

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, February 9, 2018

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P R O C E E D I N G S

(9:00 a.m.)

VICE CHAIRMAN BARBER: I'd like to welcome everybody to the first meeting of the Trademark Public Advisory Committee of Calendar Year 2018.

As you can tell, I am not Dee Ann Weldon-Wilson, our chair. Unfortunately, she could not make it. She had a family issue come up that prevented her from coming, so you'll have to settle for me.

My name is Bill Barber. I'm from Pirkey Barber PLLC, in Austin, Texas. I'm the vice chair of TPAC. I'd like to start with introducing the TPAC members. It is very much a star-studded group of folks, a lot of fun to work with, very smart and talented people.

So I'm going to introduce them in alphabetical order. We'll start with Lisa Dunner. Lisa is managing partner at Dunner Law PLLC, in Washington, D.C., and recently a past chair of the ABA-IP Law Section.

Next we have one of our new members attending her very first TPAC meeting, Anne

Gilson LaLonde. She hails currently from the great state of Vermont. She's the author of the multivolume treatise "Gilson on Trademarks", so we literally have a walking encyclopedia on trademark law in our ranks now, so welcome, Anne.

Next we have Mei-lan Stark, she's the senior vice president and chief IP counsel at NBC Universal in Universal City, California, and a past president of INTA.

Next we have Ilene Tannen. She is an attorney in New York City at Jones Day. I believe you're in your second year of your first term, so welcome back. Next we have another one of our new members, also from New York City, Donna Tobin, she's a partner at Frankfurt, Kurnit, Klein & Selz in New York, so welcome to your first new meeting as well.

Next we have Brian Winterfeldt. Brian has many hats. He founded a new law firm last year, which was quite exciting, Winterfeldt IP Group, in Washington, D.C.

He also now recently serves as president of ICANN's intellectual property

constituency, the IPC. He also recently completed a term on INTA's board of directors. He also serves on TPAC, so I have no idea when Brian finds time to sleep.

We have one new member that was not able to attend the meeting today. She did attend the subcommittee meetings and executive sessions yesterday, that's Elisabeth Escobar. She's vice president and senior counsel at Marriott International in Bethesda, Maryland, so we also welcome Elisabeth to TPAC.

Finally we have our union representatives, Howard Friedman. He's with NTEU 245 representing trademark examining attorneys and interlocutory attorneys at the TTAB.

We also have Tamara Kyle. She is with POPA, the Patent Office Professionals Association.

So turning to the agenda, the first order of business is I want to introduce Joseph Matal. As of yesterday -- I'm not sure what his title is today. But as of yesterday, he was performing the nonexclusive duties and

functions of the USPTO director, and I think Joe may have some comments and also is going to introduce a very special guest for us today.

MR. MATAI: Thank you. I have some prepared remarks, but first let me interrupt it for a more pressing matter. So the last time we met, we at PTO promised you we would still have a new Senate-confirmed director and here he is. We've delivered. Unanimous vote of 94 to zero in the U.S. Senate, sworn in by the Secretary of Commerce just yesterday.

I'm afraid he has to already head over to a meeting at Commerce later today, but with that introduction, here is Andrei Iancu.

MR. IANCU: Thanks, Joe; thanks, Bill, welcome everybody. I am very happy to be here. This is actually my first official meeting.

So it is special, because -- for me because of that. As Joe actually just mentioned, I just started yesterday. The Secretary swore me in yesterday.

It was very special and it's been

quite the 24 hours. I was in Los Angeles just a couple of days ago. The only observation I have is that it's a bit colder here than it was in L.A. when I left.

So as Joe mentioned, I unfortunately can't stay for the rest of the meeting, given that I just began, but just to say a couple of words and then with apologies I will head out and Joe will deliver his remarks.

Trademarks are critically important and they're a critically important part of our IP ecosystem. Among many other things, of course, they allow businesses to distinguish themselves, and, therefore, invest and grow as a result.

As with other aspects of IP, and I will obviously talk about this much more in the future, but at the very high level:

The work we do here on trademarks and other aspects of IP, we want our work to be accurate, we want it to be efficient, we want to provide certainty, and we want to provide reliability to both rights holders and the public.

Obviously your support and your guidance is critically important to our work. I personally look forward to working with each one of you and with this group in the months to come.

I'm hoping to learn from you all, to meet you all as quickly as possible. For today, I hope you have a good meeting. So thank you and thanks for welcoming me, even for just a few minutes.

(Applause)

MR. MATAL: Just a few updates on the trademark's front, I wanted to note that first and foremost, we're pleased to announce that the trademark's organization has met all of its performance goals since 2005. I think that's a really remarkable achievement that deserves a round of applause.

(Applause)

MR. MATAL: In Fiscal Year 2018, we're still making all of our goals, despite a 17 percent increase in trademark filings.

Is that right, Mary, 17 percent increase -- I'm sure there will be more

comments on that. So I what to thank Commissioner Denison and all of her trademark's team for their consistent performance on these issues.

Lastly, I would like to thank all of you for having supported me during these last eight months, performing the functions and duties of the director.

It's been a creative transition and some challenges. I'm pleased to say that we survived intact and made it to this point, and we look forward to continue to work and collaborate with you.

With that, I'll hand it back to Commissioner Denison.

MR. IANCU: Actually if you don't mind, just very briefly I do want to say a big thank you to Joe who really has, from the outside, and I'm sure many of you are from outside, the agency, viewed from outside, you did a marvelous job running the agency for the past, what, ten months --

MR. MATAL: Eight months.

MR. IANCU: -- eight months, so I

want to give a big hand to Joe.

(Applause)

VICE CHAIRMAN BARBER: Well, again, Andrei and Joe, thanks so much taking time out of your very busy schedules to join us. It's great having you here for any time you can give to us, so we appreciate your coming today.

MR. MATAL: Thank you.

VICE CHAIRMAN BARBER: Certainly we have an equally star-studded cast of speakers and presenters from the USPTO as we always do here. They're very generous with their time, very informative with their presentations and slides and remarks. So we always appreciate the group here from the USPTO, it makes our jobs a lot easier and more productive to have this kind of input.

So first on the agenda is our wonderful commissioner for trademarks, Mary Boney Denison, who's going to give us an update on trademark operations.

COMMISSIONER DENISON: Thank you, Bill. I would like to welcome Elisabeth,

Donna, and Ann to TPAC. We're delighted to have you on board, and I know you're going to be great contributors.

I would also like to echo what Andrei said about Joe. We in trademarks love Joe and we think he's done a fabulous job. So, we're very grateful for his leadership since June 7. Thank you.

Of course, we're excited that Andrei is here and it's really fun that we got his first public appearance. So it's really a good day. So, let's move on to more fun stuff.

Continuing resolution, so I'm told about our insider down at the other end of the table that the president has now signed the continuing resolution, so the government is back open again.

The government in general can maintain operations until March 23rd, of course we do have a reserve fund here at the USPTO. If there should be another government shutdown, we should be able to stay open subject to authorization from the White House.

So Dana will talk more about this when he is speaking in a few minutes.

So here are most recent staffing numbers. We had new lawyers, new examining attorneys, who started in January. We are expecting 40-plus more this fiscal year.

We have two more classes coming in in March and May. We have revamped our training this year. I'm very grateful to all of our trainers who have been working very hard to train so many people that we have coming in.

So we are expecting, as I said, about a total 60 examining attorneys this year, and then next year, if you take a look, we are going to continue to keep going up we think in filings. So, we're thinking we're probably hiring about 80 next year, so we'll be advertising again probably in the summer for next year's hires.

If you take a look at this chart, you will see that the projections are for us to keep going up. As was just mentioned, we had as of January 31st a 17 percent increase

compared to that same period in the prior fiscal year.

So things seem to be continuing to go up. In fact in the last 30 years, we've only had four years where we've had a decline, so we're continuing to hire. Last year fiscal's -- when we ended Fiscal Year '17, that was a 12 percent increase over the prior year.

But thanks to our hardworking examining attorneys and all of our staff, things are running smoothly and we are still meeting our pendency goals in spite of these dramatic increases.

So I'm really proud of them for doing such a great job on pendency and quality. So we're meeting our quality goals as well, because that's just as important. So I'm delighted to report that we are meeting all of our quality measures, amazing work all around by our employees.

Now, as everybody who's heard me talk since I became commissioner, we're very interested in eGovernment. The original goal

was to have all applications filed electronically. We're at 99.9 percent for that.

So, the goal shifted some years back from just filing the application electronically to staying electronic the entire time. So we encourage end users to be fully electronic with us.

Now, if you take a look, the figure -- the 99.9 percent is for the applications, but staying fully electronic through the process is not quite as good, so that's only at 87.4 percent.

Because sometimes after people file the electronic application and they get their filing receipt, they say we don't want email from you or they have a big filing and they file on paper, so that actually costs us more than we charge.

Now, we did do a fee change, as you may recall, charging more for paper. It still doesn't fully cover our costs, but it has had an impact and if you look at the chart, you'll see that we're getting far fewer paper

applications than we have in the past.

That said, we are still planning for mandatory electronic filing and we are working on a notice of proposed rulemaking right now and you will be hearing more about that in a minute.

Now, I'm going to leave the IT reporting to our CIO representatives, but I wanted to bring to your attention MyUSPTO. It is a fabulous new IT offering we have. I would welcome your input on it, because it's still in beta.

