

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, July 30, 2021

1 PARTICIPANTS:

2 TPAC Members:

3 CHRISTOPHER KELLY, Chair

4 SUSAN NATLAND, Vice Chair

5 STEPHANIE BALD

6 DAVID J. CHO

7 TRACY L. DEUTMEYER

8 JOMARIE B. FREDERICKS

9 JENNIFER L. KOVALCIK

10 TRICIA MCDERMOTT THOMPkins

11 KELLY WALTON

12 Union Members:

13 JAY BESCH, NTEU 245

14 PEDRO FERNANDEZ, NTEU 245

15 HAROLD ROSS, NTEU 243

16 USPTO:

17 ANDREW HIRSHFELD, Performing the Functions and
18 Duties of the Under Secretary of Commerce for
19 Intellectual Property and Director of the
20 USPTO

21 KIMBERLY ALTON, Acting Director, Office of
22 Governmental Affairs

CHRISTINE COOPER, Chief of Staff, Office of the
Commissioner for Trademarks, USPTO

1 PARTICIPANTS (CONT'D):

2 AMY COTTON, Deputy Commissioner for
3 Trademark Examination Policy4 MARY CRITHARIS, Chief Policy Officer and
5 Director for International Affairs, USPTO6 GREG DODSON, Deputy Commissioner for Trademark
7 Administration, USPTO8 KAREN FERRITER, Deputy Chief Policy Officer and
9 Director for International Affairs, USPTO

10 DAVID GOODER, Commissioner for Trademarks, USPTO

11 JAMIE HOLCOMBE, Chief Information Officer, USPTO

12 ANASTASIA JOHNSON, Executive Assistant, Office
13 of the Commissioner for Trademarks, USPTO14 SEAN MILDREW, Deputy Chief Financial Officer,
15 USPTO16 MICHELLE PICARD, Senior Advisor for Financial
17 Management, Office of the Chief Financial
18 Officer, USPTO19 GERARD ROGERS, Chief Administrative Trademark
20 Judge, Trademark Trial and Appeal Board, USPTO21 COKE STEWART, Performing the Functions and
22 Duties of the Deputy Under Secretary of
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Trademark Trial and Appeal Board,
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Manager, USPTO

1 PARTICIPANTS (CONT'D):

2 DAN VAVONESE, Deputy Director for Trademark
3 Operations, Office of the Commissioner for
Trademarks, USPTO

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

2 (1:09 p.m.)

3 CHAIRMAN KELLY: Hello, and welcome to
4 the 3rd quarter Public Meeting of the Trademark
5 Public Advisory Committee. My name is Chris Kelly
6 and I am a partner at Wiley Rein in Washington,
7 D.C., and I have the privilege of serving as this
8 year's TPAC Chair.

9 Before we begin today, I would like to
10 introduce my fellow TPAC members, beginning with
11 this year's Vice Chair, Susan Natland. Susan is a
12 partner with the Knobbe Martens firm in its
13 Irvine, California office.

14 Next is Stephanie Bald, a partner with
15 the Kelly IP firm in Washington, D.C.; Kelly
16 Walton, Senior Counsel at Electronic Arts in
17 Austin, Texas; Jennifer Kovalcik, Vice President
18 in Technology & Intellectual Property Counsel at
19 Community Health Systems in Franklin, Tennessee;
20 Tricia Thompkins, General Counsel at Shoe Show in
21 Charlotte, North Carolina; David Cho, Assistant
22 Vice President and Senior Legal Counsel for

1 Trademarks and Copyright at AT&T in Dallas, Texas;
2 Tracy Deutmeyer, a shareholder at the Fredrikson &
3 Byron firm in Des Moines, Iowa; and Jomarie
4 Fredericks, Deputy General Counsel and Chief
5 Intellectual Property and Brand Counsel and
6 Director of Intellectual Property at Rotary
7 International in Evanston, Illinois.

8 I would also like to recognize the Union
9 representatives with us today. From NTEU, Jay
10 Besch, and from POPA, Pedro Fernandez. But,
11 again, welcome to everyone. Thank you for
12 participating.

13 Our first speaker today is Drew
14 Hirshfeld. Drew is the acting -- Drew, I know
15 this is not your precise title -- but Acting Under
16 Secretary of Commerce for Intellectual Property
17 and Acting Director of the USPTO. Drew, we are
18 very happy to welcome you back to TPAC and we
19 appreciate your support. And, with that, I will
20 turn it over to you.

21 MR. HIRSHFELD: Sounds good. Thank you,
22 Chris. And, it's funny. I don't think anybody,

1 including myself, gets my title right. I think
2 it's the longest title you could have, although
3 actually Coke Stewart's title is the longest,
4 because she has the same as mine with Deputy added
5 into it.

6 So, in any case, welcome, everyone, to
7 our third meeting of the year. I'm happy to be
8 here with all of you. I look forward to the day
9 we're back in person and having these meetings in
10 person. But, for now, these remote meetings will
11 do us well. I also know we got a late start
12 today. We did have some trouble getting people
13 connected in, which is one of those problems you
14 have sometimes with remote, large meetings. So,
15 our apologies, and thank you to all of you who
16 have joined in.

17 Again, it's my pleasure to be with all
18 of you. I wanted to welcome all of the TPAC
19 members and all of the Union members. I won't
20 repeat what Chris mentioned for names there, but,
21 welcome to everyone. To all the members of the
22 public who are joining here, welcome to you as

1 well. We appreciate your interest in the TPAC and
2 the American Trademark system.

3 I want to mention a couple recent events
4 that we've had. Let me start with an event
5 earlier this week, just on Tuesday. Hopefully,
6 you all know about this event, but I'd like to
7 mention it anyway. But, we had a wonderful
8 celebration of the 75th anniversary of the Lanham
9 Act of 1946.

10 We were honored to have the Secretary of
11 Commerce, Gina Raimondo, join us as well as
12 Senators Grassley and Coons, Congressman Ted
13 Deutch, and numerous individuals and companies
14 from the private sector. There were a few
15 wonderful sessions about people from companies
16 sharing how trademarks have impacted and helped
17 form and create their businesses, and so, a
18 wonderful event.

19 And, there was a great documentary on
20 Fritz Lanham. So, I believe we're putting that on
21 our website, if we haven't done so already. So,
22 if anybody wasn't able to catch that live, I

1 recommend that you do get the opportunity to see
2 that. It was quite a great event.

3 I also wanted to mention that earlier
4 this month we had a visit to the USPTO by Deputy
5 Secretary Don Graves. And, I think I have
6 mentioned this previously to TPAC, but Secretary
7 Raimondo had previously visited, so this was a
8 visit by Don Graves. And, he started to make --
9 as he is transitioning into commerce -- wanted to
10 meet all the agencies, and the USPTO is his first
11 stop, and we welcomed him.

12 I will share with all of you that one of
13 the things we did with his visit, in addition to
14 meeting the senior leadership team, giving him a
15 tour, and giving him some background on what we
16 do, is we actually had him sit down and have both
17 a trademark examiner and a patent examiner walk
18 him through the tools in what their job is.

19 And, when we were planning this, I will
20 tell you all that I asked him: Do you want this
21 kind of level? Because, we'd love to give it to
22 you if you're interested. And, he was very

1 excited about it and really wanted to see the
2 tools that people were using. So, I was quite
3 pleased with that visit. I think we were able to
4 really show him what we do at the USPTO.

5 And, I will tell you that, very clearly,
6 both Secretary Raimondo and Deputy Secretary
7 Graves are very well aware of what we do at USPTO,
8 they're aware of the value of intellectual
9 property, and, so, they are big supporters of both
10 patents and trademarks and, in general, the USPTO.
11 So, wonderful visits by them. I will tell you
12 that Don Graves's ancestors actually held patents,
13 and, so, he has a special tie, and that was a lot
14 of the discussion that we had as well.

15 So, I chose to highlight some topics. I
16 know you're going to hear more about these later
17 on in this meeting, but I wanted to highlight some
18 key topics that we had because of their
19 importance. And, let me start with filings. And,
20 the filings for the year continue to be
21 unprecedented. They are very high, as you're
22 going to hear, coming up.

1 So, right now, where we speak, trademark
2 application filings are up 54 percent fiscal year
3 to date as compared to last year. That is quite a
4 remarkable number. It shocks me every time I say
5 it or every time I hear it from people. It's
6 really quite amazing to see this increase.

7 In the last couple months, there have
8 been lesser increases but still increases
9 nonetheless. And, what's interesting is, it is
10 when the Trademarks team and Dave Gooder reports
11 to me that the last couple months have been less.
12 If you looked at the last couple months in a
13 vacuum, we'd still think that's really high. And,
14 really, there are still big upticks in filings,
15 but, compared to the previous months, there are
16 slightly less upticks. So, we are seeing a big
17 trend.

18 U.S. filings continue to be strong
19 overall. They account for 59 percent of our total
20 filings. Filings from foreign brand owners also
21 continue to grow, with China having the largest
22 portion of international filings. They are

1 currently at approximately 25 percent of our total
2 filings.

3 I also wanted to mention backlog in
4 automation. Obviously, with the increase in
5 filings, we have an increase to the backlog.
6 That, of course, has to affect our pendency, and
7 we're taking a lot of steps to make sure we keep
8 pendencies low. And, I know Dave Gooder and his
9 team are working on bringing in more examiners,
10 examining attorneys, and being able to move the
11 backlog as best as we can and to keep it down.

12 We're also looking at developing and
13 testing, deploying new automation systems and
14 artificial technologies to increase efficiency.
15 So, we're addressing this in a number of ways, and
16 I believe that, while we will see increases to the
17 pendencies, they will level off and we will be
18 able to start returning them to the lower numbers
19 as we move forward.

20 Also, with the increased filings, we've
21 unfortunately continued to see some concerning
22 filings. There is certainly an uptick in

1 fraudulent filings. We're seeing people also
2 attempting to circumvent the U.S. counsel rule
3 that was implemented in 2019. What we have done
4 is we've created a special task for on improper
5 activities, and that's become a very important
6 part of our register protection initiative.

7 We're fortunate, I will tell you, to
8 have Dave Gooder in his role. So, thank you,
9 Dave. Dave is well aware of protecting the
10 register and what needs to be done there and
11 really has made this a big focus and continued the
12 efforts of previous commissioners but really has
13 made this a great focus, and, so, our special task
14 force will continue to develop strategies to
15 address any suspicious filings and the scams.

16 They're investigating all kinds of
17 allegations of fraudulent activities to determine
18 and understand any of the misconduct and what next
19 steps we can do. By way of an example, you may
20 have seen that we've recently issued a Show Cause
21 order for about 14,000 applications, which all
22 started from a single filer in China, so, more

1 information I'm sure that Dave and his team will
2 share with all of you.

3 I also wanted to mention the Trademark
4 Modernization Act, of course. The public comment
5 period for our recent request for comments ended
6 last week on July 19th. We received 30
7 submissions and we're now going through those
8 submissions and considering what our next steps
9 should be. Again, I know you'll hear more about
10 this as we continue on.

11 Finally, I just want to say a note about
12 our employees. And, I will tell you that you all
13 know that my day job, so to speak, is commissioner
14 for patents, and then in January I've had the
15 pleasure of performing the functions of the Under
16 Secretary and Director.

17 And, I will just tell you, across the
18 agency, I couldn't be more proud of the employees
19 and the way they have handled the last year and a
20 half plus that we've had our working -- our
21 complete working world changed. And, many people
22 who were not remote were remote. Trips to the

1 office are different. Meetings are now all
2 remote, of course. Meetings with members of the
3 public are done remote, et cetera. Hearings are
4 done remote. So, I couldn't be more proud of the
5 way that the whole entire staff has adapted to
6 what needs to be done so that we can continue to
7 function.

8 I personally feel that the USPTO has
9 continued to function as best as possible. I
10 think we're, quite frankly, setting the standard
11 of how to be able to perform remote and in this
12 situation. And, so, I just wanted to give a
13 shout-out to all of the employees throughout the
14 entire agency. I'll particularly shout out the
15 Trademark employees, since this is a TPAC meeting.
16 You've all done a great job. So, thank you to all
17 of you.

18 And, any manager knows that the most
19 important managers for the wellbeing of the line
20 employees are those first-line supervisors, and
21 across the board you've all done a great job
22 keeping your employees engaged and productive.

1 So, thank you to everyone. I'll wrap up my
2 remarks there. It's a pleasure to be with all of
3 you, and I look forward to a great meeting.
4 Thanks.

5 CHAIRMAN KELLY: Thank you, Drew, very
6 much. And, we now go to Commissioner Gooder.

7 MR. GOODER: Thanks, Chris, and thanks,
8 Drew, for the kind words. Welcome, everyone, to
9 today's TPAC meeting. And, for the next session
10 we're going to talk about the Trademark office,
11 the Trademarks' Business Unit, as it's known
12 internally.

13 And, our agenda for today -- next slide,
14 please -- covers a number of areas around the
15 office that are of interest. So, we'll talk a bit
16 about the Trademark Business Unit and update on
17 what's happening with our priorities and some of
18 the things that Drew was talking about.

19 We'll then move to an update about our
20 IT systems and developments with the Office of the
21 Chief Information Officer (OCIO). Then, we'll
22 have a legislative update, a Policy and

1 International Affairs update, an update from Judge
2 Rogers at the TTAB, and then, of course, time at
3 the end for public comments and questions. So,
4 without further ado, let's dive in. Next slide,
5 please.

6 With regard to the Trademark's Business
7 Unit itself, what we're going to talk about it a
8 number of things. First of all, some of our
9 business operations and performance, and then
10 we'll switch gears out of actual trademarks and
11 move to the financial side and talk about it, how
12 things are going for the year, et cetera.

