

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE (TPAC)

PUBLIC MEETING

Alexandria, Virginia

Friday, November 4, 2022

1 PARTICIPANTS:

2 TPAC Members:

3 SUSAN NATLAND, Chair

4 DAVID CHO, Vice Chair

5 TRACY DEUTMEYER

6 JOMARIE FREDERICKS

7 JENNIFER KOVALCIK

8 TRICIA MCDERMOTT THOMPkins

9 ADRAEA BROWN

10 DANA BROWN NORTHCOTT

11 RODRICK ENNS

12 Union Members:

13 JAY BESCH, NTEU 245

14 PEDRO FERNANDEZ, POPA

15 HAROLD ROSS, NTEU 243

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

2 (10:00 a.m.)

3 MS. NATLAND: Good morning and welcome
4 everyone to the final public meeting of the
5 USPTO's Trademark Public Advisory Committee for
6 the year. We are coming to you in-person from the
7 USPTO Headquarters here in Alexandria. I am Susan
8 Natland and I am Chair of TPAC and a partner with
9 the law firm of Knobbe Martens. This meeting,
10 like the last meeting, is hybrid and we are so
11 grateful to be here in-person in this beautiful
12 building with much of the USPTO leadership, as
13 well as the staff that makes this meeting
14 possible. This will be my last meeting as Chair
15 of TPAC, and as a member of TPAC, because my term
16 is ending; and I just want to say a few words
17 about how incredible this experience has been for
18 me to work so closely with the USPTO leadership,
19 the great TPAC team and the USPTO staff these past
20 few years.

21 It has been a real privilege and honor
22 to serve on TPAC and work with the USPTO on the

1 common mission of protecting trademarks and the
2 integrity of the U.S. Trademark Register. One of
3 the goals I had as TPAC chair when I started this
4 year was to continue to put the spotlight on
5 trademarks to highlight the critical role that
6 trademarks play in the U.S. economy, to foster
7 innovation, competitiveness, entrepreneurship,
8 economic growth, and even humanitarian issues.
9 One of the ways we can do this is to honor
10 trademarks and the role they play; and Director
11 Vidal will discuss in a moment the first trademark
12 award in the history of the USPTO for stakeholders
13 called "The Trademarks for Humanity Award". This
14 award will be given to brand owners, both small
15 individual entrepreneurs and large companies that
16 use registered trademarks to advance humanitarian
17 issues. TPAC greatly appreciates -- greatly
18 appreciates -- the support and role that the USPTO
19 had in pushing this milestone award forward. I
20 will forever be grateful for my time here on TPAC
21 and will carry so many fond memories -- so many
22 fond memories -- for the rest of my life. This

1 role has truly been one of the most fulfilling and
2 rewarding that I have had in my professional
3 career, and I will very much miss working with
4 every single one of you.

5 Before I move on, I want to give a quick
6 shout out to my kids who are watching this meeting
7 via the link from California; Liam, Tate, Shea,
8 your mom says "Hi"; this is what I do in D.C. when
9 I'm gone. It's only 7 a.m. in California, and I
10 know the kids are getting ready for school, so I
11 wish you all a great day. Finally, I want to
12 thank my wonderful TPAC colleagues; this has
13 really been the best and most engaged group I
14 could have asked for to work with. The level of
15 engagement, thoughtfulness and dedication to
16 trademarks is truly remarkable; so, thank you.
17 And with that, I will introduce my TPAC
18 colleagues.

19 First, my Vice Chair, David Cho;
20 Assistant Vice President Senior Legal Counsel
21 Trademarks and Copyrights for AT&T. Next -- in
22 order of seniority -- Jen Kovalcik, Vice President

1 of Technology and IP Counsel at Community Health
2 Systems; Jen is also rolling off of TPAC, so thank
3 you, Jen for your amazing dedication and support
4 of TPAC for the past three years. Tricia
5 McDermott Thompkins, General Counsel Shoe Show who
6 is also rolling off; Tricia, thank you for your
7 contributions. Jomarie Fredericks, Deputy General
8 Counsel and Chief Intellectual Property and Brand
9 Counsel Rotary International. Tracy Deutmeyer,
10 Shareholder Fredrikson & Byron. Adraea Brown,
11 Vice President and Assistant General Counsel at
12 H-D U.S.A.

13 (Harley-Davidson). Dana Brown
14 Northcott, Vice President and
15 Associate General Counsel IP at
16 Amazon.com. Rodrick Enns, Partner
17 at Enns & Archer. Finally, our
18 three Union Reps; Jay Besch who I
19 think is coming online today,
20 President of NTEU Chapter 245;
21 Harold Ross, President of NTEU
22 Chapter 243; and Pedro Fernandez,

1 President of POPA, the Patent
2 Office Professional Association.

3 I now have the pleasure of introducing
4 Kathy Vidal, Under Secretary of Commerce for
5 Intellectual Property and Director of the USPTO.

6 Director Vidal, you have already done so
7 much in your first six months here; it is quite
8 impressive. TPAC very much appreciates your
9 engagement and leadership, and tireless energy and
10 dedication to Trademarks. Director, over to you.

11 MS. VIDAL: Thank you. I don't know how much
12 time Liam, Tate, Shea have; is it three kids or is
13 that - okay. I don't know --

14 MS. NATLAND: Three children.

15 MS. VIDAL: -- Three children, okay.
16 You said that quickly, so I don't know how much
17 time they have before school starts; so, let me
18 start with you. I'd like to recognize those
19 rolling off the TPAC, the TPAC generally, and to
20 provide some welcoming thoughts; but I want to
21 make sure that Liam, Tate and Shea do not miss
22 their mother receiving an award. So, I want to

1 thank you for your phenomenal leadership over your
2 time at TPAC. The work on the TPAC is critical to
3 all the work that we do at the USPTO. It is a
4 committee that is -- it's dictated by Congress --
5 it's in the statute and is the primary advisor to
6 the Director on trademark issues; so, these are
7 the people that are advising on everything that we
8 do in the trademark space, they work very closely
9 with trademark management on everything that we do
10 and help us shape the country going forward when
11 it comes to brand protection. So, I want to thank
12 all of you. Susan, I want to thank you for your
13 leadership; I know that it's not the end, that you
14 believe in everything that we're doing and we're
15 going to continue the dialog. The Trademarks for
16 Humanity Award, that is something that Susan came
17 up with TPAC, and I want to thank you for that
18 because we do need to recognize the critical role
19 that trademarks play in protecting our brands,
20 especially when it comes to technology, ideas,
21 companies that are going to advance humanity,
22 whether they're in the green tech space, whether

1 they're related to immunizations, or anything that
2 moves our country forward, that moves our world
3 forward in terms of solving problems and making
4 sure that those solutions are branded so you know
5 you're getting the real thing; and that the
6 investment in those solutions are protected with
7 the brand; so, I want to thank you for that. I
8 also want to thank you for our dinner the other
9 night where you asked if we could expedite it --
10 we've done that -- so, it was -- we had a rollout
11 that was going to take a little bit longer -- we
12 now hope to roll it out in the next month --
13 thanks to you -- so that we can do it during your
14 tenure. So, I can't promise timing because
15 sometimes things are not perfectly aligned, but we
16 are going to do everything we can to make sure
17 that that award gets out there and the word of it
18 gets out there during your tenure. So, thank you
19 for that and thank you for all of your
20 contributions.

21 I heard a comment by one of the PAC
22 members that said that it's good that we roll

1 people off of the PAC, even though they have such
2 tremendous contributions because being able to
3 serve in that capacity really gives you exposure
4 to the excellence within the organization, to the
5 great work that we're doing, to the passion, to
6 the service that we're doing across the entire
7 organization; and when you're on the outside, you
8 don't necessarily see that. You may see different
9 initiatives, you may see different results, but
10 you don't live and breathe people staying up late
11 at night, working on weekends, doing everything
12 they can to improve every part of the system, and
13 listening from stakeholders on everything; and I
14 will say on that, that TPAC plays a critical role
15 in that because these are your representatives --
16 public -- that you can go to directly, you can
17 also come directly to all of us, but these are
18 also your representatives; so, feel free to always
19 have conversations with them for moving things
20 forward. So, thank you for that and thank you for
21 recognizing the great work that the PTO is doing.
22 To me it's something that -- there's nothing that

1 -- gives me more joy than hearing from the TPAC,
2 from our other PAC, from stakeholders who just
3 want to thank me and they mention people by name
4 and say "Thank you for this great work"; whether
5 it's helping somebody register a trademark and
6 leading them through the process or whether it's
7 getting rid of all of the scams so that we make
8 room for the real brands. The trademark side of
9 the house is doing such incredible work, I
10 appreciate you recognizing them.

11 As -- and I will start with you -- I do
12 have two other certificates to award, but because
13 your children are on the phone I just want them to
14 know what an incredible mom they have, that this
15 is something that she's doing above and beyond her
16 job, and what she's doing for your family; it's
17 something that will have a direct impact on the
18 entire country. So, this is work where her hours
19 are not just the work she does, it's all the big
20 ideas that we implement across 13,000 employees to
21 advance the country, to make sure that we're
22 protecting innovation, we're keeping kids safe

1 from video game components that might be flaw --
2 might have issues with them; and that we're
3 creating a brighter future for you. So, your mom
4 is part of that; she is helping to shape the
5 future for the country, including for children,
6 and I know she wants to continue to be engaged.
7 So, you've got an incredible mom, you are
8 very-very lucky; and on that, I do want to mention
9 a few things. So, Susan; you've been a member
10 since 2019 -- December 2019 -- including as Vice
11 Chair and then Chair. You served on the Trademark
12 Operations as the lead, Budget and Finance, and
13 the TAB -- on those subcommittees -- and on the
14 TTAB subcommittees. A fun factoid about you -- I
15 want to make sure this is kid-appropriate -- it
16 looks like it is -- a fun factoid about you is
17 that you are an avid boxer -- would love to hear
18 more about that and I'm sure, kids, you've seen
19 that -- and apparently -- I don't know if this is
20 her pet snake or yours -- but you have a family
21 pet snake named Lucy; so, I hope you all send me
22 pictures of Lucy, I don't know what kind of snake

1 it is, but I love that that's the name of the
2 snake.

3 So, with that; I want to present you
4 both with a certificate and a flag to thank you
5 for your immense contributions. I'm sure you'll
6 take this home and share it with your children.
7 So, let me first present you with the certificate
8 and then I will present you with the flag.

9 MS. NATLAND: Oh my gosh, thank you.

10 MS. VIDAL: And as the Chair, you also
11 receive the USPTO flag which I'd like to present
12 to you as well; and kids, it's this flag here in
13 the middle. So, thank you for everything; I
14 really appreciate it --

15 MS. NATLAND: Thank you.

16 MS. VIDAL: -- And all of your service.

17 MS. NATLAND: Thank you so much, thank
18 you. I just want to say thank you so much. This
19 means so much to me. I really-really love serving
20 this country and getting this flag and having it
21 is incredible. Thank you so much. Thank you
22 everybody.

1 MS. VIDAL: Thank you. Okay, now back
2 to the top of the script again. So, I do want to
3 thank all of the members of TPAC. Your engagement
4 has been incredible; the work that you do with our
5 trademark crew has been fantastic. I look forward
6 -- as we move forward -- to engaging even more
7 frequently and making even bigger changes for the
8 country. I'll talk a little bit about some of the
9 things we have in the works, but really welcome
10 all your ideas. I know the individual
11 subcommittees put together some really phenomenal
12 ideas, I know Trademarks is assessing those, and
13 we look forward to figuring out ways we can
14 quickly and efficiently and sustainably change the
15 processes to make them better for all Americans.
16 So, really appreciate all that work.

17 I do have two other certificates that I
18 have the honor of awarding. Let me start with
19 Jennifer Kovalcik who -- as Susan mentioned -- is
20 rotating off. She has been a member since
21 December 2019. She served on the IT in
22 E-Government subcommittees as the lead and a fun

1 factoid about Jennifer -- let me read it just in
2 case the kids are still on -- okay -- she is world
3 class turkey caller -- oh -- is that something we
4 can hear or do you need a whistle for that?

5 MS. KOVALCIK: (Indicating)

6 MS. VIDAL: Oh, did you hear that? So,
7 Liam, Tate and Shea; I hope you were on and heard
8 that. I actually have turkeys in my backyard back
9 home in California, so I might need to borrow you
10 because that could be quite entertaining; and I
11 hope everybody was able to hear that. So, she's a
12 world class turkey caller and a former karate
13 instructor -- karate -- am I saying it right --
14 instructor with a second degree black belt. Wow,
15 between you and the boxer; maybe I'm happy you're
16 leaving. So, if you wouldn't mind coming up, I
17 would love to award you a certificate and thank
18 you for your dedicated service -- again -- to the
19 country; we are all very grateful.

20 MS. KOVALCIK: Thank you so much.

21 MS. VIDAL: And Tricia is also -- Tricia
22 Thompkins -- is also rolling off of the TPAC.

1 Again, want to thank you for your service. You
2 have been a member since October 2020. You have
3 served on the Budget and Finance Committee as the
4 lead, and the Policy and International Affairs
5 subcommittee; so, thank you for that great work.
6 Your fun fact is that you are a D.C. Metro native
7 with Jamaican heritage, a former examining
8 attorney -- yay for that -- so, thank you for both
9 services -- both as in the USPTO and on the TPAC
10 -- and you had a godfather that was a singer who
11 performed with Bob Marley; wow, that's exciting.
12 So, thank you -- again -- for your service. If
13 you would come up, I would love to award you a
14 certificate and thank you so much for all that
15 you've done for the TPAC and for the USPTO.

16 I want to provide some other thanks as
17 well. So, I've been six months on the job now and
18 cannot tell you -- cannot say anything -- more
19 about the great people that I work with. These
20 are some of the brightest, most engaged people
21 I've worked with over my entire career and to know
22 that everybody is coming in every day to try and

1 make a difference for the country and to try and
2 make a difference for all of you; it's something
3 that -- it just -- warms me up and makes me want
4 to work harder, and do more for you and for the
5 country. So, I want to thank everybody here from
6 the USPTO for all of the great work that you do.
7 I also really appreciate our work with the Unions;
8 that it's something that I committed to before I
9 even got here. I called the Union heads even
10 before I was confirmed to say "Should I be
11 confirmed? I'm really looking forward to working
12 with you because you have -- we all have -- the
13 same interests in mind. We want to do what we can
14 for everybody at the USPTO and making sure that
15 that's front of mind in everything we do". So, I
16 know, Pedro; you're here in the room. We have Jay
17 Besch and Harold Ross on the phone. I will say
18 that not only are we working on behalf of all of
19 those at the USPTO, but in thinking about how we
20 can all collaborate together for stakeholders.
21 So, we are thinking about ways to lean in on that,
22 ways to collaborate with Trademarks and with the

1 TTAB -- or with the TPAC -- to make sure that
2 we're doing even more. So, I'm looking forward to
3 building on all the great work we've done so far
4 and taking that to the next level. So, thank you
5 to the Unions for all that you do and for being
6 engaged partners in all that we do.