So what can you do with this? Once you set up an account, you can put in up to a thousand applications and registrations in one group and you can have as many groups as you want.

So you can organize it by your different business units if you're a corporation or you can organize it by client. However you want to organize it is fine with us. You will get an email notification of status changes to the file once your things -- once your cases are in the docket.

In addition, a lot of people read the Official Gazette every week. It will store your search and then it will send you an email notification if there are any new hits on the saved search. So it can save you the trouble of looking at the Official Gazette every week.

Also in the works we have something we are calling an easy file. We are working on a simplified application for intent to use word marks, standard character marks using TEAS RF and we are also working on a form finder. We're hoping that both of these will be ready this year.

So as of February 1st, there were 72,000 external public users who had MyUSPTO accounts. There are only 3,766 people using the trademark docket actively.

We originally envisioned this would be something that the pro se community would use, because they didn't have a docket. But what we in fact found is that law firms are starting to use it as a backup docket. So that was good news for us.

So this is what it looks like. You just have to register one time to set up a profile and then you can log in. It will give you access to all the MyUSPTO and the financial manager, patent maintenance, and so I hope that I will -- I would encourage you to take a look at it.

You will see on the right side of the page when you look at it, we want feedback. So please give us feedback. We have a great IT team working on this, and they are very anxious to make us and the public happy with this product.

So if you look at it and you say, gee, it would be better if you did this, please don't just think about it, tell us so that we can consider whether that is something that we can do for you.

Also I always want to mention that there is source codes for a mobile app for trademarks on GitHub and it will notify you any time there's a status change.

Moving on to the ID manual, on January 1st the 11th Edition of Nice went into

effect, so our ID manual has been updated. You are now able to download the entire manual. You can download it into Excel, HTML, or XML and you can customize the content when downloading.

Now, of course the danger of doing that is that we update it frequently, and so you do have to be careful and make sure that you are using the latest version of it if you downloaded it.

Here's a screenshot showing you how to download it in plain English. We have plain English writers now. It says download entire manual.

So I mentioned earlier that we are moving towards mandatory E-filing. We have a draft of the notice of proposed rulemaking, which is circulating internally for comments. So, we're hoping that maybe within the next month, it will be published and we very much hope that the public will give us comments.

Traditionally we only get a few comments on our proposed rulemaking that we put out, and we would very much like to have

comments from as many people as possible, not just the Bar Associations, of course we very much welcome theirs, but we also like to hear from individuals and law firms or academics or anybody, because people have different perspectives. So we like to hear from as many people as possible.

Please if you care about mandatory E-filing, please think about sending us something. It could be -- if you're in private practice, it could be on behalf of yourself personally, it could be on behalf of your law firm, it could be on behalf of a client, so please think about that.

We are hoping that before the end of the calendar year, we will have that implemented. You should expect it to look somewhat similar -- the exceptions to look somewhat similar to what the TTAB has already done.

Now, we also have been tasked by the president with working on regulatory reform. So we have proposed the removal of interferences, which Gerry Rogers will

probably talk about a little bit more later.

They haven't been used in over 40 years, so we thought that was the perfect thing to get rid of. So the proposed rulemaking issued in October and the comment period closed in November.

Now, I know a lot of people have read about the Brunetti decision and that was issued by the Federal Circuit on December 15th and it held that the immoral and scandalous provision of Section 2(a) was unconstitutional.

The Court of Appeals for the Federal Circuit ruled that the mark, while vulgar, was protected speech under the First Amendment, so there is -- we work through the Office of the Solicitor at the Department of Justice and they will be filing something shortly in that case.

Now, one of our biggest challenges is making sure that our Use Space Register stays clean. By that I mean only reflects marks that are actually in use.

So we did a pilot several years back

and the results were that in all the audited cases, 51 percent of the time people were unable to prove use on all the goods. We asked them for additional specimens and proof of use on, so that gave us great concern.

So after a lot of consultation with members of the bar and internal consultations, we decided on a three-pronged attack. We decided to increase the readability of the declaration, because we thought it was just a big chunk of text and no one was really reading it, so that change has been implemented.

Now people have to check several boxes on the declaration. So they may or may not be reading it, but they do have to check the boxes and it makes it more likely that they will read it at least. So that has been implemented.

We have decided to continue the random audits of the registrations and that has been made permanent. We have examining attorneys who are working on that now and I believe we've issued close to a thousand

office actions now in that.

So what happens if you get one of these, we are going to -- well, the first thing to know is that if a timely response is not filed to an office action after the expiration of the statutory filing period, the entire registration will be canceled. So unless you really don't care about it, you really should respond.

So we're going to be pulling single class registrations with four or more goods in the class and multiple class registrations in which there are at least two classes with two or more goods, and we will require proof of use for two additional goods or services for each class.

Now, if a timely response is not filed to an office action but time remains in the statutory filing period, the registration owner has the option to file a new maintenance filing along with all new filing fees.

But I just wanted you to be aware of that and we will be following this closely to see if there are any tweaks that we need to

make to the program. Again if you have experience with this and you would like to give us feedback, we very much welcome that. We always like to hear from you when we have something new going on.

Now, I'm not going to really talk about this, because this is firmly in the TTAB's court, so Judge Rogers will handle this, but just wanted to mention that we are continuing to work on the possibility of offering expedited cancellation proceedings and Judge Rogers will address that more when he speaks.

Next up is fraudulent solicitations, a topic I am very interested in personally. We are doing as much as we can to raise awareness of trademark owners to the fact that the moment they hit our system, they're going to start getting these solicitations from people.

So we now have a dedicated web page, we have a video up, the patent section has a similar warning, and individuals are going to -- individual applicants are going to get a

notice, a warning, from us in the trademark application filing receipt, in the cover email for Trademark Office actions, and with each paper registration they get a bright orange sheet of paper with a warning. So we're doing what we can to warn people upfront about this.

Now, on the other end, we are working with the Department of Justice on criminal prosecutions. As we announced at the last TPAC, we were able to secure five criminal convictions last year. One person got eight years, so we're trying to send a strong message there.

We held a public roundtable with TPAC in July. We had the Federal Trade Commission, the Department of Justice, the Postal Inspection Service, Small Business Administration, and the Customs and Border Protection people all brought together, and it was a very good conversation.

The bar groups came in and talked. Some individuals came in and spoke. It was the first time this group had been publicly together to talk about this.

The USPTO is also participating in an informal Interagency Working Group on fraudulent solicitations and mass mailing fraud. We are sending this month a lawyer on detail to the Department of Justice to work on these criminal prosecutions.

The fraud group at DoJ is very busy. So to make sure they have time to work on our stuff, we are going to sending our lawyers over there. So one is going in February and I believe the other one will be going over in April, and we're expecting them to stay for about a year and work on this because we really want to send a strong message out to the criminals that this is not acceptable and that we're paying attention to it and we'll prosecute them.

Now, we're also working on enhancing the customer experience. We have a new five-year customer experience strategic plan, we have a customer experience administrator, and we have plain language writers, which I mentioned briefly a moment ago.

This year we are dramatically

working on improving our website, so that customers can find things. When they find it, they can understand it and use the information that they need.

So this is one of our big focuses and we have these two plain language writers who are going through the many, many pages that we have and trying to make them as easy to understand as possible.

We are also going to be implementing four customer surveys. They will be on TEAS, our electronic filing system, our Trademark Assistance Center, content for the website, and application prosecution. So stay tuned, you should be seeing these soon when you're on our website.

We are also -- we became aware recently of a problem where people were going in and making unauthorized changes to correspondence addresses. We believe this was being used so that they could act as if they were the owner of the registration.

So we are working on MyUSPTO so that email alerts, hopefully starting in April,

will be going out for any files that you have in your docket where a change has been made to the prosecution history on certain things, such as the correspondence address.

So that is something that we were able to move pretty quickly on and so that's another reason to put your docket into MyUSPTO.

So we have a great vision for enhancing the customer experience and we hired an outside consultant last year and developed this vision, which is to provide consistent, clear, and intuitive services to our trademark customers.

So we are -- everything we are doing is working toward making sure that we are providing consistent, clear, and intuitive services to trademark customers.

So this is not something that you snap your fingers and it happens overnight, but we're really trying to make significant changes in that area. So if you have ideas for us on how we can improve the customer experience, again we would like to hear from

you.

Now, on the international front, as you know we participate in the TM5. It's the five largest trademark offices in the world -- the European Union, Japan, Korea, China, and the United States.

It focuses on -- the TM5 focuses on an exchange of information and collaboration and possible harmonization for you, for users. So we have lots of different projects going on. Some you may be more familiar with than others.

If you look on TSDR, you will now see icons that appear on there. The icons were something -- they were a USPTO initiative and they've now been implemented by the EU, Japan, and China.

So if you go to their databases, you will see the same icons. So even if they use a different word, you will understand the status if you understand the icons.

So Korea I think should be implementing soon, so we should have all five members having implemented that. So that's

just one of the many projects we have going on.

In terms of upcoming, there is going to be a joint workshop on examination of nontraditional marks, including proving acquired distinctiveness, that is going to be at the INTA annual meeting in Seattle and that's going to be on Monday at 1:15. So if you're attending the INTA meeting, you can participate in this.