13 Then, we'll switch gears and focus on
14 our four key priorities this year -- combating the
15 surge in applications, the Trademark --
16 implementing the Trademark Modernization Act, our
17 efforts with regard to register protection, and
18 then about IT modernization, which is by no means
19 least, even though it comes forth on the agenda.
20 So, next slide, please.

21 Okay. With regard to staffing at the
22 Trademark office, we're now slightly over 1,000

1 employees. We're up 58 people from last July at
2 this time and which is largely examiners, but not
3 entirely. As you see, about 48 of them were
4 examiners, et cetera. And, everybody is
5 teleworking and everybody has the option to do it.

6 So, when the pandemic hit last year, the
7 Trademark side of the agency was already about 70
8 percent working remotely. So, the shift wasn't
9 that difficult, and I echo what Drew was saying.
10 I commend our folks for literally pivoting on a
11 dime for those who weren't already teleworking, to
12 be able to just, literally, almost seamlessly,
13 just keep moving.

14 Obviously, we've all learned very
15 different ways of working this year, and then
16 we're all looking at what is hybrid and what does
17 hybrid mean in the next phase of things. So,
18 we'll talk more about that, certainly, at the
19 October meeting. With regard to meetings, I'm
20 pretty sure this is the sixth virtual meeting
21 since the pandemic started, maybe the fifth, but I
22 think it's the sixth.

1 And, while we would have loved to have
2 done this one in person, it's just -- the
3 situation in Alexandria and with federal
4 government buildings, et cetera, just didn't
5 really allow it. We're really hoping that we will
6 move into this hybrid world of TPAC meetings in
7 October at the last meeting of the year. Next
8 slide, please.

9 So, the story that Drew was alluding to
10 and the one that you've heard a lot about this
11 year, it's been written (Inaudible), it's just
12 application filing levels. And, if you look at --
13 look back a year, Fiscal 2020, we ended up the
14 year with about 738,000 classes.

15 Now, here's a distinction you need to
16 keep in mind as you look at statistics. And, this
17 is something I didn't appreciate as a private
18 practitioner. We tended to think outside the
19 agency in terms of how many applications are you
20 dealing with. Inside the agency, we look at the
21 number of classes actually filed. And, the reason
22 is because that actually drives the workload more

1 than the number of applications.

2 So, when you see the number, be sure and
3 identify in your mind -- are we talking about
4 classes or applications? In this case, looking
5 back last year, like I said, almost 740,000
6 applications. This year alone we're at 785, and
7 we're projecting to come in somewhere around
8 940,000 applications. So, that percentage is
9 shifting daily as the fiscal year goes along, and
10 right now we're at about 44 percent over last year
11 on a classes basis. It's significant. I know
12 we've all overused the term unprecedented, but, it
13 certainly is. Next slide, please.

14 Okay. So, if that's what's happening on
15 a macro basis, it's interesting to look at it by
16 the month. And, essentially, you see the months
17 in red at the left were kind of the start of last
18 fiscal year into the -- right into the pandemic.
19 And, then, you notice that by June things started
20 turning around and they kept going and going and
21 going.

22 And, obviously, there was a huge spike

1 in September and mostly in December which leaned
2 right up against the fee increase. So, it was
3 pretty understandable. Not to that size would we
4 have predicted it. And, literally, every month
5 since then, as Drew was saying, has been back up
6 and climbing. And, even a small month, like June
7 of this year, as opposed to -- June of last year
8 was moving, so, it's really amazing. Next slide.

9 What's interesting also is what's
10 happening in the world with all these filings.
11 So, the top line, blue line, is the U.S. The next
12 line down, yellowish gold, is 25 percent, then the
13 bottom line, green one, is European Union, and the
14 purple line right above it is the rest of the
15 world. And, a couple (Inaudible) you can see,
16 obviously, the spike in January which was
17 significantly impacted by Chinese filings. Same
18 with the end of the fiscal year.

19 But, also, you've noticed that as we've
20 moved into June and July, filings are tapering
21 off, and that's actually a welcome change while
22 we're still up significantly. It does allow us to

1 catch our breath a bit more and eat away at the
2 backlog. Dan Vavonese is going to talk to you a
3 bit more in detail a bit about what's happening
4 with that and what we're doing. But, it's a
5 welcome change. Next slide.

6 Interestingly, talking about pendency,
7 here's what's essentially happened with that
8 massive backlog in an inventory that we have. The
9 lower two lines are first-action pendency. And,
10 as you can see, we're just shy of 6 months right
11 now. And, our target for the year has been four
12 and a half. We knew it would be higher, but, at
13 the time we were setting targets, nobody
14 anticipated December being as big as it was.

15 The good news in this, actually, is that
16 it is starting to flatten out and we think it will
17 -- we're projecting that it will stay right around
18 6 months as we eat away at it. With regard to
19 disposal pendency, that actually is some good news
20 in the sense that it's still under our usual
21 target of 12 months. Next slide, please.

22 One of the shining spots here is our

1 quality numbers have stayed steady if not climbed
2 a bit, and, given what everybody's had to deal
3 with this year with examiners and support staff
4 and everybody have dealt with, to see these
5 numbers stay strong, I think, is just a real
6 testament to how professional everyone is.

7 And, we all know how difficult it's been
8 to be working from home, schooling from home,
9 taking care of family from home, and I want to
10 thank literally all the Trademark staff,
11 everybody, for being able to keep these kind of
12 numbers up. Next slide, please.

13 MR. GOODER: Okay. So, a lot of people
14 ask: What caused the surge and who is causing the
15 surge? We're going to take a little bit of a dive
16 into that right here, because I think it's
17 important for people to understand that it's very
18 easy to poke at one thing or another and say, aha,
19 that's what caused it or that's the problem, et
20 cetera. As with most things, it's not an easy
21 answer. So, next slide.

22 Let's start by looking at what the

1 numbers are, and that'll be of help. So, if you
2 look at all Trademark filings across the board --
3 and this chart only goes back 5 years -- but,
4 focusing on the right-hand side, 76 percent of all
5 are filings, and that's 33 percent are owned by
6 one-time filers, single. They own one.

7 And, the next biggest group, 43 percent,
8 are small filers, ones that own less than 10
9 filings. So, we're largely talking about
10 individuals and small business, SMEs, essentially.
11 That's really significant when you think about the
12 kinds of business activity going on in the U.S.
13 and it affects us. Next slide.

14 When you look at the surge itself,
15 what's interesting is, starting on the left side
16 of this chart, on the type of applicants, again,
17 with the surge it's consistent. The percentages
18 are slightly different, but we're still looking at
19 75 percent being small and solo filers. So, the
20 trend continued.

21 What is interesting is, by far and away
22 the majority of the filings are based on actual

1 use. They are strongly of the business type that
2 are individuals or other kinds of businesses, sole
3 proprietorships, et cetera. And, then finally, if
4 you look at countries on the right, you will see
5 that, of the surge itself, the vast majority of it
6 is from China and the U.S. It's important to note
7 that it's bull. It's not just one country or the
8 other. Next slide, please.

9 Now, what causes a surge has been the
10 subject of lots of conversation, in the media, in
11 our meetings and conversations, as I talked to
12 brand owners and lawyers around the country. But,
13 we've really identified five things, and I don't
14 think any one of them is the biggest contributor,
15 but they are all significant.

16 The first one is the growth of online
17 sales, and especially cross-border sales. Look at
18 any online platforms, sales numbers in the
19 pandemic, especially look at Amazon or others, and
20 their numbers are just significantly up. Well,
21 that caused a lot of sellers to shift gears to
22 pivot to other product lines, et cetera. For

1 instance, one of the biggest growth areas in terms
2 of filings was pet products. We obviously love
3 pets and we had more time to focus on them during
4 the pandemic, so, online and e-commerce, certainly
5 a big driver.

6 Two different kinds of government
7 stimulus was going on. One, which was most
8 directly government -- the stimulus checks that we
9 all know about in this country -- and I'll talk
10 about that -- I'll come back to that in a second.
11 The other type, which was certainly a factor in
12 the Chinese filings, was filing subsidies at the
13 provincial and local level, notably in Guangdong
14 province, which is just above Hong King in the
15 south. It's one of the major manufacturing hubs
16 in China, especially Shenzhen, but other provinces
17 as well.

18 These are not central government
19 stimulus. These were -- or subsidies -- these
20 were by province. They are changing over time.
21 The central government -- you'll hear more about
22 this, I think, in the OPIA, Policy International

1 Affairs section, so, I won't go into it here.
2 That is changing. That being a factor is likely
3 declining.

4 Obviously, the fee increase had an
5 impact. We've also seen a lot of activity amongst
6 Chinese and U.S. law firms, lawyers, filing mills
7 marketing directly to Chinese trademark owners or
8 potential trademark owners, offering low- cost
9 services, some of which were less than reputable.

10 And, there's a lot of marketing type
11 that, I think, drove some of this, because, when
12 you look at the substance of some of it, you
13 realize that actually we're selling something that
14 wasn't as needed, but if you come from a country
15 -- a part of the world where you file based on --
16 your trademark rights are based on who files first
17 as opposed to what's being actually used, you
18 realize why that's an easy message to sell.

19 Lastly, and this is the area, I think,
20 that's been underappreciated and is getting a lot
21 more media attention now, is just the flat out
22 growth in business formation and development

1 entrepreneurialism in the last 15 months. You see
2 the number there, 6.7 million new businesses
3 started since March 2020. That, as I understand,
4 is an absolute record.

5 But, what was going on this year, this
6 time around, was very different. So, usually,
7 when we've seen an economic downturn, you've seen
8 people get laid off, et cetera, and then
9 everybody's trying to find another job, et cetera.
10 Well, this time was a little different. New jobs
11 just weren't so easy to find right away, and, so,
12 a lot of people had time on their hands, and this
13 time they had some money because of the stimulus.

14 And, the theory that I've heard
15 economists talk about is, those two factors made a
16 big difference. And, a lot of people who said
17 I've been thinking about doing X for a long time.
18 Now's the time. It's never going to get -- I
19 should try it now. I've got the downtime. I've
20 got some funds. I'm going to do it.

21 And, if you look at the numbers of
22 individuals who filed for the first time, that's

1 pretty consistent with this. So, this is an area,
2 I think, that's exciting -- lots of very
3 well-known, big companies started during difficult
4 economic times. And, I think this is a way that
5 will be quite positive for a long time. Next
6 slide, please.

7 All right. One additional thing that
8 arose at the last meeting that I wanted to update
9 you on -- and you'll hear a bit more about this --
10 but, it was raised in the last meeting that a lot
11 of trademark owners were having difficulty
12 obtaining timely copies of certified trademark
13 registration certificates. They might have had a
14 priority deadline overseas. They might have had a
15 litigation deadline imposed on them. And, because
16 of the pandemic, they weren't able to get these
17 certified and/or legalized copies fast enough.

18 This is a three-legged stool. You've
19 got the USPTO's part of this where you actually
20 obtained the certified copy, you had the State
21 Department which deals with the legalization of
22 that document, and then you have the foreign

1 government. It might be the court or the IP
2 office that is imposing a deadline that we're just
3 at complete odds with the actual turnaround time.

4 OPIA will update you on the State
5 Department, the foreign side, but I can say that
6 from the USPTO's side, for trademarks, the delay
7 in getting an expedited copy of your registration
8 typically is now down to practically zero. It's
9 literally 1-day turnaround. And, I commend that
10 whole team for really, really picking it up and
11 getting things back on track quickly after it was
12 raised at the last meeting by a number of
13 trademark owners. Next slide.

14 All right. Now, at this point we're
15 going to switch gears out of trademarks and switch
16 over to money and budgets and revenue and expenses
17 and all that good stuff. And, for that, I'll turn
18 the mic over to Jay Hoffman who is our Chief
19 Financial Officer. Jay?

20 MR. HOFFMAN: Great. Thanks, Dave.
21 And, I think you'll find that a lot of the
22 financial information we're going to cover here

1 tracks very closely with the business story that
2 Dave just told. So, this syncs up nicely. Let's
3 go ahead and go to the next slide.

4 So, I've got a fairly brief agenda for
5 you today and limited materials. We're going to
6 go through our financial position and status for
7 FY 2021. We'll share some information with you on
8 kind of what comes next in terms of our budget
9 formulation for FY 2022 and FY 2023. So, go ahead
10 and head to the next slide, please.

11 So, our financial outlook is largely
12 unchanged from what we presented to you last
13 quarter. If we look at the table here, fee
14 collections at the beginning of the year were
15 estimated about \$444 million. That has
16 subsequently been adjusted upward and is now at
17 about \$465 million. And, the current revenue rate
18 is actually tracking higher than that upward
19 adjustment. We are tracking revenues of about
20 \$480 million. And, I'll show you a slide on that
21 in just a moment.

22 We started the year with about \$122

1 million of cash on hand. That was our operating
2 reserve. And, we added an additional \$16 million
3 of that from prior year revenue that was
4 reprogrammed to us. So, our total available
5 resources for the year were 604 million.

6 Our spending this year is only projected
7 to be about \$424 million, which is less than what
8 we're collecting. The collections level is
9 probably going to be closer to 480 million. So,
10 consequently, we will be adding funds to the
11 operating reserve this year, which is a good
12 thing. So, the operating reserve is projected to
13 end the year at \$180 million or perhaps a little
14 bit more, which is well above the minimum
15 operating reserve level of 75 million. Next
16 slide, please.

17 This slide here, you know, we have a
18 number of different fees that we charge for the
19 trademark business, and what this chart does is it
20 disaggregates that information. So, you can see
21 what is driving some of our revenue overages that
22 I described at the prior slide.

1 So, as I mentioned a moment ago, our
2 estimate for the year was about \$465 million in
3 aggregate trademark revenues. We're tracking it
4 at about \$14 million over that, and the vast
5 majority of that is from application filings, as
6 you can see from this chart. So, we're about 5.3
7 percent over where we expected to be and nearly
8 \$14 million ahead of plan on application filings
9 alone. And, that tracks with exactly the story
10 that Dave Gooder was just describing on the
11 business side.