7 In addition to that, I want to mention
8 Derrick; our Deputy, who is here. I want to
9 introduce him; if anybody has not already met him,
10 Derrick Brent joined the USPTO a few months back
11 and has been instrumental in working right
12 alongside me in everything that we do. He's been
13 in the meetings with me with employees; so, one of
14 the things that we started doing a little while
15 back is having employee listening sessions so that
16 we could hear from any employee in the entire
17 organization who wanted to share their experiences
18 and their ideas. We -- between Derrick and I --
19 we have both met with over 1,000 employees; we
20 started using our lunch hours for that. We've had
21 numerous listening sessions -- all in very small
22 groups -- everybody has had a chance to sign-up

1 for those listening sessions and we've targeted
2 some of them to make sure -- making sure -- we're
3 hearing from everyone; so, not only the Trademark
4 examining attorneys, folks in leadership, folks in
5 IT, folks across the entire organization; and
6 there have been so many great ideas in that regard
7 and we're so happy to hear them. As a result of
8 that, we actually opened up a new portal inside
9 the USPTO where every single USPTO employee -- or
10 colleague -- which is a word I prefer -- all of my
11 colleagues are welcome to engage with me at any
12 time directly by emailing me through an internal
13 portal. So, we've received a lot of great ideas
14 that way as well, some of them are personal to
15 individuals and we're happy to take those up, as
16 well as big ideas for how we can be doing better.
17 That goes along with -- if you -- I'm sure you've
18 already heard -- but we also have the Engage with
19 the Director external portal, so in addition to
20 the members you have here that you are welcome to
21 engage with directly to share your ideas, in
22 addition to all of the folks on the Trademark side

1 that I know are out there every day at conferences
2 and different forum listening sessions, hearing
3 your ideas, disseminating them, trying to figure
4 out how we can make this -- the USPTO -- even
5 better for you; you're also at any time welcome to
6 engage me directly through the Engage with the
7 Director portal. There's a number of topics; if
8 it doesn't fit into one of those, you can email me
9 at director@uspto.gov. I don't do anything alone,
10 so as you email us ideas we will all work on those
11 together to advance all the great work we're
12 doing. So, thank you. Welcome Derrick Brent as
13 the Deputy and thank you to everyone.

14 In addition, I just want to mention some
15 of the things that we are focused on, both as an
16 organization and within Trademarks, and I very
17 much look forward to this session today where
18 we're going to talk in much more detail about all
19 of this. Across the organization we are really
20 trying to get out there in every area of the
21 country and incentivize more entrepreneurship,
22 more innovation everywhere; we want everyone to be

1 part of that innovation, entrepreneurship
2 ecosystem. We are going to announce an
3 entrepreneurship initiative in November that I'm
4 very excited about, that I can't announce yet, so
5 stay tuned for that; but through our Counsel for
6 Inclusive Innovation we are defining the term
7 "innovation" extremely broadly. It's innovation
8 when it comes to brands, when it comes to creative
9 products or business ideas, or technical
10 innovation; it's all included and we are doing
11 everything we can to educate children from the
12 youngest ages, including through Camp Invention
13 where there are kids ages 6, 7, 8 who are coming
14 into their schools and learning about the value of
15 innovation, the value of brands, the value of
16 design protection, the value of creativity, and
17 how that can be protected and how it must be
18 respected; so, those are phenomenal. I share
19 wherever I can that the kinds of questions we get
20 from those kids are the kind that we would
21 normally get from adults. There was one that I
22 attended remotely and a 9-year-old boy -- I

1 expected him to ask one of the questions like you
2 used to see on "Kids Say the Darndest Things" -- I
3 was expecting those kinds of questions and he just
4 said "Look, how am I gonna protect my merch on the
5 internet?" -- just dead-face -- and just waited
6 for my response on how it's going to help him
7 protect it, so; and then -- you know -- there was
8 a young girl who asked about -- you know -- know
9 much it was going to cost her to get a patent and
10 there was a young girl, Hannah, in a school
11 locally here in Alexandria who was making a
12 flip-flop -- first of all -- she was very upset
13 that she wasn't allowed to make two flip- flops
14 for the design competition -- and then she wanted
15 to make sure nobody was going to steal her idea
16 for her flip- flop.

17 So, these are all the things we are all
18 facing and the more we can educate our children as
19 we move forward, we can grow that next generation
20 as we work to make sure that everybody gets
21 involved in the system now. It's important for
22 jobs, it's important for economic prosperity, it's

1 important for inclusion that everybody has access.
2 So, you will see more on the Council for Inclusive
3 Innovation; we now have a Council for Inclusive
4 Innovation subcommittee with the TPAC, so I'm
5 looking forward to working with that group to
6 advance our initiatives in that regard. You've
7 also -- I'm sure -- heard about the work that
8 we're doing on anti-counterfeiting. We also now
9 have a subcommittee that's very focused on that -
10 you know - we did a lot with the GoForReal
11 Campaign this year; that is out there everywhere,
12 we're going to continue to do more with that. We
13 are engaging in more partnerships around that; and
14 on that we need your help. We need your help to
15 make sure that everybody in the U.S. as whatever
16 part of the ecosystem they're in, that they can be
17 part of the solution so that we can crank-down on
18 this everywhere. So, it's so critical to our
19 country, not only because of the harms caused by
20 counterfeit products; whether it's drugs that are
21 laced with chemicals that can cause death to fake
22 airbags -- I mean -- across the board these

1 products are unsuspecting and you would just think
2 you're getting a better deal and you're not;
3 they're very damaging. They end up funding crime
4 syndicates and they take the business away from
5 all of the small to medium size enterprises that
6 we are trying to lift and support in the country;
7 they take away jobs and they take away GDP's. So,
8 we're very-very focused on that.

9 Within Trademarks itself, inventory
10 needs to come down; we all know that, we're all
11 working on that. Trademarks is hiring new
12 examiners -- examining attorneys -- so, we're very
13 excited for them to come onboard; that will take
14 some time to integrate them. We're looking at the
15 use of non-lawyer professionals to come in and
16 help with some of the work, like paralegals, so
17 we're working on a program for that; and
18 obviously, we're developing our Trademark Academy
19 to better serve everything that we do; and I will
20 say on that, we are going to be working across
21 Trademarks and with the TPAC with trying to come
22 up with more creative ideas on what more can we do

1 to get that number down because it's imperative
2 that we do so.

3 TMA is going great. On a very positive
4 note, the implementation has been fantastic.
5 Thank you to all of you who've been really
6 involved in that; from setting it up from day one
7 in December of last year for its implementation,
8 to the next steps when it comes to the TMA. I'm
9 getting a little bit of an echo. In addition to
10 that, we need to -- did somebody change something
11 or -- okay, perfect -- excellent. So, we are
12 sorry for those who are listening in, there's a
13 little bit of feedback; I just wanted to make sure
14 we got rid of that before I continued talking.

15 IT modernization, phenomenal work by the
16 PTO on that as well; from the crossover to TM exam
17 to the TRAM retirement which I know was long in
18 the works. Really-really excited about all of
19 that. Again, in that area, we need to do more;
20 we're going to do more, we've been talking about
21 that. We need more tools; we need to make sure
22 we're using AI on the Trademark side for search

1 and for other things. A lot of those projects are
2 in the works and we're going to try and lean-in as
3 much as we can to bring solutions to the Trademark
4 examining attorneys, sooner rather than later on
5 that. Boosting the Trademark Register; Amy,
6 thanks for all you've done and everybody's done in
7 that regard. Just ferreting out all of the abuse
8 has been a tremendous task. When I came in it was
9 one of those things that delighted me that I
10 didn't realize we had the capability of doing that
11 and that we were doing it at scale. So, that's so
12 important to everything that we're doing to
13 cut-down abuse everywhere; and I think all parts
14 of the organization can learn from Trademarks in
15 that regard on how we can implement programs,
16 including the special taskforce for improper
17 activities, and make sure that we're not only
18 cutting-down on the fraud we see now, but we're
19 anticipating what may happen next and cutting-down
20 on that as well.

21 So, that is across-the-board a lot of
22 what we're working on. I could continue to talk

1 probably all day on all of our initiatives. What
2 I would say is; if there is more we can do, if we
3 can do better, if you have creative ideas; we are
4 open to creative ideas from anyone anywhere. So,
5 sometimes people put it in the press first --
6 happy to hear ideas anywhere -- you can
7 communicate with any of us on that, you can
8 communicate with the TPAC on that. Again, thank
9 you for everyone; I look forward to an incredible
10 day today and appreciate you all joining in.

11 MS. NATLAND: Thank you very much,
12 Director Vidal; really appreciate those comments
13 and -- again -- you've accomplished so much
14 already and really look forward to seeing the
15 continued wonderful work; and welcome Derrick as
16 well, really wonderful to have you here. With
17 that, we're going to turn it over to Commissioner
18 Gooder.

19 MR. GOODER: Thanks, Susan. Good
20 morning everyone; wherever you are in the country,
21 early morning, afternoon, wherever. Today we're
22 going to cover a number of things regarding the

1 business operations of the Trademark side of the
2 agency, as well as some of the policy things
3 happening, operations things, IT things, and the
4 Trademark Trial and Appeal Board, etcetera. So,
5 we've got a lot of material we're going to get to.
6 Theoretically I do have control of this, all
7 right. So, we'll start with business operations
8 update and that deals with how filings are going,
9 etcetera, staffing; and then we'll add a financial
10 update from our Deputy CFO on how that looks from
11 the big picture about Trademarks in the agency
12 itself; and then what we'll do is move into the
13 three areas we talked about, policy, admin and
14 operations, and then after that we'll move onto
15 other topics. So, without further ado; let's go
16 into files.

17 So, this chart represents application
18 filing levels by class and if you look at it, it's
19 rather an interesting last couple of three years.
20 As all of you know, the far growing line to the
21 right is actually the budget -- or proposed
22 predicted amount -- projected amount -- sorry --

1 for fiscal 23' -- which we have started at the 1st
2 of October -- we're now currently in fiscal 23'
3 and closed out 22' -- but if you look at the three
4 next to it you'll see kind of a topic that's good
5 for Halloween which is a big tooth that sticks up
6 in our flow and that obviously was the trademark
7 surge in 21'. If you look at where we are this
8 year as opposed to last year, it's obviously down
9 -- I mean -- it couldn't help but be and it was
10 about 16 percent below last year, but what's more
11 -- I think -- valuable to look at in the long-term
12 is we are actually about 6 percent above 2020 and
13 that continues a fairly consistent curve over the
14 past few years. The big question on everybody's
15 mind is -- of course -- what's next? We are all
16 watching the economy and just lots of predictions
17 and we have to kind of balance a lot of that.
18 What we do know is that essentially since March
19 there has been a fairly slow gradual decline in
20 filings; and that's consistent in other parts of
21 the world as well, all over Europe, U.K., China,
22 Korea, Japan; it's a very consistent drop. Now,

1 it's not like we saw in the pandemic, so imagine
2 it more of -- to borrow the analogy from our CFO
3 -- it's a bit like a tire with a nail in it and it
4 just continually loses a little bit of air; and
5 while that's helpful to us from a standpoint of
6 getting through our inventory of unexamined
7 applications, it does have a longer term financial
8 consequence that we're keeping an eye on; and
9 Sean will go into that in a little more detail.

10 In terms of where those filings are
11 coming from -- sorry about that -- there we go --
12 essentially we track this by every country and we
13 have people who come to us from over 200 countries
14 to file -- which is remarkable when you think
15 about it -- but literally everywhere in the world
16 -- and the U.S. is back to about a 64 percent
17 share of that, China -- which is the next line
18 down -- is back down to about 16 percent which is
19 more where it's historically been over the last
20 few years; the spike, obviously, was in 21'.
21 Europe is 11 percent, Asia Pacific -- not counting
22 China -- is 6 and the rest of the Americas is 4.

1 What's interesting is all three of those last
2 categories are slightly higher than they were in
3 the past. What may be a little more useful is
4 when you look at this slide which breaks it each
5 region separately and then by the last few years.
6 You can obviously see with -- the bars on the left
7 is the U.S and then China -- you can see the big
8 spike in 21' and then you can see where they are
9 now. What's interesting is the U.S. is actually
10 either -- depending on how much you want to round
11 the number off -- either flat or slightly lower
12 than 20'. China is still a little up and the rest
13 of the world is up a bit from last year. So,
14 they're healthy numbers, but there are also ones
15 that we're all watching very carefully, just like
16 we are with everything else in the economy right
17 now.

18 So, with regard to staffing -- our
19 people -- we are a little over 1,000 employees,
20 that doesn't account the 46 examiners who started
21 about a week ago into our Trademark Academy, so
22 that puts us slightly over 1100 employees. There

1 are -- again -- not counting the new class --
2 about 718 examining attorneys; by far and away the
3 biggest part of the Trademark workforce. We
4 telework a lot -- as people know -- and that has
5 actually increased through the pandemic and we've
6 worked on ways to make that more workable for our
7 people so that we can encourage more geographic
8 diversity. This map basically tells you that with
9 all but eight states we have examiners everywhere,
10 including Alaska, Hawaii; and that continues to
11 increase and we think that's a really healthy
12 thing to -- it helps our customers who are in
13 different time zones, it helps just perspective;
14 so, we're very happy with this and how it's
15 moving.

16 Before I pass over to Sean for the
17 finance side, are there any questions from TPAC?

18 MS. NATLAND: Thanks, Commissioner. You
19 know, I just have one observation request going
20 forward. I think it would interesting to see this
21 data over time -- you know -- to see the changes
22 on the geographic diversity because I know

1 historically -- of course PTO is on the east coast
2 and a lot of the employees and colleagues were
3 based here or close to D.C. -- and I think it
4 would be interesting to see some movement over
5 time as things move to telework.