There will also be a TM5 midterm user session on Sunday morning at 9:00 a.m., an unpopular time for people to attend, I know, but that is going to be by invitation only.

There will be a meeting in South Korea in Jeju Island in June, that's where the midterm meeting is going to be for TM5 this year. We believe that the annual meeting for TM5 where users will be invited will be November 1st and 2nd in Seoul.

I mentioned fraudulent solicitations, how we're working on it on the domestic front. We also proposed that as a

new project for the TM5. It's particularly a problem in Europe, so they were very anxious to colead this with us.

The Asian partners are also interested in it, although it does not appear to have been as much of a problem yet in Asia as it has been in Europe and the United States. So this was adopted as one of our new projects for the TM5.

We also have some other new projects. We have a quality management project, that one is being co-led by JPO and EUIPO where we will exchange information with the other TM5 members on our quality management systems and our initiatives.

The third new project is a priority rights documents project that's being led by the EUIPO, and that project is going to compare the practices of the TM5 offices regarding the acceptance of priority rights documents and validation of applications filed under the Paris Convention for trademark applications and registrations. So we also agreed to future revisions of the TM5 website

to try to keep it more current and up to date.

KIPO, the Koreans, were established as the secretariate for 2018, that's why we're having the meetings in Korea, and we had a full-day user session including a summary of the annual meeting, presentations on quality management, bad faith trademark filings, and we had tabletop informal discussions on fraudulent solicitations, bad faith filings, and quality management.

We find these meetings to be extremely helpful to us and are delighted that the users are participating more fully in these meetings.

The ID list is now posted on the TM5 website. This is one of the projects and we have over 18,000 terms now that are acceptable in all the partner offices. We've agreed to invite some others to participate in the project.

Now, if you go to the USPTO ID manual and you see a T, that means that the term is one of the 18,000 terms agreed upon in all the TM5 member countries.

Now, with regard to the Madrid protocol beginning in November, I'm pleased to announce that applicants may add a mark description to their international application, even if the description does not appear on the basic application. We think this is going to prove helpful with our requirements.

China, we've got lots of different issues with China. We have an influx of Chinese applications, we're having some specimen issues, we've got counterfeiting issues, we have bad faith filing issues. So let's just talk first about the influx of Chinese filings.

It appears that there are subsidies being given by one or more provincial governments and those are one of the reasons for the influx. In addition there is a general focus by the national government encouraging people to protect their IP.

There is also the fact that we had 500,000 plus classes filed here last year, but China had 5 million. So just the fact that

they have 5 million applications suggests that we're going to continue to get more here.

So we think that the influx is not just tied to the subsidies, but is also part of the broader initiative for protecting IP in China. Some of these Chinese applications come in with doctored specimens, and we have some concern about whether some of them are in use as well.

This chart gives you an idea of the filings. Right now we have close to 10 percent of all filings coming in from China.

People are getting more sophisticated with the fake specimens, and so we are working with our examiners to equip them as best we can on what to look for in these specimens.

We are also doing our best to refuse as many as we can or to question them. If you see a specimen that you think is suspect, we are going to be setting up a mailbox and -- do we have a date anybody in the gallery over there, do we have a date in the next month or so? Yeah. So we'll be promoting that when

it's ready.

So our concerns about the mocked up specimens are that it may not show the mark as used in Commerce, it could be the basis for filing fraud, of course it could subject the practitioner who submitted it to discipline by our Office of Enrollment and Discipline, and of course it could impact the validity of any registration that issues and potentially subject it to cancellation.

That is all I've got today, Bill.

Thank you very much.

VICE CHAIRMAN BARBER: Thank you, Mary, as always for your very thorough report. We have maybe time for a couple of questions, if any of the TPAC members have any burning questions for Mary. Anyone? You're a very quiet committee today, which is fine.

MS. DUNNER: Thanks, Mary. I think it's important to note with myuspto.gov, as you told us yesterday, that the docket's going to increase beyond a thousand marks; isn't that right, or at least you're hoping it will?

COMMISSIONER DENISON: It was

originally -- I think it was a very small group per group. Right now it's a thousand applications in one group, but you can have as many groups as you want.

So you could have 50 clients with a thousand marks each. There are currently no plans to expand beyond a thousand applications per group. But if people think that's important, they should send in feedback to MyUSPTO about that. Thank you.

VICE CHAIRMAN BARBER: Thanks, Lisa. Any other questions? So next we will turn it over to Dana Colarulli who's the director of the Office of Governmental Affairs here at the USPTO. He's our eyes and ears and often our voice up on Capitol Hill, so he's here to give us his legislative update.

Thanks, Dana.

MR. COLARULLI: Good morning. Thanks, Bill. It is true, I get to witness what happens up in Congress and advocate for the agency. There's a rule that you should never start something without knowing where it's end.

But I'm going to in my presentation today give you a sense of where Congress has worked, the process has actually worked, and probably some examples of where it hasn't worked so well. We'll see where the tally is at the end.

But we've had certainly this week ups and downs, some good things for the agency certainly. That starts with the Senate confirming and president signing the Commission for Andrei Iancu to finally become the next director of the USPTO. We're happy to see that.

The vote was 94/zero. There were six members who didn't vote. Although just the next day in the Congressional Record, Senator Heinrich from New Mexico put in an excuse and said, I'm sorry, I wasn't there. I would have voted for the director of the PTO, but I had some family issues. So maybe it is 95 to zero, so that's a good thing.

But that followed the normal process. Certainly the White House nominated him some many months ago. He had a hearing in

front of the Senate Judiciary Committee, some back and forth with certainly two members there in person, but a number of questions for the record afterwards.

Clearly there is interest in the work that we do and we've already been able to start a good relationship with the Senate Judiciary Committee as they move forward.

I think that we can expect that the Committee will want the new director to come over for an oversight hearing at some point in the next few months.

We've been working to say happy to do it, let's let him get his feet under him before he goes, but I think that's important. They haven't had an oversight hearing on PTO on all the things that we're doing, so we expect that there will be certainly a hearing on that.

The Committee is also looking at other issues that it might address during this second session of the Congress, and I'll talk a little bit about those as we go forward. So that worked, that was great, Congress moved

forward.

As of within the last hour, the president signed -- the bill passed by the House now -- early, early this morning to fund the government. This is the fifth CR that we've seen.

This CR goes until March 23rd, unclear what will happen at that point. What this CR did was a number of things. In addition to just continuing funding for the government, also essentially lifted the debt ceiling and had within in it some general agreements over the next two years for funding. Sean will certainly mention this as well, but I think that's the detail that's relevant to the PTO.

For the PTO as it happened under the last CR, or shutdown scare -- the shutdown that occurred, USPTO stayed open. We were able to rely on our operating reserve, so the interruptions to PTO were minimal.

Certainly every time there's a CR, there's a lot of time spent to planning in case there is a shutdown, but PTO stayed open,

the light was still burning at PTO.

Now, for those of you who are interested, we're at CR Number 5. The CRS recently in a report, actually going back to 1998, said that on average Congress will pass 5.5 CRs in any given appropriation year.

So this is not out of the ordinary. The high mark goes back to 2001 where there were 21 CRs that went through that whole period, so certainly not the best way to operate the federal government. We did have I think the shortest CR in history just last night, but as of this morning everything is up and running again. I'll have another slide at the end to talk a little bit about that.

Getting onto business, the rest of the agenda. Certainly immigration not addressed in this continuing budget resolution, so that will take a lot of the bandwidth of both the House and the Senate in coming months.

Certainly what to do at March 23rd with the rest of the fiscal year is going to be a discussion and then immigration and DACA.

And then issues about infrastructures, other issues that the president had indicated that he would like to pursue in the State of the Union certainly will dominate the agenda.

I wanted to highlight just some of the leadership changes that are relevant to the USPTO. In the Senate we have Orrin Hatch a long-time member of the Judiciary Committee, both chairman and ranking member at different times during his tenure, announced that he'll retire at the end of his term.

Two additional members were added to the Senate Judiciary Committee on the D side, that was as a result of the ratio of members in the Senate changing. Doug Jones from Alabama became a member of the Senate that provided space for two additional members on the D side for the Committee.

Cory Booker and Kamala Harris joined. We're looking forward to getting Senator Harris out to our San Jose office. We haven't done that yet, but always good to have another California member on the Committee.

In the Judiciary Committee, changes

at the leadership on the R side both for the full committee and the subcommittee, both Chairman Goodlatte and Chairman Issa announced that they will retire at the end of this Congress, so they have this year and then we'll be looking for new leadership on the R side.

As a result of Ranking Member Conyers' retirement from Congress earlier this year, Jerry Nadler became the ranking member of the full committee and Hank Johnson became the ranking member of the subcommittee.

So some new personalities and folks that have certainly been there, at least on the House side, that we've worked with and we can continue building some good relationships with, but certainly there will be some changes for the next Congress.

In terms of a general legislative update, I think it's clear that given the other issues that I mentioned Congress -- is going to dominate Congress' attention, IP issues continue to be a little bit of a backseat. Although in the judiciary context,

I think consideration of IP issues will likely be dominated by a very positive copyright legislation that we see now moving.

For the first time in many years, we've seen stakeholders coming together and generally supporting legislation that's now been introduced both in the House and the Senate, the Music Modernization Act and a couple of other bills that will likely move although forward.