12 The other area where we are seeing an
13 increase over plan was our maintaining exclusive
14 rights. That's tracking at about 4.4 percent
15 above our plan levels, and that equates to about
16 \$4 million. There are some other categories where
17 we're a little bit behind. The Intent to Use fees
18 are about 4 percent behind plan. Trademark Trial
19 and Appeal Board fees are about 11 percent below
20 plan. But, in the aggregate these are fairly
21 small. These are only \$1- to \$2 million off the
22 overall revenue plan, so, not particularly

1 material. Let's go to the next slide, please.

2 So, this chart here is the FY 2021
3 revenue compared to the FY 2020 revenue change.
4 We do it in a percent change. I've showed you
5 this chart before. And, the way we look at this,
6 just to acclimate you to the chart, is that the
7 yellow line is the 40-day moving average percent
8 change year over year, and the green line is the
9 10-day moving average change year over year.

10 So, our fee collections have been
11 consistently coming in in that 25 to 50 percent
12 above last year's collections, again, tracking
13 with that story that Dave Gooder was just
14 describing about how this year has really been a
15 big year for Trademarks. My standard caveat, of
16 course, is that last year was an unusually low
17 year at the outset of the pandemics for Trademark.
18 So, you are comparing a very high year with a very
19 low year, so you can take it with a grain of salt.

20 You'll notice here the last handful of
21 months that the overall trends have been volatile
22 within a fairly consistent range and that the

1 year-over-year gap has started to narrow. We're
2 seeing kind of a downward trend in this change
3 year over year. So, all of that's a good thing.
4 I think that the revenue pattern is starting to
5 settle in to something that's a little more
6 predictable, and I think the next slide actually
7 does a good job of showing that. So, let's go the
8 next slide.

9 So, what this slide shows is it depicts
10 the end-of- year aggregate revenue projections for
11 the Trademarks business line, and what we do is
12 each day we calculate the end-of-year projection
13 of revenue based off the trends that we have
14 experienced so far this fiscal year.

15 So, just to acclimate you to this, so
16 the Y axis is in millions of dollars, the X axis
17 is in months. The blue line that you see here is
18 our end-of-year projection that we are calculating
19 every day that I just described. The purple line,
20 the horizontal purple line is the current fee
21 estimate. That's 466 million for the year. And,
22 the green horizontal line is where we started the

1 year. We thought we were going to track at about
2 \$445 million.

3 So, a few interesting things about this
4 revenue slide, number one, you saw a big
5 acceleration right before the fee increase -- I
6 think people trying to take advantage of the lower
7 fees in the January timeframe -- and then it
8 started to taper off after that, after the fee
9 increase went into effect.

10 But, what's kind of interesting is, once
11 you got to March, for the most part the aggregate
12 revenue projection sort of leveled off. It's got
13 a sort of flat to slightly upward trend to it.
14 And, generally, that's a good thing. So, things
15 have tightened up with respect to our plan.

16 As I had presented on the previous
17 slide, we're tracking at about \$480 million on a
18 daily revenue rate. So, that's about \$15 million
19 above the revised plan, or about 3 percent. Let's
20 go to the next slide. Actually, Dave already
21 briefed this. Let's skip this one. Let's go to
22 the next slide.

1 So, FY 2021 status of our operating
2 reserve balance. This is our cash on hand to deal
3 with volatile situations, like what we experienced
4 last year at the outset of the pandemic, and other
5 unexpected needs. We're in very good shape. So,
6 what this chart shows is the Trademark operating
7 reserve balance, again, expressed as a 25-day
8 moving average. That's the area that you see.

9 There's two horizontal lines on this
10 chart. The horizontal line at the top is the
11 optimal operating reserve balance. That equates
12 to 6 months of operations, 6 months of cash on
13 hand, if you will, and that's about \$218 million,
14 give or take. There's a second horizontal line
15 that runs across the lower part of the chart, and
16 that's the minimum operating reserve balance,
17 which is about \$75 million, and that equates to 3
18 months of operating requirement.

19 So, as you can see here, we are
20 significantly above the minimum operating reserve
21 right now for Trademarks at \$180 million. That's
22 about where we expect to end the year. We're

1 approaching the optimal balance. We're not there
2 yet. But, overall, we're in a very sound
3 financial position in the Trademarks business
4 line. Next slide, please.

5 Some next steps on the budget -- so, the
6 FY 2022 budget. Earlier this year back in May,
7 the House and Senate Commerce, Justice, and
8 Science subcommittees on appropriations had
9 hearings with our Department of Commerce
10 Secretary. Both of those hearings were largely
11 focused on other bureaus and issues within the
12 Department of Commerce. There wasn't a lot of
13 substance with regard to the U.S. Patent and
14 Trademark Office.

15 The appropriation request is \$3.994
16 billion in the FY 2022 budget, and that's set at
17 the projected spending requirements level. We
18 anticipate that fee collections will be above the
19 spending requirement and are expected to come in
20 at \$4.058 billion. This is a change from the way
21 things were done in the prior year.

22 Overall, we're still waiting to see what

1 the House and the Senate decide. The House has
2 done the markup of their bill, and they did
3 recommend an appropriation of the agency at the
4 3.994 billion level. We're still waiting on the
5 Senate to go through their markup process. Just
6 as a reminder, in a perfect world, we would
7 receive an appropriation that authorizes us to
8 spend fees prior to October 1st.

9 Traditionally, we end up on a continuing
10 resolution for some short duration while
11 appropriations get worked out. I don't have a
12 crystal ball. I don't know what this year will
13 bring. But, the final appropriations bills are
14 still working their way through Congress and are
15 largely outside of our control at this time. Next
16 slide, please.

17 Lastly, the next steps on the budget for
18 the following year. The FY 2023 budget is
19 something that we are actively formulating inside
20 the agency. We're finalizing our fee estimates
21 and requirements for the FY 2023 budget, and we
22 plan to submit that to OMB approximately September

1 13th. That's what the current schedule provides
2 for.

3 We'll be sending an internal-use copy of
4 that document to the Trademark Public Advisory
5 Committee in the third week of August for your
6 review. For those of you who are watching at home
7 and are avid readers of the USPTO budget, the
8 document does not become a public document until
9 early February of next year in 2022, and we'll
10 release it to the public at that time.

11 So, I think that takes me to our last
12 slide. So, I will turn it back over to Dave
13 Gooder and his team. Thank you for your
14 attention.

15 MR. GOODER: Thanks, Jay. Any questions
16 for the TPAC on Jay's presentation? (No
17 response.) All right. Hearing none then, let's
18 move right along. Next slide, please. Okay. So,
19 this may look familiar to many of you. For this
20 fiscal year, these are our top priorities, without
21 a doubt. And, we're focusing an enormous amount
22 of effort.

1 Today, we're going to move around that
2 outer circle and update you in each of those
3 areas. And, the first area we're going to talk
4 about is the top ball, which is what we're doing
5 to attack this surge of applications. And, for
6 that I'm going to turn it over to Dan Vavonese
7 who's our Deputy Commissioner for Trademark
8 Operations. Dan?

9 MR. VAVONESE: Good afternoon. Quick
10 audio check. Good?

11 MR. GOODER: Yes, you're good.

12 MR. VAVONESE: Okay. Thanks. So, you
13 can proceed to the next slide. So, you know,
14 Commissioner Gooder talked about where -- some of
15 the causes for the surge and the numbers. I'm
16 going to talk more specifically about how that's
17 impacting our processing and then what we're doing
18 about it. So, we can go to the next slide.

19 So, the first thing I want to talk about
20 is our unexamined application inventory. What
21 this is is the number of application classes that
22 are waiting, basically, in the queue to be

1 examined by examining attorneys, and this means
2 from the actual date it's received. So, normally
3 they wouldn't be examined right away anyway, but,
4 this is -- this looks at the total inventory we
5 have of unexamined applications.

6 And, as you can see from this chart, we
7 have generally been above the 150- to 175,000
8 application classes in our inventory, and that's
9 been a healthy number for us. It's supported our
10 work for us, and it's also allowed us to stay
11 within that 3-month pendency, which, you know, our
12 customers have been accustomed to for the last
13 15-plus years.

14 Over the last year and a half, due to
15 the surge, this inventory has continued to go up.
16 And, just for some numbers, when we talk about 45
17 percent increase just this fiscal year alone, that
18 equates currently to about 230,000 additional
19 classes than what we had at this time last year.
20 And, that's on top of a 9-1/2 percent increase
21 last fiscal year as well. So, just the numbers
22 alone, you can kind of see where those numbers are

1 and how that's built up our inventory and how
2 that's built up as a result our first-action
3 pendency.

4 So, we are doing everything we can to
5 get through these applications. I want to just
6 emphasize, again, that our examining attorneys are
7 putting out a ton of work and at a very high
8 quality, as you saw by our quality metrics. Our
9 supervisors who are supporting them are working
10 extremely hard every day to get through the
11 classes. It's just a ton of work that we're
12 trying to get through, and I'm going to talk about
13 some of the things we're trying to do about this
14 in a few minutes.

15 The other thing, regarding the
16 first-action pendency, is that at the end of -- in
17 December alone we had 110,000 application classes
18 filed, which is just incredible. So, towards the
19 end of June we were getting through the end of
20 December, which, again, built up our first-action
21 pendency even a little more.

22 We are through the end of December now.

1 We are in January. I think we're about the
2 second, third week of January right now. And,
3 because the filings were a little lower in January
4 and February, that's why we're hoping that we're
5 going to be able to get through those months a
6 little quicker, and hopefully our pendency will be
7 leveling off instead of the continued rise that
8 you saw in the previous chart. So, that's
9 something that we're going to be working on. Next
10 slide.

11 So, I want to talk about a couple other
12 areas. I already talked about the first-action
13 pendency. For new applications that are filed, I
14 know there continues to be some confusion on this
15 that I just want to clarify. When you file a new
16 application, your data is uploaded to our system
17 within 1 week.

18 There is one exception where, if the
19 international classification is not included in
20 the application and that's specifically for TEAS
21 regular applications, because it would have to be
22 in a TEAS Plus application and in a Madrid

1 application. If the international class is not
2 there, the data cannot be uploaded to the system
3 until our pre-examination unit does their quality
4 check. So, we put a reminder on our website and I
5 want to remind everybody again to please include
6 the international class, because it does help us
7 at least get your data into the system right away.

8 The other items here which you see in
9 the processing timeframes that we publish -- the
10 entering any office supply data, such as design
11 codes and pseudo marks, that is taking
12 approximately 80 days. That's the timeframe for
13 when our pre-examination unit does our quality
14 checks as well as entering any design codes or
15 pseudo marks where applicable. So, that's another
16 clarification regarding pre-examinations.

17 Also processing of responses to office
18 actions. This is something huge that we really
19 want to highlight. Early in the calendar year,
20 again because the surge impacted all areas, it
21 didn't just impact new applications, it impacted
22 responses, it impacted maintenance filing,

1 everywhere. We were taking approximately close to
2 90 days to get responses to office actions entered
3 and returned to the examining attorneys.

4 We're happy to announce that we are back
5 on goal, we are back at 14 days, which is our
6 goal, that within two weeks of when you file your
7 response, the response will be entered and sent to
8 the examining attorney for review. This is a huge
9 accomplishment and I want to thank our examination
10 coordinate who's worked extremely hard to get this
11 back on goal. Next slide.

12 So now I'm going to talk about what
13 actions that we've been taking. First on
14 reorganizing workloads among our staff, especially
15 in our advanced court unit and in our
16 pre-examination units we have been cross-training
17 and we have been redistributing work where
18 necessary to attack the largest surges and, you
19 know, our focus is going to be also on helping
20 with that pre-examination backlog, getting
21 additional help in that area as well.

22 In the law offices and with the

1 examination of the applications we're had 47 new
2 examining attorneys in April. They are through
3 their training period we are very happy to say,
4 and they are now working on applications. So
5 that's going to be a big help to us.

6 Upcoming hiring plans. We are in the
7 process of interviewing, about the third
8 interviewing for examining attorneys for next
9 fiscal year. We have a regular hiring plan for
10 the next several years to hire additional
11 examining attorneys and that's going to be a big
12 boost for us to handle the additional surges and
13 the continued increases that we are projecting
14 that are going to be coming. We're also looking
15 at where we can bring on additional resources to
16 help in all areas with trademark.

17 IT and processing improvements. I want
18 to stress this here. We're not just trying to
19 hire our way out of this, you know, we can't do
20 that. We have to continue to look at IT
21 improvements and business process improvements as
22 well.

1 On the IT side we are looking at several
2 automation efforts, both for the robotic process
3 automation and with artificial intelligence that
4 fits in our service areas, again especially in
5 advance of court and in pre-examination. One
6 example is with design codes using artificial
7 intelligence that suggests design codes to help
8 our employees more quickly process the new
9 applications.

10 And that's really the goal here is to
11 provide additional tools to our employees so that
12 they can more quickly and efficiently process the
13 work as it comes in.

14 And then short term and long term
15 processing improvements, you know, we'll be
16 looking at more tools that we can provide to our
17 examining attorneys, to all our employees to work
18 through and again more efficiently handle the work
19 as it is coming in short term. And then long term
20 looking at our entire business process. Where can
21 we find areas that we can streamline our process,
22 you know, the opportunity we have here with the

1 longer first action pendency, we do want to get
2 that timeframe down but it does give us time now
3 to actually look at our process and where we can
4 streamline and build efficiencies in before the
5 application even gets to the examining attorney.

6 On our external sites, I've talked about
7 this before, we want to continue to be updating
8 notices on our websites so that our customers know
9 what to expect. You'll know what your timeframes
10 are whether it's a maintenance filing or a new
11 application or a response, here's the timeframe.
12 And then continue to explain what we're doing to
13 try to solve the issues.

