

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE
QUARTERLY MEETING

Alexandria, Virginia
Thursday, July 26, 2018

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P R O C E E D I N G S

(8:57 a.m.)

CHAIRWOMAN WELDON-WILSON: Welcome to our TPAC meeting. We're very happy to have all of our participants that are in room as well as the ones that may be watching or listening online. So, thank you for joining us today. I like to take just a minute to run through the members of TPAC that are here with us today. We have Bill Barber who is our vice chair. He's a founding member of the law firm of Pirky Barber and he is a past president of the AIPLA. He comes to us from Auston today.

Lisa Dunner is the founder and managing partner at Dunner law. She counsel's clients on trademark, copyright and unfair competition and is the past chair of the AVA section of IP law. Elizabeth Escobar is vice president and senior counsel at Marriott International, she is responsible for Marriott's IP matters worldwide and is Marriott's representative to the Brand Registry Group.

Ann Gilson LaLonde is the author on

Gilson on Trademarks. She has worked on the treatise since 1998 and took over sole authorship in 2006. She's also authored numerous articles on trademark issues, and I believe is going to be a presenter tomorrow at the trademark expo that we'll hear more about later.

Ilene Tannen is of counsel at Jones Day and her practice focuses on trademark copyright and unfair competition. She's a member of INTA's TM5 subcommittee of the trademark office practices committee. Donna Tobin is one of our members from -- I'm sorry from New York, right? I am sorry, I don't have that written down. She is a partner and co-chair of the Trademark & Brand Management Group and member of the litigation group at Frankfurt, Kunitz, Klein & Setz.

Brian Winterfeldt is the founder and principle of Winterfeldt IP Group here in Washington, D.C. He advises clients on trademarks branding strategies and related issues including domain names. Brian serves on the INTA's board of directors and was

elected as president of the Intellectual Property Constituency. The group that ICANN that represents shareholder interest, is that correct?

MR. WINDFELDT: Intellectual Property Interest.

CHAIRWOMAN WELDON-WILSON: Intellectual Property Interest. And then we have one of our union representatives with us today, Howard Friedman, who represents National Treasury Employees Union 245. We appreciate everyone being here today and we are pretty much on time and delighted to have Andrei Iancu with us today, he is the undersecretary of commerce for Intellectual Property and director of the USPTO. And he is willing to come here today and share some thoughts with us.

MR. IANCU: Alright, good morning everybody and thanks Dee Ann, very good to see everyone once again. So, let me talk to you a little bit about -- some of the exciting events going on around the USPTO and around the Intellectual Property Community especially

for the past few months. You probably know that last month we issued our patent number 10 million. It was a very exciting event, we had a signing ceremony in the oval office. Where the President signed the patent itself together with the secretary of commerce and myself.

And then we had a celebration at George Washington's gristmill it was quite remarkable. The gristmill at Mount Vernon the gristmill still in operation with a machine that has patent number 3 which was signed by George Washington back in the day and it's still in operation today. But in fact, patents -- the first patents was signed by George Washington and all the first several presidents signed patents, until John Quincy Adams. Since John Quincy Adams only two presidents signed patents, Gerald Ford signed a patent in 1976 just as a ceremony for the Bicentennial and now President Trump signed 10 million.

It is a historic event for many reasons, but it highlights the important that

intellectual property has obtained in our economy today. I believe quite strongly that IP and innovation and entrepreneurship are at the core of our economic growth, has been for a while but is playing an even more prominent role today. It is a very good opportunity for us to celebrate IP in general, not only did we have those ceremony's that I mentioned last month but we're continuing the ceremonies throughout the summer.

If you haven't had a chance you can walk around Alexandria, you'll see on the sidewalks these huge replicas of patents with some explanations. We call it the walk of progress and you can check it out around Alexandria from Dulaney Street to Duke Street. All of IP is intertwined, folks who innovate have very often have brands and visa versa. Inventorship and entrepreneurship and protection of rights, brand protection as well as patent protection and copyright protection is intertwined. And all of it plays a critically important role we keep an eye on all of it here at the PTO. And we try to

advance the interest of the IP community whenever possible.

So importantly for this group, tomorrow you probably know is the first day of our national trademark expo. Which is being held at the Smithsonian Museum of American History in D.C. This is the first time actually we have partnered with the Smithsonian for this event and it's really, really exciting. Kareem Abdul Jabar will be our keynote speaker. The two of us have a lot in common, other than our heights we both graduated from UCLA so I'm very excited to see him tomorrow. He will as I said, be the keynote speaker at the opening and will appear on two panel discussions on July 27th.

In addition to Mr. Abdul Jabar we will have speakers providing free trademark workshops for the public and CLE sessions for attorneys. I'm very much looking forward to attending and I hope to see all of you or most of your there.

Finally, let me thank all of you for your ongoing collaboration and hard work

throughout the year it is critically important to our agency. One of the things that I have appreciated the most over the last several months is the opportunity to meet with you and hear what you all doing and what we're doing well and what we can improve on.

The continuing collaboration between the USPTO and TPAC is extremely important and your insights and guidance on a number of issues has been invaluable. We're looking forward to continued collaboration in the months ahead.

So, with that, thank you again for having me here to say a few words and I hope you have good rest of the meeting. I'm already looking forward to the next meeting but I'm sure that today's meeting will be very productive.

And now Commissioner Dennison hopefully will provide an update on our trademark operations.

MS. DENNISON: Thank you very much. So, I'm going to start off with a little bit of information about the trademark

organization itself. We are getting close to 900 employees in trademarks and close to 600 examining attorneys. So, we have hired 61 new examiners this year and we are looking at hiring about 100 in the next fiscal year. One advertisement has already gone out and we had I believe 7 or 800 applicants, so that was terrific. And so, we have a team going through those resumes right now and we expect them to probably start in the fall and then they'll be another advertisement. So, if you know anyone who would like to be a trademark examining attorney, please tell them to watch usajobs.gov because there will be another advertisement posted.

Now, taking a look at new application filings, if you look at this chart one thing that you can see, I know it's a little hard to read is that since 1984 we have only had 4 years when we have had a decline in filings. And so last year we were up 12 percent right now we are up 10.4 percent, but we are expecting that to slow down a little and be closer between 8 and 9 percent for the

end of the fiscal year. And next year we're looking at maybe a 5 percent growth rate. But of course, each time you grow then the percentage means actual more applications each percentage is worth more. So, we really think that things are going to continue to keep going and believe we have to keep hiring to meet our pendency and quality goals. So right now, thanks to the hard work of our examining attorneys and our technical staff we are right on track. At the end of June, we had first action pendency of 3.1 months, we strive two and half to three and half months and we strive for 12 months for disposal pendency if you exclude suspended or inter party proceedings and that's at 9.7 months. So really a shout out to our terrific staff for doing such a great job to keep up despite the tremendous influx of filings.

And of course, they are also not just rushing through them to meet pendency goals, they're doing a terrific job and they're meeting our quality goals as well. We look at first action and final action

basically just to see if they got it right. The exceptional office action is truly exceptional and that is a whole different measure. And that looks at the search, the evidence, the writing and the decision making. And this number has been going up each and every year and so we're delighted to see that number continue to rise.

Now e-government is another thing that we look at. Originally, we wanted to have all applications submitted electronically. The slide show is 99.9, I think it's 99.96 we can't round up to a 100 though. And once we got fairly high up in the 90's on applications we shifted to making the communication fully electronic throughout the whole process and that has been a harder goal. People really like to file their applications electronically because they get an automatic immediate serial number and it used to take weeks to get your serial number. But they seem to be less motivated to stay fully electronic throughout the whole process.

So, if you look at the top of the

chart, we're at 99.96 that's for the applications. But the whole process we're only at 87.9 so we are planning to go mandatory within the next year.

Now here is a slide showing the paper application, so as you can see we're really down to a handful of paper applications. And it really has declined since we put in the additional fees. Now, you can see that 12 percent of the time as from the prior slide, 12 percent of the time people are still filing paper. And that impacts quality and it also is being subsidized by the electronic filers at this point, because we can't charge enough for the cost that we incur.

Now, we have some IT improvements to let you know about. It came to our attention by someone who's sitting in the audience today. That there was a problem where people were going into other people's files and changing the correspondence address. So, we are now sending out emails when the correspondence address on your file has been

changed. It's just kind of an alert from us. So, I wanted to let you know about that. So, pay attention if you get one of those emails from us because it could be that someone has just gone into your application or registration and changed the correspondence address.

We have also changed the owner section of the forms. What we found was -- it was a common pro se problem when the person filling out the forms would put their name in the owner section when in fact, they were doing it on behalf of a business. And so, we have clarified that to prevent accidental misuse of this field.