6 MR. GOODER: Yeah, it would --
7 interestingly -- this year marks the 25th
8 anniversary of the Trademark Office teleworking.
9 We didn't start during the pandemic; we started
10 about 25 years ago from a project that came from
11 one of the Federal Executive Institutes where
12 people -- you know -- like you would go to an MBA
13 kind of offsite program, etcetera; and they came
14 up with this idea of teleworking that would save
15 commuting costs, congestion on highways, real
16 estate space, all that kind of thing; and it was
17 put in place through a lot of negotiation, a lot
18 of work -- contribution -- by examiners, by
19 managers, and it had to be passed as a pilot
20 program by Congress. It's now a permanent
21 program, but when we heard a lot of people say
22 "Wow, it's amazing you all were able to just go

1 through the pandemic with just -- we didn't notice
2 a change -- that's because the Trademark Office
3 had been doing that for a long time. We're doing
4 it more now than we were, but to the credit of our
5 CIO and the ability to stay functioning as well as
6 they did was just -- combined with that -- was
7 flawless. The stories you hear from people who
8 teleworked in that early- early time -- we're
9 talking back in the dialup days -- and -- I don't
10 know -- David and Tricia, was that after your time
11 at the office?

12 MR. CHO: Yes, after; I'm old, but not
13 that old.

14 MR. GOODER: Yeah, so -- but you're
15 right, Susan; that would be interesting to see how
16 it has migrated because we have been very -- sort
17 of -- Mid-Atlantic centric.

18 MS. NATLAND: Exactly; I just think of
19 the population of some of these states -- you know
20 -- and it's not exactly reflective, but it's
21 great. It's great to see these numbers and
22 representation all over.

1 MR. GOODER: Okay. With that, I will
2 turn it over to Sean Mildrew who is our Deputy
3 CFO. Sean?

4 MR. MILDREW: Great. Thanks, Dave;
5 appreciate that. I'm Sean Mildrew; I'm the Deputy
6 CFO here at USPTO. Jay Hoffman -- the CFO --
7 couldn't make it today, but he joins me in
8 extending our best wishes for those TPAC members
9 rolling off this cycle; and especially Susan and
10 Tricia, we want to say thank you for your service
11 on the subcommittee -- the Budget and Finance
12 subcommittee -- a real working partnership and we
13 certainly do appreciate all of your thoughtful
14 feedback, comments, and really feel like we've
15 made a lot of good progress in a very short period
16 of time; so, appreciate that all. Thank you.

17 Okay. So, let's -- I've got a few
18 slides here -- I'm going to talk a little bit
19 about the yearend wrap-up for fiscal year 22'
20 which -- as you heard from the Commissioner --
21 closed on September the 30th; so, we've started a
22 new fiscal year on October the 1st -- fiscal year

1 23' -- give you some status on that; and then a
2 little sneak peek on what's on the horizon. Okay.
3 So, our first slide gives you a perspective here
4 -- really, a full agency perspective -- broken
5 into our two business lines; the Patents business
6 line and the Trademarks business line, and you can
7 see in the middle column there -- the Trademarks
8 column -- and then those two add to the last
9 column on the right, the USPTO agency-wide
10 perspective; and so, just a couple of numbers I
11 want to highlight as you look at this, our
12 appropriation for fiscal year 22' for Trademarks
13 was \$450 million dollars. We actually collected a
14 little bit more than our appropriation -- that's
15 what that \$8.2 million dollar amount is -- that's
16 actually collections over the appropriated level
17 -- that gave us a total yearend fee collection for
18 Trademarks of \$458.3 million dollars; and so, you
19 probably are wondering "Gee, your appropriation
20 was for 50, you collected more than that. What
21 happens with that extra"? I'm proud to say
22 because of the AIA legislation we're able to

1 retain that additional amount -- that \$8.2 million
2 dollars -- in a special fund called "The Patent
3 and Trademark Fee Reserve Fund" and those funds
4 become available to us through a congressional
5 reprogramming action. So, all of our fees
6 collected go to all of our activities to foster
7 innovation and IP security for the country. So,
8 good news there, but we back it out because it's
9 not currently available, we're in the process of
10 working with the department and OMB to transmit
11 that reprogramming to the Hill now, and so, that's
12 on its way; and we have an operating reserve and
13 some other revenue to the tune of \$214 million
14 dollars. So, working the way down that middle
15 column gives you a total funds available of \$664.4
16 million dollars. Out total spending -- end of
17 year spending -- is \$455.5 million which would
18 leave us then -- if you follow the math -- all the
19 way down to an end of year operating reserve of
20 \$208.7 million dollars which is a really healthy
21 strong operating reserve, which is great for an
22 uncertain economic climate; so, I want to say

1 kudos for us for that.

2 Okay, the next slide. So, looking at
3 agency-wide spending, you can see we spent 93
4 percent of our plan; so, our plan is set by those
5 various components there that you can see along
6 the X-axis, the compensation, rent, printing,
7 contracts, equipment and other. So, the blue bar
8 represents our plan -- our spend plan -- our
9 operating plan -- and the red bar is our actual
10 spend. So, you can see that we've actually spent
11 a little bit less in each one of those major
12 categories and that's why we ended up with overall
13 an agency spend of about 93 percent of our plan.
14 The major difference is, in compensation, we had
15 approved vacancies that we didn't fill -- didn't
16 get a chance to fill -- this fiscal year; those
17 continue on, so hopefully we'll get those filled
18 soon enough. So, that is about \$148 million
19 dollar difference and then contracts is another
20 big area where about 40 million of that is needed
21 contracts that just didn't get executed by the
22 time September 30 rolled around, but they continue

1 on; so, that's a need that will be filled in
2 fiscal year 23'. The majority though are changes
3 in direction from our programmatic areas,
4 contracts we no longer need. So, we planned a
5 little bit more and we actually needed a little
6 bit less.

7 Okay, so this is looking at -- this
8 slide here -- looks at the Trademark spending
9 levels compared with the revenue; and the red bars
10 represent the spend by month from the beginning of
11 the fiscal year -- again -- this is fiscal year
12 22' -- the year we just closed -- from October all
13 the way to September 30th and you can see by the
14 bars our spending goes up and down, it's not
15 exactly linear, and you can see that revenue does
16 the same, very small changes throughout; and you
17 can see at the very end of the year in September
18 we closed the year with just a little bit more
19 revenue than we had spending; and if you remember
20 the chart that we started with, it's about \$8
21 million dollars and that's the surplus over the
22 appropriation amount.

1 So, Trademark fee collections; as you
2 can see we make some plans at the beginning of the
3 year and throughout the year we continue to look
4 at the economic conditions and our collections,
5 and revise that forecast through various elements
6 throughout the year as we continue our planning
7 process, including a mid-year review; and we
8 actually closed the year with end of year
9 collections at \$459 million dollars, that includes
10 that \$8 million dollars of surplus over the
11 appropriation amount, which is the green bar there
12 -- the green line is the \$450 million dollar
13 appropriation amount -- so you can see that we
14 closed with just a little bit higher than that;
15 but overall -- as Dave had mentioned -- Jay had
16 talked a little about -- previously -- that -- Jay
17 Hoffman -- our CFO -- talked a little bit about
18 how there is a little bit of softening going on
19 with your revenue, and our estimates and plans
20 reflect that.

21 MS. THOMPKINS: So, Sean --

22 MR. MILDREW: Yes, mm-hmm?

1 MS. THOMPCKINS: -- If I may? First of
2 all; let me say that it actually has been -- and I
3 say actually not in a pejorative way, but in real
4 terms -- that it's been a pleasure working with
5 your team this year. I joke with Susan that --
6 you know -- I was an English major because I
7 didn't want to do that much math and here I am.
8 However, your team has made it extraordinarily
9 easy to understand the information, so I wanted to
10 commend you on the work that you've done thus far.
11 As we look at some of the trends that you're
12 sharing with us and in context of the operating
13 reserves, as well as just our collections and
14 revenue relative to our spend; although, we had an
15 uptick on the monthly basis in September. Can you
16 share a little bit with us -- at least to the
17 extent that you can -- please share with us some
18 of the work that you have done to -- you know --
19 acknowledge the trend between the spending and the
20 revenues and fee collection to mitigate what could
21 be a downward trend in fee collections?

22 MR. MILDREW: Sure, great question;

1 thank you, Tricia. Also -- you know -- we truly
2 have enjoyed working with you guys and feel like
3 there was a true collaboration and exchange of
4 ideas and information, and that makes us all
5 better; so, we always appreciate that. You know,
6 as a fee- funded organization -- we're 100 percent
7 fee-funded -- so, we're very different than most
8 Federal Agencies that receive a direct
9 appropriation from the Treasury. So, we really
10 have to live within our means; and so, the
11 Director, the Commissioner -- in fact -- everyone
12 here at USPTO is very conscientious of that
13 relationship -- you know -- we need to make sure
14 we balance the revenue forecasted and collected
15 against the needs of the agency; and so, we're
16 always looking for innovative ways -- as you heard
17 the Director say -- looking at technology, looking
18 at retiring legacy systems, moving to the Cloud,
19 using AI to help streamline our own internal
20 processes so that we can be maximally efficient
21 and optimize the incredible talent and workforce
22 that we have -- truly knowledge workers -- here at

1 the USPTO -- again -- something different than I
2 think what you find at a lot of Federal Agencies;
3 that uniqueness really does put a really -- you
4 know -- a green eyeshade on all of us -- to use
5 the phrase from long ago -- you know -- the bean
6 counters with the green eyeshade. I think we all
7 feel a duty to make sure that every dollar
8 collected from our fee payers really does go to
9 benefit them directly through the products and
10 services that we have, including -- you know --
11 looking at our real estate footprint as well. So,
12 we're actually looking at that and taking action
13 right now today to shrink that footprint and have
14 been doing so over the last couple of cycles, and
15 will continue to do so. So, we really do look for
16 every dime under that cushion -- sofa cushion --
17 and make sure that we recover it and use it to
18 really foster incredible IP activity here in the
19 country and at USPTO. I hope that answers your
20 question.

21 MS. THOMPCKINS: It does, thank you; and
22 I think even in context of what Commissioner

1 Gooder shared about telework and that we were
2 so-so-so far ahead -- 25 years -- I can't believe
3 it's been 25 years -- and I too, Commissioner
4 Gooder; am not that old, I do remember it in law
5 school though where I had a dispute with my
6 roommate about sharing the phone; but nonetheless,
7 I do think that your office has demonstrated that
8 it's ahead of the curve in that regard, along with
9 the other members of the USPTO; so, I commend you
10 on the work. Thank you.

11 MR. MILDREW: Great, thank you. Okay.
12 So, the next slide here; just looking at the
13 Trademarks end of year collections that were above
14 and below our plan -- again -- our plans are made
15 and adjusted throughout the year -- and it looks
16 like maintain exclusive rights, 2.3 percent above
17 plan, but then intent to use fee is down 5.8; and
18 you can see some other fees are down from our
19 plan, which is -- again -- those numbers aren't
20 atypical from a trend or a previous fiscal year.

21 So, looking at the Trademarks operating
22 reserve; you can see that very top line shows our

1 optimal operating reserve balance of \$271 million
2 dollars and that's about six or seven months worth
3 of operating activity -- that will fund about six
4 or seven months of operating activity -- and we
5 have a minimum required operating balance of \$120
6 million dollars and that's set at about three
7 months of operating activity. So, we like to be
8 somewhere in between; we always strive for the
9 optimal and as you can see -- you know --
10 throughout the fiscal year -- and this chart
11 actually goes back to 2020 -- you can see how
12 there's been a steady growth in our operating
13 reserve -- again -- which is our -- it's our --
14 sort of our -- rainy day fund in case some
15 economic activity should negatively impact the
16 organization. GAO recommends that fee-funded
17 organizations like the PTO maintain an operating
18 reserve for those business cycles, and we all know
19 business cycles happen -- you know -- where
20 there's ups and then you can expect some downs as
21 well; so, that's money in the bank to help make
22 sure that we maintain normal operations and can

1 make sure that we fulfill our promise to the
2 American public and to the world -- IP world.

3 So, looking forward to fiscal year 23'
4 -- we started this fiscal year October the 1st --
5 as I mentioned -- we're currently under what's
6 called a "continuing resolution". Congress has
7 not passed full year appropriations for the
8 Federal Government, so all agencies are under a --
9 what we call -- a "continuing resolution" which is
10 scheduled to last through currently December the
11 16th; and unfortunately, what happens when you're
12 under a continuing resolution is you're held to
13 last year's spending. Now, that may not be bad if
14 you're not a growth agency; but as you all know,
15 USPTO is a growth agency -- and you can see by the
16 number of filings that the Commissioner showed
17 just at the top of our presentation here - so, we
18 are a bit constrained in the amount of money that
19 we can spend between this period of time -- from
20 the start of the fiscal year October 01 through
21 December the 16th. Now, what's also interesting
22 is that this is not an anomaly, this is actually

1 more typical -- in fact -- I think we've started
2 most fiscal years -- in recent memory -- under a
3 continuing resolution of some length of time -- so
4 -- again -- another great reason to have an
5 operating reserve to help us continue normal
6 activities in a growth mode while we're
7 constrained through the appropriations process at
8 last year's levels. So, that's a really great
9 nuance to really understand and appreciate the
10 operating reserve. We are also authorized to
11 spend our carryover, which is our operating
12 reserve -- as I mentioned -- and that the fee
13 revenue in excess of our appropriation -- the \$450
14 million dollars that I had mentioned -- a total
15 for the agency of just over \$31 million dollars --
16 8.2 of that -- \$8.2 million dollars -- is for
17 Trademarks and will be available once the
18 reprogramming process is concluded.

19 And then, just a quick look for on the
20 horizon; we've submitted our fiscal year 24' budge
21 request to OMB and so, they're reviewing and
22 working on that right now and we anticipate that

1 we will release the President's budget for fiscal
2 year 24' in the February timeframe. By law the
3 President has to transmit the budget request for
4 the next fiscal year by February 1st, so we'll see
5 if that date sticks. There has been some -- in
6 the past -- there has been some wiggle room on
7 that date, but by law it is the first Monday of
8 February, so we'll see if that sticks; and then,
9 the USPTO plans to release its new strategic plan,
10 we're working on that right now, sometime this
11 winter. So, that'll be very exciting and I think
12 will really resonate with the IP community. And I
13 believe that's my last slide. So, thank you,
14 appreciate it.

15 MR. ENNS: Sean, may I ask a question?

16 MR. MILDREW: Sure.

17 MR. ENNS: I just wonder if you might
18 comment a little bit -- I'm struck by the
19 similarity between the comments you and
20 Commissioner Gooder have made -- about starting to
21 see some softening in filings and revenues,
22 although they aren't necessarily reflected in the

1 full year results yet; and it sounds to me a lot
2 like what we hear the Fed saying what they're
3 seeing in the economy in general and I know that
4 in general it's been said that -- as compared to
5 Patents -- Trademarks tend to be much more
6 sensitive to changes in the economy. So, in using
7 your crystal ball and doing these projections; to
8 what extent do you see at least the goals of the
9 Fed and the projections for the economy in general
10 and the target of a soft landing; how much do you
11 take that into account in trying to project the
12 performance of Trademarks, which are very variable
13 and sensitive, and how does that impact the size
14 of the operating reserve that we need?