We've certainly been pulled in as a technical adviser on those and we'll continue to, but that's positive movement on the IP front.

Patent measures may also be considered and I mentioned a few there. We haven't seen a lot of trademark activity. Now, the one exception to that was celebrating the start of the Olympics, which I think technically was this morning at 5:00 a.m. for us, the Opening Ceremonies, I think I have the timing right.

There was earlier this week a Senate Resolution introduced. It was a sense of

Congress that essentially in essence resolved that ambush marketing adversely affects the United States' Olympic and Paralympic teams and their ability to track and retain corporate sponsorships which support and are critical to the success of this international competition. So trademarks and IP rights certainly got a little bit of a shout out this week from Congress.

So, again in your good column, if you're keeping track, a good thing that Congress did this session.

Other operational updates, continuing to pursue a three-year extension of TEAP. That bill is now pending in front of the Homeland Security & Governmental Affairs Committee in the Senate. We're looking forward to them marking up that bill.

I haven't seen any controversy, but looking to try to push that process along and we think that it will move along. So we're keeping an eye on that.

Not mentioned up here, but Sean I know will mention as well, fee setting

authority for the PTO, important for the entire agency, expires in September of this year. So we've started conversations on both the House and the Senate side on what vehicle we can move to extend that authority, either extend or make permanent, both of which we've started the conversation with the critical staff. So again issue that we're trying to pursue on behalf of the agency.

Lastly, I'll end with another thing in the good column. That will be that one thing that Congress does is they celebrate well. We're trying to help them celebrate World IP Day. It will happen in April of this year. This year's WIPO theme is "Powering Change: Women in Innovation and Creativity", great theme to build a good awareness event.

We're underway planning for both a Capitol Hill event here back at the agency for trademark examiners, patent examiners, and all PTO employees to help raise the public awareness of IP in general according with the theme. Lisa was so excited by the upcoming celebration, that her nametag fell.

I made reference to this chart. It's a chart I used in the TPAC meeting earlier. It catalogs the shutdowns. I think the CR data I mentioned earlier is just as fascinating. Again not a great way to manage the government, but we are open and PTO will continue to be open, even with these disruptions in funding.

With that, happy to take any questions.

MR. MATAL: Dana, I just wanted to mention, we just got an email from Commerce about an hour ago. The president signed the CR. They're going to do this two-year budget, so we won't have these little dramas for two good fiscal years it looks like.

MR. COLARULLI: Yeah. You saw the one picture I had on the slide of the CR. That white sign when I was walking my daughter to school this morning down the hill, I checked the OPM app and technically we were still closed soon after that sometime before. I think 8:42 the president signed, so we're glad that the rest of the government is now

open for business.

VICE CHAIRMAN BARBER: Thanks very much, Dana, for your thorough review and positive outlook and you're very tactful for putting so many good checkmarks in Congress' column.

Any questions for Dana? Thanks very much. Next on the agenda, we have Shira Perlmutter.

She's the Chief Policy Officer and Director for International Affairs. I see that she has Amy Cotton with her as well, so we're well represented by OPIA today and I'll turn it over to you, Shira.

MS. PERLMUTTER: Thank you. I'm going to give you a brief report on three topics. We always try to figure out what is upcoming that will be of the greatest interest to TPAC.

So first I'll update developments with respect to the Hague -- the proposed Hague Convention on the recognition and enforcement of foreign judgments that I reported on at the last meeting.

Second I'll talk a bit about our outreach to federal agency counsel on IP matters, and third I'll mention two upcoming international meetings that I think are of particular interest and that is the ICANN meeting that's coming up and the World Intellectual Property Organization, WIPO, standing committee on trademarks that just took place.

Now, on the Hague project -- so you will recall when I reported at the last meeting that there's something of a split in the trademark community on the Hague convention where INTA supports the inclusion of trademarks in the proposed convention and AIPPLA opposes it for all IP.

The situation we've been faced with is that the rest of the IP stakeholder community primarily patents and copyrights but also for purposes of trade secrets is very opposed to including their areas of IP in the treaty.

So the United States has sought to exclude IP at this point in time. It doesn't

mean there might never be any coverage, but given the fast track that this is moving on with the potential for a diplomatic conference early next year, we've been explaining the complexity of the intellectual property issues and that it could be dangerous to include IP now.

So there was a special session in November after the last TPAC meeting and there was progress made from our perspective, because we now have a text that offers two alternatives in dealing with IP, and one option is complete exclusion and the other option is inclusion but with a lot of limitations that take care of some of the major concerns that we had.

So in particular in the case of judgments on validity, the only ones that would be included are judgments made by the Courts of the country that issued or registered the right in question.

On judgments about infringement, it would be only recognition for judgments from Courts in the country where the infringement

took place. So that takes care of some of our concerns about exporting laws from one country into another.

Then also very important, because we were concerned about extraterritorial application of injunctive relief, there's also an option now in the text for limiting enforcement to damages, rather than injunctive relief.

So we're now in a situation where there's a couple of options, one be complete exclusion, which is in accordance with where the United States has been and the other is at least a much improved treatment of intellectual property narrower and avoiding some of the pitfalls.

So at the moment in terms of status, there is going to a working group in the first half of this year on whether decisions rendered by administrative tribunals should fall within the scope of the convention, that is administrative IP tribunals. So that would include for example TTAB.

There are no other formal meetings

scheduled before the diplomatic conference, which again is supposed to take place in the first half of next year, but there's going to be continued outreach and discussion obviously about the different options that are now included in the text.

So happy so answer any questions or I can move on to the other topics.

VICE CHAIRMAN BARBER: Any questions at this point for Shira. Thanks.

MS. PERLMUTTER: So in terms of what we're doing for federal agency counsel, in the trademark area this has come up, because there have been a number of legislative initiatives proposed that would give agents federal -- different U.S. federal agencies very broad rights to control their names and logos and programs.

We've routinely objected to these statutes, because they have the effect of circumventing the trademark system. So a lot of these statutes would make it unlawful to use an agency's name or program name unless the agency authorized it.

It's problematic for our trademark system, because there's little or no public notice of the claim of rights or how they'll be interpreted when it comes to conflicting uses.

It's also a real challenge and a burden on our examiners, because the examiner would have to identify each of these statutes as a conflict and then interpret the statute and how it would impact the application, and then find out about whether there is authorization or not and then interpret what the authorization allows the applicant to do. So that's complex and quite different from the normal process.

So what we've been trying to do is to work with the agencies to explain to them how they can use the existing trademark system to achieve what they want to achieve and avoid their concerns, the problems that they're worried about. So what we've been doing is reaching out to them to educate them.

In October, we hosted a full-day program for governmental officials at our

Global IP Academy and the idea was to introduce the PTO as a go-to resource for information on trademark protection and federal registration and also to promote the benefits of federal registration in the existing system over these special statutory schemes.

We expect to offer the program again this year, because there was a very large wait list. We limited the number of participants, so that we could have good discussion and we plan to continue doing this.

I just wanted to note that this -- we called this the Trademark Boot Camp and it was preceded by a Copyright Boot Camp that we did for U.S. government attorneys in September. We really had very enthusiastic response to both sessions and way more people wanting to sign up than we had room. We are now also planning a similar boot camp on patent topics for federal agencies.

So we should be continuing to offer all of these on a regular basis, so that the other agencies can develop their expertise in

a way that helps their programs.

Then finally on the upcoming meetings. The next ICANN meeting will be held in San Juan, March 10th to 15th. We advise the U.S. delegation to the Governmental Advisory Committee on IP matters. Of course that's known by the lovely acronym GAC, one of my favorites.

The principal topics in the San Jose meeting are expected to include protection for geo names, which are names of geographical or cultural significance in any future top-level domains.

The impetus for this discussion, it's interesting, was the GTLD application for Amazon by the U.S. company and it engendered opposition from some Latin-American countries who believe that they should control the geographic names that are associated with their regions.

Second main topic from our perspective is an assessment of rights protection mechanisms in the new generic top-level domains, such as the Uniform Dispute

Resolution Procedure, UDRP, the Uniform Rapid Suspension System, and the Trademark Clearinghouse.

Then last but not least the continued who is domain name registration database, which gives contact information about registrants. The issue that's come up is that there is this new EU General Data Protection Regulation, or GDPR, which went into force in May and that's caused issues for the WHOIS database.

So just to say a few words about that, the U.S. Government supports a robust and easily accessible WHOIS service, which can help in enforcing both trademark and copyright rights, and it really provides a cornerstone of trust and accountability on the internet. You have to know who you're dealing with.

We are concerned that the European GDPR will be used as another reason to threaten the continued availability of WHOIS, which has been under attack and debate for some time.

So the GDPR is designed to protect

you citizens from privacy and data breaches of their personally identifiable information.

The problem is while EU privacy regulations have existed for some time, the GDPR increases the finds, strengthens the conditions for consent by citizens for the use of their data, and increases the territorial scope of the regulations, so it's much more onerous.

It applies to all companies that process or hold the personal data of data subject residing in the EU and that's regardless of the location of the company. So it's something that everyone has to be concerned about and it may have again implications for the WHOIS database.

So at the last ICANN meeting, the GAC advised the ICANN board that the WHOIS data is used for many legitimate purposes and it should use its best efforts to create a GDPR compliant WHOIS database that continues to facilitate timely access to the data. This month ICANN initiated a process to do so, so we will continue to be involved in that.