We've also made some changes to the ID manual. You will be able to see all of your results on a single page. We're also adding common spellings that people have for, you know, tire could be tyre versus tire depending on where you are. Or color c-o-l-o-r versus c-o-l-o-u-r. So, we'll automatically be searching some alternate spellings. If you have terms that you're

aware of that you think we should include, please send them to us at IDSuggest@USPTO.gov. We also will be having some navigation buttons to make it easier for you to see the results from previous searches that you have done.

MyUSPTO.gov is one of my favorite projects that we're doing. We originally started this off for pro se because we thought it was important for them to have some sort of a docket and they didn't have access to dockets. And as you may know patents I believe have something like 3 percent pro se but in trademarks we have in the high 30's pro se. So, I think right now it's about 37 percent.

So, it's really important that we pay attention to these people who didn't have access to dockets. And so that was the original impetus for trademarks to be interested in this concept from myUSPTO.gov. And so, what you can do is you can put in your applications in groups of one thousand. You can put applications and registrations in the same groups and it will list due dates and

send you email notifications of status changes and certain prosecution history entries.

Of interest to people who watch the official Gazette each week it will store your search and send you an email notification when there are new hits on your saved search. So that can save your paralegal a significant amount of time because they'll just get an email when there's a hit and they will not have to go in and do searches every week.

So, I wanted to let you know about something, if all goes well, I have my fingers crossed. Hopefully, this weekend we are going to be having a new widget within MyUSPTO.gov and that is going to be the trademark form finder. One of the pain points that we've gotten from pro se's and lawyers alike, is that it's really hard to find forms. And so, we have put into the myuspto.gov a trademark form finder widget and we hope that it will make it much easier for you to find files. So, it should be launched this weekend, so next week I would encourage you to please take a look at it and give us any feedback that you

have. It is considered to be an alpha version, so we are expecting to make changes and improve it. So, we need your feedback and so please consider giving us feedback.

The next thing we're working on that will be in MyUSPTO is what we're calling a simple file. And so, it will be an application that you can use for intent to use word marks in TEAS PLUS and we are testing it right now with a small set of public users and we hope to launch this later in the year.

So, when you're on the MyUSPTO.gov website there is a feedback section on the right under the help section. So that's how you would go to give us feedback. So, I would urge everyone to please give us as much feedback as possible because we want it to meet your needs.

Now, I mentioned a minute ago mandatory electronic filing, we have published a notice of proposed rulemaking and the comments are due July 30th. We have a handful of comments so far but would love to have more, you still have time. Don't count on

just the bar groups to send in your feelings because you may or may not agree with them. We love to hear from companies, we love to hear from individuals, we love to hear from law firms, bar groups, anybody. We want to hear from you.

So please think about taking a look at this Notice of Proposed Rule Making and letting us know what you think about it. We are -- based on preliminary conversations we had, we don't expect that people are going to be opposed to this. But we want to know what people think before we proceed. We are hoping that we can review all the comments and get a final rule out later this year and implement this in 2019. We believe that this is important as I mentioned earlier because it will have a positive impact on quality. And it will also stop the subsidization of the paper filers by the electronic filers.

In addition, we're working on a rule that would require foreign trademark applicants and registrants to be represented by U.S lawyer, to file a document at the

USPTO. Many countries around the world have had this for years and we're doing this primarily to address the growing concern that we have about the unauthorized practice of law. And dubious specimens and dubious claims of use that we're getting. So, stay tuned we are hoping to have -- this says, notice of propose rule making is planned for early 2019, that means fiscal year. So, we're hoping later this calendar year that we will have this rule out for your comments.

There's been a lot of press over the last year or two over our Section 2(a) of the Lahnam Act. And the most recent was the Brunetti Decision issued at the end of the last year. And it found that the immoral or scandalous provision was unconstitutional. The status right now is that the Department of Justice sought and received an extension of time until August 10th to decide whether to file a petition for a cert, so stay tuned on that we will have something -- well you'll know something after August 10th.

Now, I know that -- it's too bad

that Andrei left because decluttering is one of his favorite topics. Any rate, some years back we piloted an audit of post registration filings and we were concerned by what we saw. Because in the majority of cases people were not using the mark on all the goods for which they sworn it was in use. And so, we decided to make this pilot program a permanent program and we launched it back in November of 2017.

So as of June, we had sent out twenty-four hundred first actions. Some of you in the room, I think have probably received them. You are eligible for the audit if you filed either a Section 8 or a Section 71 Declaration of Use. And your registration includes at least one class with four or more good or two classes with two or more goods in each class. So, we are really just getting the results in. Of the twenty- four hundred we've only got 945 responses so far. So, in those 945 44 percent were deleting goods.

Now, we're hoping that number will go down as people are more careful about what they file with us but it's really too early to

tell, since we just started in November. And of the twenty-four hundred we've really got 900 responses. So, you can see that 21 percent of the respondents were pro se and 79 percent had a lawyer. So, we are interested in this and watching it very carefully.

Misleading Solicitations:

Basically, anyone who files a document in trademarks is likely to get one or more misleading solicitations now, that is the sad truth. And so, we are trying to attack this and we're tracking it on the front and back end. So, by the front end I mean we are trying to educate our users. So, we are warning applicants in the filing receipt, in the cover email for office actions and with each paper registration they get a bright orange sheet of paper. We are also -- we've put up videos and warnings on our website. We're working with lots of different parts of the U.S. government on this, we had a roundtable with TPAC of course last summer on this. And we had the federal Trade Commission, The Department of Justice, U.S.

Postal Inspection Service, The Small Business Administration, Customs and Boarder Protection all there to talk about it and hear about user concerns and users are very concerned about this.

So, in 2017, The Department of Justice had did some criminal prosecutions and in fact it's not on the slide but I think one person got 8 years and so we are interested in doing more criminal prosecutions because we want to send a strong message to people that this is not something they should be engaging in. So, we sent two lawyers from the USPTO to The Department of Justice this year, one went in February and went in May and they're staying about a year to work on criminal prosecutions. So hopefully of course, I can't stay in the loop because it's all highly confidential. I don't really know what they're doing but I do know that they're working on this and hopefully they'll be more criminal prosecutions coming out before long.

Now, as everybody probably knows, I was a longtime customer of the office. And

so, I'm very, very interested in the customer experience. And we have in the last year or so hired a chief customer experience administrator and plain language writers. And so, one of things that we're focusing on this fiscal year is reaching out to people with very short touch point surveys. So, we will -- none of them have gone out yet, but -- I'm not sure what the order is, I think the Trademark Assistant Center One is the first one to go out, is that right? No. TEASS, website. Okay, website content is going to be the first one that launches. But if you get one of these, I would urge you to please take the survey because we really want the feedback, so that we can enhance the website for you.

So, one of the key things that the customer experience team is working on is dramatically improving our website and a very important thing that we have found is improving the TESS guidance, improving the search guidance and so we have been -- we've gotten two web pages published this month.

One is on getting ready to search and the other on how to use TESS the Trade Mark Electronic Search System. We've also improved some other pages, why you should hire a private trademark attorney, timelines and decisions on petitions. So, these are very important developments. We found that with this 37 percent pro se, while we needed to adhere to legal requirements, we could still simplify and put things into more plain language. And so, these are just a few of the ways that we are working to enhance the customer experience.

Now another topic that gets a lot of interest from people is specimen issues. Over the last few years we have that mocked up or fake specimens have been increasing and that they have been getting much more sophisticated. We're doing our best to refuse fraudulent specimens, we are engaged in conversations about digital tools that can help us do this and hopefully in the Fall we will have that implemented so that our staff will have a better tool for determining what's

real or what's fake.

Now, why are these a big deal for us, well first of all is this fraud on the office? Is there -- frequently, they appear to be connected with the unauthorize practice of law. You know, what impact did these things have on validity of the registration. Does it really show the mark as used in commerce, these are just a few of the things that we're struggling with these challenging specimens and statements of use.

So, this is an example where someone took a Walmart photo and worked on it and Walmart disappears and Walmart's logo disappears, and the flag moves but pretty much everything else is the same with a new trademark on it. So that's one way that people work on things.

And another thing is this is a rather unusual looking designed of a scarf and yet it's been sent in by multiple applicants with multiple different marks. And so maybe it's really what they're selling but maybe it's just that someone use the same specimen

and it's not really what they're selling and doesn't show you this in commerce.

So, we have opened up a streamline process for the public to report improper specimens and the mailbox is tmspecimenprotest@uspto.gov We have heard from 34 people. We wanted to give you a couple of things that are important to know about this. If there are multiple specimens in the file you need to address all of them. Because it could be if you only address one of them then we don't know about the others and we probably have to take them. And also, you need to make sure that the URL is readable because that's the source of the evidence. And we are only taking the complaints about applications not registrations.