15 MR. MILDREW: That's a really great
16 question. We take all of that information into
17 account and unfortunately, nobody really knows
18 what's going to happen -- I mean -- this is really
19 somewhat uncharted territory; so, you've got a
20 lot of folks thinking a lot of different things at
21 this time. So, it's hard to kind of sort through
22 the noise and kind of figure out exactly what's

1 going on here and how best to plan for it. My
2 only suggestion is the best way we can plan for it
3 is to continue to strive to hit our optimal
4 operating reserve. As you said -- you know --
5 when you look at the two business lines, Trademark
6 business line tends to be a lot more sensitive to
7 fluctuations in a macro-economy; so, we have
8 noticed that and we do take that into account, and
9 that's why the maximum -- the optimal -- operating
10 reserve for Trademarks is so much greater in time
11 -- length in time -- about seven months right now
12 -- than it is for Patents because they tend to
13 react slower and less dramatic to those types of
14 macroeconomic changes; but, we're definitely
15 keeping an eye on it. It's something that we
16 always do, we always are keeping our finger on the
17 pulse, trying to understand where CBO is
18 forecasting; keeping in mind other indicators that
19 may indicate one way or another where the economy
20 is headed so that we can best plan a spending and
21 revenue projection through the budget process in a
22 way that continues operations on a normal basis;

1 and that's what we really strive for, is to
2 continue normal operations despite all the noise,
3 despite -- you know -- if Congress can't pass an
4 annual appropriations bill on time -- you know --
5 we try to cover all those risks and we've done so
6 very successfully; and that's why you see -- that
7 line chart that I was showing you between the
8 minimal and the optimal operating reserve --
9 edging up. As risk tends to increase in the
10 macro-environment we like to make sure that we
11 fully fund our operating reserve to weather those
12 storms. So, I hope that answers your question.

13 MR. ENNS: Yes, thank you, appreciate
14 it.

15 MS. VIDAL: And I'd just like to add
16 that I think I probably speak for TPAC, but we 100
17 percent agree with that approach and I think Rod's
18 question was a great question and I think it just
19 underscores the need to try to stay closer to the
20 optimal level given the uncertainty.

21 MR. GOODER: Okay. Thank you, Sean.
22 Now we're going to move to other parts of the

1 business and to set that up I want to just remind
2 everyone -- you've heard this from us at
3 successive TPAC meetings if you've been here and
4 you all of TPAC itself -- but we have essentially
5 five big priorities in Trademarks this year; and
6 the first one obviously, is to knockdown the
7 inventory -- that means obviously that has an
8 impact on patency -- so reduce patency, knockdown
9 the inventory, they're all related topics. That
10 is the single biggest priority. You're going to
11 hear more from Dan about that shortly.

12 The next one is that we are fully --
13 this fiscal year by the end will be completed --
14 is fully implement the Trademark Modernization
15 Act. So, the last pieces coming, which you'll
16 hear from Amy or Dan, will have to do with the
17 change in response times for -- responses to --
18 preregistration office actions --
19 post-registration office actions will come later
20 in the year -- but that's one of our five
21 priorities.

22 The next one, which you'll hear from

1 Greg and Glenn here throughout our meeting, is
2 intensifying the modernization of our IT and
3 you've heard this a couple of times already about
4 retiring legacy systems, and that is one of the
5 biggest pieces of modernization is to get that out
6 of the way -- and you'll hear more about that --
7 because that leads us to much- much better IT,
8 better interfaces with the public, with the
9 examiners, etcetera. So, that is number three.

10 The fourth biggest area is boosting the
11 effort and how we go after protecting the register
12 from scams, from deadwood, from all the things
13 that all of us in the Trademark community don't
14 want on the register; and that has become an
15 enormous mission of ours to do, especially as
16 scams proliferate, and we ran into a new one
17 yesterday actually; and we put them immediately up
18 on our website, we take a great deal of action
19 with regard to them, but when you look at them --
20 you know -- you're constantly reminded that just
21 like counterfeiters, scammers adapt, they change,
22 they try new things, etcetera; and we're doing

1 everything we can to see that our customers don't
2 get scammed by it. So, that's the fourth area.

3 The fifth area is just some projects
4 that we'll talk more about in the next TPAC
5 meeting in January or February timeframe; and that
6 has to do with projects that are helping us look
7 at our organization and our flow of how
8 applications move and both are designed to reduce
9 pendency, but also to take into account the fact
10 that our systems, our organization, etcetera, was
11 built when we were much smaller; and now -- you
12 know -- we're a half a billion dollar company
13 operating with customers in 200 countries and 1100
14 employees. So, how we worked in the past and how
15 we set it up in the past is not how we need to be
16 doing it in the future and that's that project as
17 we evolve.

18 So, with those in mind you'll hear us
19 constantly referring to those over the next year,
20 over the next two or three years; these are big
21 projects. So, with that; I'm going to turn it
22 over to Amy Cotton who's our Deputy Commissioner

1 for Trademark Examine Policy and while that sounds
2 like a title that's limited to Policy, she wears
3 probably more hats than any of us in this
4 organization. So, Amy; over to you.

5 MS. COTTON: Thank you, Dave. So, this
6 morning we saw a World Trademark Review article
7 that highlights a scam that -- this is the letter
8 actually -- a scam letter that is meant to
9 impersonate the USPTO. Now, I realize that's
10 very- very small, but I wanted you to see what it
11 looks like. So, this is a letter that is sent out
12 to some applicants from one of the scammers and
13 then the scammer offers to do the attorney
14 services to back it up. The cost for filing
15 listed in there is \$1800 dollars with a 15 percent
16 federal tax and at the very -- not at the very top
17 -- but on the right-hand side it says "U.S.
18 Department of Commerce", so there's certainly some
19 clues in there that it's not the USPTO; and you
20 all know this and you can tell whether -- you know
21 -- a notice is a scammer or not, but a lot of
22 people can't. So, what the message - the top line

1 message - for you guys to spread the word on and
2 for us to spread the word, call TAC -- call the
3 Trademark Assistance Center -- they will walk you
4 through the TSER record and they will tell you
5 whether something is something we sent or
6 something that we did not send; and they are
7 really knowledgeable about that. We also have web
8 pages up that we want folks to use to get more
9 information about how to protect yourself from
10 scams.

11 So, let me jump to TMA -- nonuse
12 cancellation -- very briefly because we have a
13 special guest here today and I want to leave time
14 for him. So, when you're doing a mark clearance
15 search and you find a prior mark that's not in use
16 or you've got a 2D cited against you and you don't
17 think that mark is in use; what you do you, what
18 are the tools that the USPTO has for you?
19 Certainly, you can go with the wait and see
20 approach and see if a maintenance filing is not
21 filed or filed, that requires patience, I don't
22 have that; so, there are two other options for

1 you. You've got the TTAB -- Trademark Trial and
2 Appeal Board -- Petition to Cancel for any of
3 those elements up there; and now you have the TMA
4 Petitions to the Director for Expungement and
5 Reexamination; and these are tools to attack a
6 registration for nonuse by providing evidence to
7 us that the mark is not in use and then we decide
8 whether a prima facie case is made. If a prima
9 facie case is made, then we will institute
10 proceedings; we can also institute proceedings on
11 the Directors own initiative if we find that that
12 there's evidence out there that wasn't in the
13 petition or on our own initiative.

14 These are the stats for you. Like I
15 said, I'm going really fast here, but the TMA
16 webpage on the USPTO site is great for finding
17 petitions; we're going to improve it, we've got a
18 database coming later this calendar year where you
19 can search these decisions more easily. I do have
20 some "do this, not that", but that's really small;
21 sorry about that. My "do this, not that" for
22 petitioners -- the main thing I want to highlight

1 there is -- if you are a lawyer and you want to
2 petition, use your law firm as the petitioner, use
3 your law firms address as your domicile address --
4 little tip for you -- that way then you as the
5 lawyer don't have to provide your domicile
6 address, you can provide the law firm as the
7 domicile address. If you give us one bad
8 specimen, we're only going to be able to institute
9 on that good. We can't institute on everything,
10 but if you give us a bit more that we can infer
11 nonuse from other pieces of evidence, then we can
12 institute on all of the goods or services in the
13 registration; so, make sure that you give us a
14 little bit more than a bad specimen. If you have
15 evidence that this particular registration has a
16 specimen that came from what we call a "specimen
17 farm"; this is one of those shady e-commerce
18 retail websites where there's disparate goods all
19 over the place, the product descriptions don't
20 match the products, there's third -- you know --
21 you see a Fisher-Price toy with somebody else's
22 mark on it; give us evidence of that. We like

1 that evidence because we definitely will want to
2 institute on those cases because we can certainly
3 infer nonuse. If you have a registration where
4 there's an attorney that has been sanctioned,
5 please give us that evidence; we know it's been
6 sanctioned, but we want to see that in the
7 petition. So, these are the main things. The
8 other thing on the "not that" side; don't just
9 give us an investigator's report, which is
10 testimonial evidence, unless you give us the
11 documentary evidence that the investigator found.
12 I had that the other day -- I'm like argh -- I
13 want to institute because the investigator's
14 report is good, but it's just testimony; so,
15 there's not enough there for me.

16 On the registrant's side "do this, not
17 that", we don't have a whole lot of responses from
18 registrants yet because they're defaulting -- yay
19 -- so, that's great, but I don't have a lot of
20 experience yet; when I get that, then I'll have
21 more "do this, not that's" for you. Certainly
22 though, if you just give us the original

1 specimens, that's not going to work -- and again
2 -- don't provide testimony without documentary
3 evidence. Okay. I've got eight seconds left.
4 Okay.

5 So, here we go. All right. When you
6 submit a TEAS or a TEASI form you are clicking a
7 validate button. The validate button means you
8 are certifying that everything in that submission
9 is true and accurate, has evidentiary support, was
10 not made for improper purpose or harassment. Now,
11 if that turns out not to be true, under a
12 37.CFR.1118 we can sanction you. These people
13 have been sanctioned. These are mostly foreign
14 filing firms who are responsible for submissions
15 that violate rules. So, we're really going after
16 the big ticket scammers -- you know -- the big
17 ticket rule violators -- and we have a webpage
18 with all of our sanctions on it. One of the
19 sanctions is that we can refer a practitioner to
20 the Office of Enrollment and Discipline; and so,
21 we're going to do that. Now, the top two there
22 are in the matter of USPTO.gov accounts sponsored

1 by Julian Haffner and Grace Lee Huang. So, those
2 U.S. attorneys sponsored foreign agents for a
3 sponsored attorney -- an attorney sponsored --
4 support staff account. In the Terms of Use in the
5 Verified Account Agreement it says "You cannot
6 sponsor foreign agent for a sponsored account".
7 So, what did we do? We took down all of those
8 sponsors accounts by those attorneys and we sent
9 those attorneys over to the Office of Enrollment
10 and Discipline for investigation and possible
11 discipline.

12 So, I want Will Covey who is online
13 today and who is going to share with us what they
14 do on their side of the house once we send over a
15 name and evidence of rule violations. So, Will; I
16 am passing the buck over to you, but I will
17 advance your slides for you.

18 MR. COVEY: Okay, thanks. Can you hear
19 me okay?

20 MS. COTTON: Yes, we can hear you.

21 MR. COVEY: Okay. Yeah, I'll try to do
22 this sparingly on time. So, I'll give you a

1 high-level review -- if you look at the date of
2 this -- I don't read Chinese but -- you can see
3 some of the information here is in March of early
4 this year right as the PTO announced that we were
5 getting ready to go forward with the ID.me and
6 they're looking for USPTO -- those who have the
7 credentials -- and who have the ability to kind of
8 interact with the USPTO. We had this translated
9 -- and also -- one interesting thing is whoever
10 sent this email was looking for attorneys in the
11 United States who had the credentials who also has
12 -- I think something like -- it says "non-Chinese
13 sounding last names". There was a notion -- I've
14 gotten this question -- "Hey, are we targeting
15 Chinese - "those with Chinese" -- "last names" or
16 what have you; and the answer is no, we're taking
17 everything that comes through the door for us as
18 far as cases - and I'm going to show you a couple
19 sounding names -- but I think it's interesting
20 that -- I think -- that these foreign actors are
21 thinking that we are targeting or we're going
22 after different types of names to kind of see who

1 we're going to investigate and things; that's
2 certainly not true, but it's interesting that
3 they're reacting -- they're staying on top of --
4 what's going on at the PTO to -- they want to
5 continue these business operations that they were
6 -- and schemes -- that they were basically
7 involved in. Next slide, please.

8 Okay. So, this is just kind of a list
9 -- a rundown -- of local council cases that we
10 have pushed through our system -- through the OED
11 system -- in the last roughly year- and-a-half.
12 The first one was -- it says at the top there --
13 Mr. Liu -- he was in May of 2021 -- and you can
14 see we got a couple others. These are thousands
15 of applications, signature issues, specimen
16 issues, that are kind of called into question; and
17 they're very intensive-type cases for us to kind
18 of put together because it's a huge volume of
19 cases to kind of make the case as we kind of
20 package the information in the investigation to
21 make sure that we can present it to a third party
22 judge who can then understand it and understand

1 the gravity and what the significance of what the
2 attorney was engaged in. So, many of these cases
3 involve settlements which I think is good work by
4 not only OED, but also by the Trademark
5 operations, kind of helping us kind of gather the
6 data and information and kind of put into an
7 understandable format that we can present to a
8 third party; and I think when we lay our cards on
9 the table with these attorneys many of them
10 realize -- many of them deny -- that they did it
11 or they claim that they were looking at all these
12 applications, but when we go down and we pull data
13 -- for example -- we can see how quickly
14 applications were signed and they were submitted
15 to the office. Sometimes there's only a few
16 seconds between applications and it takes a lot of
17 effort to kind of pull that all together and
18 present that kind of story to the attorney, and
19 obviously then they realize that "Hey, yeah; I
20 need to settle this case" and we've entered into
21 these types of settlement agreements. Thousands
22 of applications -- 5, 6, 7,000 -- next slide --

1 the highest one is Jonathan Morton; I think it was
2 32, 34,000 applications filed over a one-and-a-
3 half-year time period. So, it's a massive amount
4 of cases being pushed through the system and we
5 then worked with Trademark operations to make sure
6 -- the Trademark policy -- to make sure that once
7 we enter into these agreements that the proper
8 steps are then taken with these applications. We
9 still do have -- and I do talk to the Bar across
10 the country about these cases to kind of alert
11 them as to; one, what's going on as far as OED's
12 actions against attorney who are engaged in this
13 type of conduct. Unfortunately, we're still
14 seeing a steady stream of this type of conduct,
15 but we're basically handling that so far at this
16 point and I don't -- unfortunately, I do -- see
17 this continuing into the future; what we're
18 seeing. Next slide, please.