14 And if we go to the next slide I just
15 wanted to quickly highlight our dashboard again.
16 We put this up about three months ago. We update
17 this on a monthly basis. These are our current
18 timeframes in our various areas of the office so
19 that you can go and check these on our website and
20 see where we are in these various areas.

21 This is updated monthly so again, it
22 takes us about a week or two after the following

1 month to get the new numbers up there, and we will
2 continue to strive to make sure that we've giving
3 you timely information so that you know where we
4 are. And again, I just want to continue to thank
5 all of our employees within the law offices and
6 within our service areas, and just across the
7 board and our supervisors, in continuing to work
8 through this.

9 Please rest assured that we thank you
10 for your patience with us on all this, and again
11 rest assured that we are doing everything we can
12 to work through these surges and make sure of the
13 timely and quality processing of your applications
14 and all of your filing.

15 So that was quick but that's where we
16 are on our pendency and our backlog.

17 MR. GOODER: Sounds good. Thanks, Dan.
18 Any questions from TPAC for Dan? All right.
19 Moving on. Our next speaker is Amy Cotton, who is
20 our Deputy Commissioner for Trademark Policy. And
21 she's going to talk in two different areas. The
22 first one is an update about the Trademark

1 Modernization Act. So, Amy, over to you.

2 MS. COTTON: Thanks Dave. Next slide.
3 So we issued a Notice of Proposed Rulemaking on
4 implementing regulations for the Trademark
5 Modernization Act and a few other initiatives. We
6 received 30 comments, they were due by July 19th,
7 the comment period was 60 days. And this is the
8 spread of the comments that we received, the type
9 of folks who were filing comments. So we are
10 currently reviewing those comments and putting
11 together an idea of what they both like and what
12 they don't like and how we might move forward with
13 the final rule. Next slide.

14 So if you recall in the Notice of
15 Proposed Rulemaking we had three provisions that
16 were related to the TMA, letters of protest,
17 flexible response periods, and nonuse
18 cancellations. But we also had two other
19 provisions, attorney recognition and court orders,
20 that were ancillary to the TMA and things that we
21 wanted to get public comment on as part of this
22 package.

1 we presented for public comment. So what did we
2 hear? Next slide, please.

3 We kind of heard everything. From the
4 commenters, 23 of them actually focused on the
5 flexible response period with comments. Some of
6 them supported Option 1, the three-month response
7 period. Some supported a combination of Options 1
8 and 3 so that there would be a three-month
9 response period rather than two and then
10 extendable month by month to the full six months
11 but the application would not abandon until six
12 months.

13 Some supported no change whatsoever,
14 wanted to keep the six month response period.
15 They were noting that for Madrid applicants where
16 in the proposed rule we said Madrid applications
17 needed the full six months for purposes of
18 complying with the formalities and the procedures
19 at the International Bureau at the World
20 Intellectual Property Organization. So that
21 needed to change, that the six-month response
22 period needed to stay unchanged for the Madrid

1 applicants. But folks thought that was unfair
2 that if the Madrid applicants got six months, then
3 they would be at an advantage that other domestic
4 applicants weren't getting. But of course the
5 domestic applicants don't have to go through the
6 World Intellectual Property Organization
7 procedures. So I understand the comments for that
8 one but they indicated that they do not want any
9 change.

10 Then we heard quite a few saying we
11 don't want to change, but if you're going to make
12 a change we support Option 1, the three-month
13 initial response period.

14 And then finally we also heard that we
15 should just delay implementation all together and
16 ask for more public comment on this issue. So as
17 you can see, the comments spanned the gamut. Next
18 slide.

19 So we actually received comments on the
20 attorney recognition provisions that are notable.
21 If you recall we had four different rules that
22 were implicated with attorney recognition. We had

1 Rule 2.17(g) where recognition for representation
2 would continue until revocation or withdrawal. As
3 you know, right now recognition for representation
4 for an attorney ends at registration, abandonment,
5 or change of ownership, so this rule proposed to
6 change that to continue until the attorney
7 withdrew or the applicant or registrant revoked
8 the power of attorney.

9 We also proposed Rules 2.17(b) and
10 2.19(d). Those were addressing the issue of a
11 fraudulent designation of a representation
12 agreement. That would not be effective, we would
13 not consider that to be effective if it was
14 fraudulent, so no withdrawal or revocation would
15 be required in those instances.

16 We proposed a 2.19(b) trying to clarify
17 when an attorney must withdraw and when they're
18 permitted to withdraw to make it very clear that
19 there are different situations that are involved
20 with that.

21 And then we also proposed a 2.61(c)
22 where we were deleting a provision that has been

1 about removing the attorney docketing information
2 from the data base. Apparently it is a manual
3 process to put all that back in if we were to
4 remove it during our transition phase, and so
5 there were those that wanted to keep that. So
6 we're currently looking at all the different
7 comments that came in and assessing which way to
8 go on this particular set of provisions. Next
9 slide.

10 With regard to nonuse cancellation,
11 there were several discrete issues that are worth
12 mentioning with regard to a 30- day letter. So
13 this is a 30-day letter that we currently use in
14 examination when an applicant provides a good
15 faith response but it's missing some formality,
16 some requirement it is missing, some data element
17 or whatever. It's not that the submission is
18 deficient in its evidence, it's actually that
19 there is a data element missing that needs to be
20 added.

21 So we proposed that we have a 30-day
22 letter period availability for a petition that has

1 a missing part to it. There were some who
2 supported the 30-day letter, there were some who
3 say that 30 days to perfect the incomplete
4 petition is too long, and there are some who
5 oppose. We can tell that there might be a certain
6 amount of misunderstanding of what the 30-day
7 letter is. It goes out to formalities, it does
8 not go as to the sufficiency of the evidence
9 presented in the petition. So we're looking at
10 that right now. Next slide.

11 We got calls for allowing a petitioner
12 to supplement a deficient petition with more
13 evidence. So to the extent that the examiner is
14 making a decision as to whether to institute a
15 proceeding, presumably this particular commenter
16 wanted us to tell the petitioner where their
17 evidence failed and allow them to supplement with
18 more so creating a back and forth on the front
19 end.

20 We heard a comment about allowing a
21 registrant to submit a response to the petition
22 prior to institution, presumably to challenge the

1 sufficiency of the evidence that was presented in
2 the petition. And we also heard a comment that we
3 should address confidentiality concerns with the
4 registrants. Next slide.

5 The real party in interest issue. This
6 is whether the USPTO should require the petitioner
7 to identify any real party in interest behind the
8 petition. Some thought that we should require
9 that, some thought we should not require it. Some
10 went with our proposal, which is wait and see if
11 it's actually abused. And some said we should
12 retain the discretion to ask for it if we think
13 that we need it prior to the institution
14 determination. Next slide.

15 As to whether we should limit the number
16 of petitions filed on a registration, certainly
17 some people thought that there should be a limit,
18 some people thought there shouldn't be a limit but
19 we should wait and see. And some said that we
20 should address patterns of abusive filings by
21 denying future requests. So that would sort of be
22 outside of the limitation aspect. So again, we

1 saw all kinds of comments on this. Next slide.

2 On the expungement and reexamination
3 response period. Some people said that they would
4 like all of the office action response periods
5 across trademarks to be exactly the same. So if
6 it's six months over here, it should be six months
7 over there. Some people said that there should an
8 extension of time allowed for the registrant to
9 respond. Some people said instead of a two-month
10 response period there should be a three-month
11 response period. Some people said three-months
12 extendable to six. That would be mirroring what
13 we're talking about in the examination context and
14 the post-registration context. And then some
15 people said they wanted a full six months to
16 respond to the first office action and to the
17 final office action. Next slide.

18 Filing fee. We proposed a \$600 filing
19 fee. Some said that was fine, some said it was
20 too high. They gave us options for getting money
21 to refund the petitioner because it was so high.
22 Some people want it to be lower for more recent

1 registrations, certainly the surging of
2 applications that we've seen, I guess the
3 commenter wanted to target those. And the lower
4 fee for individuals, small businesses, and
5 non-profits. Next slide.

6 We had proposed, actually we'd asked for
7 comments, we hadn't proposed it yet, but we asked
8 for comments on whether a registrant who fails to
9 respond to an office action should be targeted for
10 later audit. There were some who opposed that,
11 some who supported it, and some that said we
12 should wait and see what should happen there.
13 Next slide.

14 And of course we will need to publish
15 our final rule in November. It has to be
16 implemented, the final rule, at least as to the
17 nonuse cancellation procedures by December 27th,
18 and we have to have a 30-day publication period
19 after the final rule before implementation. So
20 look for that final rule in November. In the
21 meantime we'll be working on that rule package and
22 putting it together and refining it based on your

1 comments. So we really appreciate those who give
2 us the very thoughtful input that we got.

3 And that's all I have on the TMA unless
4 there are any questions. Hearing none I think we
5 move on to the register protection. So can we
6 move on to the slide?

7 MR. GOODER: Yep, keep going, Amy.

8 MS. COTTON: Okay. Next side, please.
9 Roll it. Okay. I've spent a lot of time at our
10 last TPAC session talking about our register
11 protection initiative. And I want to basically
12 let you know I'm inviting you all to the September
13 16th Webinar that we're offering on register
14 protection initiatives that we will take an hour
15 and a half to go through all the register
16 protection initiatives and answer questions that
17 you have. So in light of that forthcoming event I
18 won't spend a lot of time on this today. I wanted
19 to remind you thought of what we're doing and what
20 we're seeing.

21 So as you heard from Drew, we are seeing
22 applications featuring indicia of bad faith,

1 fraud, inaccuracy, false statements, whatever you
2 want to call it, we're seeing it. Certainly this
3 is a, you know, not all of our applications are
4 coming in this way, not by any stretch of the
5 imagination. But we have not previously been
6 built to handle these sorts of statements,
7 inaccuracies that are coming in in applications.
8 And the reason why is our examining attorneys are
9 not investigators. They are not in a position to
10 be able to investigate each and every data element
11 that comes in an application to identify whether
12 it is accurate or not.

13 Our system was built relying on the
14 declaration of use signed under penalty of
15 perjury. But that doesn't seem to be working in
16 deterring behavior anymore so of course we're
17 taking different actions based on different
18 authority that we have to try to address this and
19 take the burden off of the examining attorneys to
20 do this. Because they really cannot identify
21 schemes in examination. The schemes are what
22 we're seeing. We're seeing waves of applications

1 that are all filed in the name of different
2 applicants but probably filed by a single filing
3 firm or multiple, you know, a couple of different
4 actors. And they all feature similar data
5 elements. And so examiners are not going to be
6 able to see those waves of applications and so we
7 had to find another way to get at this problem.

8 So we formed of course a special task
9 force who investigates rule violations. So when
10 we are aware of, you know, particularly suspicious
11 applications we will start picking at it, start
12 pulling the thread and trying to figure out what
13 are the rule violations that are happening in
14 this, why are they happening, are there other
15 applications that are affected by this, and then
16 start proceeding with sanctions.

17 Now if we find that there is attorney
18 misconduct in these applications as we
19 investigate, we will then refer the case to the
20 Office of Enrollment and Discipline for them to
21 look at that. If there's criminal behavior that
22 implications U.S. Applications we will refer

1 those issues to law enforcement. Next slide.

2 So the steps that we're taking again, as
3 I said, we're identifying the schemes. And this
4 is very labor intensive. We're trying to amass
5 the tools that we need, the investigators that we
6 need to try to figure out what data element is
7 common, what suspicious data element is common
8 amongst a series of applications that are
9 implicated in a scheme. And based on that what
10 are, you know, we pull those applications out, put
11 them in a holding docket while we investigate, and
12 start looking at what we can do here.

13 We are targeting not one off, like I
14 said, we're targeting rule violations that show a
15 wide spread pattern of abuse, a wide spread
16 pattern of indications of evidence of intent to
17 circumvent our rules. They are deliberately
18 trying to get around our rules in order to obtain
19 a registration to which they are not otherwise
20 entitled. So as we target those schemes, we
21 target the pattern of behavior, we are talking to
22 law enforcement, we are talking to OED. In the

1 meantime we are improving our website content to
2 let folks know what we're seeing, to let folks
3 know what they can do when they see it in their
4 own files and what actions that we're taking so
5 there's no surprises.

6 But of course all of this takes a lot of
7 labor, a lot of time, a lot of resources, in the
8 midst of a filing surge, if you hadn't noticed.
9 So we're doing our best to ramp up our machinery
10 and really get at these rule violations and these
11 schemes and target them. Next slide, please.

12 Again I want to point you to our
13 website. We are flagging the news of potential
14 scam companies. These have been flagged to us by
15 our customers. These are not ones that we've
16 identified on our own but where our customers have
17 flagged them, we put those solicitations on our
18 website, we've put their names on our website, and
19 so applicants who are affected by this can go and
20 look to see if the company that they've been
21 dealing with is listed and then take action based
22 on that.

1 Again we're listing the names of actors
2 and companies that we are investigating or have
3 sanctioned. We are providing a checklist for how
4 to prevent being scammed, what to do if you
5 believe you are a victim, and we have an external
6 email box if you have scams at USPTO for folks to
7 let us know when they get these solicitations,
8 when they get these scam companies' solicitations,
9 that we can post them and if they believe that
10 there's something that we need to know.

11 Now we don't want this email box flooded
12 with every time you see something suspicious
13 because we really can't act on every single
14 inquiry that comes in. We have quite a bit of
15 different ways to get this information as we
16 investigate, but certainly that email box is
17 available for those who really need to contact us
18 and let us know about some bad behavior. Next
19 slide.