Tomorrow as our director mentioned the National Trademark Expedition is launching we're very excited about it. Kareem Abdul Jabar who is a trademark owner will be there. And we have 20 other exhibitors and the Smithsonian is doing this with us for the first time and we are hoping to dramatically

increase our exposure. Because traditionally I'm told that the Smithsonian gets about 30 to 40 thousand people every weekend in the summer. So, this really will be a great opportunity for us to educate people about trademarks, so please consider coming. The welcome ceremony starts at 12:15.

And this is just a schedule, we have CLE in the morning and then the opening ceremony. And if you really need to see Kareem Abdul Jabar you need to get there before 1:30. Otherwise, if you want to see people like our own Ann Gilson LaLonde, you need to come on Saturday at noon. So, we have lots of different things, we have scavenger hunts, interactive games, trademark design workshops. I think you can build a brand for your sneaker that kind of thing. So, there's going to be lots of fun stuff and so we really encourage people to come.

Now, on the international front we are a member of -- the United States is a member of the TM5 which is the five largest trademark offices in the world. That includes

Europe, Japan, Korea, China and the U.S. And we focus on exchanging information and collaborating and trying to harmonize. One of the projects you're likely to be most familiar with is the common status descriptors. And what that is, is if you go into our database, if you go into TSDR you will see these logos on each application or registration and they are usually a circle with a red circle around it or a green circle around it. Green means it's live and red means it's dead and if it's a registration it'll have a ribbon. And if it's an application it will have a file folder. So that's something that you may recognize as -- it's probably our most visible project.

The 2017 TM5 annual meeting that was in Europe and we agreed on some new projects. So, I just mentioned the misleading solicitations. We have proposed that as a project for the TM5. The Europeans enthusiastically endorsed that because it's a big problem in Europe as well. And so, they are going to co-lead it with us. And the

Asian members of TM5 were not as familiar with it but are concerned because if it's in the U.S. and in Europe it's likely to also end up in Asia. And it will certainly impact any of their users who are filing in the United States.

So, I just mentioned the common status descriptors project which is the logos that show up on TSDR. And we have invited 12 other countries to participate and six of those have already expressed interest in participating so we're very excited about that. Because we believe that will likely take off if a few more countries put it on their website then everyone will want to do it. It means that you don't have to understand the language to understand the status of the file.

We also established at that meeting that the Koreans would be the 2018 secretariat and so they have hosted in Jeju Island a midyear meeting in June. And they will be hosting the annual meeting where we will invite U.S. bar groups to attend November 1st

and 2nd in Seoul.

We also had a meeting at the International Trademark Association in Seattle with users and we plan to continue that practice. So, if you look at the TM5 ID list, that's another project of the TM5. And that is to get as many terms as possible agreed upon by all five members. So right now, we have 18,600 terms that are acceptable to all partner offices. Not sure why the screen just turned blue but the -- this is an example of our ID manual and if you see the T that means that particular term is acceptable in all five-member countries. Just a quick mention of the Madrid protocol, as of last November applicants can add a description of the mark to the international application.

Now China is a topic that remains of interest to people. We've had a significant influx of filings -- let me just skip to this slide. So, this shows how dramatically the filings inbound from China have increased since 2013. So, we believe that the filings are leveling off somewhat -- not we've lost,

okay. Thank you. Thank you in the back. As you can see the filings were dramatically up in 2017 and they are definitely are going to be up for this year but we do believe that they are leveling off somewhat.

Now what's interesting is what you can see -- I know it's hard to read but this is -- the circles contain names of cities in China. And the navy blue one on the right is Shenzhen and the navy blue one on the left is Shenzhen and so really you can see the dramatic shift in filings coming out of the Shenzhen area.

In addition, you can see this slide shows a shift to applicants with one or two applications versus larger companies with bigger portfolios on the right. So, I would urge to stay informed, subscribe to our newsletters. You can find that the USPTO subscription center and we will not inundate you, but you will stay informed, particularly the trademark alerts are important.

And we want to hear from you anytime. Please email tmfeedback@uspto.gov

frequently there is a user issue that we don't know about and so we really do welcome you to send emails to us and keep up posted so that we can better serve you. Thank you very much.

CHAIRWOMAN WELDON-WILSON: Thank you Commissioner Dennison we appreciate all of the information. Does any of the TPAC members have any questions or --

VICE CHAIRMAN BARBER: Really more of a comment. With regard to the fraudulent -- potentially fraudulent specimens. Another issue I've notice recently is where an applicant submits a print out of a web page that looks pretty fishy to me and it doesn't have the URL or the date at the bottom of the page. I know the TTAB has been requiring both applicants and parties and inner parte's actions to include that on the web page printouts that they submit. I guess my suggestion would be perhaps we could educate examining attorneys to require the same thing for specimens that are submitted with applications. I don't think that falls within the specimen protest pilot programs or

wouldn't work to report that but perhaps that could be -- the examining attorneys could be educated to require that of the applicants.

CHAIRWOMAN WELDON-WILSON: Thank you. Did anyone else have a question? Elizabeth.

MS. ESCOBAR: The IMTA has a bad faith taskforce and recently there've been some discussions amongst the taskforce members about Chinese nationals reaching out to U.S. trademark owners offering to purchase their registrations. And I wondering if that had surfaced at the office and if you had any views on that?

MS. DENNISON: It has surfaced but I'm going to defer it to Amy, do you have any comments or not? I mean, I know we're aware of it. It sounds like naked assignments to me.

MS. COTTON: Yes, we have been in touch with the INTA taskforce. Our China Team has been working with them and you've sent examples of this to us recently, right? That example was the first that I had heard of it

but I will check with our China team to see if it's more robust practice than that one email suggests. I suppose then that some education would be useful for the INTA to make users aware that this happening. And that potentially it's a naked assignment and therefor invalid.

MS. ESCOBAR: Thank you. I think it came from one of my colleagues on the taskforce.

CHAIRWOMAN WELDON-WILSON: Thank you Brian was next.

MR. WINTERFELDT: Thank you Commissioner Dennison. Quick question, for a part of your decluttering initiative you noted a number of actions have gone out but seems like a large number of them have gone unanswered. Is that because we're still with no window of time for people to reply or people not replying. If people don't reply, is their registration in jeopardy?

MS. DENNISON: If they don't reply their registration is cancelled. But the answer is it's a mix, some are being abandoned

but some it's still within the window.

CHAIRWOMAN WELDON-WILSON: I believe Lisa Dunner had a question.

MS. DUNNER: Just following up on the solicitations for purchasing a registration. I actually received one of those and unfortunately, I deleted it because I had no idea what they were talking about. We represent so many clients and I've not registered Dunner Law thinking I don't need to register Dunner Law. So, would you like us to forward those to you in the future Amy, okay.

CHAIRWOMAN WELDON-WILSON: Amy nodded her head, yes. Are there any other questions for Commissioner Dennison? Well thank you very much for all of your information today. And since we've just finished talking a little bit about TM5 maybe that's a good transition to our next topic, the policy and international update. And I believe Shira Perlmutter is going to lead us on that.

MS. PERLMUTTER: Well good morning everyone. There's always such a plethora of

things happening in the international environment. We always have to pick and choose and so for today we've picked two topics to report on and one is to update you on the status of what's happening with the EU General Data Protection Regulation or GDPR. And the second is to describe the massive report issued by the WTO panel on the Australia plain packaging labeling restrictions for tobacco which came out a few weeks ago. And when I say massive I think it's 880 pages. So, you may not want to read it in its entirety, so we'll try to summarize it.

So, to start with the GDPR at the February meeting, I reported a bit on this recently adopted regulation and we want to update you. Since February the regulation has actually come into force May 25th was the drop dead. And so, there's been considerable attention and concern about this and considerable discussion since that time.

Now, as I reported in February this is -- while the EU has long had very

protective regulations on consumer privacy, the GDPR amps it up considerably in a number of respects. And it protects EU citizens from the unauthorized use of their personally identifiable information. But not just in Europe also by organizations that are located outside the EU if they're offering goods or services to EU citizens or monitoring their behavior. So that means that any company including an American company that is processing and holding the personal data of subjects residing in the EU are subject to this regulation.

Now, the good news for us is that this is an EU regulation that can only be enforced in EU courts. It doesn't apply directly to what the USPTO is doing. But we are very actively part of a conversation within the U.S. government and internationally about the impact of the GDPR on U.S. Businesses and also on EU nationals that are accessing the services of the U.S. government, not limited of course to the USPTO including for example State Department consular

services.

So, we've looked at this and we've identified two main equities of the USPTO relating to the GDPR but also to privacy considerations more broadly. And one of them has to do with insuring that data remains available for online enforcement that's contained in the ICANN who is database. Which provides domain name registrant contact information and that information has been absolutely critical to both law enforcement in the United States but also to IP right holders when they try to enforce their rights.