Finally WIPO had at once meeting of the standing committee on trademarks, industrial designs, and geographical indications, or SCT, and now we have another meeting coming up in April.

We are excited about this, because after two years of negotiating, we finally convinced the SCT to develop a work plan that includes a survey on Geographical Indication Protection Systems at the national level around the world.

Now, that doesn't sound like that should be such a big deal, but it was a huge fight. There was a lot of resistance. There are some countries that don't really want the SCT to look at all the options for protecting geographical indications. The SCT has in fact been blocked from discussing these issues for years while the fight over the Lisbon agreement continued.

So we're very pleased that this discussion will be launched, but as a tradeoff we had to agree to also have the SCT study the misuse of GIs, countries names, and geo names

in the domain system and on the internet, so those two studies will go forward.

The U.S. delegation strongly supported a roundtable discussion instead of any idea of a treaty for protecting names of -- geo names. So we're just looking at how -- and country names, sorry, the big push by Jamaica and Switzerland among other countries.

So, again, we're avoiding any kind of treaty, but there will be a study and it will look at how examination -- how the examination system can address many of the non-authorized names that these countries are concerned about -- non-authorized uses of the names that these countries are concerned about if the examination tests are appropriately designed and applied, so we think we're making a lot of progress.

Finally on industrial designs, the upcoming SCT will discuss future work on the protection of GUIs, graphical user interfaces, icons, and type-face designs. So progress at WIPO, which often means studies, but we're

very pleased about this.

So that's all I have unless there are questions.

VICE CHAIRMAN BARBER: Thanks so much, Shira. It's very comforting for me to know as a U.S. trademark attorney that we have such an active and effective voice from the PTO to represent the U.S. interestsinterestsinterests and perspective in all these international activities affecting the IP rights of our clients. I know it's a huge job. Thank you for all of your efforts. It's very important.

Do we have any questions for Shira or Amy? Thank you again.

Next, the final speaker before our break is from the OCFO. We have Tony Scardino, the chief financial officer. I believe you also have your deputy chief financial officer, Sean Mildrew, here, so I will turn it over to you to give us an update on the OCFO.

MR. SCARDINO: Thank you. I did want to begin by actually announcing that we

have selected and Sean has agreed to join us as the deputy CFO. Frank Murphy retired this past July -- or last July.

Sean joined us about a month ago, comes from the Department of Homeland Security, Customs and Border Protections specifically, so it's great to have him on board. I'm sure y'all will get to know him very soon -- very quickly.

So we typically go through oftentimes three fiscal years. This is like a light budget time for the federal government. You've probably been hearing there's not a lot going on in budget world right now, being completely facetious of course. It's been challenging, but we are in the midst of 2018 and '19 is right on the horizon. So we'll go through some of that.

It's hard to keep the slides up to date. Right now it lapses. We were explaining, our prepared to explain, that we had a lapse in appropriations on January 20th and parts of the U.S. government were shutdown for about two-and-a-half days. We stayed open

during that time period.

Similarly last evening, or early this morning, however you want to say it, there was another lapse of appropriations for several hours. The president has in the last hour I believe signed the CR, so the government's back open. We were going to stay open again.

Just to remind you, we need two things to stay open: We need money in our operating reserve and we need support from the administration, and we had both in January, we had both today.

So we're very happy to announce that, but it's critical that the operating reserves on both the patents and trademark side are at a level that will enable us to stay open. Three-and-a-half years ago when the government shutdown, we shutdown for 17 days and we stayed open, USPTO, so just a reminder for that.

So we're on another CR I think Dana mentioned until March 23rd, another six weeks, so we will continue to work within that. CR

means that you're operating on last year's, the prior year's, appropriation level.

So what happens is if we collect more money than that at the end of the year, money would go into the Patent and Trademark Fee Reserve Fund.

We don't know whether there will be an omnibus appropriation, whether it will be a year-long continuing resolution, nobody knows, they could have separate preparation bills. Now that there's a budget deal that seems to be in place, we're all hopeful, but my crystal ball is as cloudy as anyone else's.

In terms of fees, things are coming in a very positive -- as I'm sure folks have mentioned already today, filings are up, which usually corresponds to fees being up. When we compare fees, there's a couple of different ways to compare them. We can compare them to what we plan to collect this year. This particular chart compares to last year's at this time, so first quarter of Fiscal 2018 versus the first quarter of Fiscal 2017.

They're up 13.3 percent, but you'll

recall that new fees went into place in January of 2017, so that's part of it. Higher fees would correspond with higher fee rates, so things are looking positive there.

From a spending perspective, we started the year with \$120 million operating reserve and if spending and fee collections go according to what we currently plan, we will add \$4 million to the operating reserve and end up with almost \$125 million in the operating reserve.

'19 budget, typically it is submitted to Congress the first Monday in February. The government's running about a week late. It's now projected to go next Monday, the 12th, that's partially due to the lapses in appropriations and how busy we've been in the budget world.

But you'll see the budget released on our website next Monday. You of course as a committee have seen it prior to that last month, so thank you for any thoughts that you may have had. Of course if you have any thoughts after you see it again, please let us

know, or else we can talk about it more detail at the next meeting.

The Secretary of Commerce typically appears before appropriations committees on our behalf, it's part of all Commerce Department. Right now I believe Secretary Ross is scheduled to appear before the Senate Appropriations Committee on April 12th, and we don't have a date for the House yet.

Finally as you are probably all aware, fee setting authority expires for USPTO as part of AIA, American Invents Act. It was a seven-year authority and as sun sets September 16th of this year. We've certainly had discussions with folks up on the Hill about maybe a vehicle that they would attach an extension of fee setting authority for us.

But I just wanted to take a couple of seconds for why this is important to the organization, because trademarks could still have the ability to set fees under 15 U.S.C. Section 1113, which is wonderful. But as an organization, USPTO would not have the ability to set fees on the patent side. Since patents

is roughly 90 percent of the budget, where that would be challenging is with anything that's enterprise-wide.

So if we were going to do an IT project, let's say that both patents and trademarks was going to benefit from, if patents didn't have the ability to raise their fees and collect enough money to do that, trademarks could also be affected by that.

Similar with the government shutdown. If patents didn't have an ability to build their operating reserve at a sufficient level to stay open, that could cause challenges for the entire enterprise, including trademarks. So getting fee setting authority would be positive for everyone.

Any thoughts, questions? I have a brief slide deck today.

VICE CHAIRMAN BARBER: This may be a dumb question, but if that were to happen and there was no extension or new vehicle for the patent side to set fees, would the fees just stay at the same level indefinitely?

MR. SCARDINO: No, that's not a dumb

question at all actually and I should have mentioned that. We would still have the ability to raise fees through CPI. We used to do that before we had fee setting authority. It basically tracks along with inflation, among other things. The challenge there is many that you can't target your fee increases. It's more like across the board.

With fee setting authority what we've tried to do instead is look at every fee and try to figure out sometimes some should go down, some should stay the same, and some should go up.

You can also modify behavior through that. There's a lot of benefits of having fee setting authority over just doing a CPI increase, but you are right, we could increase fees otherwise.

VICE CHAIRMAN BARBER: Any questions? Mei-lan.

MS. STARK: So this is less of a question than a comment, but thank you, Tony, for the great report as usual. I want to commend the office on what I think is a

terrific budgeting process and fiscal responsibility.

I think the health of the operating reserve clearly demonstrates that. I know that in the last round of your regular reevaluation of the operating reserve, it was elected to go ahead and increase that reserve.

I think that with the instability we've seen of the funding so far of the government, that that proved to be a very wise decision and course of action. So we commend you on that, because I do think that reserve leaves the trademark operations in a very secure place for if there are some unforeseen circumstances like a government shutdown. So thank you for all that work.

MR. SCARDINO: You're more than welcome.

VICE CHAIRMAN BARBER: Thanks, Mei-lan. Howard.

MR. FRIEDMAN: Two things: One, I want to thank Tony, because I know he was in the director's office for a little while, so I appreciate all the work he did for us and for

the agency working with Joe. We appreciate that.

The other is I don't think this is necessarily directed toward you, but it came to me in looking at the presentation, just something for people in the room and Joe and Andrei to think about.

If the proposal for the 2019 budget is to freeze pay and not have a pay increase, that's obviously something that's going to be difficult for us.

Given that at least for the Employee Viewpoint Survey, our rankings did not turn out well and we have had a precipitous decline. Given the difficulty that has on morale, perhaps we can all work together and figure out how we can make up for that pay increase, particularly since we have such a large operating reserve.

So with that recipe I hope we can work together with the agency and try to figure out how we might be able to make that up if there is a no pay increase for 2019. Thank you.

MR. SCARDINO: Thank you for the input.

VICE CHAIRMAN BARBER: Thanks, Howard. Any other comments, questions for the CFO? Mary?

COMMISSIONER DENISON: I'd just like to make a comment also. I wanted the public to know that we have very much enjoined having Tony as the Acting Deputy Under Secretary since last summer. He's been incredibly responsive and helpful to us, so I wanted to just publicly thank Tony.

MR. SCARDINO: Thank you for the nice words.

VICE CHAIRMAN BARBER: I think it is time for our break, so we will break until 10:25 and we will start promptly at 10:25.