20 Lastly I just want to flag, and I
21 believe we might have flagged this at the last
22 meeting, but I just wanted to let you know. Under

1 the authority of the Commissioner for Trademarks
2 we have issued final orders for sanctions against
3 two different actors, one in China and one in
4 Vietnam. The first individual was operating a
5 cloning scheme so he was actually cloning well-
6 known marks. Everything in the application was
7 the well-known mark owner, all legitimate
8 information in there except there was one
9 suspicious email address that tipped off our
10 examining attorneys. And once we started tracking
11 the data we found that he had filed 11 of these,
12 and we were able to terminate those applications.

13 Likewise we had the Vietnamese
14 individual, Mr. Ngo, he was filing unauthorized
15 changes of correspondence, addresses, multiple
16 registrations to try to hijack them for whatever
17 purpose, we're not really sure. But we cut him
18 off, cut off his USPTO.gov account and he can no
19 longer file any documents with us.

20 We have a show cause order outstanding
21 that we are currently evaluating the response,
22 which we have received, Yusha Zang and the

1 Shenzhen Huanyec Intellectual Property Company.
2 There were 14,000 applications implicated in their
3 filing scheme, all featuring rule violations. And
4 we are currently evaluating our next steps.

5 And just to let you know, the Office of
6 Enrollment and Discipline did come to a settlement
7 agreement with a New York attorney who was found
8 to be in a relationship with a filing firm where
9 he was not reviewing the documents that were filed
10 under his name, and there were multiple rule
11 violations inherent in those applications that
12 were filed.

13 So that's a little bit of what's going
14 on now, but certainly tune in on September 16th to
15 hear a more detailed review of what we're doing in
16 the register protection space. Any questions on
17 that?

18 Okay. Dave, back to you.

19 MR. GOODER: Okay. Thanks. The one
20 thing I will add to what Amy was saying was in
21 terms of the things that we're doing cleaning up
22 this problem generally. One is it's obviously a

1 high priority for us, but two is we've really kind
2 of adopted a different mindset about all this.
3 And it's one very, those of you in companies that
4 have had counterfeiting problems will recognize it
5 as being more of a brand protection mindset. It's
6 far more holistic, it's more going at it from a
7 strategic perspective on all fronts, looking
8 wherever we go Amy has found ways to get at some
9 of this that maybe we didn't utilize as much
10 before or thinking. We're staffing up more, it's
11 become this focus of ours and instead of brand
12 protection like you'd seen in a private sector,
13 it's register protection here because the accuracy
14 and integrity of the register is just of prime
15 importance to all of us, to the economy, to
16 businesses, to everybody.

17 So when you hear us talking about
18 register protection, that's very intentional and
19 will be kind of the way we think about this going
20 forward.

21 Okay. With that we're going to switch
22 gears and go to -- did someone start to say

1 something, or are we okay?

2 MS. NATLAND: Hi, Dave.

3 MR. GOODER: Hi.

4 MS. NATLAND: It's Susan. Hey, I have
5 just a quick question for Amy. Really helpful
6 information, and it's basically all the efforts
7 that being made to attack the scams. I'm just
8 wondering if the PTO has considered other type of
9 technology such as maybe an app or the types of
10 things that banks may use to communication with
11 customers. As you know, for example, you know, if
12 the communication isn't on the app, isn't there,
13 the app is not found, it's not authorized, it's
14 probably a scam. Is there anything that we're
15 looking at there? Because I just feel like this
16 problem is just going to get worse in terms of
17 even, you know, imitating the PTO and trying to
18 get fees and, you know, really fraudulent
19 practices.

20 MS. COTTON: Certainly. I'm not
21 familiar with the software of which you speak, so
22 I'm intrigued and I will certainly go and talk to

1 my IT expert, Mr. Daudson, and maybe he can add in
2 that. We are certainly looking at any sort of IT
3 tools that will help us. The question is how do
4 you employ them and what do you do with the data
5 that you get, how do you operationalize that. So
6 that's always the struggle that we have. And, you
7 know, we can keep adding these tools and that
8 takes time. In the meantime we've got a problem,
9 so I don't have that kind of time, and that's why
10 I'm throwing manpower at it as much as I can.
11 Certainly we're exploring some automated
12 solutions.

13 I don't know, Greg, if you want to add
14 anything to that.

15 MR. DODSON: That's a great idea, Susan.
16 We don't have anything like that in the queue
17 right now but I think that's an awesome idea and
18 we'll take it back. We can have that conversation
19 offline with you and get some ideas and maybe get
20 an example of what you're asking us to look at and
21 we can kind of dig into that for you.

22 MS. NATLAND: That would be great. And

1 kind of pay you back with the whole USPTO login,
2 that type of thing. So.

3 MR. GOODER: Yeah. Yeah, that's what I
4 was going to mention is as we enhance the login
5 security and the ID proof thing, etcetera, a lot
6 of this will get harder to do. I was speaking
7 with the reporters today, there is no silver
8 bullet in this, just like any anti-counterfeiting
9 program, there isn't one thing that is all of a
10 sudden going to stop it because it truly is you're
11 dealing with somebody who doesn't want to be found
12 out and is trying to move in ways that keeps them
13 one step ahead of things. So. But, yeah, any
14 suggestions like that will be well received.

15 Any other questions? All right. Well
16 then with that we are going to turn it over to
17 Greg Dodson, our Deputy Commissioner for Trademark
18 Administration, which notably includes IT. So,
19 Greg, it's all yours.

20 MR. DODSON: Thank you, David. Thank
21 you everybody, and good afternoon. Trying to get
22 us back on time as best that I can. But there are

1 unprecedented times, unprecedented times in IT
2 too. We've got a wonderful working relationship
3 with our CIO, some great opportunities with what
4 we're calling the new ways of working to get
5 things done. And I want to go through a few of
6 those opportunities with you as we go through
7 these slides. So if I could ask for the next
8 slide, please.

9 Just want to talk about a few things
10 that are of interest to our external audience.
11 First and foremost want to talk about electronic
12 registration certificates. For many of you this
13 has been an ask for quite some time. A lot of our
14 customers love the paper copies, many also just
15 want an electronic version. So we've been working
16 very, very hard, working diligently with our CIO
17 colleagues to try to get this thing in work. And
18 we think we're almost there.

19 We had some issues with some high
20 availability problems with our Adobe system. We
21 got those worked out just about a week ago, and
22 those have allowed us really to kind of accelerate

1 the process going forward. So we're really
2 excited about where we are. We're working a
3 communications plan with our communications team
4 to make sure that the word gets out there and the
5 process gets socialized. And we're looking at
6 sometime around the middle of February of the next
7 calendar year, so right in the middle of the
8 second quarter of FY22 delivering at least a BETA
9 version of this electronic registration
10 certificate.

11 As you know obviously there's some good
12 reasons for doing this. It's more effective and
13 efficient for us to be able to do that. It keeps
14 us from having to maintain an infrastructure of
15 both printers, paper, ink, that kind of stuff, the
16 postage fees back and forth. There will be for
17 those of you who want a paper copy, there will
18 still be an opportunity to do that, but ultimately
19 the primary method by which you will get your
20 registration certificate will be electronic.

21 Now we're looking at options to be able
22 to do kind of a block chain version of that.

1 We're looking at trying to make that coincidence
2 with some of the work that's going on with our
3 colleague IP offices across the globe. And
4 hopefully we can get to a place where certified
5 copies of an electronic version will be sufficient
6 to be included into whatever the legal process
7 would be for that going forward. So we're very
8 excited about this and we look forward to our
9 input from our customers as we go forward with
10 this to kind of help us out. Next slide, please.

11 Many of you have heard, and you've heard
12 today in the presentations so far about our
13 identity proofing process and where we are with
14 that. I wanted to kind of just unpack that just a
15 little bit more for you. We've done some
16 usability testing with a selected group of
17 individuals which are a cross section really of
18 customers on both the trademark and the patent
19 side just so that we could get a flavor for how
20 that is going to work. We were very thankful that
21 a number of our TPAC colleagues volunteered to do
22 Beta testing with us and had a chance to identity

1 proof themselves with our vendor. We had one
2 opportunity unplanned, but it worked out for us
3 very well for one of our TPAC colleagues to go
4 into what's called a referee session and we were
5 able to understand a few more things with that
6 process as well too.

7 And the next step in our evaluation
8 begins next month, which is really next week in
9 August where we're going to take a larger cohort
10 of individuals and we're going to kind of test
11 this thing from end to end. And so we're going to
12 get volunteers from groups like the ABA and INTA
13 and AIPLA to help us. A real good cross section
14 of customers to kind of work this system out and
15 see what we can do. We're going to do that
16 through the month of August. We're going stand
17 down in September, go through the process of
18 weeding through all of the feedback that we've
19 gotten to date. We're going to work with our
20 vendor. And then we're looking at some time right
21 after the launch of the new fiscal year, so
22 sometime in early to mid- October of 2021 we're

1 looking at putting that plan into place.

2 We will socialize that certainly with
3 our customer base out there, everybody will know
4 what's coming. But the vendor that we've chosen
5 is somebody that we're very, very confident with
6 or confident of, and we fully expect that this is
7 going to really make a big difference in the way
8 that we handle the improper activities and even at
9 the far end of the problem, the fraud.

10 So with that, I'd like to transition
11 into where we are with the systems themselves, if
12 I could get the slide changed over real quick.
13 And this is the last slide for everybody.

14 So if you've been involved in the IT
15 process for a while and listening to what we've
16 been doing, once the trademark next generation
17 program was stood down and we took a strategic
18 pause to try to figure out where we were going to
19 go with that. We've brought in, as many of you
20 know, a third party consultant to kind of help us
21 work through the process to see what was valuable
22 and what we could continue to work, those things

1 that we need to discard for any number of reasons.
2 In some cases because we began that program a
3 decade ago, some of the technology had changed
4 over and it gave us the opportunity really to
5 reach into some of the current capabilities and
6 some new opportunities, so we did that.

7 And so we took a look at what we were
8 going to do and we had a really, really nice plan.
9 And for those of you that were listening about a
10 year, maybe about four versions of TPAC ago, we
11 talked about TMX and how that process was going to
12 work. And we were funded at a very good level,
13 and then the pandemic hit. And luckily for us
14 through the leadership of the Commissioner and the
15 support of Mr. Hoffman, the CFO, who got behind
16 this effort, and our CIO, Mr. Holcombe, who's
17 going to be on line here after the break. We were
18 able to kind of settle on a new program for '22
19 and '23 that is going to allow us in a lot of
20 cases to catch up with pretty much the year that
21 we lost through the pandemic. So we've done a few
22 things.

1 And you can see on here that we're
2 trying to accelerate. So many of you know what
3 TRAM is, that's Trademark Records and Management.
4 No, that's not it. I can't remember what the
5 acronym is. I'll put it in the chat. TRAM is the
6 foundational baseline for everything we do. It's
7 not only a database, it's a system of business
8 processes. It's been the way that we've done
9 business for quite some time. We're going to step
10 away from TRAM and go into a new process that's
11 Java Code based and it's going to be a lot more
12 efficient and a lot more effective. A lot of
13 micro services are going to be involved in that.

14 In fiscal year '22 we're going to add
15 six teams to the TRAM retirement process so that
16 we can accelerate that and get that going. So
17 we're looking very, very forward with that.

18 From our DNA or our trademark data and
19 analytics perspective we finally retired the last
20 of our legacy reporting systems and we put
21 everything into the enterprise data warehouse,
22 which is just this wonderful process that allows

1 us really to kind of sort through everything in a
2 lot more of an effective and efficient manner.
3 And we're going to add an additional team to our
4 DNA effort in fiscal year '22 to be able to take
5 us even to a better place with data and analytics.

6 We are looking from the exam proponent
7 and our lead product owner for trademark exam has
8 briefed a couple of different options over the
9 last couple of weeks to some different cohorts of
10 individuals, and we're looking at launching to an
11 early adopter group of people in the next near
12 term an opportunity to kind of take a look at
13 trademark exam, kind of go through some feedback,
14 really kind of wring the system out and make sure
15 this is what the examining attorneys really need
16 as we make the next step into the future. So
17 we're looking forward to that.

18 As we just kind of talked about with the
19 identity proofing trademark external, which as
20 many of you know on the external side of the house
21 is TEAS, we're looking at how that whole process
22 is going to work. We're very excited about the

1 opportunities that we have with trademark external
2 and we're just kind of building upon that. But as
3 you can see with the ID proofing, and as Amy said
4 a little bit ago, we've added a lot of information
5 on our web pages, and one of those is the scam
6 awareness opportunities there for our customers.
7 So we encourage you to look at our external pages
8 and give us feedback on what we can do.

9 Last, let's see, we've got Trademark
10 International, which as many of you know is kind
11 of our Madrid process. Those folks have
12 transitioned a lot of the work into the Amazon,
13 into the Cloud in the Amazon web services. We're
14 really looking forward to how that's going to work
15 for us as we go forward. This is a problem that
16 requires a lot of interaction with our
17 international colleagues, as Amy mentioned, WYPO
18 and the International Bureau we have a very
19 symbiotic relationship with those folks and we
20 gotta make sure our systems talk to each other.
21 And so we're in good collaboration with them as we
22 go forward and we're very excited about that.

1 And as you can see, micro services are
2 kind of the way we're going with this. And a lead
3 product owner for Trademark International, Mat
4 Kim, is doing a real really good job of tying up
5 that work.

6 And then finally, working with the lead
7 product owner for the TTAB, which is one of the
8 judges over there, really, really smart and
9 capable technical individual on Chief Judge
10 Roger's team, working with us to kind of
11 transition those things like ESTTA and TTAB this
12 over into the new process. And this time we're
13 going to get it right and make sure that TTAB's
14 systems are completely and totally aligned with
15 what the trademark business unit is doing. And
16 the only systems that we're going to separate out
17 are those that have to be separated out because of
18 the particularities of the judicial process that
19 Chief Judge Rogers and his team do.