19 And just as a side note, I will mention
20 that all of those cases that we mentioned, they're
21 practicing before the PTO; they're all attorneys,
22 we then coordinate with the State Bar so that they

1 can look at reciprocal action. For example, if
2 you are a New York attorney or Connecticut or
3 Virginia, many of those states have -- across the
4 country -- have what's called "Reciprocal
5 Disciplinary Processes", so they will then take
6 our cases and we'll work with them; we'll offer up
7 our evidence, we'll help them understand the
8 cases, we'll offer to provide witnesses --
9 basically if they need help presenting the case to
10 one of their -- to whatever their process is in
11 their state -- so they can also take similar type
12 action against these attorneys and get the word
13 out across the country. So, with that -- and I do
14 mention that we do offer attorneys the -- and the
15 public -- anyone who has questions -- you can
16 always call OED; we have some of the investigating
17 attorneys who answer questions and kind of help
18 attorneys navigate -- you know -- the professional
19 responsibility rules that apply to them as they're
20 kind of handling these types of cases; and we do
21 get questions about "What are the requirements?
22 Do I actually have to physically sign the document

1 or can I allow my assistant or my paralegal sign
2 this"? So, we do still get those types of
3 questions and we try to educate the public and
4 help them understand what their obligations are.

5 So, with that; I will close and open up
6 if there are any questions. Let me say thank you,
7 TPAC for inviting me to speak about what we're
8 doing as far as enforcement actions against the
9 attorneys.

10 MS. VIDAL: Any questions from TPAC?

11 MS. BROWN: Hi. Well, I actually don't
12 have a question for you; I have a question for
13 Amy. Just quickly going back to that scam letter
14 that you shared, the one with the U.S. Department
15 of State; can you just remind me, what actions
16 does the PTO take against people who are using the
17 logo -- the Seal -- like -- do you guys
18 investigate them and do you take action against
19 those actors as well as warning the public?

20 MS. COTTON: Great question. We do not
21 have law enforcement authority, right? So, if
22 there are any -- you know -- civil or criminal

1 statutes that are violated by that action there's
2 not much we can do about that, except to raise it
3 with law enforcement. In that particular
4 instance, we've seen that letter before. Folks
5 have sent to TMscams@USPTO.gov, so we knew what
6 the scam is; it's very similar to a party that
7 we've already sanctioned and that we were going to
8 continue to sanction. So, we're aware of what's
9 going on there. We are trying to put that up on
10 our website, but I got people pushing back saying
11 "It looks like it's us, it's going to confuse
12 people that it's us"; I was like "No, it'll say
13 Department of Commerce", but we are trying to put
14 that up on our webpage so people will know that
15 that's a scam. We have already referred that
16 matter to law enforcement through various
17 channels, through our Office of General Counsel,
18 then they go to the Office of the Inspector
19 General for the Department of Commerce, and then
20 they liaise with law enforcement. So, that's what
21 we can do in terms of the criminal side or the
22 civil side. The Federal Trade Commission actually

1 has authority to go after those who impersonate
2 government agencies; they actually have a Notice
3 of Proposed Rulemaking on that to make it easier
4 for them to go against those sorts of folks; so,
5 we certainly support that effort. We have limited
6 enforcement, they have enforcement "Yes, go after
7 that". So, all we can do is raise awareness with
8 our stakeholders not to fall for these scams, tell
9 people to call TAC, find out if this thing is for
10 real or not; certainly if it says "Department of
11 Commerce" it probably isn't, but -- you know --
12 for those who want to make sure. So, those are
13 the actions that we can take.

14 MS. BROWN: Thank you, appreciate that.

15 MS. COTTON: Yep.

16 MR. GOODER: Okay. Any other questions
17 for Amy or Will? Thank you, Will for joining us.

18 MS. NATLAND: Thank you, Will.

19 MR. COVEY: Thanks, Dave.

20 MS. NATLAND: Great work, thank you.

21 MR. COVEY: Okay, bye-bye.

22 MR. GOODER: Now, I'll pass the mic to

1 Dan Vavonese who's Deputy Commissioner for
2 Trademark Operations.

3 MR. VAVONESE: Good morning everyone.
4 So, we've heard a lot about filings and where we
5 were in FY 21' and filings in FY 22', which while
6 they were down compared to 21', we still had over
7 780,000 application classes. As we went through
8 FY 22' our pendency did rise -- continue to rise
9 -- over our seven-and-a-half-month goal, it got up
10 to 8.3 months by the end of the fiscal year.
11 Similarly, with our disposal pendency -- which you
12 can generally add about six months on to the first
13 action pendency based on the six month response
14 period -- we ended at about 13.8 months for
15 disposal pendency. So, when it comes to the
16 inventory, what I want to point out is that -- you
17 know -- you've seen this continuous rise ever
18 since -- you know -- ever since -- you know -- mid
19 2020. The good news as far as our inventory is
20 concerned is that we have leveled off -- you know
21 -- it's been a long time coming and we've been
22 working a lot on that; but it is leveling off, it

1 is slowly starting to go down, but the thing we
2 have to remember is that it's a huge number of
3 classes that we're trying to get through and the
4 age of the inventory is what we're dealing with
5 right now because the oldest cases in the
6 inventory -- a large amount of those -- that's the
7 age that's really getting us with this 8.5 --
8 close to 8.5 -- month pendency that we have right
9 now.

10 MS. NATLAND: Hey, Dan; would you mind
11 just going back a slide --

12 MR. VAVONESE: Yeah.

13 MS. NATLAND: -- Or can we just go back?
14 So, I do just have a question on pendency as we've
15 talked about it -- you know -- it's a priority and
16 it's a big issue for stakeholders; and we've seen
17 that first action pendency has just kept going up
18 and obviously disposal is tied to that, so that
19 also goes up. So, my question to you is; has the
20 PTO thought about what the goal really should be
21 realistically given stakeholder concerns and the
22 benefit of shorter first action pendency for many

1 reasons that we've already discussed, that's my
2 first question; and then my second is, once that
3 goal is set is there any thought to give milestone
4 dates to hit that goal? So, whatever the goal is
5 -- you know -- six months we'd like to do this, in
6 a year we want it to be this? That's my question.

7 MR. VAVONESE: So, we are doing still a
8 reevaluation of all of our metrics to determine
9 what is the ideal pendency going forward -- I mean
10 -- we've had three months for years because that
11 was what -- you know -- 15, 20 years ago that's
12 what our stakeholders were looking for. Is that
13 really the number that our stakeholders need?
14 What we've heard a lot more recently is it's in
15 that five to six month range that's really -- you
16 know -- so that you can file overseas, so that you
17 can make those determinations getting product to
18 market. So -- I mean -- this fiscal year -- based
19 on our -- the age of our -- inventory and based on
20 our projections in the filings for this year it's
21 likely that we're going to stay in this eight to
22 eight-and-a-half-month range. Now, that said;

1 we're doing everything we can to get that number
2 down sooner rather than later, but over the next
3 couple of years getting that pendency down -- we
4 don't have those milestones set yet -- but
5 generally that's what we're looking at, about a
6 month each year for the next couple years; but -
7 again -- we've got a lot of things that we're
8 getting into place, not only with our hiring, but
9 also with some of our IT improvements and our
10 process improvements that we hope is going to be
11 able to accelerate getting this number back down.

12 MS. NATLAND: Okay. So, it sounds like
13 there's been some thought as to the type of range;
14 although, I still think that could be fine-tuned
15 probably a little bit --

16 MR. VAVNONESE: Right.

17 MS. NATLAND: -- Just because -- you
18 know -- sometimes foreign filings -- if they're
19 larger -- can actually take some time with formal
20 documents and all that stuff, so; and then in
21 terms of the milestones -- yeah -- I just think it
22 would be helpful to have a little bit more clarity

1 on what the expectation should be and more dates
2 in between -- I think -- would be great.

3 MR. VAVONESE: Yeah, understood,
4 definitely.

5 MS. NATLAND: Okay.

6 MR. VAVONESE: And -- you know -- we
7 have continued to hire and -- you know -- this
8 kind of shows -- this graph -- just shows our
9 trend in examining attorneys being hired over the
10 last several years. The last few Bars are really
11 by quarter so you could kind of see when we've
12 hired and also some of our attritions because --
13 you know -- also -- I mean -- we say we hired 93
14 examining attorneys, but we also have attritions
15 -- we also have a lot of -- almost a third of
16 those attritions are examining attorneys getting
17 promoted into other areas of the office -- you
18 know -- they are -- our examining attorneys get
19 trained extremely well and then they have a lot of
20 career development opportunities in other areas of
21 the office. So, we ended up at about 718
22 examining attorneys by the end of the fiscal year.

1 Our quality -- I want to emphasize this
2 -- you know -- with our pendency where it is, our
3 quality continues to be stellar and that's due to
4 the hard work of all of our examining attorneys
5 focusing on making sure they're making the right
6 decisions on their cases, especially when it comes
7 to substantive refusals; and then as far as the
8 exceptional office action -- the overall look of
9 the entire office action -- the decisions they're
10 making when it comes to evidence, when it comes to
11 the arguments they're making. So, I want to
12 commend our continued work in the quality area.
13 Our processing timelines -- we've already talked
14 about first actions and disposals. The one other
15 area that we're still seeing challenge is probably
16 due to continued increases in our maintenance
17 filings -- is in post-registration -- we're
18 currently at 100 days. I'll talk in a minute
19 about -- you know -- what we're doing in
20 post-registration, but I also want to continue to
21 point to the processing times all being available
22 on our website. We have a dashboard that looks at

1 quarterly and then we also have processing
2 timeframes across our different services units.
3 This is updated monthly, but it's generally about
4 a month behind; so, we've gotten a lot of requests
5 to get more real-time information onto our website
6 and that's something we're working very hard on,
7 is to get more real-time information so that
8 you're not just looking at a month ago, you're
9 looking at almost to the day or at least to the
10 week, so it's more timely.

11 Hired 93 examining attorneys last year.
12 We have two classes coming in for FY 23', so
13 probably going to be somewhere in the same range
14 of examining attorneys total. Our Trademark
15 Academy; it's been a huge accomplishment for us
16 this past fiscal year. We stood up this academy,
17 it's the entire first year of the new examining
18 attorneys, they are in this academy, it's done a
19 lot to help us with improving the training,
20 improving the consistency of the examining
21 attorneys that are coming in and learning; and
22 then after that one year -- which the first

1 graduation just happened a few weeks ago -- they
2 go back to their home offices and we just hired a
3 new class that came in two weeks ago now, so
4 welcome to the new attorneys that are in that
5 academy as well. Post- registration; we are in
6 the midst of hiring more post- registration
7 specialists to assist with this backlog. We are
8 also going to be looking at other process
9 improvements in post-registration as well to deal
10 with this backlog. Our TM Flex contract; we are
11 continuing to utilize that for bad faith
12 investigations to help us upfront with identifying
13 the issues and we're also looking to expand TM
14 Flex to deal with other non-examination help where
15 we can use it.

16 I also want to point out that the
17 examining attorneys are all transitioning to an
18 entirely new examination system; they have for the
19 last six months, it's been a rolling transition
20 over. December 1st is the cutoff date where they
21 move from our old legacy system to our entirely
22 new TM exam system. We're very excited about

1 getting onto this modernized IT system and we're
2 in the homestretch with just a few weeks to go.
3 So, we're excited to finally get that done and
4 Glenn and Greg will talk a little more about that
5 and our IT planning.

6 Last, I want to point out another
7 December timeframe we're talking about is our move
8 in the Trademark Modernization Act phase II to
9 flexible response periods; specifically,
10 preregistration responses to office actions moving
11 to a three month timeframe for responding to your
12 office action for any office action issued on or
13 after December 3rd. We've sent out a lot of
14 reminders on this, I want to keep reminding people
15 you have a one-time request for a three month
16 extension before the response date comes and this
17 does not apply to 66(a) Madrid Protocol office
18 actions; you still have the six month timeframe
19 for that; and post-registration, we are delaying
20 the implementation of the three month response
21 period, that will be on October 07, 2023. That
22 was my quick review of operations; any other

1 questions?

2 MR. CHO: Dan, real quickly on the
3 Trademark Academy; I think one of the big goals
4 was the revamping of it, was to give better
5 training so that the new examining attorneys can
6 then be more acclimated and be more productive
7 sooner; is that correct?

8 MR. VAVONESE: Well, it's a combination.
9 It's both quality and production -- you know --
10 it's more about the consistency -- making sure
11 that they're all being trained consistently -- and
12 getting them up to speed so that by the time that
13 first year is done they are ready to go back to
14 their home law office and they're ready to roll.
15 They are examining towards that entire first year,
16 it's a ramp-up period that first year.

17 MR. CHO: Right. Thanks for the
18 explanation because the quality is important
19 because if it's a better examination done, then
20 there's less kind of going backwards and
21 correcting things, especially in this pendency
22 environment --

1 MR. VAVONESE: Correct.

2 MR. CHO: -- Thank you.

3 MS. NATLAND: Any other questions?

4 Nope, okay.

5 MR. GOODER: Okay. At this point, I
6 think we're supposed to take a break.

7 MS. NATLAND: I think we are.

8 MR. GOODER: And we're back on schedule.

9 MS. NATLAND: Yes.

10 MR. GOODER: Which is great.

11 MS. NATLAND: It is. Thank you guys,
12 great job getting us on schedule.

13 MR. GOODER: We'll resume at what,
14 11:45?

15 MS. NATLAND: I think we're set for 15
16 minutes, does that work?

17 MR. GOODER: Yep.

18 MS. NATLAND: Okay. We'll come back in
19 15.

20 MR. GOODER: See you all shortly.

21 MS. NATLAND: Thank you.

22 (Recess)

1 MS. NATLAND: Okay. We are back from
2 the break and I think next on the agenda is Chief
3 Judge Rogers with the TTAB; is that correct? No,
4 we should know better; I will let you take over.