(Recess)

VICE CHAIRMAN BARBER: Next on the agenda we have Chief Administrative Trademark Judge Gerard Rogers, who is here to give us his usual update on the TTAB.

JUDGE ROGERS: Thanks, Bill. I'll start with on the comings-and-goings subject.

We've had that today with Andrei coming and new TPAC members coming and as you'll see -- and of course we saw Sean come in as the new deputy chief CFO.

Since our last meeting, our Deputy Chief Judge Susan Richey, retired and so we will be looking for a new deputy chief judge. Hopefully she will -- her replacement will be on board for the next TPAC meeting.

We had a vacancy announcement. We've received applications. I've not yet looked at them, but plan to do that in the very near future, because it is certainly in my interest to do so quickly and to keep this process moving.

Another going that we had at the end of last year, end of December, was Jeff Quinn, who was our most senior judge, wonderful, wonderful judge, standard bearer for quality and production. He had all the qualities that we desire in a judge, so we miss him.

We will not replace him right away. You'll see on this staffing slide that the judges are down one from what we started the

fiscal year with, but that's okay. Because as we run through some of the other numbers, you'll see that we're doing just fine in keeping up with the inventory.

So I don't see any need to make a replacement in the near term, but we have the ability to do that and we also have other positions in the budget that if ultimately we see more work arising for judges to decide cases on the merits, we will be able to hire them.

We've been kind of watching to see when the increasing number of cases that we get in the front door, which is on the bottom of this slide and we'll discuss in a second, will result in more cases going through the process and needing to be decided by a panel of judges.

But we haven't seen cases maturing to ready for decision on the merits in an increased rate in the same way we've seen an increase in the cases coming in the front door. Anyway, just something that we're watching.

On the bottom of this slide, you'll see a couple of figures I want to point out. One, we've talked in the past -- we talked last year in a couple of past meetings about we had a slight drop in extensions of time to oppose last year and we wondered whether that might be attributable to the imposition of fees for certain extensions of time to oppose.

I didn't think so at the time. I thought it was probably just one of our annual aberrations and you can see that extensions of time to oppose are running up this year.

So I don't think the fees necessarily had anything to do with the drop last year. And it looks like along with extensions of time to oppose, other things are generally rising.

It's kind of interesting to me why notices of appeal are slightly down. You would think with all of the new filings coming into trademarks, we would see more appeals, and we did see a slight increase last year in appeals. Generally all of our numbers have been going up for a number of years now, but

this is a slight decrease and there's really no way for me to tell why that is.

But the other interesting figure on this slide is petitions for cancellation, they were up. Maybe that's what applicants who are facing 2D refusals are doing. Maybe instead of appealing -- and maybe it's because John Welch tells them on his blog that they have very little chance of succeeding on appeal, so that instead of trying an appeal they're trying to cancel the registration that's been cited against them. Maybe they have better chances there they think.

In any event, we had about a 13 percent increase in petitions for cancellations last year. And after the first quarter this year, we seem to be running again at that rate. So again just something to monitor. It means more trial cases are getting commenced, it doesn't necessarily mean we're going to have more go through the whole process and need to be decided by a panel of judges.

VICE CHAIRMAN BARBER: Judge Rogers,

can I interrupt and ask a question about the extensions of time to oppose?

JUDGE ROGERS: Sure.

VICE CHAIRMAN BARBER: Do you have any data on what percentage of those are the first extensionextensionextensions of time versus the second or third that require a fee now and how much revenue you're getting from extensions of time?

JUDGE ROGERS: No, we don't.

Unfortunately our Legacy filing system and our electronic file system, ESTTA, for filing the extensions in TTAB IS, which is internal TTABVUE external is not easily mined for that kind of data.

We've tried searching in various ways and we've talked about this before. We did do -- or attempt a couple of searches that would have yielded some of that data, but I didn't find it to be particularly reliable. So I wouldn't want to report it and base any conclusions on that data.

Hopefully at some point, we will have in the future extensions of time to

oppose processed as part of the NG system, the trademark's NG system, because our view is really that extensions of time to oppose are just a way for someone to put a hold on an application. It's not really a board proceeding.

We don't have jurisdiction over the application simply because the extension's been filed. And if we can have extensions filed within the NG system and processed there, maybe that will be a better system and we'll be able to get that kind of data out of it. I think as long as we're struggling with the Legacy system, it's probably going to be difficult.

We're certainly making enhancements, and I'm going to discuss a couple of those today, to the Legacy system, but I don't think that this is a high enough priority to put a lot of time and money into.

On this next slide, I wanted to point out you may see "wow, production of final decisions by the judges dropped 26 percent in the first quarter", but that is not

an alarming figure for me and it should not be an alarming figure for you.

Because we ended the last fiscal year with 93 cases in inventory, which is well below our target range and we ended the first quarter with 93 cases in inventory. So the judges produced exactly as much work as they needed to do in the first quarter to keep pace.

The fact that we didn't have more cases that needed to be decided by panels of judges gave me some added flexibility and I had a number of judges working on some special projects, some research projects.

Judge Mike Adlin did a very extensive research project on nonuse cases, which will help us with our thinking about a possible streamline nonuse cancellation proceeding.

Judge Cataldo did a very extensive review of cases that went through the ACR process, so we can get more information, updated information, on that on our website.

We were also able to shift some work

around. We shifted some paralegal work to attorneys, some attorney work on Motions for Summary Judgment to judges. It gave us the flexibility to manage our work better.

So it looks like a startling drop, but it's an acceptable number, and it doesn't bother me in the least. I'm sure the judges will produce as much as we need to produce over the course of the year to keep inventory under control.

A really encouraging number and one that I owe some thanks to departing Deputy Chief Judge Richey for is the eight precedents we got out in the first quarter of the year. Often in the first quarter, we are a little slow getting precedents out and we catch up later in the year, but she worked really hard.

She did not coast to her retirement. She was working hard right up til the end, as we would have expected from her, because she was wonderful in the three years we had her.

And a number of those precedents are on issues that have come up under the amended rules that we deployed last year, so we think

it's important to get those precedents out on a regular basis to show how we're interpreting the rules, so that's a good number there.

Let's jump ahead. Now we're talking contested motions and these are the figures that deal with the work that the attorneys are doing.

Some kind of figures that are a little bit at odds with each other. You can see that the average time to disposition of contested motions is below goal. It's better than goal. Below is good on this slide.

So the average time to disposition a contested motion was at 7.8 weeks in the first quarter. However, when we took the snapshot that we always take at the end of a quarter, we had about nine cases with contested motions that were over 12 weeks old and the oldest of them was 17.9 weeks, so we report that.

It's something we would rather not see when we take the snapshot at the end of a quarter. But on the other hand, it's particularly useful for us to take the snapshot every quarter and to make sure that

if things have slipped, we identify them and we get them taken care of.

I can assure you that they've all been taken care of since this snapshot was taken. That's one of the benefits of doing this every quarter, measuring this.

Just one more point on that and that is we can always take the snapshot a different time. We can take it a little bit earlier than the end-of-the-quarter reporting and then we could clean them up quickly, but I'm not trying to hide anything here. I want to be transparent about what we're doing and what we're seeing, so we take it on the quarter, which is a good time to take it and that's when the attorneys update the logs and we know what's out there.

So I would rather miss this one-stretch goal with a couple of cases each quarter but take the snapshot, then to not be doing this.

Yes, Lisa.

MS. DUNNER: Sorry to interrupt, just so I understand your use of snapshot, are

you looking at all the motions and then averaging them or are you literally just --

JUDGE ROGERS: Well, the top figure on this page, 7.8 weeks, yeah, is an average figure. As former TPAC member Jonathan Hudis suggested during our last meeting, I should repeat the disclaimer, and that is that all average pendency figures are just that, they're averages. Some cases go faster, some take longer. But also we exclude from these measures when we're calculating the averages, cases that involve decisions that are going to issue us precedents or are being considered for issuance as precedents.

We also, depending on the measure that we're calculating, we may exclude some anomalous proceedings, things that were suspended, that were out of our control, maybe a suspension for bankruptcy occurs after a contested motion is filed, so in theory it was pending for two years until the bankruptcy is resolved.

So we exclude things like that, because we expect these measures to be tools

for you to counsel your clients about what normal cases involve as opposed to the outlier cases.

So the bottom number on this again, this is the contested motion slide, 177 cases, so two cases over the upper end of our target goal for inventory control, but not surprising to me.

Again, in the first quarter of the year, we have a lot of employees taking annual leave around the holidays and they have to take it then or they lose it, so there's incentive for a lot of people to take leave at the end of the year.

While we try and balance out the production, take our snapshots, manage our inventory control on a quarterly basis, we're not surprised when inventory grows some in the first quarter.

Production is down in the first and third quarters, and it's usually up in the second or the fourth quarters before the midyear and the end-of-the-year results, so that's just kind of the way it goes.

Also that was something that we were aware of that it was going to be a little higher and that's why we shifted some of the motion work to the judges. That's something we did two years ago and resulted in the end of that year which we previously did this in us meeting all our goals for the rest of the year, so hopefully we'll find that again.

In terms of what the judges do, again we've already talked about we ended last year with 93 cases, we ended the first quarter with 93 cases waiting disposition, and the judges are certainly getting them out on average pretty quickly once they're ready.