And the second area -- second equity has to do with maintaining our own collection and processing of personal data including when we use third party contractors. And those contractors may be impacted by the GDPR even in situations when we are not. So, we have to think about that as well.

So, at the last ICANN meeting in June there was considerable discussion about the who is database and what the impact of the GDPR has been on its success ability or will

be on its success ability in the future. And what's happened since the implementation just about two months ago now, IP right holders have found it difficult to get access to any who is data and the conditions under which they can request access differs from registry to registry. So, it's a very complicated and unclear situation. There's a lot of confusion about what GDPR requires of registries and registrants and how it impacts the registrant's existing contract provisions with ICANN.

So, what's happened is that some registers have stopped collecting some contact information even through their contracts with ICANN require them to collect it. And ICANN even has gone so far as to sue one registrar in Germany asking the Court to force them to keep gathering the information on people who are buying web addresses. Even if they're not currently making it available to outside interested parties.

So, what's happening now is ICANN is trying to find a temporary way forward to have

the registrars continue to collect the personal data and then ultimately find a longer-term solution that would allow anyone with a legitimate interest to obtain the data.

And we're very active The Office Policy of and International Affairs is part of the U.S. delegation to the ICANN Governmental Advisory Committee with the unfortunate acronym of GAC. And GAC we're happy to say is very committed not just we are but the entire Government Advisory Committee to provide in public access to who is promote trust and accountability on the internet. And we have a lot of support within the U.S. government because other agencies also are concerned about the impact on law enforcement and investigations generally, so that's where that stands.

As to the impact on the USPTO specifically we may be hearing concerns and questions from EU nationals when they're asked to provide personal data in connection with an application. And we've been monitoring what the European IP offices are doing to determine

if our data practices generally align with theirs and so far, they generally do.

The EU IPO's website gives a lot of information about what they're doing. They process data for tasks related to the public interests or in legitimate exercise of their official authority. And they presumed consent when an applicant provides personal data unless the applicant tells them otherwise. So, we're monitoring this as well.

So, I don't know if there's any questions about this before I turn to the WTO report. So, you can see things are very much in flux and we'll keep coming back to you with updates. On the panel report we been waiting for this for a long time you can see why at 880 pages it would have taken them some time to write it. The report issued on June 28th and Australia won, they won all the claims against them. Include upholding the consistency of their tobacco labeling restrictions with their WTO obligations.

Now, a few thoughts about this, I mean first of all clearly overall bad news for

trademark owners. On the other hand, there's a lot of positives to the decision as well. Now one thing that's clear the ruling has already been appealed by Honduras. So, we'll see if it's upheld on appeal but meanwhile clearly it will encourage other countries to adopt similar packaging restrictions and perhaps to extend them to other types of products like infant formula and foods that are high in sugar, salt, fat content.

Now, one thing that we were concerned about some of the claims in the case set up a very direct conflict between World Health Organization public health initiatives and the WTO trade agreement. And really raised the question of whether public health concerns would always trump intellectual property.

So, one piece of good news from the decision is that the panel says no, it does not always trump there's a more complicated balancing inquiry that's needed. So, in this particular case you had the existence of a WHO standard embodied in the framework convention

for tobacco control. And the panel looked at that and said, well that provide some support for trademark restrictions but it doesn't create a presumption of consistency. It's just one factor that we're looking at. And that's clearly a silver lining to what otherwise is a disappointing outcome for trademark owners.

So, if we go to the next slide, just to briefly outline the legal analysis on the trademark aspects. The main IP claim was Article 20 of the trips agreement and it says that, the use of a trademark in the course of trade shall not be unjustifiable encumbered by special requirements. Such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. So that was the crux of the IP claims.

And there were three main issues that the panel evaluated based on Australia's arguments, one is what used in the course of trade? Is it use on the packaging itself, is

it use in commercialization, such advertising and marketing or could it be uses by sponsors or in promotional context, that one was issue.

Next issue what is justifiable because it's only if it's unjustifiably encumbered that it's a problem. And in connection with that question, who bears the burden of proof on whether it's justifiable or not. And then third what is a special requirement that encumbers the use of a trademark in these respects.

And it's interesting because the panels answer to these questions were generally positive from trademark owner's perspective. So, the legal analysis is helpful even if the holding at the end is not. So first the panel did find that the trademark restrictions were very far reaching special requirements that did in fact encumber the use of the trademarks. Second, it found that the phrase, use in the course of trade, should be broadly interpreted. So that it covered not just presale packaging and point of sale displays but also commercialization activities

like advertising and promotion. And then third, Australia had made the argument that the measure would be justified if it had any rational connection to Australia's public health objectives. And the panel said, no that's too easy a test. And instead it applied a balancing test, asking is there a justification or a reason that sufficiently supports the encumbrance at issue. And that's where the (inaudible) became negative for trademark owners. Because the result of that balancing favored Australia and they found it was justifiable.

So, the panel said, Australia had demonstrated that the labeling restrictions were justifiable in light of all of the facts. First of all, the comprehensive nature of the tobacco control regime in Australia, second, the contribution of the measure to -- the overall objective of improving public health. And third, the existence of a merging local public health policies in favor of such restrictions.

And there's one other aspect of the

report that's particularly interesting there had long been discussions in the international circles about whether the TRIPS agreement requires WHO members to grant a right to use a trademark. And the panel cleared this up at least unless its reversed-on appeal. And said that it did not find a right to use in the TRIPS agreement. But they did recognize that trademarks owner legitimate interest in using the mark. And they took that interest into account in the balancing test on justifiability.

So, you essentially have the courts seeing Article 20 as a balance between the legitimate interests of trademark owners and using their marks in the market place. And the right of WTO members to adopt measure for the protection of societal interest that might adversely affect use of a trade.

So just some thoughts in conclusion, so the actual outcome is disappointing, but the report did leave the door open for future complaints and also provided very helpful guidance on how to evaluate these types of

claims and other packaging restrictions that aren't part of a comprehensive set of measures designed to improve public health, like Australia's. Whether they're applied to tobacco or any other products might not fair as well if they're challenged WTO. So happy to answer questions if anyone has.

CHAIRWOMAN WELDON-WILSON: Lisa Dunner has a question.

MS. DUNNER: Shira thank you for that report. I've always been intrigued by the plain packaging regulations and I often wonder what would keep them from expanding. And I think you mentioned other products like sugar. There have been tons of health studies out there that show and has proven that sugar is addicting or addictive and what would be the difference?

MS. PERLMUTTER: And we are seeing that beginning to happen at the WHO. Including amazingly enough at the last WHO meeting there was a whole panel discussing the public health implications of video games. And so now the video game industry is getting

concerned about the WHO possibly proposing restrictions, or other countries proposing labeling restrictions for video games as well.

MS. DUNNER: Sorry. And to the extent this might expand to other countries, do you have a sense of that?

MS. PERLMUTTER: Do you mean just tobacco or all products. I mean tobacco is already --

MS. DUNNER: Tobacco.

MS. COTTON: Plain packaging for tobacco is being adopted by several probably three right now that I know of. And then about four more that are headed that way. I think the thing to keep in mind is does the measure--the trademark restriction--contribute significantly to the ultimate policy goal for sugar, which is likely to decrease childhood obesity or whatever it is. There has to be a pretty direct line between the two. That's what this panel report identified: that there really has to be a relatively straight line and there really needs to be some evidence. It has always been the U.S. government's

position that there needs to be evidence that these things are likely to work or have worked in order to justify these types of restrictions. The panel's balancing test was really important to what the elements of the balancing test are. Australia had a regime in place with many different measures with the overall goal of improving public health . The specific trademark measure of plain packaging was to discourage the use of tobacco products. So, it was a very comprehensive regime, and this trademark measure was only one piece of it. In light of that very comprehensive regime, the panel was in the position to say well, Australia did their homework. There's evidence to support that this particular measure will advance this particular goal and that other measures, alternative measures won't. So that's why it's 880 pages.

Would you see that at this stage on sugar, high fat, alcohol. I don't know that the evidence is out there. There probably will be public health authorities who will start amassing that evidence. Yes.

MS. PERLMUTTER: Sorry. I don't know why I'm having so much trouble with this. Just to add to that, I think looking at how these WTO panels work, you know, it seems likely to me that if there are restrictions challenged on other types of things when there's less of an incredible track record of what the public health consequences are. I mean tobacco has been something under huge discussion for a very long time and there's a lot of consensus about it. (inaudible) feeling they'll be some desire to try to pull back a little bit and not look like they're going too far in terms of allowing this so broadly.

But the problem of course is it would take years before the next case comes up. By the time a country adopts the restriction, it's challenged and then it goes through a panel decision. And just one other point, the United States participated in the case as an interested third party but was not one of the complainants, wasn't directly involved.