5 CHIEF JUDGE ROGERS: All right, thank
6 you. I'm a little flustered and surprised; I'm
7 usually later on the schedule, I have to get used
8 to this; but thank you for having me and thanks to
9 all the TPAC members we worked with throughout the
10 year, it's been another good year for TTAB. So,
11 let me just run through some of the numbers and
12 get right into it. You will see -- I'm just going
13 to give you a little bit of context -- I've done
14 this before -- but I think it's worth remembering
15 that things started changing during the pandemic
16 and so we started seeing fewer cases coming in
17 during the pandemic while Trademarks was seeing
18 cases go up -- new applications were going up in
19 Trademarks -- during the latter part of the
20 pandemic and into 21'; but for us, during the
21 second part of fiscal 20' we started seeing
22 moderation. Now, ex parte appeals increased that

1 year, but extensions of time- to-oppose
2 oppositions went down and petitions-to-cancel --
3 although they increased -- were increasing at a
4 much slower rate than they had years prior to the
5 pandemic year. So, in 21' this trend continued;
6 ex parte appeals still grew, but much less than
7 the prior year, and then extensions of time-to-
8 oppose also went down. Oppositions kind of
9 stabilized in 21' and so we got the same -- almost
10 exactly the same -- number of new oppositions as
11 in 20', but petitions-to-cancel went down and that
12 was the first time in many years we had seen a
13 decline in the number of petitions-to-cancel.

14 So, what did we get in fiscal 22"? We
15 continued to see a decline -- continued to see a
16 drop-off -- and interestingly, appeals were down
17 -- new appeals being commenced -- were down 9
18 percent compared to 21'. Extensions of
19 time-to-oppose and oppositions -- again -- kind of
20 stabilized in 21' and 22', so they're pretty
21 steady. Petitions-to-cancel also went down just
22 like appeals did. So, those are things that are

1 just coming in the front door of the TTAB -- so to
2 speak -- the new filings -- it doesn't mean
3 there's not a lot of work for our paralegals and
4 our attorneys and our judges to do that are
5 already in the pipeline from other years; and
6 you'll see on a visual representation of filing
7 levels in a couple of slides, the part of the work
8 that's still in the pipeline that we're working
9 on.

10 So, these next few slides just present
11 visual means for looking at some of this data.
12 So, on this chart you can see -- looking at it
13 over a two year, three year period -- the
14 fluctuation in the filings. So, oppositions --
15 which are at the top -- tend to go a bit more up
16 and down, although they've been pretty steady --
17 you can see at the tail-end of the opposition line
18 -- they're retrending back upwards. Appeals and
19 cancellations -- while I talked about things
20 generally declining -- when you look at them on a
21 longer timeline as this slide does, they're pretty
22 stable; and so, there's plenty of work for us to

1 pay attention to that's in the pipeline, and this
2 -- I think -- really illustrates that. These are
3 just like the average pending balances of all
4 three types of cases when you look at the -- take
5 the -- snapshot at the end of each quarter; and
6 so, you can see these trend lines are pretty
7 steady with the opposition one trending down, but
8 on the previous slide we just saw that oppositions
9 were starting to trend up, so this probably won't
10 go any lower than it has.

11 This representation of some of this
12 filing data shows -- I think -- in a more dramatic
13 fashion -- these are percentage decreases or
14 increases that we saw each year. So, the
15 opposition and cancellation lines -- or bars --
16 you can see were pretty high for a number of years
17 and it's only the recent years -- from the
18 pandemic on -- where we've seen declines in the
19 new oppositions and cancellations; and so, all of
20 those increases we saw leading up to the pandemic
21 year represent the work that's still in the
22 pipeline; the appeals and the trial cases that our

1 attorneys are working on and our judges are
2 working on.

3 So, let's look at how they're doing in
4 that respect. In 21' we got through the work that
5 needed to be done by the attorneys on contested
6 motions -- under goal -- we have goals and the
7 goals were the same in 21' and in 22' -- getting
8 contested motions decided in under 12 weeks on
9 average and we were able to meet that goal in 21'.
10 We also met the goals for processing appeals and
11 these are goals for processing appeals when they
12 have been completely litigated and they're ready
13 for decision by a panel of judges. So, the goal
14 there -- again -- is to get the appeal decisions
15 out in 12 weeks or less; and for trials, the goal
16 is to get the trial decisions out by panels of
17 judges in 15 weeks or less. So, you might look at
18 these numbers and say "Wow, you were way under in
19 21'", but we knew from the previous slide how much
20 work was in the pipeline and was going to still be
21 coming; so, it was a buffer, we were trying to
22 push those numbers down because we knew that

1 eventually they were going to go up; and so, in
2 22' these numbers all climbed a bit -- still well
3 under goal -- and that's what we're trying to do
4 is make sure that we can stay under goal and plan
5 accordingly. So, motion decision pendency was up
6 a bit in 22', but still under the goal of 12 weeks
7 for processing contested motions. Appeal
8 decisions -- again -- up a little bit from 21',
9 but still well under our goal; and trial decision
10 pendency still under goal.

11 So, we're in the enviable position of
12 having a docket that is not surging in terms of
13 new cases coming in, which gives us time to work
14 off the cases that are already in the pipeline;
15 but we are cognizant of the fact that eventually
16 that trademark filing surge is going to result in
17 more work for us and the Trademark Modernization
18 Act Appeals from Expungement and Reexamination
19 Proceedings -- which we have not seen one yet, but
20 we do expect that over time we will begin to see
21 some of those as well. So, that's why we're kind
22 of actively monitoring the incoming filings and

1 the status of what's in our docket waiting for
2 decision by attorneys and waiting for decision by
3 judges. Susan?

4 MS. NATLAND: Yeah, just a quick
5 question, Judge Rogers. With respect -- and you
6 hit on the head -- with this inventory that's
7 making its way through the system, are you
8 planning on any personnel increases at the TTAB to
9 be ready when these all come in?

10 CHIEF JUDGE ROGERS: We are and actually
11 we've been planning on them -- excuse me -- in the
12 budget plans that we put forward for the agency
13 for a number of years; so, we have positions for
14 attorneys and positions for judges in the budget.
15 We also have positions in the budget for Business
16 Intelligence Analysts because we want to get
17 better control over our data for forecasting
18 purposes in terms of staffing levels and to try to
19 stay ahead of trends -- if we can figure out what
20 the trends are and what the relationship is
21 between our trends and Trademarks trends and the
22 macro-economic trends -- and we don't -- a lot of

1 that is just kind of tea leave reading now by
2 myself and Deputy Chief Judge Mark Thurman, but we
3 hope to get better at it and more analytical at it
4 and more scientific about it with the Business
5 Intelligence Analyst hiring; and we just had a
6 vacancy announcement close recently for the judge
7 position -- we did have two judges retire in the
8 last fiscal year and we didn't rush to replace
9 them right away because as we just saw on those
10 numbers that we were looking at, we were keeping
11 pace with our goals and we've heard today about
12 the USPTO being good fiscal stewards of our
13 stakeholders fee payments and we never want to
14 hire more people than we need to keep pace with
15 the work, so we didn't rush out to replace those
16 judges right away; but, we are pretty cognizant
17 that -- again -- the numbers went up a little bit
18 in terms of the pendency this year and we know how
19 much work we still have in the pipeline, so we're
20 going to start gearing up. We also know we have a
21 number of judges who are at or soon will be
22 retirement age, so it takes a while to get new

1 judges onboard -- and new attorneys -- and we just
2 brought three new attorneys on in the last few
3 months -- get them up and running and really
4 familiar with Board practice.

5 MS. NATLAND: Thank you.

6 CHIEF JUDGE ROGERS: Sure. The other
7 numbers that we report -- and all of these numbers
8 that we've been covering on these slides -- are
9 available on our website, we update them
10 quarterly, there are charts showing median
11 average, end- to-end processing time. End-to-end
12 processing time is not something that we set goals
13 for because we don't have complete control over
14 the time between commencement of a case and
15 eventual disposition of a case, there's a lot of
16 time that can be taken up in ex parte cases by
17 Request-For-Reconsideration, remands and things
18 like that; and in trial cases, of course we could
19 have many contested motions. The parties, also we
20 know in our trial cases, like the Board to be
21 flexible with the granting of extensions and
22 suspensions to accommodate settlement talks, so we

1 report this information because we know it's
2 valuable for client counseling, but we don't
3 actually feel we can set goals for without being
4 put in the position of having to tell people that
5 they need to move faster; and sometimes they don't
6 want to move fast if they're talking settlement.

7 Quickly, oral arguments were resumed in
8 August and parties can still choose the virtual
9 option -- all arguments in-person we were
10 conducting all along in the pandemic -- but
11 completely virtual, many people are still
12 requesting the virtual option, we had 13
13 proceedings oral arguments and proceedings in
14 October, only three of them were in-person, most
15 of them were still virtual; and many panels will
16 still have a judge participating virtually or a
17 party participating virtually. We do participate
18 in a number of outreach programs where we have
19 arguments heard in one of our hearings. So, our
20 hearings are relatively few in number compared to
21 the number that the PTAB hears in their patent
22 cases, but if you're interested in seeing how the

1 hearings work, you can do it sometimes at some of
2 these live program that we engage in and sometimes
3 they're broadcast; so, these are just examples of
4 programs that involve TTAB hearings.

5 We've also talked in various meetings
6 before about the Final Pretrial Conference Pilot
7 Program that the Board is standing-up -- or is
8 getting ready to standup -- and so, we've begun
9 receiving customer input and we continue to seek
10 as much customer input as we can get. We most
11 recently got comments just last week from the
12 ABAIP section; those were added to the comments
13 previously received from IPO and AIPLA, and we'll
14 get those all posted up on our website sometime
15 very soon; but throughout the process of
16 standing-up the pilot we will continue to accept
17 comments as we go along. So, the benefits of this
18 pilot -- when we begin it -- will -- we hope --
19 allow parties to put their best foot forward in
20 their trial cases and will support effective
21 presentation of their cases, avoid redundancy,
22 avoid mistakes; and if you read our decisions on a

1 regular basis, don't just read about them on the
2 TTAB blog, read some of our decisions every once
3 in a while and we're working on a new precedence
4 page that will include links to our precedential
5 decisions, and we have a reading room which is
6 really intuitive for searching; but if you read
7 our decisions on a regular basis you will see how
8 many cases we talk about parties arguing over
9 un-pleaded issues, objections to evidence and
10 evidence that doesn't get considered because it
11 wasn't introduced properly; and so, the whole
12 purpose behind the final pretrial conference when
13 we stand that up is to help parties do a better
14 job in cases where we think they're going to need
15 the assistance going into trial.

16 So, that's it and my good friend, Mickey
17 Grammatica Fletcher -- who left TTAB to go to
18 Trademarks -- we are sad to say -- but is doing a
19 great job for Trademarks -- has told me my time is
20 up.

21 MS. VIDAL: Thank you, Judge Rogers; and
22 thank you Mickey. Any questions for Judge Rogers?

1 Yes, Rod?

2 MR. ENNS: Judge Rogers, thank you. I
3 think a lot of practitioners will be very
4 interested in the advent of the Final Pretrial
5 Conference program; and I understand that as it's
6 proposed now, it still will be a pilot once it's
7 stood- up, so it will only be selected cases that
8 participate; is that --

9 CHIEF JUDGE ROGERS: I think even --
10 that's true -- it may always be a situation --
11 even if we change it from a pilot to something
12 that becomes permanent, that only certain cases
13 are going to be coming into it; just like we ran a
14 pilot previously -- the Expedited Cancellation
15 pilot program that you may have read about on our
16 website -- and that was focused on dealing with
17 cancellation cases that only involved nonuse or
18 abandonment claims and we wanted to figure out if
19 there were ways we could expedite those cases to
20 get those unused marks off the register; and so,
21 those by definition were focused on only certain
22 types of cancellation cases with certain types of

1 claims. The Final Pretrial Conference pilot will
2 not be focused on certain types of cases with
3 certain types of claims. Any kind of case, any
4 kind of claim, could come up, but it's going to be
5 focused more on the issues that are presented, how
6 the case has been conducted during pleading,
7 during discovery, and does it show signs of
8 potentially resulting in one of those decisions
9 that we would have to draft where we would have to
10 be discussing arguments on unpleaded claims,
11 improperly introduced evidence. If we think that
12 this is where that case is going, that's when we
13 might step in and say -- you know -- "Join us in
14 the pilot, let's talk about the case and what the
15 parties need to focus on at trial".

16 MR. ENNS: Well, I guess that's what I
17 was going to ask. Those that litigate in Federal
18 Court, I don't think I've ever gone to trial in
19 Federal Court without having a final pretrial
20 conference first, it's a de rigueur part of the
21 process; is there any thinking long-term as to
22 whether there would be benefit to having a final

1 pretrial conference as just an automatic part of
2 the process because I -- the benefits you've
3 described -- I think -- might apply to a
4 wide-range of cases?

5 CHIEF JUDGE ROGERS: I think that there
6 are cases that will not be pulled into the pilot
7 the way we're envisioning it because they will not
8 have had sloppy pleadings; they will not have had
9 too much contested motion practice, they will not
10 have had motions for some summary judgment that
11 sought judgment on unpleaded issues, they will not
12 have any of the red flags that would cause us to
13 pay attention to it; and so, we are going to be
14 looking for cases and we're not always going to
15 catch the cases that could benefit from it, but we
16 also know that there are many cases which don't
17 need our intervention; the parties don't engage in
18 motion practice, they go to trial, they put their
19 evidence in, there are very few objections about
20 evidence; all they really want from the Board is
21 the decision and I docket these cases as they
22 become ready for decision every month and need to

1 be assigned to panels of judges; and I see them
2 run the gamut from very small record, very focused
3 trial proceedings, and then very-very large trial
4 proceedings that are sometimes unkempt -- I might
5 say -- and so, we're going to do our best to kind
6 of put our bang -- get the best bang for our buck
7 -- and by focusing on certain cases -- and I don't
8 think we have the staffing or the resources to
9 step in and do this with every trial case when
10 many of them really just don't need it.

11 MR. ENNS: Thank you.

12 CHIEF JUDGE ROGERS: But one thing we
13 hadn't thought about was the possibility of -- and
14 we can think about this during the pilot -- is
15 parties asking to be involved in a conference if
16 they think that they see parties who have been
17 involved in it are getting benefits that they
18 would like to share in, then perhaps parties will
19 be able to opt into these conferences in the
20 future.

21 MS. NATLANDL: Great. Thank you, Judge
22 Rogers.

1 CHIEF JUDGE ROGERS: Sure.

2 MS. NATLAND: As always, great
3 presentation, look forward to seeing how the pilot
4 progresses. The next topic -- the next area --
5 we're going to cover is from the Office of the
6 Chief Information Officer. You guys always make
7 IT fun and interesting. Debbie Stevens and Lisa
8 Hilton, over to you.

9 MS. STEVENS: Thank you so much. Good
10 afternoon everyone and -- again -- thank you for
11 allowing us some time here to share some of our
12 updates. Since the last TPAC we continue to have
13 strong collaboration across our teams, delivering
14 business value and improving our resiliency.
15 We've made steady progress on our migrations into
16 our new data center and our latest data shows we
17 are on track and ready to complete that in the
18 latter part of fiscal year 2023.