There's a couple of judges, I will tell you, who like to have their assignments prior to oral hearings. So if you see certain judges on oral hearings, you might get a decision a couple days after that oral hearing because they're working up decisions even before the hearings. Most of them get assigned after the hearings and get worked up afterwards, but some will come really quickly.

So there are different ways that

different judges work and I like to accommodate their working patterns as best I can, so that's why you'll see some fluctuations there.

In terms of end-to-end pendency, and that's of course something that we also have been focusing on for quite a while now. The figures at the end of the first quarter this year all kind of eye popping. I don't expect them to continue for the rest of the year.

These decreases in end-to-end pendency for appeals and trial cases are probably a little bit anomalous. Again we also decided only 27 trial cases, issued final decisions in them in the first quarter.

So it's a relatively small number as we issue more over the course of the year and have an average that is based on a larger number of cases, including some large record cases, some small cases, this number will fluctuate. So the first quarter figures have to be taken with a grain of salt.

So that's it for the numbers. I was going to talk a little bit about the standard

protective order, but if anyone has any questions about those numbers, I can take those now.

So the standard protective order, we talked about it the last time we were together and we did have it posted up on IdeaScale and we received comments, only three, and as Mary mentioned earlier in regard to some of our NPRMs, we also suffer from apposite of comments sometimes when we seek comments, so we would certainly like more comments.

But the standard protective order was the subject of an IdeaScale posting and we asked for comments on it. We got comments from AIPLA, IPO, and from in-house counsel at IBM.

I was not aware until yesterday when we were discussing it with some of the TPAC members that the AIPLA comments that I received, which I thought were a courtesy copy, were not up in IdeaScale.

So we now know that and what we will do is take the AIPLA comments, put them up in IdeaScale, and we will post some more targeted

questions based on the subjects that were raised in the AIPLA comments and the IPO comments and through IBM.

Also the IPO comments and the IBM comments came in very late in the comment period, so many people may have thought that that had closed and that they were not able to respond to them.

So we will continue to solicit more comments on the subjects addressed in those postings and I will also let you know that as we discussed the last time we were going to ask our interlocutory attorneys what experience they were having with the standard protective order, because we also want to know their experience and not just the outside practitioner's experience.

Having polled them, we found that it's pretty rare that any of them have disputes about materials that are submitted as confidential and whether they should be confidential or not be confidential, we don't have a lot of arguments about it.

We actually have very few cases in

which parties agree to substitute a different protective order for the standard protective order.

Although it was mentioned in one of the comments about the possible burden on the board for not having a rule that -- or a protective order that presumes in-house counsel will have access to attorney's eyes only documents, we do not have a lot of, if any, disputes that are raised by parties seeking access for in-house counsel to documents so designated.

So our experience -- our interlocutory attorney experience with the standard protective order is that it's pretty widely used as is, it doesn't result in a lot of disputes, but that doesn't mean that we won't take all of the comments that were received to heart and post them and phrase some questions in a way that will generate some future -- or further comment.

We can think about, and we've already been discussing in house, Judge George Pologeorgis who worked up this revised

standard protective order before it was first posted and I've been discussing some of the suggestions.

So it's likely that we will consider some tinkering with the protective order. We will also consider some tinkering with the institution orders or the other information that goes out in regard to proceedings to alert parties to the provisions of the protective order.

So I think I've said plenty on that. But if there's any questions on that, I'd be happy to take them.

The next thing I wanted to just quickly touch base on -- and I do have some case heavy slides. I'm not going to run through them all in a significant way here, because our time is limited, but I do think it's important after the rules were amended that we point out the issuance of precedents that deal with amended rules issues.

This first one is basically just dealing with Motion for Judgment on the pleadings and we previously issued precedents

clarifying about when a Motion for Summary Judgment is timely. This is a precedent that applies basically the same rules to Motions for Judgment on the pleadings.

This is the clarification notice that we did last year that deals with the timing of motions for summary judgment and again was applied in the Motion for Judgment on the pleadings context.

We had another one and this is interesting, not because of the timeliness issue on the Motion for Summary Judgment, we had already addressed that in previous decisions, but in this one we also pointed out that the rule on when motions for summary judgment can be applied was amended to remove the phrasing that said, the board had discretion to consider untimely motions for summary judgment.

That was intended. We don't want to be in a position where parties are arguing whether we should or should not consider untimely motions for summary judgment.

So it's more important than ever

that people get motions for summary judgment in in a timely fashion, because untimely motions will not be considered and that was the point of this decision.

Then this is the last of these precedents on amended rules issues. This was dealing with declaration testimony from the plaintiff and then the defendant's offer of discovery depositions to impeach the declaration testimony offered by the plaintiff's witnesses.

So there's some procedural wranglings that were going on in this decision, but it's a good decision to look at, because it discusses when you can use discovery depositions for impeachment. It also points out that the better practice is to seek to take oral cross-exam of any declarants who you would like to impeach. So it's just a good procedural reminder about how things work when you're facing declaration testimony from your adversary's witnesses.

I've just about used up my time, so let me point out where we stand. The rest of

these slides are basically on the new cancellation proceeding, the streamlined cancellation proceeding.

What I did, you can look at the slides, whether it's the audience looking online -- and I think the slides are posted for people to look at -- or here in the committee, I've included a number of cases that were issued as precedents or some that were issued as non-precedents.

What we've been doing with the nonuse cancellation proceeding is, one, trying to mine our system for data about issues such as how many petitions for cancellation, and we saw earlier that they are increasing in numbers, involve nonuse or abandonment claims, how many of them involve only those claims, how many of them involve other claims, how many of them get decided on the nonuse or the abandonment claim, and what kinds of cases they were.

We haven't gotten a lot of good data out of the system yet and we're going to continue to work on that. We also have a

working group, Judge Cynthia Lynch, Judge Chris Larkin, and Judge Mike Adlin did the review of nonuse cases.

We also will be working with Amy Cotton in OKIA and Christina Hieber on eventually what we hope to do with nonuse proceedings.

But in the short run, we've concluded that we're not likely to get an NPRM together in the very near future. We want to continue to look for some data on different kinds of cases and try to figure out which cases are the ones that are the most amenable to this type of proceeding.

If you look at the slides with nonuse cancellation cases that I've put in the deck, you'll see that some involve those claims and went through very significant trials and created large records. Those would not be amenable to a streamline proceeding.

But I also have a slide in there about a summary judgment case where we decided a nonuse or abandonment claim on a summary judgment and that be the kind of case that

would be a better model for a streamlined proceeding.

We also talked the last time we were here and the at the public meeting that we held here on campus in regard to a nonuse proceeding about the possibility of doing some kind of a pilot or something where we could bifurcate some cases and order that the nonuse or abandonment claim be considered first. And if that didn't resolve the case then, we would handle other claims that were pleaded in the case.

So that's something that we're going to look into and see if we can identify some of those cases. That may be the best way for us to figure out what cases are the best kinds of cases for a streamline proceeding and what kinds of procedures we should order the parties to follow in those cases if we have kind of bifurcated and set off for separate treatment the nonuse proceeding.

One last item I will mention -- and if anyone needs to talk to me about any of these things, I know I'm rushing through a

lot, I'll be around after the meeting.

We do have ESTTA enhancements coming out that will come out in April or May. This will involve primarily two areas of concern to regular filers: One is the consented motion form for consented extensions or suspensions. We've discussed in the past an internal calendar that we developed so that we could have one running constantly updated calendar and you wouldn't need to look back at previous orders to see what the calendar schedule was, and that will become available for public view with this deployment of Legacy enhancements in April or May.

We will also have a new modified form for filing these consented motions to extend or suspend, still in testing, still in final stages of development, but we'll get more information out on that when we are closer to deployment.

And the other thing that will be in that package is now that we have more -- we have fees for extensions and more strategic determinations that have to be made by both

potential opposers who are filing extensions of time to oppose and applicants who are discussing settlement and avoidance of the need to file an opposition, we have -- we will be rolling out new filing forms for relinquishment of an extension that you have received, and sometimes parties agree to that as a settlement so that they don't have to wait for the extension to expire and they can get the application moving quicker, and also for applicants to file objections to extensions.

We've had some complaints in the past from some applicants that some potential opposers are just intermeddlers and don't really have standing to oppose, so we're going to have a form for filing objections and we'll also have a form where the applicants can request reconsideration of any extension that was granted.

I think those are not going -- I'm not particularly a fan of having some of those new forms. I think they will just yield more filings for us to decide, but I also think the

fees that we imposed last year will blunt some of those concerns. Those filings were always available to people, we just didn't have a form for them, but now we'll have a form for them.

I'm sorry I ran a little bit over, but I just wanted to make sure that I covered all those topics for you.

VICE CHAIRMAN BARBER: Great, thanks so much, Judge Rogers.

Any questions for the chief judge? Thank you very much.

Well, last but not least, we have an update from the OCIO. I believe we will have David Chiles, the acting Chief Information Officer, and he has with him Rob Harris, the acting TMNG Portfolio Manager, so take it away.

MR. CHILES: Thank you each. As was mentioned, my name is David Chiles. I am the acting Chief Information Officer. To my left, as he mentioned, is Rob Harris. Rob is our acting Trademark Next Generation Portfolio Manager.

I want to say thank you all for the opportunity to speak before you. I'm going to hand it over to Rob. He'll walk you through some slides and we are both available for questions afterwards. Thank you.