CHAIRWOMAN WELDON-WILSON: Thank you very much for your presentation today. It was obviously very interesting, and we appreciate your time. We're going to now turn to our legislative update. Dana Colarulli he's the Director of the Office of Governmental Affairs has agreed to join us today to give us that update.

MR. COLARULLI: Thank you. Good morning everyone. So, I'll give you the general legislative update, I'm going to do three things. I'm going to give you the sense of the current legislative environment generally for our issues. Give a status on a couple of pieces of targeted legislation. And then I'll up to date you on some related congressional committee activity.

So here we are at the precipice of August of the annual August recess for congress. The house is in session this week as is the senate they'll be a few things that'll get done this week then the house is gone for most of August. To return back right around Labor Day, just after Labor Day. The

senate will also be out next week but then has committed to coming back for much of August to continue the work of that body. We're unsure of how long they'll stay but right now they're scheduled to be in for most of the August recess. So, this week very, very active expect folks to start leaving town tomorrow.

Generally, for the rest of the year, I think the environment for getting much legislation done. More generally, is not great, although there will be a couple key things for them to go forward. I think substantive IP legislation, although there are many discussions both on the patent side and the trademark side. Again, I think those discussions will continue at pace, but you won't see legislation necessarily moving. So, my anticipation of major legislation moving forward in the IP area over the next couple of months given the election. It's certainly August recess right now in the short term. They're very, very low but there are some productive discussions that are occurring, and I'll go through some of those.

So quick update Tony and CFO are going to update a little bit more on the FY'19 budget as the other budget development. But as of May, both the committees and the house and the senate side reported out our FY'19 budget slightly less than the president's request to do to the CBO score. But we're in good stead for the FY'19 budget cycle as we are. Question remains how that will be past, whether it will be an omnibus package we'll have to see. So far so good at ensuring that PTO can keep all the fees it collects. Certainly, a network budget around our estimates.

T our telework extension, I've talked about that before in front the committee. The agency had requested a 3-year extension of authority that expired last December. Even as we sit here right now the house is taken up the national defense authorization act which includes a provision that passed the house in a separate legislation but got stuck in the senate. So, it will extend our TEAPP authority until

December 31, 2020. Once the house passes the NDAAa the senate would need to take it up -- unclear whether the senate will take it up before the August recess, but it does seem as if it will occur in the next month, we're hopeful, we're pushing, and I'll keep the committee update as we see that moving forward. But now it seems like this is must pass legislation it will past the question is when, that's good news for the agency and for the all the teleworkers on the trademark side.

I have been as the director mentioned this morning very excited about patent 10 million, I'm not ready to move to celebrating trademarks with the trademark expo. This week the senate moved forward with a senate resolution in honoring the trademark expo. The congressional trademark caucus which is actually bicameral caucus both house and senate also sent out a dear colleague letter to engage staff have them also join us in the celebration. That dear colleague also highlighted a number of exhibitors that Mary mentioned this morning and pointed folks to

our website. And also, as we're sitting here my staff has blasted capitol hill with invitations to come along as well. I mentioned their going in August recess. Tomorrow all the members, all their bosses will be out of town so we're trying to give them something fun to do. So, any congressional staff that might be tuning in, please come to the Trademark Expo as well. There's lots of celebration there we're trying to add to it.

I'll highlight one of the pieces of legislation that's the Small Business Innovation Protection Act. This is a bill that was introduced in the senate last congress reintroduced this year. A house counterpart was also introduced and actually passed the house. The senate version also passed the senate, unclear which version whether it's the HR or the S number that'll be taken up. But we expect this to move forward and get to the president's desk as well.

Generally supportive legislation for PTO and the work that we do particularly

targeting small businesses. We've had a long tradition of working with the Small Business Administration. Much of this bill codifies that relationship, encourages us to do more. So, if you consider the goals the should be whether someone comes to (inaudible) or comes to PTO and ask an IP question, they should get the same information. We've been partnering strongly with the SBA to make sure as small businesses come they're thinking about their business planning more generally. They have an IP question that they'll be directed to us and we can help them along the way.

So, this bill generally encourages that, both generally with SBA and also particularly where the SBD sees the network that the SBA has of small business development centers around the country cannot be compared. We certainly can't reach all of those people but with a partnership with them we can provide them all that great information.

I'll mention that our regions have also done a number events with the regional SBA administrators and the state directors.

So, we've already started to build some of those relationships again a bill that's generally supportive much of the work that we've done, specifically targeting small businesses and their particular needs when it comes to considering IP.

Moving on to committee activity again, we had an oversight hearing just recently where the director testified number of issues came up. We've already talked a bit about the surge in trademark applications and Mary provided some data, some updated on that. Those questions have come up and congress is continuing to watch that issue. A lot of questions on the patent side of the house, particularly on what the agency's doing to increase clarity around Section 101 eligible patent subject matter. And what changes we're making at the PTAB the post grant review proceedings.

Certainly, China continues to be a topic - it was a topic during the oversight hearing and is a topic throughout the hill, whether you talking about small businesses or

large businesses. So, I expect they'll continue to consider that. That again, in an election year is also an issue that tends to be focused on a bit. So, I expect congress to continue talking about and expressing concern over what are doing to protect USIP particularly in China. So just a sense of some of the things going on in the oversight hearing.

Two hearings on the small business side again, how small business committees been very, very active again, to look at these issues to focus on these issues. And I think hopefully focus on the importance of considering IP in their business planning. This hearing in May and then a second hearing in July both referred to resources provided by the USPTO, I think very, very helpfully focused on both the tech side and some of the manufacturing side again, how IP is important. So good activity at least on the small business side, I expect to see more as we get into the next congress.

I think with that -- I think that's

all I wanted to highlight. I'll toss it to Tony when we get to him to talk a little bit more about the budget. Happy to take any questions.

CHAIRWOMAN WELDON-WILSON: Thank you very much, I believe Bill Barber has a question.

VICE CHAIRMAN BARBER: I have a quick question about the oversight hearing through May.

MR. COLARULLI: Sure.

VICE CHAIRMAN BARBER: You have a bullet point here that says, diversion of USPTO user's fees, could you just elaborate on what the discussion was there?

MR. COLARULLI: Absolutely, I think very helpful congressional concern and oversight over the PTO to ensure that all of the fees that we collect go to supporting the agency. So again, there are questions there. I'll note there is some provisions in some of the others -- at least two piece of legislation we've seen that would make significant reforms on the patent side that

also focuses on ensuring that PTO keeps its fees. In fact, even proposing that the USPTO be transitioned to a revolving fund. So that was the focus of the questions. Again, focused on making sure the PTO keeps all of its fees in a helpful way.

CHAIRWOMAN WELDON-WILSON: Thank you very much for your presentation and as Dana mentioned Tony is here and he is our chief financial officer. Tony, would you mind giving us an update.

MR. SCARDINO: Sure. Good morning.

CHAIRWOMAN WELDON-WILSON: Thank you.

MR. SCARDINO: Just going to get to my slides, so I know what to say. So, the agenda is pretty similar each time we talk. We'll go through three budget years '18, '19 and '20 and we got a couple of other things strategic plan. I'll update you on the latest there and the fee setting authority of course will bring up the (inaudible) in terms of our discussions today.

So, for '18 filings are robust. I

just want to kind of give you a little backdrop. When we talk things like filings and fee collections we often times compare two different sets of numbers. A lot of times we say filings are up over last year at this time and they are, up 9.2 percent very positive very robust. Collections are up 9.7 percent so the money's rolling in.

However, we planned for growth so the next slide you're going to see compared to plan things are down slightly a percentage. Some actually looking confused well wait a minute things are up but then their down. It's because you're comparing apples and different piece of fruit.

So, in terms and of collections and filings things are up as we anticipated. Things are slighted down like I said, .7 percent below the plan because we updated the plan since we met last quarter. Application filings are down very slightly in terms of projections seven hundred thousand dollars less than we thought at this point and time of the year. And maintaining exclusive rights

are down two and half million dollars.

Just to give you some idea, year to date we planned for four hundred and eighty-three thousand application filings and were at four hundred seventy-five thousand. Which if that continues for the rest of the year this will be our biggest year ever in terms of trademark application filings.

From spending perspective in 2018 we're right on pace. We came into the year with 120-million-dollar operating reserve. And we're anticipating we will contact more than we spend this year, so the reserve would go up to 130 million dollars, so that's going in a positive direction.

In terms of '19 -- Dana mentioned this a bit. We got a markup in May the USPTO mark is 46 million dollars less than the president's budget request, that's not going to be problematic. But if we ever did collect more than we spend the bill would also allow us to put money into Patent and Trademark fee reserve refund, so we can access at that through our reprogramming, so we're in good

shape there.

Senate report also states a few concerns about IP attaché's getting that on the record. And finally, from a budget perspective 2020 we are quickly coming to the point where we'll have draft budget for you to review as well as the Department of Commerce, that'll be the middle of next month.