19 And lastly, as Director Vidal mentioned
20 earlier in her opening remarks; our focus is on
21 retiring TRAM this fiscal year; so, it's a huge
22 undertaking and one our team's have rolled up

1 their sleeves and are ready to accomplish that
2 task. So, now I'll turn it over to Lisa; and
3 she'll give us more information. Lisa?

4 MS. HILTON: Thanks, Debbie. First I
5 wanted to say a big thank you to the TPAC IT
6 subcommittee as they continue to support us as we
7 move our efforts forward, providing guidance,
8 giving us feedback as we move the products
9 forward. Next slide, please. All right. So,
10 further update on where we are with the data
11 center migration. As Debbie mentioned, we are
12 over 30 percent done with that migration and to
13 date all the migrations that have happened thus
14 far have been successful with no issues; and
15 specifically on the Trademark side -- Trademark
16 exam -- as well as the TTAB ESTTA database and
17 TTAB's database successfully moved to the new data
18 center in August the 31st and CMS system just
19 moved October 21st. The next system up -- and
20 we're keeping our fingers crossed -- and we have
21 our teams on alert -- is actually this weekend.
22 TEAS and TEASI will migrate to our new data center

1 tomorrow; all hands are on deck from the business
2 side to our technical team to our infrastructure
3 team, making sure that move -- which is a big move
4 for us -- will be successful and there won't be
5 any impacts to any of our customers; and as Debbie
6 mentioned, TRAM is on all of our minds and that is
7 our focus and our team's focus, and a lot of the
8 foundation of things that the teams have done this
9 year helped us to build that foundation toward a
10 successful TRAM retirement; and we look forward to
11 that effort into FY 2023. What I will do next is
12 turn it over to Glenn Brown who is the Trademarks
13 Information Technology Group leader and he will
14 give you more information on the specifics of what
15 will be happening with our teams this year. Over
16 to you, Glenn.

17 MR. BROWN: Thank you, Lisa. Thank you,
18 Debbie. I'm going to go over the Trademark IT
19 priorities. We have five plus -- you know -- one
20 near the end -- it kind of fits under two of those
21 - but, basically back in July we established TRAM
22 -- as we've all been talking about today -- we've

1 established TRAM as our -- TRAM retirement -- as
2 our number one priority with a date of September
3 2023 -- our plan -- we've already been able to add
4 more resources towards that endeavor and realign
5 resources that were already on site to meet that
6 goal. The next priority that we have is continued
7 TM exam modernization. Our goal right now is we
8 -- you know -- on December 1st we are going to
9 have all our examining attorneys switched over
10 from the legacy fast one app to the new modernized
11 platform -- they've already been adopting the tool
12 -- so, that -- but on December 1st they will be
13 fully on the new tool -- the new platform -- and
14 that helps with the TRAM retirement as well.
15 We're also going to be right -- a couple days
16 later -- on that new platform we'll be
17 implementing the Trademark Modernization Act
18 flexible response times for pre- examination
19 activities on December 3rd and -- you know --
20 those two goals kind of go hand-in-hand; and then
21 we'll continue -- we started building on -- you
22 know -- the Petitions Office and the

1 Post-Registration Business Unit Office within
2 Trademarks -- we started building them --
3 capability on the modernized platform to support
4 TMA and also to get them off TRAM and we're going
5 to continue that work throughout the next fiscal
6 year.

7 Under E-File; we're modernizing and
8 consolidating the initial application forms, we
9 expect to be fully deployed with that with a
10 consolidated -- you know -- modernized form in
11 August of 2023. That also removes those forms
12 from their interaction with TRAM and instead
13 they'll interact with the new platform - again --
14 advancing the TRAM retirement effort. TTAB
15 center, they're modernization effort continues and
16 they're focus right now is on the Notice of
17 Opposition form, so that priority number four is
18 going to continue as well; and then finally -- as
19 the numbered priorities anyways -- we also want to
20 continue to of course support any international
21 treaty obligations and the first one -- and really
22 the only one that is on the books right now -- is

1 the Exchange of MP3 audio and MP4 video formats
2 with the International Bureau. We -- the
3 development for that is underway -- and we expect
4 -- I believe the date is February -- when that
5 treaty obligation will be met and implemented.

6 And then the last one is -- it kind of
7 falls under two categories -- but we also have to
8 replace the search system -- the backend search
9 system -- that both the examining attorneys use
10 and the public use. Internally it's known as X-
11 Search, externally it's known as TESS; we'll be
12 implementing a solution by September of 2023 so
13 that we can -- you know -- cease using the open
14 text BRS solution. We'll probably have -- you
15 know -- I believe it's in July -- is when we'll
16 have an initial beta available for production use.
17 The systems will run in parallel, both internally
18 and externally, and then we expect to basically
19 turn off the old systems by September of 2023.

20 On the next slide -- I just wanted to --
21 you know -- kind of drilldown a little bit more on
22 a couple externally facing efforts for E-File

1 modernization. Again -- as I mentioned on the
2 first slide -- E-File is going to be focusing on
3 consolidating the initial application forms.
4 There will be a beta in May of 2023 for the 1B
5 initial application forms and then by August of
6 2023 we expect to have all the initial application
7 forms consolidated and deployed into production by
8 August of 2023.

9 And then, TEAS -- of course -- has
10 another deployment and -- you know -- to support
11 the Trademark Modernization Act flexible response
12 times for initial application -- or --
13 pre-examination -- and that deployment will go
14 live on December 3rd. So, that's all I got.
15 Thanks. Any questions?

16 MS. KOVALCIK: Thank you so much, Glenn;
17 and first of all, I want to say what an honor it's
18 been serving on the IT subcommittee and working
19 with you and Lisa, Debbie, Jamie and Greg. You
20 guys have done a tremendous amount of work over
21 the past years and it is not lost on me and I hope
22 it is not lost on the public what a colossal

1 effort this has been -- I mean -- you guys are
2 working all systems simultaneously; you're doing
3 data center updates, you're doing database
4 retirement, move to the new database, you're
5 updating the search system, you're updating the
6 filing system, you're updating the examiner
7 system, you're updating what we as the public see
8 and so much is happening on the backend; it really
9 is extremely Home Makeover on the IT side and a
10 lot of it goes unsung because it happens without
11 the public seeing it, but we do see it, we
12 appreciate it and we commend you on the progress
13 that you have made and the continued
14 implementation efforts for all of these things to
15 move seamlessly and simultaneously; so, thank you.
16 With respect to E-File, I am very excited about
17 the new application form that's coming out and
18 can't wait to see how that goes. With all of the
19 efforts that IT has put into examiner efficiency
20 with the BOT, with automation, with artificial
21 intelligence; I would imagine that this new filing
22 form will also contribute to examiner efficiency

1 and perhaps contribute as well to pendency
2 reduction. Commissioner Gooder, would you imagine
3 that would be the case as well?

4 MR. GOODER: Absolutely. Yeah. We know
5 that the better quality the application coming in,
6 the more efficiently it goes through the system
7 and the new E-File will really help that. It
8 helps -- it'll be easier to work with for --
9 applicants will get better -- the aim is better
10 quality of the application coming into the
11 examiners theoretically has less to do -- the bots
12 help -- a lot of the things help -- it also helps
13 take things off the examiner's plate that they're
14 having to deal with now to verify things,
15 etcetera; that's also partly why we're piloting a
16 project to bring more non-attorney people into
17 that process like paralegals, etcetera; is to aim
18 at both of those things efficiency, reduce
19 pendency, everything.

20 MS. KOVALCIK: Great. Well, thank you.
21 Obviously, it's a huge priority for TPAC and for
22 the office to keep pendency down and have

1 efficiency; so, thank you for every IT thing that
2 contributes to that.

3 MR. GOODER: Can we quote you on the
4 Extreme Home Makeover; it's the best analogy I've
5 heard?

6 MS. KOVALCIK: Yes.

7 MS. NATLAND: Great. Thanks, Jen; great
8 comments. Any other questions from TPAC? Okay.
9 Well, thank you, Debbie, Lisa, Glenn and Greg for
10 all that great work. As Jenn said, a lot of it's
11 behind the scenes and it's kind of the type of
12 thing where -- you know -- it's all good until
13 it's not good. So, thank you for keeping it all
14 good for us, keeping things moving. Next, we have
15 an update from the Office of Policy and
16 International Affairs -- OPIA -- Nancy Omelko and
17 Brandon Ritchie; over to you.

18 MS. Omelko: Hi everyone. I'm Nancy and
19 Brandon's sitting over here. I'm going to start
20 with the updates for our office. We participate
21 in a number of international meetings and we're
22 going to do a run-through of the ones that are

1 just past and the ones that are coming pretty
2 soon. The first one is (inaudible). There was a
3 meeting of the 75th general meeting in September
4 of this year. There's still ongoing debates about
5 domain name system abuse which doesn't have
6 anything to do with counterfeiting and infringing,
7 unfortunately; it has to do with malware and --
8 excuse me -- Botnets and phishing and farming and
9 spam; so, there were discussions going on at that
10 meeting about those things. Also, the WHOIS
11 Disclosure System is an ongoing conversation there
12 and there was no mention of the UDRP, which we'll
13 probably resume discussions in 2024; and they're
14 still reviewing plans for the new round of GTLD's
15 possibly now -- excuse me -- in 2026. Oops --
16 yeah -- oh -- excuse me -- so, this is what we're
17 talking about --

18 MS. FREDERICKS: Excuse me, Nancy; could
19 I just ask you a quick question?

20 MS. OMELKO: -- Sure.

21 MS. FREDERICKSK: Hi, nice to see you.
22 Our earlier discussions, they were thinking that

1 the next round of new TLD's would be in 2024'
2 that's off the table now, it's not until 2026?

3 MS. OMELKO: Yeah, apparently it's been
4 pushed back, yes.

5 MS. FREDERICKS: Thank you.

6 MS. OMELKO: Mm-hmm. Okay. And next is
7 the standing committee for Trademarks Industrial
8 Design and Geographical Indications; that's going
9 to be held in Geneva in November -- this month --
10 around Thanksgiving -- they always do that to us
11 -- Thanksgiving and Fourth of July usually are big
12 dates for meetings in Geneva; and so, this time
13 we're continuing to talk about country names and
14 also there'll be a side event for discussions of
15 geographical indications as they are applied to
16 services, and also another session on non-
17 agricultural products. The EU is introducing
18 crops and industrial products, so they will
19 probably be leading that discussion. There is
20 also the Design Law Treaty is going into a
21 prep-con -- a preparatory -- meeting all of next
22 year, so the standing committee for Trademarks

1 will not be meeting on the usual subject matter
2 that we're used to; they'll be really preparing
3 for that diplomatic conference.

4 Let's see -- and then -- very exciting
5 -- next week the Madrid Working Group is convening
6 again; they're going to be talking again about
7 many of these subjects that we've heard about in
8 previous TPAC meetings. One is dependency;
9 there's a vast array of proposals getting rid of
10 the basic application, delinking from -- you know
11 -- the central attack piece of it and then a
12 couple things about reducing dependency to three
13 years and only claims of fraud can be used against
14 -- for the -- central attack claim. So, that's
15 ongoing. We are going to be holding the line; we
16 think that there are still discussions that have
17 to be had on that front.

18 There's also languages -- very
19 controversial because Russian is one of the
20 languages that is proposed to be introduced along
21 with Arabic and Chinese; and so, what the U.S. is
22 pushing for is some type of criteria to make sure

1 that we just don't let any language come in
2 without some sort of reason behind it. It's very
3 expensive to introduce a new language,
4 interpretation and translation fees among them --
5 among the costs. Also, there is -- let's see --
6 the examination for SCOPE. Usually, this has to
7 do with limitations -- and I'm not going to go
8 into too much detail -- but which office -- the
9 originating office or the office where the
10 protection is sought -- who should see whether the
11 limitation that is sent through the Madrid System
12 for less than all the goods in the international
13 registration should be examined by which office.

14 And then -- let's see -- there's also
15 talk about the possibility of convening a
16 diplomatic conference on the issue of dependency.
17 Again, the U.S. is not ready to start those
18 discussions because we haven't really decided
19 which way we're going on that.

20 MS. FREDERICKS: Nancy, if I could; just
21 a quick question? So, with respect to the
22 languages that are being proposed and I understand

1 the controversy, especially with respect to
2 Russia; but you had mentioned and we had
3 previously talked about the U.S. in favor of
4 setting criteria. So, would it be a matter of not
5 considering any languages, including these three,
6 until criteria were set and then those criteria
7 would carry forward for any language that might
8 want to be proposed by anybody down in the future
9 or are they going to move forward -- do you think
10 -- with consideration of these languages and then
11 simultaneously -- or next -- or something -- hear
12 a proposal about coming up with criteria because
13 those in themselves could take a long time to get
14 agreement on?

15 MS. OMELKO: Right. And our position is
16 that we would want to have criteria first before
17 we even consider these additional three languages.
18 Chinese is actually one of the languages that
19 would probably be considered under the criteria to
20 quality because it is the largest office, it has
21 the most filings, etcetera; so, it probably would
22 win that, but we want to have those criteria first

1 in place and then if China qualifies for that,
2 then we would -- you know -- certainly let them
3 have that language, in addition to the other ones
4 that are currently available.

5 MS. FREDERICKSK: Is there much support
6 for the idea of criteria beyond the U.S. at this
7 point?

8 MS. OMELKO: The way WIPO works is there
9 is a group B; it's developed countries -- Russia's
10 not included in that group B collaborative effort
11 -- and we've come up with a statement that we will
12 intervene at the beginning of that particular
13 discussion point and we have come up with like a
14 two page statement about the criteria and so forth
15 that is important for all of us on that group B
16 committee to adhere to.

17 MS. FREDERICKS: Thank you.

18 MS. OMELKO: Mm-hmm. Okay. So, next is
19 TM5; that meeting was held a couple weeks ago in
20 Brussels and then there was a user session; and
21 this was the 10th anniversary of TM5; so, that was
22 celebrated and I think Director Vidal actually

1 videotaped some remarks for that occasion. The
2 accomplishments -- you know -- each country has a
3 special project or two that they're working on and
4 those were -- you know -- pushed forward, but some
5 of them are still ongoing; and then also, there
6 was publication of the Trademark TM5
7 Nontraditional Marks Search Guide which is
8 available on TM5.org and when we met with the
9 intersubcommittee on nontraditional marks last
10 month they saw this for the first time and were
11 very impressed with it; so, it's probably a very
12 good tool for others to use when trying to apply
13 for marks in the TM5 countries.