MR. HARRIS: Thanks, David. Good morning, everybody. This morning I will just take a few minutes and give you an update as to what's happened and what's changed over the last three months since we've last been together.

Commissioner Denison already this morning touched on the improvements and changes that have happened on MyUSPTO, which we are all very excited about, as well as the TSDR mobile app.

Chief Judge Rogers just touched on some of the enhancements to the two TTAB systems, so I will primarily focus my comments on the efforts on the Trademark Next Generation initiative that's going on.

Our focus is on our TMNG examination product, which for the folks in the room that weren't here last time, will replace our

current system, which is FAST1, which all of our trademark examining attorneys use.

Last summer it was deemed that the custom editor being used in that tool was not sufficient, not meeting business needs, so we've been working on replacing that editor with a COTS product referred to as CKEditor.

We have made significant progress and we are on schedule primarily due to two factors: First, our development team has been very focused and has made great progress, but also it's been supplemented by working very closely with two examining attorneys and two managing attorneys that have provided great support, in-sprint testing, and really pushed the process along by working side by side with us and providing immediate feedback on the work we're doing. We appreciate their support.

In addition to the work for CKEditor on TMNG examination, we also upgraded the version of CKEditor that the electronic Official Gazette uses. Additionally, based on feedback from both internal and external

customers, we've made a handful of improvements to the searching and sorting capabilities of our TMNG ID Manual.

Mary touched on earlier that we've updated ID manual to be consistent with the latest Nice agreement, then on the back end we continue to work to migrate all trademark and TTAB data from 1970 forward from our Legacy systems into TMNG.

The last of my slides is focused on a little more detail into the TMNG examination product itself. Last Fall the Trademark Business and OCIO got together and identified six very specific critical success factors.

These are six items that we must produce and demonstrate before the product is deemed acceptable and ready to be used by a broader group.

The first is focused on office actions and making sure they are sent to the correct address and formatted correctly. We have made great progress there. One of the primary remaining issues is around the issuance of new 66A office action, there is

some discussion going on internally as to how we are going to handle that in our NextGen environment.

We are ready to push forward and to have a broader group provide feedback on this portion of the tool. Unfortunately for a number of reasons User Acceptance Testing, which was planned to be up to about ten users, has been paused.

We haven't set a date for that and the impact on how we then push forward to a broader beta group and ultimately out to the law offices.

That is dependent on getting over that first hurdle, which is our User Acceptance Testing, so we are working very closely with the Trademark Business and hope to have that going as quickly as possible.

The second critical success factor has to do with how office actions are displayed. As I just mentioned, we have finished the first phase of the CKEditor implementation. We are now working on Phase 2. The plan was to finish by the end of

March. We are experiencing about a week or two slip to that schedule, but expect to be finished with CKEditor work in early to mid-April.

In addition, you will see a few references on the fourth bullet to FireShot. FireShot is a COTS package, which is a web capture tool similar to how SNAGIT is used today.

We have had some hiccups with getting that tool implemented. We have actually addressed those and it is being rolled out over the next few days as well, so we are in good shape there.

So again that's another instance where this portion of the product has made significant progress and we're teed up to start User Acceptance Testing once we have agreement with the Trademark Business.

MS. DUNNER: Excuse me, Rob, could you just explain the in-sprint testers that maybe a lot of people are not familiar with?

MR. HARRIS: Sure. So as part of our agile development process, we work in what

we refer to as sprints, three-week sprints. We are looking for feedback as quickly as possible, so as opposed to a more traditional approach where we would develop a product and hand it to a set of users to look and see if it meets their expectations. In this case, we have developers and these in-sprint testers working on the same team, side by side.

If a developer is working on something in the morning, sees the requirement, works it up, he has an ability to reach out to an end user to get feedback immediately.

The more immediate feedback certainly the better and more efficient approach we have.

The third critical success factor on this page has to do with dockets which was honestly a struggle for us last Fall.

We have gotten to the point where the end of November a subject matter expert in the Trademark Business who we have been working very closely gave us a thumbs up and said everything looks good.

We're still having some blips. Everything's not perfect, but we've made significant progress there and again are on the cusp of -- actually I believe just late this week, we've brought on or offered this capability out to a broader group of folks just to get their input.

It's one thing to work with the best and the brightest in the subject matter experts, but the more eyes and ears we have on this, the broader the feedback will be and the better product we will have.

So we're excited that the docket work has been sent out for some more folks to test and provide feedback on.

The last piece on this slide is a Letter of Protest. That's a very real-time discussion happening as to how we're going to fold that capability into what we've already built. Right now we're looking at the impact from a scope, cost, and schedule perspective.

The quality data critical success factor is ongoing. We have met expectations to date, but know that we can't rest on our

laurels and we're always looking to look for improvement in that area.

System performance, this is really a question of will the system respond to and act as intended and as quickly as our customers are expecting. Starting late last calendar year, we were running performance tests. These were automated performance tests that generally give us results and give us an indication of how the system is going to respond based on a certain set of users, 300, 600, and so forth.

Initially the feedback and the results we got, we were not meeting SLAs in some key areas. We ran our cycle in January with our January deployment and are excited to say that we have made changes to the code base, so the system is working more efficiently.

Now, at the 600 concurrent user level, we have either met or exceed all of our service level agreements for all but one of the transactions, a transaction being flip rates, how long does it take to open and

create a first action, et cetera.

So we are excited about that, but based on the news that Mary shared earlier about filings going up and staffing increasing, we know that we have to anticipate the system working for a larger user base.

So as part of the March deployment cycle, we're going to now start to test the system against 900 concurrent users and upwards to 1,200 concurrent users again to make sure that when we're ready to deploy, the response time for the system will certainly meet or exceed the needs and the time frames laid out by our customers.

The last piece I think I have already touched on, and this has to do with how the office actions are formatted properly.

Again, that gets back to the implementation of CKEditor. We are anxious to finish that work the end of next month and get it out to our users and get that feedback loop going.

Are there any questions on TMNG examination before I look forward to what is

coming up?

So taking all that as background, what our current schedule is projected to be is completing the development work, as I just mentioned, by the end of next month or most likely the first week or two in April.

That puts it in a position with the concurrence of the business area to expand -- to deploy the product and expand that user base out to a broader set of beta test users in the third quarter and again have time to incorporate feedback received, improve the product, address defects, and ultimately get TMNG examination out to an expanded user group in Quarter 4 of Fiscal Year 2018.

Assuming success there, we would then have about a four to six-month process to train and roll out the examination product to all law offices in the first half of Fiscal Year 2019.

There certainly continues to be risks around this. As I mentioned with User Acceptance Testing, having paused while we address some internal discussions, how the

results of that impacts the schedule is something we haven't gotten our arms around yet, but certainly I feel like we'll be in a position to have further discussions with the IT Subcommittee at our upcoming monthly calls and have an update available to the broader TPAC at our next quarterly meeting.

Beyond TMNG examination, we do expect to start working on development of our TMNG E-file capabilities. In the late Spring is the current projection is for contract award there.

If we look at the current trademark production systems, again Commissioner Denison and Chief Judge Rogers have addressed some of this earlier, but we have three primary areas of focus this year, which is Madrid, our Madrid Legacy system, we need to address deficiencies in the current system that affect legal rights, that team is on board and work has started there.

TEAS, we heard again from Commissioner Denison about the need for implementation of mandatory electronic filing

this fall. There is a significant amount of work across the board, one portion of that are the IT changes to a number of or current systems. So we have contract award, team on board to start those changes to support that effort.

Last but not least, the regular and quarterly updates to the TTAB systems that Chief Judge Rogers mentioned just a few minutes ago.

The one piece I'll add is beyond the changes in FY18 is what we're already looking at, is how best to position and what work we have to do from a CIO perspective to make sure that these current production systems are ready and in a position to handle the additional hires and also the increased filings that were reported earlier in the FY19 and '20 period as we continue to work on TMNG.

That's our struggle and our need to prioritize is how do we keep the current production systems at a level that supports the business area's requirements while also keeping an eye on the future and making sure

we're investing and making good progress from a TMNG perspective.

That is all I have. I open it up for questions.

VICE CHAIRMAN BARBER: Any questions from TPAC members forforfor Rob or David?

I just want to thank you, Rob, for -- I know this has been a challenging job over the past while and you have a number of challenges and transitions going on right now that also introduce complexities to the development of this product, but appreciate your candid and transparent reports to the TPAC and look forward to continuing that dialogue.

David, I was remiss in not welcoming you to the TPAC meeting and thanking you as well for your efforts in taking over in this transition following the retirement of John Owens, so thank you and welcome.

MR. CHILES: My pleasure, thank you.

VICE CHAIRMAN BARBER: I think we are at the point in the meeting where I will open it up to any comments from the public.

We have some members of the public here in the room and I think we have some on the webcast. So if anybody has any comment or question that they would like to raise, this is the time to do it.

Mary, anything else from you?

Anything else? I think we are adjourned. Our next meeting I believe is May the 4th and we'll look forward to seeing all of you here. Thank you.

(Whereupon, at 11:11 a.m., the PROCEEDINGS were adjourned.)

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COMMONWEALTH OF VIRGINIA

I, Carleton J. Anderson, III, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
Virginia**

My Commission Expires: November 30, 2020

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