And then eventually, by September 10th we will have a submission that goes to the Office of Management and Budget, second Monday in September is always the date. And then eventually that budget OMB will come back -- we'll go back and forth with them. We'll have updated models for them later in the fall and then the president's budget will be released to the public and the congress the first Monday in February.

So strategic plan, yesterday -- Tuesday we had a town hall meeting for all employees and director Iancu gave an overview of what the new strategic plan will be built around. A draft will be available for public comment later this

summer. And then as part of that review we will also have a public session, so folks can comment on the strategic plan. And we expected the final document will be available later this fall.

And finally, our fee setting authority that was provided in the American Events Act in 2011, sunsets this September 16th it was a 7-year sunset. So, we are -- it's a couple bills that have been proposed in congress that would extend fee setting authority, so we remain hopeful. Any questions, comments, thoughts or praise? Dana gave me praise.

CHAIRWOMAN WELDON-WILSON: Well thank you very much. Does anyone have any questions before we move on?

MR. COLARULLI: I knew Lisa was thinking about --

MS. DUNNER: Just wanted to give you some praise, thank you very much for that report.

MR. COLARULLI: Thank you Lisa. Now my day's complete.

CHAIRWOMAN WELDON-WILSON: Thank you for being here and you actually got us pretty much back on schedule.

MR. COLARULLI: Always my goal.

CHAIRWOMAN WELDON-WILSON: I was very impressed with that.

MR. COLARULLI: When I go after Dana I always know I need to makeup time.

CHAIRWOMAN WELDON-WILSON: So, we're scheduled for a ten- minute break right now. So, everybody, we'll start promptly at 10:25. Thank you very much.

(Recess)

CHAIRWOMAN WELDON-WILSON: Okay everyone let's get back to the tables, so we can start the second part of our meeting today. We are very honored to have with us our Chief Administrative Trade Mark Judge Girard Rogers. Judge Rogers, would you please give us an update on TTAB?

CHIEF JUDGE ROGERS: My pleasure Dee Ann, thank you for having me and accommodating my desire that whenever I travel I have isle seat. No, it's okay, I don't mind being out

here. In case there's a fire alarm I can get out quickly.

Alright, let's run through some of the performance measures and of course the first item on the list is timely. And that is our staffing as we've discussed in the past the increase in trademark application filings. Ultimately, means more work for the TTAB and we'll get to some of those numbers in a second.

But in addition to the increased incoming cases, we've also had some retirements and some departures from our ranks, so we do have some positions to back fill and we had already planned in this year's budget to add some judges. So, we are in the process of hiring attorneys and we are in the process -- we have a vacancy announcement out for judges. We have recently hired a lead paralegal to work with our paralegal staff and we of course are still in the process of filling deputy chief judge vacancy at the board. So, a lot for us to do in the remaining months of the year but we're hopeful

that will all work out just fine. And that will be fully staffed or close to it by the end of the year. And so hopefully, I'll have more to report on that when we meet in October.

As you can see on the bottom of this slide, these are the increases in filings that I mentioned. In some recent years even while trademarks was experiencing their increased application filings we would see some fluctuations. Last year we were talking about a slight decrease in extensions of time to oppose. Sometimes appeal filings have been relatively flat but oppositions and cancellations have been up more significantly.

Over the course of a number of years in particularly this year and you can certainly see from this slide that extensions of time to oppose have bounced right back up to where I expected they would be. And so, I think last year's slight decline on extensions of time to opposed was an aberration.

In terms of some of the work we have produced this year. The case is decided on

the merits by the judges. These are combined appeal decisions and trial case decisions are down somewhat significantly this year. The ramifications for that though are not particularly negative because our inventory of cases are waiting a decision by a panel of judges is still within our target range. It has increase so it's nearer the top end of that range but that's of course why we're hiring because we cognizant that it has increased.

In part the decline in production of decision by the judges is directly attributable to the fact that we had two very stellar judges retire this year. One in first quarter and one in the second quarter. So that's not a surprise that our production would have gone down. But of course, we're monitoring as I said, the inventory and our pendency is still fine. So, this is something that we will take care of.

The other thing that is contributing to the decline in the number of decisions issued is we've seen a decline in the number

of cases maturing to ready for decision. So, in other words there fewer cases maturing to the point where panels of judges have to decide them. That's about 9 percent down this year, so of course when fewer cases require a decision, you get fewer decisions.

The presidential decisions, we're right on target we will easily meet the goal this year, I have to give public credit to Judge Karen Culkey who has stepped up and filled that portion of the deputy chief judge role that involves the shepherding through the process, the clearance process of our presidential decisions and Judge Culkey's done a really wonderful job working with the judges and the attorneys on presidential decisions that involve merits determinations and appeals in trial cases. But also, procedural rulings on motions that come up in trial cases, which is something that you expect to see more precedence on in the year or two after you've engaged in a significant rule making, as we did early in 2017. So, we've tried to get some precedence on procedural matters out

there to educate the bar about the how the amended rules are working.

Contested motions decided, production is actually up this year but we also as we will get to some of the other numbers in a minute. Have seen an increase in the inventory of cases with contested motions and of course that's why we are hiring more attorneys. When we have more work, we hire more people to help us do the work.

The customer service desk here, we added some of these measures relatively recently, I think last year we updated some of these measures. And the decline in the number of calls and service request is probably attributable to the fact that we saw increases last year after the rules were amended and now things have settled down a little bit.

And then the quality of the call responses by our customer staff has gone up and it is something we are very closely monitoring, so we're very pleased with that measure. This is the slide focuses on contested motions as I discussed. We have

seen an increase in production. However, we are slightly above our goal we try to get contested motions decided on average between 8 and 9 weeks from the time they are ready for decisions. So, we are simply .1 which is less day or so above the goal. And the other measure that we have relating to contested motion pendency is whenever we take the quarterly snapshot we like to ensure that we have nothing pending that has been pending for long than 12 weeks.

When we took the quarter three snapshot we did have something that was pending longer than that and there's a handful cases that are between the 12-week measure and this 15.7-week measure. So, we've taken some steps this year, we've had judges pitch in and do some contested motion work. We also seen normal fluctuations in the contested motion work during the course of the year. Usually the first quarter and the third quarter are down, and the second quarter and the fourth quarter are up. So that's kind of a natural pattern, I think at the USPTO for many

business units and it certainly holds true for us as well.

So, I am very optimistic that we will meet the two pendency goals by the end of the fiscal year, so we'll be able to report back on that when we meet in October. And as you can see on the bottom of this slide the inventory of cases with contested motions is 18 above where would like to be. So again, not tremendously out of range and again, because we have some vacancies to fill this one of the reasons why this occurred.

Even though we have those vacancies in the judge ranks and we did see a decline in the production of decisions by judges. We have easily met the pendency goal as you can see on this slide. And our inventory is still within target range of 130 to 160 cases. So again, we know it's going up and we don't want it to go up a whole lot further. So, we'll be hiring some judges.

And interestingly and very positively, even while we've had some increases in some of the other measures.

We've got significant decreases in the end to end processing time. So, for both appeals and trial cases the overall average pendency from commencement to completion of those case. We've seen reductions this year which is an indication from my point of view that everybody on the staff is doing their piece to keep cases moving through the pipeline.

That means the paralegals are turning work around when we see consented or uncontested filings. The attorneys are doing their best to keep up with the contested motions, the judges are doing their part to get decisions on the merits out. Because if they're not all doing their parts then we can't see these positive changes in the end to end processing times.

And the last line on this slide, is for ACR trial cases and one of the things we've talked about in the past has been whether we would continue to see interest in accelerated case resolution even after we amended our rules in 2017 to leverage into those rules for trial cases. Many of the

efficiencies that parties have traditionally agreed to in ACR classes.

And I'm pleased to report that we still a good deal of interest in accelerated case resolution. We see parties who remain interested in the cross motions for summary judgment model of prosecuting a trial case. Which still has to be agreed to because that's not one of the efficiencies that was leveraged into the rules. That's something that parties still have to agree to and parties are still interested in it.

We also see parties interested in -- quite a surprise I think for many U.S. attorneys, limitations on discovery and stipulations of fact and stipulations that a body of evidence will just become part of the record and the board can use that to decide the case. So, there's still a good deal of interest I think in doing things in a more efficient way than those efficiencies we already provided for in the rules governing trial cases.

So, I'll stop there for a moment

before I talk about a few other things just to see if there's any questions about any of these measures.

CHAIRWOMAN WELDON-WILSON: Well first, I'm going to applaud you for sharing these performance measures with us. I think it gives us a much greater understanding of what the TTAB is doing and helps us to know what a good job ya'll are doing and going forward.