20 So with that, I think I got us sort of
21 kind of caught back up. I'm available for any
22 questions if anybody has any right now. All

1 right. Well hearing none, Dave, I will hand the
2 microphone back to you.

3 MR. GOODER: Sounds good. Thanks, Greg.
4 And, Chris Kelly, the Chair of our meeting here,
5 that's the conclusion of the trademark's business
6 unit schedule. We're scheduled to take a 10
7 minute break at this point, and we are I think
8 about 12, 13 minutes behind schedule, which isn't
9 too bad. So shall we do that? You want to
10 reconvene, you want to take seven minute, eight
11 minutes, 10 minutes, what would you like? You're
12 the boss.

13 MR. KELLY: Let's take the full 10 since
14 we're only 13 behind.

15 MR. GOODER: Sounds good. So we'll see
16 everybody back here at 45 after.

17 MR. KELLY: Thanks, Dave.

18 MR. GOODER: Thank you.

19 (Recess)

20 MR. KELLY: Shall we proceed?

21 MR. GOODER: Yeah, let's do.

22 MR. KELLY: All right then. Well

1 welcome back everyone. We will continue with our
2 program. And next up we will hear an update from
3 the USPTO's Chief Information Officer, Jamie
4 Holcombe, and Os Turan, the Acting Trademarks
5 Product Line Manager. Gentlemen, if you want to
6 take it away. Welcome.

7 MR. HOLCOMBE: Thank you very much. I
8 would like to say aloha. Yes, I'm in my aloha
9 attire because it is Friday, and I just wanted to
10 extend that aloha to everyone here.

11 I'll get off the stage really early, but
12 you'll hear me say this over and over again. My
13 three priorities for the USPTO. One,
14 cybersecurity; two, resiliency; and three, moving
15 to the Cloud. Os, take over.

16 MR. TURAN: Thank you, Jamie, and good
17 afternoon everyone. I'd like to start off with
18 some additional IT highlights since our last TPAC
19 meeting. If we could advance to, let's see the
20 next slide, please. There we go.

21 The first update there that you see is
22 the ongoing OCIO Data Center move. As you know,

1 we're currently on track for August 1st to move
2 from the Boyers facility to the new data center in
3 Manassas. And to clarify, the data center move
4 was broken down into two phases. We had a
5 facility in Boyers that we're moving over to
6 Manassas, and we'll also be moving the Alexandria
7 Production Data Center to Manassas. And that's
8 part of Phase 2. And those plans are close to
9 being finalized.

10 One potential concern has been the
11 challenge with longer than normal shipping windows
12 for equipment deliveries to the new data center
13 due to the global pandemic. However, the team has
14 been able to effectively plan around those
15 constraints in order to stay on schedule.

16 The next item there involves our efforts
17 to support the Trademark Modernization Act, as you
18 heard from Greg Dodson. The teams continue to
19 make good progress on developing all the IT system
20 changes that are needed. And we're still
21 confident we'll make the mandated deadline at the
22 end of December.

1 In fact, a couple of teams may finish
2 well ahead of schedule. And we plan to share
3 their available capacity with other teams to
4 ensure we don't have any unforeseen resource
5 bottlenecks.

6 The third bullet there speaks to our
7 continued drive towards developing loosely coupled
8 architectures based on micro services. For
9 example we've recently implemented some new micro
10 services for getting trademark data over to
11 MyUSPTO users so that they can populate their
12 dashboards. So these new services basically allow
13 us to remove the dependency from MyUSPTO to the on
14 premise TRAM database. And it gets us another big
15 step closer to the Cloud.

16 And speaking of the Cloud, Trademark
17 Exam and Content Management Services products both
18 completed their Cloud readiness and migration
19 planning, and other trademark products have also
20 already begun their own Cloud migrations and are
21 making progress along those lines.

22 Finally, the teams have been making

1 great progress with building out some of the
2 infrastructure improvements to support agile
3 delivery of software into production. I'd like to
4 illustrate what that really means in the next
5 slide. Next, please.

6 So here we see on screen is a relatively
7 simple dashboard that provides visibility on two
8 important types of infrastructure improvements
9 that benefit agile delivery. These are DevSecOps
10 Pipelines and Blue/Green Environments. And I'll
11 explain more what those are.

12 DevSecOps Pipelines simply put, are
13 automated software delivery workflows where you
14 can check in completed software code at the start
15 of the pipeline and then various components within
16 that pipeline conduct a slew of automated tests
17 and software checks, including cybersecurity
18 scanning, to ensure that the code is truly ready
19 to deploy into production. And if the code fails
20 any of those test everything comes to a halt and
21 the developer's got to fix that. And then of
22 course if they pass all tests the code can go

1 straight into production.

2 So with this kind of automation the
3 benefit is very clear in that DevSecOps Pipeline
4 simply mean much faster deployments of software
5 into production where we can measure that in terms
6 of minutes instead of hours or sometimes days.

7 Now the other element here is a
8 Blue/Green Environment. These are, in simple
9 terms, essentially two identical production
10 environments running in parallel. They are
11 largely mirror copies of each other. This allows
12 us to deploy new code into one of the environments
13 without having to bring the whole production
14 environment down. So users can continue to do
15 their work as we deploy new patches, enhancements,
16 and so on. And of course this equates to greatly
17 increased availability of the system.

18 So just to explain the dashboard and the
19 left a little further, you can see here various
20 numbers within the pie charts. Those numbers
21 indicate the status of whether a particular
22 component within those products that you see

1 listed there have either established a DevSecOps
2 Pipeline or a Blue/Green Environment or if they're
3 still in progress.

4 One note just for your awareness is that
5 in the case of one product in particular,
6 Trademark Exam, there's four components where it
7 just does not make practical sense to have a
8 Blue/Green Environment. There would be no benefit
9 being secondary systems, and therefore it's not
10 included in the tally.

11 But as you can see, overall that the
12 total number of components that have been
13 completed shows that we've come a long way and
14 made some excellent progress.

15 So to wrap up these two infrastructure
16 improvements, they are key to deploying software
17 into production faster and greatly increasing
18 system availability.

19 And that is all I have for the IT
20 update, so unless there are any other questions,
21 I'll hand the mic back over to Dave.

22 MR. KELLY: Thanks, Os, this is Chris.

1 Any questions from TPAC members for either Jamie
2 or Os?

3 MR. CHOO: Maybe just one minor
4 question, Os, on the chart that we're seeing right
5 now. There's a legend for green and yellow for
6 complete and in progress. I notice there's gray,
7 there's no indication for that. Can you clarify?

8 MR. TURAN: It looks like some sort of
9 formatting error of sorts. So I can tell you that
10 for the Trademark International, Trademark TTAB,
11 those should be all yellow, they're all in
12 progress. So apologizes for the conversion to the
13 PDF. So like Content Management Services, they're
14 done, that should be all green. And Trademark
15 Exam, that the 14, sorry I just saw a text there.
16 I believe they are also all done, there won't be
17 any further components. Those four components,
18 it's not necessary to get up to the 18 total
19 components that they have. So I just realized
20 that as we got to the slide. So sorry about that.

21 MR. KELLY: Okay. Anyone else?

22 MS. KOVALCIK: Yeah, this is Jen.

1 MR. KELLY: Hi, Jen.

2 MS. KOVALCIK: First I want to say good
3 job. I see that he's been working so hard and
4 made so much progress this year. Obviously last
5 year was quite a challenge from IT with the
6 budgetary concerns and COVID and everything.

7 So when we're projecting completion of
8 Blue/Green for September/October, it sounds like
9 from a user experience what they will see really
10 is increased availability. So as one perhaps that
11 failed or had some type of deployment going on for
12 a new upload, they would not see any impact if
13 they're operating in the other system. Is that
14 fair for what you are referring to be?

15 MR. TURAN: It would. From the direct
16 visibility yes, the users would most likely
17 perceive the system availability. Indirectly, and
18 this would be really hard to quality or quantify
19 for an end user, is the improved internal
20 efficiencies that we've had with deploying codes
21 faster whereas it could have been days sometimes
22 just to get code through all of these hoops and

1 hurdles, you know, under the old ways of working.
2 But with the improvements there, you know, that's
3 where I would say they wouldn't readily perceive
4 it. Hopefully the larger picture is they'll see
5 an overall improvement in IT delivery. So.

6 MS. KOVALCIK: And then also I just
7 wanted to add I went through the beta for the ID
8 per thing and it was pretty straightforward and
9 fairly easy to use. So I think as people get to
10 experience that that they will see that that's
11 pretty user friendly as well. I know we did
12 provide some feedback on maybe some wording and
13 try to make that more clear and user friendly. So
14 thank you guys for all your work on that as well.

15 MR. TURAN: Great. Thank you very much
16 for the feedback.

17 MR. KELLY: Okay. Jamie and Os, thank
18 you again, we appreciate it. Before moving on to
19 our legislative update I just want to remind
20 listeners that if they have any questions at all
21 about any of what you're hearing today, please
22 reach out to us at TPAC@USPTO.gov.

1 So, moving on, we have with us Kimberley
2 Alton, Acting Director of the Office of
3 Governmental Affairs, with a legislative update.

4 MS. ALTON: Great. Thanks so much for
5 the welcome and good afternoon everyone. Can we
6 advance to the next slide, please? Perfect.

7 Just a couple of quick updates for the
8 quarterly meeting from the Government Affairs
9 Shop. First, the SHOP SAFE Act. You all will
10 remember this is the bill that would impose
11 trademark liability on E-commerce platforms that
12 fail to put in place sort of best practices to
13 address counterfeit goods that are sold on their
14 platforms.

15 A house judiciary committee is really
16 leading this effort. They held a hearing back in
17 May. They've also held over the course of the
18 spring and summer three staff-led roundtables with
19 stakeholders just to get feedback on the bill and
20 really try to see if there could be a consensus
21 that's reached in terms of how to go about putting
22 in place this sort of framework.

1 The USPTO has joined these roundtables,
2 we have been available to congressional offices to
3 provide technical assistance and background. We
4 work very closely with the enforcement team within
5 the Office of Policy and International Affairs on
6 providing depth subject matter expertise to the
7 Hill staffers. But it sounds as if just from the
8 monitoring that we've been doing of these
9 roundtables, the conversations, the discussions
10 are progressing. Certainly the brand owners and
11 the E-commerce platforms are trying to find sort
12 of that middle ground and reach a consensus. So I
13 think certainly the hope and the expectation is
14 that the House will be able to advance this bill
15 hopefully by the end of the year. But we will be
16 happy to keep you posted, and we will be
17 monitoring that legislation.

18 The second item I just want to flag for
19 you all very quickly is the U.S. Competition and
20 Innovation Act. That bill, formerly known as the
21 Endless Frontier Act, is a bill that was approved
22 back in June in the Senate. Hugh bipartisan bill

1 that would make just a major investment in the
2 Federal resources that are directed to scientific
3 innovation, so a lot of money directed to SNF,
4 other agencies within commerce, to really do more
5 to ensure that the U.S. remains competitive and a
6 real world leader in innovation. Can we go to the
7 next slide, please?

8 So you'll see again a mention of the
9 SHOP SAFE Act. Also our fiscal year '22
10 appropriation that is making its way through
11 Congress now. We've been talking to our
12 counterparts on the Appropriations Committee as
13 well as the Authorizing Committee. I think our
14 CFO has probably given an update on that. And
15 next slide.

16 I think that's it, just those two quick
17 updates. So I open the floor for any questions.

18 MR. KELLY: Any questions for Kim from
19 TPAC members? Okay. Kim, thank you again very
20 much for being here, we appreciate the update.

21 MS. ALTON: Absolutely. Thank you.

22 MR. KELLY: Okay. Next a policy and

1 international update from Deputy Chief Policy
2 Officer and Director for International Affairs,
3 Mary Critharis. Mary, welcome.

4 MS. CRITHARIS: Good afternoon everyone,
5 just want to make sure you can hear me.

6 MR. KELLY: Yes. Loud and clear.

7 MS. CRITHARIS: Okay. Thank you. It's
8 a pleasure to be here, and I think as my inaugural
9 meeting and presentation so I really look forward
10 to working with the TPAC members on all these
11 international trademark issues. Let's go to the
12 next slide, please.

13 Okay. So first I'd like to announce
14 that we now have a new senior level attorney since
15 Amy Cotton has moved on to bigger and better
16 things. But Nancy Omelko will be the lead for the
17 international focus for our senior level attorney.
18 Nancy has been with the Agency for a very long
19 time, she has a tremendous amount of knowledge and
20 expertise. She has been with the Office of Policy
21 and International Affairs since 2005, and she also
22 served as an attaché in Geneva.

1 We also had a posting for a senior level
2 attorney that has more of a domestic focus, and we
3 are still finishing up the process there so we
4 hope to be able to announce our domestic senior
5 level attorney at our next meeting.

6 Some quick updates on our attachés. We
7 recently hired David Kellis to lead the Mercosur
8 region. He also comes to us from private practice
9 where he has a significant amount of IP
10 experience.

11 Next we also have Juli Schwartz. She
12 was formerly with our Office of the United States
13 Trade Representative. She was Assistant General
14 Counsel at USTR, and she will be serving as
15 attaché in China in our Shanghai office. She is
16 not on the ground yet but we hope she'll be
17 departing in early to mid- August.

18 And last but not least I think you're
19 familiar with Helene Liwinski. She is on our
20 Trademark Team but she will be going over to
21 Geneva to be our attaché for the USTR at the World
22 Trade Organization. She also has not left yet but

1 she is currently on detail to USTR. So those are
2 some of our quick updates from personnel
3 perspective. Next slide, please.

4 So one of the things I'd like to update
5 you on is some ICANN updates, you know, work
6 related to access of disclosure of who is domain
7 registration was really a main focus of the recent
8 ICANN meeting. In addition there was also focus
9 on improving procedures in future realms of new
10 generic top level domain names. At this point
11 though there is no timeline for when this will be
12 set.