14 And then, training; a lot of the
15 training we've been doing has been virtual; this
16 year we are starting to travel a bit now. The one
17 in India was pretty much because they had a 12
18 year backlog in oppositions and we brought a
19 Trademark Trial and Appeal Board Judge with us and
20 he really did a great job of -- both on the
21 diplomatic end and also -- obviously -- the depth
22 of knowledge he brought to that group and they

1 were very appreciative of it. We also talked --
2 went to Mumbai and talked -- with the Controller
3 General about GI's -- geographical indications --
4 in general and had a very good meeting with him as
5 well. And then, we've done virtual training
6 mostly in Latin America and I think that means I
7 turn it over to Brandon for the NFT study.

8 MR. RITCHIE: Okay. So -- yeah -- we'll
9 talk about the NFTA study. As you know, the
10 Senate subcommittee on Intellectual Property
11 Chairman Ranking Member asked the USPTO to do a
12 study on NFT's and their impact on IP right; and
13 we -- at the PTO -- had been studying that already
14 and it was welcomed; and so, we have started that
15 work now on a formal study and we are working on a
16 Federal Register Notice that will provide some
17 details about how stakeholders will be able to
18 provide input because we really want robust input
19 from stakeholders. This is such a dynamic issue;
20 NFT's and their uses are changing and constantly
21 evolving; we're learning a lot and we have a lot
22 of knowledge at the PTO as well, but we definitely

1 need to hear from the experts in the industry,
2 both Technologists, IP practitioners, IP holders,
3 and the like. So, there will be robust
4 opportunities for that. This Federal Register
5 Notice, we expect will be published very soon and
6 so stay tuned for more details; but that is the
7 update there. We'll also be doing independent
8 research and talking with the experts here at the
9 USPTO. So, looking forward to your input on that
10 project when the time comes. And I think that is
11 it.

12 MS. NORTHCOTT: Before we move on, may I
13 ask a question please? Nancy and Brandon, let me
14 just say that it's been a tremendous pleasure for
15 Jomarie and I to work with you and your team this
16 year. As we expressed on Wednesday, you are on
17 the road a lot; Fourth of July, Thanksgiving,
18 India, Geneva; and that takes -- you know -- a lot
19 of time and attention, and a lot of work on the
20 weekend and a lot of time away from your families;
21 and so, thank you on behalf of brand owners for
22 what you're doing domestically and

1 internationally. My question is about NFT's and
2 it's to both of you, internationally and
3 domestically. I understand that at the latest TM5
4 meeting and in other fora, there have been
5 discussions about how to classify NFT's and other
6 virtual goods -- whether or not they go into class
7 9, which is already a very crowded class for brand
8 owners -- or if they belong otherwise; and so,
9 could you share a little bit more about those
10 discussions and your views?

11 MR. RITCHIE: Sure.

12 MS. OMELKO: Yeah. There was a
13 discussion at the TM5 user group meeting and the
14 concern was it seems logical that these virtual
15 products would be placed in class 9, which is
16 overloaded -- as it's getting even more so now --
17 and so, the TM5 is just a place where we can talk
18 about things, but the real action happens at the
19 World Intellectual Property Organization -- WIPO
20 -- during the Nice classification meetings and
21 there's a process where countries will -- member
22 countries -- those members of Nice -- will be able

1 to submit suggestions and suggestions have been
2 made with respect to class 9. The U.S. -- about
3 -- I think -- it was in 2019 -- and I do have the
4 URL for that -- submitted some information to WIPO
5 suggesting how class 9 could be reduced somehow --
6 generally speaking -- this is way before virtual
7 products came onto the scene -- and I could show
8 that link to you so you could see what suggestions
9 have been made -- but it's really something that
10 we have to engage with WIPO on and probably the
11 most important thing is for you to tell us how we
12 should be directing this conversation in Geneva.

13 MS. NORTHCOTT: Thank you. We look
14 forward to the dates for the roundtables,
15 appreciate it.

16 MS. NATLAND: Great. Any other
17 questions? Nope, okay. Well, thank you, Nancy
18 and Brandon; for your time today. Great work; I
19 look forward to seeing the results of the study.
20 Those were some pretty broad questions in the
21 letter, so it will be very interesting to see how
22 we approach it. Thank you so much. Okay. So,

1 next we're going to have some comments from Jay
2 Besch who is President of NTEU 245. Jay, over to
3 you.

4 MR. BESCH: Thank you, Susan. First of
5 all; I just want to say a couple of thank you's.
6 I'd like to thank you, Susan; Jen and Tricia for
7 your time on TPAC, it's been a great honor to work
8 with you. I also would like to thank our
9 Trademark examining attorneys for all of their
10 hard work and I really enjoy being the
11 representative to President of the Union that
12 represents these employees; they make it easy and
13 they're a tremendous asset to me in doing this job
14 and to our Board; and they're just really an
15 impressive group of people.

16 Finally, I'd like to thank our NTEU 245
17 representatives and Executive Board members who
18 really have stepped up this year and there is so
19 much going on and so much work for us to do -- you
20 know -- this is all a bunch of volunteers and
21 they've done it together with me and this is
22 beyond our Board -- and really -- I mean -- with

1 Trademark exam -- the TMA -- dependency concerns -
2 we're negotiating a CVA -- there's so much going
3 on and so many people we need to do this work and
4 everybody's stepped-up. So, I'd just like to
5 thank them.

6 Also, I'd just like to kind of touch on
7 a few things -- you know -- we really appreciate
8 the Director's office actively engaging our Union
9 and our Bargaining Unit employees; it's been a
10 really good thing that I think is going to start
11 to produce a lot of fruit down the road; and I
12 think relatively soon. We look forward to working
13 more closely with TPAC, the Director's Office,
14 Trademark management and others in the agency to
15 address our challenges and really kind of seize
16 the opportunities to improve what we do. We
17 believe that our employees in the Union are really
18 an excellent resource and are uniquely positioned
19 to address a lot of the challenges that have been
20 brought up today; and really just improve our
21 ability to meet the agency's mission. So, we --
22 you know -- again -- we look forward to being more

1 involved and appreciate the office's renewed focus
2 on that involvement.

3 You know, our employees have been doing
4 a lot to help meet these challenges and I want
5 that to be very clear; our employees are working
6 extremely hard to meet the challenges of pendency
7 -- you know -- there's a lot of things going on
8 that are changing that they have to adapt while
9 we're trying to do this as well -- you know --
10 this new TM exam system is really a change in the
11 way they're doing their work and -- you know --
12 our Union and our employees have been really
13 instrumental in providing input and feedback, and
14 making sure that the development of that system is
15 in the best position it can be by December and
16 beyond; and -- again -- our Union facilitated and
17 worked with Trademark management to increase
18 adoption over the past several months through
19 incentives, flexible training time, examining
20 attorneys that are working as ambassadors to
21 provide -- you know -- valuable point of expertise
22 to others who are using the system or trying to

1 get acclimated to the system; and at a broader
2 level, we continue advocating for ways to improve
3 the efficiency and quality of our examination by
4 looking at processes, looking at technology; and
5 will continue to advocate that we prioritize
6 looking at the examining attorneys as the point of
7 where we can best address pendency and have a
8 stable place where pendency is so that we're not
9 going up and down and kind of chasing after
10 pendency one way or the other.

11 And then finally -- you know -- the one
12 thing that I think the Director's Office has
13 really been focused on is taking a really deep
14 look at the employee experience at the USPTO and
15 how to make strides in improving opportunities for
16 career development, improving work-life balance,
17 and continuing to be a leader in telework by
18 focusing on the optimal ways to remotely engage
19 our workforce; and I think all of these things
20 will help to improve our ability to address
21 pendency by recruiting and retaining the most
22 talented and hardworking employees that we can

1 because they're essential to this agency's mission
2 with respect to Trademarks.

3 So, with all of that; that's really all
4 I had to say, but -- again -- Susan, Tricia and
5 Jenn, great working with you and I hope to be able
6 to catch up with you in-person at some point, even
7 though you're leaving TPAC.

8 MS. NATLAND: Thank you, Jay. It's been
9 a real pleasure working with you as well; and I
10 just want to add to your comments on thanking the
11 examining attorney core -- they're the backbone of
12 Trademarks, they examine hundreds of thousands of
13 applications a year and they're the face of
14 Trademarks. So, just really appreciate all the
15 hard work that's going on in the examining
16 attorney core. So, thank you very much. Is there
17 any questions for Jay from TPAC? No, okay. Thank
18 you so much, appreciate it. Next, we have some
19 comments from Harold Ross who is President of NTEU
20 243. Harold? I'm not sure if he's on or not.
21 Okay. I think -- let's see -- let's give him a
22 second to pop on. Okay. I think what we'll do at

1 this point is, we're going to go ahead and take a
2 five minute break; we're pretty much on time and
3 we'll try to connect with Harold and then we'll be
4 back in five minutes. Thank you.

5 (Recess)

6 MS. NATLAND: Okay. We are back from
7 our break. Welcome everybody back. We are now
8 going to turn to questions that have been
9 submitted and I will turn it over to Commissioner
10 Gooder to address some of the questions.

11 MR. GOODER: Thanks, Susan. A number of
12 questions regarding pendency and our academy, et
13 cetera; which between Dan and I will get answered.
14 The first question has to do with -- you know --
15 what action -- stated singularly -- are we doing
16 to reduce time? The answer is, there's probably
17 10 to 15 things that are being done; we've talked
18 about them at different points in the year at TPAC
19 presentations from bots that help eliminate burden
20 for examiners and realigning things. One of the
21 things also we mentioned at an earlier meeting was
22 that we engaged one of the large consulting firms

1 to literally take our process apart -- literally
2 take the car apart -- and then give us the data on
3 what can be done with that. We now have the
4 results of that back and Dan and his crew are
5 going through a lot of that data to pick out where
6 can we actually make changes. Timeframes are in
7 the process from leftover days of paper and things
8 like that, that will speed things up. There's a
9 lot of creative ideas being thought about, but
10 I'll leave it at that for the moment. We will
11 plan to go into this in more detail at our next
12 meeting and I know Susan, you'll be tuning in
13 because this is a favorite topic of yours; so --

14 MS. NATLAND: Yes, it is.

15 MR. GOODER: -- Dan, you want to add
16 anything to that or is that covered?

17 MR. VAVONESE: No, I think you covered
18 it.

19 MR. GOODER: Okay. Second question is;
20 talking about if we've diverted people out of
21 production into the academy and it's impacted that
22 --

1 MR. VAVONESE: We've always had
2 examining attorneys assist and supplement our
3 training of our new attorneys. We have managing
4 attorneys and senior attorneys that train; we also
5 have examining attorneys, especially during very
6 big hiring years like the last couple of years.
7 So, we've always had examining attorneys -- more
8 experienced examining attorneys -- assist in the
9 training and with the additional hiring we've had
10 more examining attorneys over the past year
11 assisting in the academy with the training.

12 MR. GOODER: So, it's really not pulling
13 resources out of the examination that we weren't
14 already --

15 MR. VAVONESE: Correct.

16 MR. GOODER: -- Utilizing. Okay. Next
17 question is about how our teachers -- or mentors
18 -- at the academy are chosen.

19 MR. VAVONESE: So, the instructors
20 generally come from our Office of Trademark
21 Quality Review and Training; so, thanks to Amy for
22 helping us there with providing -- you know -- and

1 they are experienced trainers in that unit that
2 are helping in the academy; and then as far as the
3 mentors are concerned -- you know -- we have work
4 projects with our examining attorneys and they
5 apply, and we look at various factors of their
6 examination, their production, their quality and
7 -- you know -- just how they work and from that
8 make selections on the mentors into the academy.

9 MR. GOODER: So, it's not just based on
10 things like how high a producer you are --

11 MR. VAVONESE: Correct.

12 MR. GOODER: -- Or --

13 MR. VAVONESE: We look at the entire
14 picture.

15 MR. GOODER: -- Okay. The last question
16 is; how do we go about essentially evaluating the
17 quality of the -- well -- any new examiner -- the
18 ones in the academy are the current way to look at
19 it, but even in the past; but, how do we do that
20 generally?

21 MR. VAVONESE: Yeah -- I mean -- you
22 know -- we have mechanisms in place to assess the

1 quality and whether that's from our Office of
2 Trademark Quality Review that does independent
3 polls of cases, so we look at that data that's
4 coming in, and then we also have the managers
5 within that office and we have the mentor reviews
6 as well to look at how the quality is coming in.
7 Based on that, it's a continuous training of the
8 attorneys to look for the issues -- where there's
9 the biggest issue -- with having everybody in an
10 academy we can kind of centralize what the common
11 issues are and focus the training where we need
12 it.

13 MR. GOODER: So, they all kind of learn
14 from each other or learn from the group as they're
15 going through?

16 MR. VAVONESE: Correct.

17 MR. GOODER: Susan, that was the end of
18 the questions.

19 MS. NATLAND: Great, thank you. Does
20 TPAC have any final questions for anybody who they
21 haven't asked already during the week? Nope,
22 okay. GI would like to thank the USPTO staff,

1 Mickey, Judy and the entire AV team for helping us
2 run this meeting and helping us run TPAC; as we're
3 doing some claps in here. None of this could
4 happen without you all, so thank you so much for
5 your support. Next -- hmm?

6 MR. GOODER: And Chet.

7 MS. NATLAND: Oh and Chet; yes, Chet.
8 Hopefully you're watching; hi, Chet. Thank you;
9 yes, Chet; how could we forget you, you're
10 amazing, thank you. Next, Commissioner Gooder and
11 his team; Amy, Dan, Greg; it's been such a
12 pleasure to work with all of you this year. The
13 quality of leadership and the quality of ideas and
14 actions is truly impressive. It's been one of the
15 great things I've been able to take from my role
16 in TPAC is being able to really see the level of
17 quality at the USPTO; it's really amazing. So,
18 thank you very much for all of your hard work and
19 so much goes into what you do. And finally -- you
20 know -- this is it, I'm out of here. I am really
21 sad, I'm not going to lie, I am really sad to
22 leave TPAC. This experience -- I tell everybody

1 -- has really been a highlight of my career, it's
2 been so fulfilling to have this role; and mostly
3 to work with all of you people. I've learned a
4 lot, which is great, I always like to learn and so
5 it's another area for me of professional growth.
6 So, thank you so much to everybody and the entire
7 TPAC team. I'm going to really miss working with
8 you all, but I will be watching and -- y seeing
9 what you guys do in the years to come and I can't
10 wait to see what's next for the USPTO. So, with
11 that, we will adjourn this meeting and wish
12 everybody a wonderful weekend. Thank you so much.

13 (Whereupon, at 12:50 p.m., the
14 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

17

18 (Signature and Seal on File)

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

21 My Commission Expires: September 30, 2025

22 Notary Public Number 256314