CHIEF JUDGE ROGERS: Thank you we're very committed to the transparency and for anyone who wants to visit our website we've got charts and dashboards and graphs with all of these numbers and others.

CHAIRWOMAN WELDON-WILSON: And more.

CHIEF JUDGE ROGERS: Yeah.

CHAIRWOMAN WELDON-WILSON: So, I appreciate that. It seems that Ann has a question.

MS. PERLMUTTER: Yes. Thank you Judge. I have a questions about this slide, the numbers just below appeals and trial cases. I realize fiscal year that '18 is not

over yet but is the difference between those two numbers explained by the fact that they are fewer cases ripe for decision.

CHIEF JUDGE ROGERS: Yeah. I mean the number of cases maturing to the point where they need to be decided by a panel of judges is down and also the production is down, because there were two retirements we had among the judges. And so, two retirements from the patent board with their core of 250 judges is nothing but for us that's a significant hit out of 24 judges so we expect the production to go up. And in addition, because the inventory and pendency controls for the judges was within our target ranges, we had the luxury of being able to use some judge time on contested motions to help the attorney's stay as close to current as they could with the pendency and inventory control measures on contested motions.

So, a number of things contribute to it and I'm not concerned because I think ultimately, we will be where we need to be by the end of the year. We may produce a fewer

decisions this year but if we're within our pendency goals and within our inventory control goals. We'll be starting the next fiscal year where we need to be.

CHAIRWOMAN WELDON-WILSON: Thank you. Are there any other questions? Bill Barber.

VICE CHAIRMAN BARBER: Just one -- I guess comment or suggestion. We were talking yesterday the TPAC members and maybe if we could put on our wish list. If we could have a searchable database on the USPTO website of presidential TTAB decisions that would be very helpful to the bar, I think.

CHIEF JUDGE ROGERS: Can I trouble you to explain how that would differ from, say the US patent's quarterly, or some other avenue through which you can obtain all those presidential decisions. You just want them all collected in one place.

VICE CHAIRMAN BARBER: Well one difference is --

CHIEF JUDGE ROGERS: Or you want them collected by kind of subject matter.

VICE CHAIRMAN BARBER: -- one difference is you have to pay subscriptions for U.S. patents quarterly. We're looking -- I think the suggestion was to have it on the USPTO website.

CHIEF JUDGE ROGERS: Got you.

VICE CHAIRMAN BARBER: I'll defer to others as to how it should be index or whether it should just be a text searchable database. But the idea was to get the presidential decisions in one place on the USPTO website that could be searched.

CHIEF JUDGE ROGERS: It's a great suggestion and one that we will take up in conjunction with our need to reevaluate the USPTO reading room that many of you use to go and look for decisions, precedential or otherwise. They at some point we need to transition away from using the FOIA site that makes all those decisions of the TTAB available and we'll have to adopt some other mechanism for making them available. And then in tandem with that effort we can go ahead and look into efforts to identify and make more

text searchable the precedential decisions.
And if there any suggestions about the best
ways to do that or how to aggregate decisions
whether it's by subject matter or time or both
please feel free to let us know.

CHAIRWOMAN WELDON-WILSON: Lisa has
a question.

MS. DUNNER: Actually, just to echo
that subject matter is always great and then
within the subject matter time would also be
helpful. But I guess subject matter in terms
of priority would be the number one way in my
opinion.

CHIEF JUDGE ROGERS: Okay. Great.

CHAIRWOMAN WELDON-WILSON: Are there
any other questions at this point? Would like
to hear the rest of your presentation.

CHIEF JUDGE ROGERS: Sure. The next
thing I wanted to talk some about is
Mary -- Commissioner Dennison mentioned this
earlier. Of course, we've often spoken with
TPAC about the effort to declutter the
register and one of the contributions that the
TTAB can make to this agency wide effort is to

try and identify more efficient and quicker means for cancellation cases that would seek to remove unused marks from the register. So, we've talked about this about a streamline cancellation proceeding in the past. And of course, we had a request for comments out. We had a great many comments come in on that subject. We have had Judge Christopher Larkin and Judge Cynthia Lynch both working assiduously on this project. And after reviewing all the comments that -- written comments that were received and the oral comments that were provided during a round table here on campus. We decided that what we really needed to do was pursue a pilot project where we have two main goals.

And one of the main goals is to identify the kinds of cancellation cases involving non-user abandonment claims that would be most suitable for a streamline proceeding. And also, the kinds of procedures, streamlined procedures or faster more economical and efficient procedures that could be deployed in such cases to serve the

purpose of a streamline proceeding. So, our I systems don't make it very easy for us to identify cancellation cases that come in and have solely nonuse or abandonment claims. And have gotten to the point where they have not been decided by default because those don't need an expedited proceeding that's as expedited you can get.

But we have undertaken a somewhat labor-intensive effort to identify cancellation cases that just involve nonuse or abandonment claims which was the subject matter covered in the request for comments. And have not gone by way of default and then find out if we can inject ourselves if you will. Involve ourselves with the parties in their early discovery conference and this involvement involves or includes an interlocutory attorney from the board and one of the two judges I mentioned, Judge Larkin or Judge Lynch. And we will discuss with the parties then the fact that we have identified the case as a suitable candidate for possible treatment through a streamlined or more

efficient proceeding. And then have discussions with the parties about what kinds of efficiencies they might agree to whether they are typical ACR efficiencies or something else that they will be willing to discuss with us. And again, these kind of serve our two main purposes of identifying the right kinds of cases for this kind of proceeding. And the kinds of procedures and processes that we think parties will accept in a streamline proceeding. Because we know from the request for comments and from the roundtable here on campus that there was a lot of division about various things.

Whether there should be discovery or not, whether the board should have a quick proceeding with no or very limited extensions. There are counter weights to those ideas that we should have some discovery, or we should allow for extension and suspensions to accommodate settlement talks. And so those are the kinds of things that we are exploring with the parties in the pilot project.

So, the results are very preliminary

hopefully we'll have more results for you when we meet again in October. But since March of this year we've identified 26 cancellation cases involving nonuser abandonment claims. Some of these have had pleading deficiency that needed to be addressed before we could move forward with discussions with the parties.

We've been involved in discovery conferences in eight of those 26 cases. Some we didn't need to get involved in because the parties were already discussing accelerated case resolution, or they were already involved in settlement negotiations. Both positive developments which if we didn't need to be there to encourage those then that's fine.

And we've had a number of cases where the parties have agreed to proceed on some form of accelerated case resolution. One of the preliminary findings Judge Lynch and Judge Larkin report is that there is some desire to take discovery which again was a point of contention in the request for comments and roundtable. And there has been

some skepticism by plaintiffs about proffered evidence of use put forth by defendants. And the greatest impediment that seems to come up for some parties to agreement to use ACR is the idea that they may need some discovery if they're not satisfied with that evidence.

So that's where we stand with the pilot, we think it's been successful, we think it will be helpful in many ways. It is not a panacea it will not lead to immediate decluttering of the register in a very significant way. But hopefully it will provide us some lessons so that when we do go out with a notice of proposed rulemaking for a streamline proceeding, it will include the knowledge that -- and be based on the knowledge that we've gained from the pilot project and will include proposals that we know parties have already shown interest in.

And that's the way we like to do rule making at the TTAB we like to work with parties first, so that there aren't a lot of surprises when we put out a notice of proposed rulemaking.

The last thing I'll mention and try and keep us on schedule here is that we did get our revision out and thanks to our senior counsel and TBMP Cheryl Butler for getting the annual revision out now every year since 2011. So, we were on schedule with the revision this year, that took precedence in the spring since our last meeting over exploring further possible revisions to the standard protective order. But we did discuss that at the last meeting and I did want you to know that we've not lost sight of the need to engage stakeholders about possible revisions to the standard protective order. But we will pick up with that now that the revision to the manual is out and we hope to engage TPAC and other stakeholder groups more during the coming months on revisions to the standard protective order. That's it.

CHAIRWOMAN WELDON-WILSON: Thank you for the report. Are there any questions from TPAC members? Well, thank you we'll look forward to hearing some updates in October.

CHIEF JUDGE ROGERS: My pleasure.

CHAIRWOMAN WELDON-WILSON: We're not going to turn to the OCIO update, David Chiles, who is the acting chief information officer is here with us today. And it looks like Gardy Rosius is with him, hello welcome.

MR. CHILES: So good morning everyone, it's our pleasure to go through a few slides. I just want to note that Rob Harris is usually here he's on leave so Gardy has been kind enough to fill in those shoes and he'll go through the presentation and at the end we're both here available for questions.

MR. ROSIUS: Alright thanks, and good morning everyone. My name is Gardy Rosius and I'm sitting in for Rob Harris. Robert Harris didn't shrink so anyway, alright. So, I'm going to go through few slides real quick just to give you some quick updates since the last TPAC update.