13 There's also discussion on protection
14 for intergovernmental organizations in the generic
15 TLDs. The working group addressing this matter
16 will be issuing a preliminary report for public
17 comment in August of this year. Also significance
18 to trademark owners, a review of the Uniform
19 Domain Name Resolution Policy will begin this fall
20 and obviously we hope to share those updates with
21 you as well.

22 The next ICANN meeting will be held in

1 October of this year. Next slide, please.

2 I'm now turning to some updates at WIPO.
3 We participated in a few WIPO related events
4 related to Madrid. There was a virtual seminar
5 for advanced trademark users, there were over 40
6 participants across the globe who participated in
7 this advanced trademark examination seminar. We
8 also participated in a questionnaire for Madrid
9 member states. There were over 178 questions, and
10 we gave comprehensive answers on U.S. practice and
11 procedure for use by Madrid users. Hopefully this
12 questionnaire and the results will be published,
13 and I think a more useful utility for our
14 stakeholders is really not what we scan with
15 respect to our practice but seeing their responses
16 from the other jurisdictions will hopefully help
17 stakeholders, you know, navigate the Madrid system
18 in those regions.

19 And there was also a WIPO released its
20 annual report of statistics on filings throughout
21 Madrid covering the calendar year of 2020. The
22 report findings included that the United States

1 was Number One both as an office of origin and
2 also as a designated office. So we see most
3 filings are coming to the United States and
4 through the United States. So those are some of
5 our recent updates at WIPO. Next slide, please.

6 Turning to our office to office
7 cooperation. Earlier this week we participated in
8 an IT expert meeting of the TM5 to discuss tech
9 issues and the registration process. Some key
10 topics that were discussed at this meeting are new
11 and emerging technologies and the use of AI to
12 examine identification of goods and services,
13 application of latest technologies to trademark
14 workflows, including block chain, AI, and machine
15 learning as well as telework initiatives to
16 maintain examination quality while also working
17 remotely.

18 The next working level meeting will take
19 place in September. And just a reminder, the
20 annual TM5 meeting is scheduled for November 3rd
21 to 5th. China will be hosting this year's TM5
22 meeting. It's still not clear whether this will

1 be in person or virtual meeting, so we will keep
2 you posted on those developments. Next slide,
3 please.

4 So we heard earlier that Commissioner
5 Gooder gave an update about the time it takes to
6 process the certified copies with the office, so
7 fortunately there's been much progress on that
8 front. So I'm here to give you a little bit of an
9 update on the process with respect to legalization
10 requirements with the Department of State. We
11 appreciate that you raised this with us at the
12 last meeting so we have had several meetings with
13 our colleagues at the State Department. And
14 unfortunately, this is a problem that is not
15 unique to the IP area, it's across the spectrum.

16 Also with respect to any kind of legal
17 or business related matters the bureau responsible
18 for, you know, processing these legalization
19 certification attestation requirements is
20 extremely backed up due to COVID. They just
21 haven't had the staff on site to be able to kind
22 of process them in a timely fashion. We tried to

1 find out from them whether they had any updates as
2 to when they'll be able to, you know, catch up.
3 Unfortunately, we were not able to obtain that
4 information. They did say however that there
5 might be a potential avenue for particular
6 instance if an applicant is having a particular
7 problem, that they might be able to address that
8 issue more expeditiously. So we will definitely
9 get back to you on more information on who to
10 contact if you're really having a particular
11 problem in a particular region. So, like I said,
12 stay tuned for that information.

13 But I also wanted to let you know that
14 in spite of the fact that we are not really able
15 to, you know, control what happens in our State
16 Department, we have been reaching out to some of
17 our colleagues, working with our attachés to see
18 if there's anything we can do to help mitigate
19 some of these problems. Perhaps they can waive
20 some of the deadlines or if we just send a
21 certified copy they can hold off until they
22 receive a, you know, an appropriately certified

1 copy, a legalized copy from our State Department.

2 So we are working with certain
3 jurisdictions. We have already reached out to the
4 Libya, China, Egypt, Ethiopia, Panama, Saudi
5 Arabia, and Thailand on how to see if we can find
6 any kind of resolution or relief on this
7 particular issue.

8 However, on that front I'd like to ask
9 perhaps, and we can do this, you know, after the
10 meeting as well, if there are any other
11 jurisdictions that there are delays in obtaining
12 attestations or legalizations that are
13 challenging, please bring that to our attention.
14 We'd also like some more information on the
15 circumstances under which those legalizations are
16 most frequently required. For example is this for
17 filing documents, is this for establishing use,
18 are these court documents. I think that's very
19 helpful to us because that can help us address
20 some of the potential remedies, if it's just more
21 of a filing document that's something maybe we
22 could address. Obviously court documents may be a

1 little more challenging. And the types of, you
2 know, legalization that's required in a particular
3 region.

4 So I think, you know, if we can maintain
5 the channels of communication that we can try to
6 work whatever angle we can with our foreign
7 counterparts and also working with our State
8 Department. Next slide, please.

9 A few highlights, you know, OPIA has
10 been doing a lot of training throughout the year.
11 We've really hit maximum capacity at a lot of
12 these events because they're virtual. The added
13 benefit is we can have enhanced participation. So
14 I just wanted to highlight some recent training.
15 We had a very good program with India on
16 geographical indications. We also hosted a very
17 successful Webinar on GIs with the African
18 Regional Intellectual Property Organization. And
19 we also held an advanced trademark examination
20 workshop with Mercosur, particularly examiners
21 from Argentina, Paraguay and Uruguay participated
22 in that advanced workshop. Next slide.

1 And finally I just wanted to give you an
2 update on some of our enforcement initiatives. I
3 know Kim touched upon some of them in her
4 legislative update. But as many of you know,
5 there was a report to the President on combatting
6 trafficking and counterfeit and pirated goods. In
7 response to that report the USPTO took the lead on
8 developing two reports in response to this. We
9 had Federal Register Notice to develop a national
10 private/public anti-counterfeiting campaign. And
11 we also had a Federal Register Notice assessing
12 contributor trademark infringement liability on
13 E-commerce platforms. We have completed a review
14 of the submissions in response to these Federal
15 Register Notice for comments, and we are hoping to
16 publish a summary of the comments in response to
17 these notices. We're hopeful that these comments
18 will aid policymakers as well as the interagency
19 and ongoing discussions on how to address the
20 issue of online liability E-commerce platforms.

21 So that is our update. But more than
22 happy to answer any questions.

1 MR. KELLY: Any questions for Mary?

2 MS. BALD: This is Stephanie Bald. Can
3 you all hear me?

4 MR. KELLY: Yes.

5 MS. BALD: Mary, thank you so much, that
6 was a really helpful update. I just wanted to
7 clarify on the legalization issue. I think what
8 you said is so important in terms of getting the
9 PTO information about what sections are
10 problematic, the type of document that is being
11 required that is problematic, and also the types
12 of legalization. And I think TPAC would be happy
13 to kind of organize any comments we get from the
14 public with that very detailed information. So I
15 was going to ask Chris Kelly if he could repeat
16 the TPAC email box because to the extent the
17 public it's probably not the right forum to talk
18 about it today in this meeting, but if you want to
19 send those, you know, specific details in, we can
20 put that together and get it to OPIA for
21 appropriate action. Chris?

22 MR. KELLY: Yes, ma'am, happy to. I was

1 about to plug it again anyway. It's
2 TPAC@USPTO.gov.

3 MS. BALD: Thank you.

4 MR. KELLY: Any other questions,
5 comments for Mary? Well, Mary, thank you very
6 much, great presentation for your first time at
7 TPAC. We look forward to having you back.

8 MS. CRITHARIS: Thank you.

9 MR. KELLY: So next up we have the
10 Trademark Trial and Appeal Board update with Chief
11 Judge Rogers. Judge Rogers, welcome.

12 JUDGE ROGERS: Thank you again. Sound
13 check.

14 MR. KELLY: Loud and clear.

15 JUDGE ROGERS: Great. Thank you. Next
16 slide, please. Just to provide a little bit of
17 context and perhaps some contrast with the
18 trademark surge we have heard so much about, I
19 will remind you that we were seeing increasing new
20 cases at the Board already even before the
21 trademark surge. And we certainly expect that in
22 the future we may see the results of the trademark

1 surge lapping the shores of trademark trial.

2 But these were the kinds of increases
3 that we were seeing even before the trademark
4 surge. We've had a little bit of a lull in '20
5 and '21 as the next couple of slides will show,
6 which is helpful because then when the surge does
7 materialize at TTAB we will hopefully be in a
8 position to deal with it. Next slide, please.

9 So the moderating filings in FY20 I
10 think, as Dave Gooder showed us earlier, initially
11 application filings went down but then went up
12 again and contributed and started this very
13 significant surge. For us, the filings that went
14 down in the second half of the year resulted in
15 FY20 being a slight increase in appeals. And
16 that's kind of steady from year to year. But we
17 saw a decrease in oppositions and the rate of
18 increase in petitions for cancellation went down
19 in '20. Next slide, please.

20 On '21 to date the same pattern is
21 manifesting itself where appeals continue to go up
22 a little bit but oppositions are down. Petitions

1 to cancel are finally down for the first time in a
2 number of years. But that's again from some very
3 high levels that we had seen in previous years.
4 And the other thing that is worth noting here is
5 that earlier in the year I was predicting more
6 significant declines by year end than we seem to
7 be predicting at this point in time. In other
8 words things seem to be leveling off. And that
9 may be an early indication that some of the
10 trademark work that has been bedeviling the
11 examining operation is finally reaching the TTAB.
12 But we'll have to monitor that for the rest of
13 this fiscal year and the beginning of the next
14 fiscal year to see. Next slide, please.

15 So when we did have all those trial
16 cases coming in from fiscal '17 to '19, they
17 certainly impacted our ability to keep pace with
18 contested motions in trial cases. We had a lot of
19 trail cases that were working their way through
20 our pipeline for the last couple of years.
21 However, the bottom bullet on this slide will show
22 you the good news now. And that is after a couple

1 of years of really working hard at it and bringing
2 on board a number of interlocutory attorneys,
3 we've finally reduced the tenancy time to
4 resolution of contested motions. And we finished
5 last year on fiscal '20 above our goal of no more
6 than 12 weeks on average to resolution of
7 contested motions. We were slightly above that at
8 12.4 weeks, but we are well below it now at 9.7
9 weeks. So if we do see an increase in trial cases
10 we should be able to keep pace with the motions.
11 Next slide, please.

12 And on the other end of the pipeline for
13 TTAB are the cases that are maturing through ready
14 for decision and need to be addressed by a panel
15 of judges. We have seen that increase
16 significantly during this surge of trial cases
17 that we saw for a few years earlier. However, the
18 number of cases maturing to ready for decision
19 stabilized some in fiscal '20, and the percentage
20 of all cases maturing to ready for decision that
21 were trial cases reduced. And we've also seen a
22 slight reduction in fiscal '21. Next slide,

1 please.

2 So the bottom line for us in terms of
3 our pendency measures is that we have met all of
4 our goals. Pendency on motions, time to issuance
5 of decisions, and ex-parte appeals and time to
6 issuance of decisions in trial cases are all well
7 below our goals for the year. Now keep in mind
8 these figures are averages, and some of you may
9 experience longer wait time. I think that sounds
10 like a message we all get on a phone queue. Some
11 of you may experience longer wait times. But
12 that's certainly true with TTAB as well. You will
13 certainly have cases that will go faster than
14 these averages, but you will also have cases that
15 might take a little bit longer. We use the
16 averages because we want to make sure that
17 attorneys can counsel their clients about the kind
18 of lion's share of cases and how they are
19 processed, and not the outliers on either end of
20 the scale. Next slide, please.

21 I wanted to discuss the fee changes that
22 took effect at TTAB back in January just for a

1 moment. Next slide.

2 As you will recall, we had some
3 increases, per class increases for new
4 proceedings. And the one I will note on the top
5 of the slide is the Petition to Cancel. We also
6 put in that fee package the provision that we
7 would refund this increase in cancellation cases
8 asserting abandonment or nonuse if the cases went
9 by way of default and there were no filings made.
10 So that in essence Petitions to Cancel based on
11 abandonment or nonuse and resulting in default
12 judgments would not see an increase. And that's
13 consistent with our desire to help purge the
14 register of lots that are not in use. Next slide,
15 please.

16 We also had some new fees that we put in
17 place in January. Some were intended to basically
18 recover more costs for heavier users of Board
19 resources, such as the appeal brief fee and the
20 request for oral hearing fee. Many parties file
21 notices of appeal but they never file briefs and
22 don't require decisions on the merits. And there

1 are very few parties that request most of our oral
2 hearings. So those are heavier users and we
3 thought to shift some of the costs to those
4 parties using those resources.

5 The second is for an extension of time
6 to file an appeal brief. It is basically an
7 attempt to prevent parties from filing too many
8 extensions and keeping appeals pending too long.
9 Next slide.

10 So what have we learned since these fees
11 went into effect? Well we're just beginning to
12 process some of those refunds in those
13 cancellation cases that involved abandonment or
14 nonuse claims and default judgments. We did have
15 a situation come up where one petitioner moved for
16 default judgement, and then the question was well,
17 do they still get the refund. Because we said
18 that the trigger was we get a default judgement
19 and there's no other filings other than the
20 petition. Well in this case the petitioner filed
21 a motion for default judgement but we thought to
22 be fair they should not be deprived of their

1 refund because we still got the default judgement
2 and that's good for all of us. So yes you will
3 get your refund. But don't file a motion for
4 default judgement, you don't need to. What you
5 really should do is contact the Board and note
6 that an answer hasn't been filed. And then we can
7 issue the order to show cause to the defendant.

