a couple of
9 minutes, we'll be right back.

10 (Recess)

11 MR. GOODER: Okay, so we have
12 essentially two questions that came in, in one
13 email, and these, I think, Dan, are for you or if
14 anyone else wants to jump in. The first, is
15 there's a link dependency for examination of
16 amendments and responses.

17 Days per the website where target is 14
18 days. Why is that and what efforts are being made
19 to address the delay?

20 MR. VAVONESE: Yes. So the way the
21 office processes the incoming amendments and
22 responses, for several years now, we've had a

1 tool, you know, it's built into our processing
2 where the majority of the responses get
3 automatically entered. And that's based on did
4 the applicant use all the necessary data fields?
5 Did they -- there are certain categories of
6 amendments that we want somebody to look at and
7 not just auto process. Like, if there's a drawing
8 amendment, if there's filing bases, certain other
9 changes that we want somebody to look at, not just
10 auto process.

11 So that 86, obviously the majority of
12 our responses get auto process that day. I
13 shouldn't say obviously, because you see 86 days
14 on the website. The responses that need to be
15 reviewed, that's what the -- that's what the 86
16 days is referring to. Those are sent to our exam
17 support unit and we have been understaffed and we
18 are hiring to get additional staff professionals
19 within exam support to help us with that
20 percentage of responses. It's about 85 to 15
21 percent. So 85 percent are entered and then the
22 other 15 percent go to our staff to review first

1 before they're sent on to the examine attorney.

2 So that's -- what we're doing to solve
3 it is hiring. And then farther out in the future
4 and we've got to discuss this how else we can
5 continue to utilize that auto processing as well.

6 MR. GOODER: Okay, thank you. Second
7 one is, in my experience, some law offices are
8 much further behind than others. Is it the case
9 that this role is performed on a law office by law
10 office basis, or is it a consolidated function?

11 MR. VAVONESE: It's consolidated.

12 MR. GOODER: Yeah. It's not done by law
13 office.

14 MR. VAVONESE: Correct.

15 MR. GOODER: All right, thank you. No
16 other questions. All right, back over to you,
17 David.

18 MR. CHO: Well, thank you very much.
19 Normally, I just sign off, but I want to take a
20 few moments and mention that partly by mistake and
21 partly by design. I did not explain why we had a
22 shorter meeting. And I'm hopeful that all of you

1 who started have stayed on because of the length.
2 And the reason why we set out in the beginning of
3 the year to really look at how we can be a more
4 effective resource, not only to the PTO, but to
5 the public at large.

6 So the first public meeting we had was
7 the second quarter. That was more of what you've
8 been used to the last few years. So this one is
9 an attempt to see how we can be effective, more
10 effective. And this is a shorter format,
11 streamlined. And if you noticed, we did not cover
12 all the traditional topics. So I would appreciate
13 if you have any quick reaction to that, go ahead
14 and email the TPAC address there. And I'll take
15 this as affirmation. We had one live participant
16 who was able to stay through the whole time, maybe
17 because it was a shorter time frame and didn't
18 have to leave early and could make the time out,
19 that it was just enough that, yes, it's worthwhile
20 to come here. So thank you very much for
21 participating with us. We look forward to
22 continuing working with the PTO and informing you

1 all of some upcoming things coming in the
2 pipeline, as you know, with the fee setting and
3 also all the IT changes that are coming underway.
4 So with that, again, thank you for participating
5 and have a good rest of the day. Bye.

6 (Whereupon, at 1:03 p.m., the
7 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Thomas Watson, notary public in and
4 for the Commonwealth of Virginia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21 My Commission Expires: September 30, 2025

22 Notary Public Number 256314