So, in terms of accomplishments since the last time we presented to you guys from an exam perspective, we've been working the editor change and we've made significant

progress there. We've completed the development integration and we've done the first round of UAT testing we've got some updates and we've addressed some of those updates and we're getting ready to go back out for a second round of UAT testing and hopefully we have addressed all of the findings from the first round and we will be okay with the next round of UAT testing.

The next item on the list is we've done some work on the back end to enhance our back-end capabilities around content and data management. And this is consistent with our six critical success factors which I'm sure your guys are aware of, so this some really good progress there. Basically, making sure that the system from a back-end capabilities perspective is stable and is capable of doing what it's supposed to do.

We did have an upgrade to the editor for TMG electronic official gazette and that's in production. And by all measures so far, it's been received very well. The users are very happy with the capabilities that

the -- they're benefitting from as a result of this upgrade. From an ID manual perspective, we did a production update based on the 11th Edition of the 2018 version of the NICE Agreement. This is really a housekeeping work we do this on a yearly basis when the agreement comes out we do the upgrade.

Last and not least probably very significant piece is the work that we've started on a legacy system to address the upcoming mandatory electronic filing that's coming up in Spring 2019.

So, this is very significant work for us basically keeping the business going and responding to some of the needs of the business as things change, alright. From a path forward perspective, we've been making some progress there, just from the top. As you can see we've identified some additional scope and we'll talk about those a little bit. So that has some influence as far as where we are in how soon we can get to the finish line. The team is remaining focus on the six critical factors and that's kind of how we're

moving forward. Just kind of keeping our focus on the six critical factors and the scope associated with those.

In terms of where the scope -- the additional scope was identified it was around the FPEP, letters of protest and divisional applications. For the first two the team has started development is continuing to do development in those areas and testing for divisionals we're still in the process of getting our requirements together, solidify the requirements so that we can begin the work that we need to do to address that capability there.

In terms of where does that put us from a schedule perspective, we are estimating that it had put us about six months behind schedule. From a development perspective the CK editor we had estimated to be done around May but due to some changes we needed to extend it out to August, that's three months. And if you put on top of that the additional scope around FPAP, letters of protest and divisional. We estimated around three months

but that three months can change as we know more about the requirements relating to divisional applications.

So, on this slide what we have is a listing of all six critical factors that I'm probably sure you've seen this before. So, from the top down the first critical success factor is having to do with office action where you send and how they sent. This work is pretty much done except that -- remember I talked the additional scope, letters of protest kind of falls under that one critical success factor.

So, until we actually address -- completely address letters of protest we can call this done, but we've made significant progress there. The second item is around -- the displaying between TSDI and TMNJ and basically what we see and what others see. That is -- there's some progress there. There was a proposal that was sent to the IB and I believe that proposal came back and team they accepted it. The team is looking at it and we're getting ready. We're taking those

steps that is necessary to start piloting the proposal and then we can sent it out for more feedback to us and comments and whatnot.

Docket is pretty much done just all the work all the scope that was associated with this critical factor as of right now has been addressed but the team, you know, just will keep eyes open in case something come up and we can address it accordingly.

From a data quality perspective that work is done. The next item on the list is around system performance. We have done all we need to do to validate and confirm system performance and all the results is coming back positive. There is no concern around system performance, so we believe that this a done action item for us here. From an examination perspective the big item here is the TMNG editor, so we're making the progress that I reported earlier as far as having done development, having done first round in UAT and getting ready to for the second round of UAT.

Two of the items from the additional

scope line item that I talked about falls under this critical success factor. That is the FPAP and the divisional applications falls under this critical success. So as a result, even though we may get this editor work done in August, until we actually are done with FPEP and done with divisionals which we still trying to figure the requirement we won't be done with this item here. So that's about it that I have to report. Any questions?

CHAIRWOMAN WELDON-WILSON: Bill Barber.

VICE CHAIRMAN BARBER: Hi Gardy.

MR. ROSIUS: Hi.

VICE CHAIRMAN BARBER: First of all thank you very much for stepping in for Rob. I don't know if he planned his vacation so that he could avoid coming to this meeting. I couldn't blame him if he did.

MR. ROSIUS: We're still trying to figure that out.

VICE CHAIRMAN BARBER: We appreciate you subbing in for him and doing so well in doing that. I guess a two-fold question with

regard to the schedule. First of all, I see the estimates you have basically says, your six months behind schedule. Three months of that attributable to the CK Editor development and then three months because of the three elements of the added scope.

If you could just clarify, if that schedule -- if we hold to that schedule and you're able to complete all that within the six months extension that you're proposing here. Can you tell us when you expect to roll out TMNG examination to all law offices for them to use in production, that's the first question.

And the second I guess is just how realistic is that at this point particularly with the concerns and issues about -- or questions about the divisional applications and how to develop that?

MR. CHILES: I do want to point out that for that second bullet item that talks about divisionals, the additional requirements and that. We still have to kind of figure that out and from our perspective that's a

ballpark. So, it's difficult to give specifics until we hear the essence, specifics until we can get down to understanding exactly how we're going to solve the problem. So, it's tough to make predictions and I'm hesitant to make a promise but other than to say, look from a ballpark perspective that's a timeframe that we think. We will refine it as we get an understanding of actually how to solve the problem. I don't know if you have anything to.

MR. ROSIUS: No. I don't. I don't. I think that's about right.

VICE CHAIRMAN BARBER: If I could just follow up though. I'm just trying to understand the estimate though. So, it sounds like the estimate is six months is that -- what does that six months mean? Is that six months from today you expect to be completed and it will be rolled out to all law offices? Or is there some process that still needs to be done before it's rolled out to the law offices for production.

MR. ROSIUS: So that would put us

sometime in the Fall of this year. And from a development perspective but we still have the business aspect of and the business have to be -- they make the call as far as, you know, how we roll this out. (inaudible) Mary's here or David if you want to anything on that.

MR. CHILES: So, from a technical perspective I believe the estimates, the six-month include our estimate of three months for the divisionals and some of the other requirements. And if we have -- that may slide to the right, given the complexity once we kind of define what we need. Within that still is the business will approve based on the delivery of the product and understanding of whether they meet the needs will make final decisions for that roll out.

I want to caution us that we do an agile process on purpose and I know sometimes it seems that it's a negative if a business until looks at a product and says, hey that's not exactly what I want I need refinement. Or even if they say there's some requirement that I like to add that weren't there before that's

on purpose, that's what we want to happen. It's better to happen in an agile process than actually deliver a product after two years or whatever timeframe it takes and then discover that it needed a cost correction.

So, I know -- it's a government agency and it makes it difficult to maneuver as effectively as we might in the private sector. Because we have contracts (inaudible) period of performance and other things but we still want to try to stay focused on a process that allows feedback from the business and allows all of us actually to learn as we move forward. Because at the end it delivers a product that you don't have to do redos and spend additional money redoing things that if we discover up front we can fix.

The divisionals are very much part of that. It's a need there but we have to get a handle on what that need means. But you still have to do estimates and do things in accordance with the government regulations. We do budgeting two years in advance so it's things like that that require us to take a

best guest estimate. But I am not sure the three months is accurate it could take two months but it could require four.

In that process there may be things that we observe that add additional features that are useful to the business. And I think they need the right to be able to do that. So from perspective I try to put that in the proper perspective to allow us the needed time to grow and learn and to make the best decisions so at the end when we deliver a product it is what the customer needs. And we don't have to spend over a long period of time redoing things because they don't get discovered until late in the process.

So I don't know if it's ever been explained kind of why we try to do an agile process as best as you can in the federal government. But it is designed to identify issues ahead of time and early enough to do course corrections. And it does mean that when we profice estimates they are just that estimates.

And although we do our best to meet

those estimates, I don't want that to get in the way, because I think in the past it has. To delivering a product that make sense for the business to move forward with. Because if we don't do that it doesn't help anybody. That may not be the answer that you want exactly but I think hopefully you get a feel what drives some of the decision making.

VICE CHAIRMAN BARBER: No. That's very helpful, thank you. I know there's aspects of this from the technical side that the OCIO is in charge of but there's also the business side.

MR. ROSIUS: Right.

VICE CHAIRMAN BARBER: Decisions are made on the business side as well. Thank you.

MR. ROSIUS: You're welcome.

CHAIRWOMAN WELDON-WILSON: Are there any other questions? Thank you very much for coming today. And we appreciate all (inaudible). Well we are at the end of our agenda and I would like to thank each of the presenters for coming today and providing us with so much helpful information. And are

there any questions or general question
otherwise from TPAC members. Are there any
from the public. Well given that I like to
thank everyone for participating today. And
look to forward to seeing you on our next
public meeting which is October 26th. Thank
you very much.

(Whereupon, at 11:08 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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