8 We also had a situation, at least one
9 party was filing a supplemental brief. And so
10 this was in an ex-parte appeal where the main
11 brief had been filed, and of course there's a new
12 appeal brief fee. Then there was a remand and
13 then later they filed a supplemental brief after
14 the remand work was done. And they used the
15 appeal brief form and then were prompted to pay
16 another fee. We want to make it clear that when
17 there is a remand situation, whether requested by
18 an examining attorney or an applicant, there will
19 be no fee for any supplemental brief that is
20 necessary after the remand. So don't use the same
21 form that you would use to file your main brief,
22 but you can use another form that will allow you

1 to avoid having to pay a second brief fee when
2 it's not going to be necessary.

3 So these are just some of the issues
4 that we are kind of dealing with as we're working
5 through making sure that people are not avoiding
6 fees by using ESTA cover sheets that they
7 shouldn't be, and that other people are not being
8 charged fees that they shouldn't be. So we're
9 kind of working out those issues as we go along.

10 Those of you waiting on refunds in
11 cancellation cases should begin to see them soon
12 if you haven't seen them already. Next slide,
13 please. Another one too.

14 So just a quick reminder that we do have
15 prioritized review of any fields involving
16 applications for COVID-19 related marks for goods
17 or services. Nobody needs to do anything about
18 that, we will keep track of those applications
19 that got prioritized from new examining operations
20 and when they get to the Board we'll move them
21 along as quickly as we can whether they're an
22 appeal or an opposition. Next slide, please.

1 TTAB IT, one more slide, please.

2 We have, as Greg Dodson alluded to
3 earlier, and Os during the CIO presentation, we
4 completed stabilization projects. Most of this is
5 unseen by our customers and stakeholders. This is
6 all put on the back end and the workflow for
7 existing ESTA and TTAB IS, TTABU systems. So the
8 only thing we're really focused on now with legacy
9 systems is the occasional security dispatches that
10 might be necessary. And otherwise we're
11 concentrating our IT work on preparing for the
12 deployment of TMA and being able to take in
13 filings related to the new expungement and nonuse
14 proceedings if registrants decide that they are
15 going to appeal from those decisions. And we are
16 developing the new TTAB Center, which is
17 essentially going to be our future look and
18 replacement for ESTA and TTABU. We are developing
19 these with recognition that there will be a move
20 to the MyUSPTO secure logon, so that would be
21 incorporated into this development work. And
22 we're working on this now and this is just kind of

1 our future focus for IT. Next slide, please.

2 The Reading Room. The Reading Room has
3 been out since almost a year now. We hope that
4 most people have had a chance to use it. And this
5 is the replacement for what used to be known as
6 the e-FOIA room for TTAB decisions. Please feel
7 free to provide us any suggestions for improvement
8 of the Reading Room at TTABFeedback@USPTO.gov.
9 We're happy to take any suggestions that you have
10 for improvement. Next slide, please. And one
11 more.

12 And this is the last of a few slides.
13 I'm not going to run into these, go through these
14 in a lot of detail because there is a lot of
15 detail that we will be discussing with
16 stakeholders. We've discussed with TPAC already
17 and we will begin discussing with other customers
18 and stakeholders in various other forums when TTAB
19 attorneys and judges are asked to speak as part of
20 the programs.

21 But we have been talking, at least a
22 little bit in previous TPAC meetings, about our

1 development of a pre-trial conference pilot. We
2 would not ever want to put all trial cases into a
3 required pre-trial conference with a judge and an
4 attorney. But there are cases that we believe
5 have certain attributes or certain indicia, or
6 have experienced certain difficulties during their
7 time at the Board and would benefit from more
8 hands-on case management and guidance by a judge
9 and an attorney.

10 So we conducted a survey amongst the
11 attorneys and the judges to see what interest
12 there would be internally among the judges and the
13 attorneys for this kind of a pilot project. Next
14 slide, please.

15 So the first question that we asked all
16 of the attorneys and the judges was whether such a
17 pilot project would be beneficial. And large
18 numbers of our attorneys and judges responded that
19 yes, this would be beneficial. This again is
20 going to be for trial cases that could generate
21 large or unfocused or unwieldy records. We are
22 cognizant of the fact that not every large record

1 case is necessarily unfocused or unwieldy, and may
2 just be a large record case, and we can handle
3 those.

4 But the cases that are particularly
5 contentious involve a lot more objections and
6 disagreements among the parties before they enter
7 into trial, can create very unfocused and unwieldy
8 records. So we have decided that we will continue
9 to develop the contours of the pilot. Generally
10 speaking an attorney and a judge would participate
11 in the conference when we decide that a case
12 should go through such a conference. We would
13 hold it after the close of discovery but before
14 pre-trial disclosures are due, that's when we can
15 most help the parties through the conference and
16 the preparation for trial. And the parties would
17 have to come to that conference with a plan for
18 trial. Next slide, please.

19 So the parties would come to that
20 conference and we would be able to discuss claims
21 and defenses and what the parties have learned
22 after going through discovery and figure out what

1 claims and defenses really should go to trial, and
2 the order that would result from that conference
3 would set the boundaries and the parameters for
4 what claims and defenses we would contemplate at
5 trial. And we would also be working with the
6 parties to encourage them to enter into as many
7 stipulations as possible, whether it is as to
8 facts that are not in dispute or whether it is as
9 to the introduction of evidence that would occur
10 at trial. And we would hope to dispense with as
11 many objections to evidence that the parties would
12 be telling us during the conference they intend to
13 present at trial.

14 That would not relate to any outcome
15 determinative, for evidence that would not be
16 outcome determinative. We have a lot of evidence
17 that is put in in some cases that is really
18 unnecessary and duplicative and redundant and
19 relates to claims that are really not the essence
20 of the dispute between the parties. So we would
21 like to focus parties more on what the real
22 essence of the dispute is through these

1 conferences. Next slide, please.

2 Objections again would have to be
3 brought up at the pre- trial conference to the
4 extent that we have heard from the parties what
5 their anticipated offers of evidence would be at
6 trial, and we would be trying to discourage long
7 appendices which are now sometimes attached to
8 briefs, including objections to evidence when much
9 of the evidence may not be outcome determinative
10 anyway and therefore we need not resolve
11 objections regarding a lot of that evidence. Next
12 slide, please. Next slide. I know there's one
13 more slide.

14 All right. Well if the next slide is
15 not coming up, I will tell you what it says. The
16 next slide says we asked the judges and the
17 attorneys, I will pull it up separately over here,
18 for each of the following indicia please specify
19 how helpful they would be in identifying cases
20 that should be included in the pilot.

21 One was that there were many claims or
22 defenses that were unwarranted. And how would we

1 determine that? Well basically because our
2 interlocutory attorneys are involved in many
3 discovery conferences with the parties and
4 certainly have occasion to review the pleadings
5 when motions come up, contested motions come up.
6 And it is not unusual for our attorneys to end up
7 striking various claims and defenses because
8 they're either unwarranted or they're not properly
9 pleaded.

10 Another item that was viewed by many of
11 our attorneys or judges as potentially indicating
12 that a case would be a candidate for a pilot would
13 be parties or counsel who are very unfamiliar with
14 TTAB practice, and of course that is something
15 that can manifest itself during the course of the
16 case when we see how people are practicing and how
17 well they follow the rules and how familiar they
18 are with Board practice. And cases that are
19 particularly contentious and have too many motions
20 based on the essence of the dispute.

21 Now we want to make sure that everyone
22 understands we would not embark on this pilot

1 without taking a lot of input from TPAC and all of
2 our customers and stakeholders. This would be
3 input that we hope will help us identify the
4 stumbling blocks, the problems that some of you
5 have with adversaries in TTAB trial cases and the
6 kinds of things that you think should be
7 considered red flags for the possible Board
8 intervention in trial cases and therefore the
9 conducting of pre-trial conferences with the
10 parties.

11 So we recognize that most cases are not
12 going to be candidates for this pilot. We have
13 many cases where parties disagree but they do not
14 engage in a lot of significant motion practice and
15 they simply try the case and wait for the Board to
16 decide it on the merits. And those are fine.
17 However, we have other cases that are very hard
18 fought, result in very, very large records, much
19 of which is not important to the ultimate
20 resolution of the case. And we want and try to
21 figure out these cases as they're working their
22 way through our system and figure out which cases

1 are likely to be problematic at trial. And if we
2 can intervene and we can assist the parties in
3 getting through a smoother trial it can save time
4 and it can save resources for the parties.

5 So this is the kind of pilot that we're
6 thinking of deploying and for which we would like
7 as much feedback, and you can provide that at
8 TTABFeedback@USPTO.gov as you hear our attorneys
9 and judges talk about the contours of this pilot
10 as we get out and speak at various programs. So
11 we'd certainly like as much input as possible in
12 the continuing development of this pilot.

13 So there's a lot of work still to be
14 done on it but I just wanted to put it out there
15 and make sure that everyone was aware that this is
16 something that we're working on and we will be
17 seeking your input on in the future.

18 I'm sorry I've run over a little bit,
19 Chris, but I think you still have plenty of time
20 for questions. I think you're on mute now, Chris.

21 MR. KELLY: All right. I'm sorry. Any
22 questions from TPAC members for Judge Rogers?

1 JUDGE ROGERS: It's good to go as the
2 last speaker on a Friday afternoon. Questions are
3 few at this time of the day.

4 MR. KELLY: Well then I guess that's it,
5 Judge Rogers, thank you very much. Always very
6 informative.

7 MS. NATLAND: Judge Rogers?

8 MR. KELLY: Oh, I'm sorry, Susan, go
9 ahead.

10 MS. NATLAND: I actually do not have one
11 on the pre-trial conference because it's a lot to
12 absorb and, you know, we're going to take a look
13 at that. But I do have a quick question on the
14 refund on the default/nonuse cancellation. Is
15 that just automatically refunded back on the
16 credit card that we used, or does something have
17 to be done?

18 JUDGE ROGERS: Yes. We actually, some
19 people may be expecting refunds that they haven't
20 gotten just yet. It doesn't mean you're not going
21 to get it. If you haven't gotten one that you
22 think you should have gotten a while back then

1 please feel free to contact us at the Board,
2 contact the paralegal that's working on the case
3 or our Chief Clerk, Denise Stalgizi, can look into
4 that too.

5 We did have some issues that we were
6 working out with the finance office in terms of
7 processing these refunds. But the refunds should
8 be done automatically, you shouldn't have to
9 request them. But if it's a problem getting one,
10 feel free to request it and we'll make sure you
11 get it. And it will go back in the same way that
12 you paid your fees. So if you used a deposit
13 account it'll go back to the deposit account. If
14 you used a credit card it should go back to the
15 credit card.

16 MS. NATLAND: Great. Thank you.

17 MR. KELLY: Any other questions? Okay.
18 Well thank you again, Judge Rogers, we appreciate
19 it.

20 So at this point that concludes the
21 program. And have we received any questions or
22 comments from the public?

1 MR. GOODER: Chris, I haven't seen any
2 come in although Anastasia flagged me that they
3 might. I think she's checking right now at the
4 moment.

5 MR. KELLY: Okay.

6 MR. BESCH: Hey, Chris, this is Jay
7 Besch. Can I just clarify a couple things?

8 MR. KELLY: Certainly.

9 MR. BESCH: I just wanted to thank the
10 presenters today for all the presentations, very
11 informative stuff, and I always learn a lot about
12 all the different parts of the Agency every time I
13 sit in on TPAC.

14 I would like to recognize and commend
15 our unit for continuing to be very dedicated to
16 the mission of the Agency in the face of the
17 adversity. Drew touched on it, Dave touched on
18 it, but it really has been quite a year and plus I
19 look forward to the office engaging our employees
20 more as we move forward with all the initiatives
21 and realities that have been set forth today.
22 Specifically the unprecedented deluge of filings,

1 the numerous initiatives in IT, the implementation
2 of Trademark Modernization Act addressing fraud
3 and many other things I'm probably missing.

4 These employees are one of the most
5 important resources we have in addressing these
6 initiatives and realities and I'm really honored
7 and privileged to represent them. Thank you and
8 thank you to the TPAC members.

9 MR. KELLY: Thank you, Jay. So we do
10 have one question, at least one question. And
11 this is to Mary Critharis regarding ICANN. And
12 the question is, are any of ICANN's sessions
13 publicly assessable like TPAC meetings and other
14 USPTO meetings? Is Mary still on?

15 MR. GOODER: Yeah, I don't see her on
16 any longer. I don't know if anybody from OPIA can
17 answer that question or not.

18 MS. CHICOSKI: Dave, I am on.

19 MR. GOODER: Oh, good.

20 MS. CHICOSKI: We can certainly make
21 sure we can get that answer from our attendees at
22 TPAC. I know with the virtual format things have

1 been a little weirder than they normally were.
2 But I can find that information out and get an
3 answer to that question.

4 MR. KELLY: Okay.

5 MR. GOODER: Actually the question came
6 not from a TPAC member but from a member of the
7 public. But we can get back to it.

8 MR. KELLY: Oh, I'm sorry, I should have
9 made that clear.

10 MR. GOODER: That's all right.

11 MR. KELLY: Okay. Any other questions
12 from the public or from TPAC? Okay.
13 Commissioner, any final comments?

14 MR. GOODER: Just I want to thank
15 everyone for taking the time to join in today, we
16 had a good attendance online, and appreciate all
17 the work that TPAC does, it's always around being
18 such an excellent resource to all of us.

19 And look forward to the next meeting in
20 October. Hopefully at minimum hybrid would be
21 great. And so with that, Chris, thank you for
22 your shepherding the meeting along and I hope

1 everyone has a good weekend.

2 MR. KELLY: Absolutely. Thanks so much.

3 MR. GOODER: Thanks everyone.

4 (Whereupon, at 3:43 p.m., the
5 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Yilinase Mqadi, 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

22

