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TRADEMARK PUBLIC ADVISORY

COMMITTEE MEETING

Public Session

November 4, 2002

[1:08 p.m.]

United States Patent & Trademark Office

Patent Theatre  
Crystal Park 2  
2121 Crystal Drive  
Arlington, Virginia

**P A R T I C I P A N T S**

Trademark Public Advisory Committee Members

Miles J. Alexander, Chair

Siegrun D. Kane

Leslie Lott

David Moyer

Kimbley L. Muller

Joseph J. Nicholson

Griffith B. Price, Jr.

David C. Stimson

U.S. Patent and Trademark Office

Anne H. Chasser,  
Commissioner for Trademarks

Bob Anderson,  
Deputy Commissioner for Trademark Operations

Lynne Beresford,  
Deputy Commissioner for Trademark Examination Policy

J. David Sams,  
Chief Administrative Trademark Judge, TTAB

(Continued)

**P A R T I C I P A N T S**

Trademark Public Advisory Union Representatives

Catherine Faint, on behalf of NTEU, Local 245

Lawrence J. Oresky, Vice President, POPA

Ollie Person, Executive Vice President,  
NTEU, Local 243

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

1  
2 MR. ALEXANDER: If everybody is ready, let me  
3 call the public meeting of the T-PAC to order. I'd like  
4 to do same thing that we've done at every meeting except  
5 the last one. I would like to have everyone in the  
6 audience identify themselves for the record. We'll go  
7 around the room for both the court report and for the  
8 record, and have everyone identify themselves. Let's  
9 start at this side.

10 AUDIENCE MEMBER: Ron Williams, Group Director  
11 of Trademarks; Mary Frances Bruce, Trademark Trial and  
12 Appeal Board; David Sams, Chief Administrative Trademark  
13 Judge of the TTAB; Frances Michalkewicz; James Toupin;  
14 Debbie Cohn; Harrison Ford; Mike Hynack; Bob Weir; Karen  
15 Strohecker, Trademarks; Bernie Knight; Lynne Beresford,  
16 Deputy Commissioner for Trademark Policy.

17 MR. ALEXANDER: Now for those sitting at the  
18 table.

19 MR. ANDERSON: I'm Bob Anderson, Deputy  
20 Commissioner for Trademark Operations.

1 MS. FAINT: Catherine Faint. I'm sitting in for  
2 Howard Friedman, NTEU 245; and I'm a trademark examiner  
3 for computers and technology.

4 MR. ALEXANDER: Thank you.

5 MR. MULLER: Kim Muller, also a member of T-PAC,

6 MR. STIMSON: David Stimson, Eastman Kodak  
7 Company. Also a member of the Trademark Public Advisory  
8 Committee.

9 MR. NICHOLSON: Joe Nicholson from Kenyon &  
10 Kenyon. Also a member of the T-PAC.

11 MR. MOYER: David Moyer. A member of T-PAC.

12 MR. ALEXANDER: Miles Alexander, Chair of T-PAC.

13 MS. CHASSER: Anne Chasser, Commissioner for  
14 Trademarks.

15 MS. LOTT: Leslie Lott. Mount & Freeland. Also  
16 a member of T-PAC.

17 MS. KANE: Siegrun Kane. Morgan & Finnegan.  
18 Member of T-PAC.

19 MR. PRICE: Griffith Price, Finnegan &  
20 Henderson. And I'm with T-PAC.

1 MS. PERSON: Ollie Person, representing 243.

2 MR. ORESKY: Lawrence Oresky, POPA, part of  
3 T-PAC.

4 MR. ALEXANDER: And the last two gentlemen who  
5 have entered.

6 AUDIENCE MEMBER: I'm Ron Hack. I'm Deputy CIO  
7 of U.S. PTO. Joe Ebersole, the Coalition for Patent and  
8 Trademark Information Dissemination.

9 MR. ALEXANDER: I thank everybody. We welcome  
10 the few members of the public organization who represent  
11 the public when they're here.

12 We are going to roughly follow the agenda today.

13 But I view today as an opportunity to ask a lot of  
14 questions and express a lot of views on the public record  
15 so that we have the ability to ask officials from the U.S.  
16 PTO about things that we have concerns about with respect  
17 to the Strategic Plan or any other matter that we're going  
18 to be addressing today.

19 In that regard, I don't believe we are going to  
20 stick strictly to the agenda from a time standpoint. We

1 will stick to the agenda in terms of subject matter. And  
2 there are, obviously, periods during which members of the  
3 T-PAC and others will be welcome to ask question  
4 specifically with respect to the subject matter involved  
5 or related to the subject matters involved.

6 That being said, I'd like to start with  
7 Commissioner Chasser's statement.

8 MS. CHASSER: Thank you, Miles.

9 This is the first meeting for three new members  
10 of the Trademark Public Advisory Committee: Leslie Lott  
11 and David Moyer. I'd like to welcome you to the T-PAC.  
12 John Standalen is the third new member. He's unable to  
13 join us today but is looking forward to being involved in  
14 the activities of the T-PAC.

15 With the three new members, we now have nine  
16 voting members who are appointed by and serve at the  
17 pleasure of the Secretary of Commerce. And we want to  
18 extend a warm welcome to everyone and to the new members  
19 and.

20 And we also want to give our gracious thanks to

1 the members who rotated off. Lou Perke, John Rose, and  
2 Helen Korniewicz who left after serving two years on the  
3 T-PAC.

4 We recognize and we are very much honored by the  
5 commitment and the interest of all the members and the  
6 interest that you take in representing constituency groups  
7 in matters related to the Agency.

8 One of the most valuable contributions you, as  
9 members of the advisory committee, make is through the  
10 issues that you address and through the recommendations  
11 that you make in your annual report. And that report is  
12 made to Congress and to the President concerning Trademark  
13 Operations, goals, performance, budget, and user's fees.

14 The report is due at the U.S. PTO on November  
15 22. And we are very much looking forward today to  
16 spending a good part of the day answering any questions  
17 that you may have relative to preparing your report later  
18 this month.

19 The meeting is also a forum for members of the  
20 committee to address the issues that are significant to

1 you. And we look forward to your discussions.

2 Our meeting today will cover very brief  
3 presentations by members of the Trademark Operations  
4 staff. We'll be talking about the highlights of the 2002  
5 performance of Trademark Operations, followed by a status  
6 report on the 21st Century Strategic Plan and the  
7 implications and the impact of the Strategic Plan on  
8 operations.

9 We'll also talk briefly about Madrid Protocol.  
10 As you know, the President signed the Department of  
11 Justice Authorization Bill just last Saturday, November 2.

12 So that has been a treaty that trademark owners have been  
13 promoting for the last 10 years. And we're very pleased  
14 to see that it was finally passed.

15 Finally, we'll have a report on the Trademark  
16 Trial of Appeal Board.

17 Following the presentations on Agency  
18 operations, members of the subcommittee, the T-PAC  
19 subcommittee, will provide the status of their views and  
20 reports concerning TTAB, E-government, quality, and human

1 capital.

2 I'd like to start a brief discussion on the  
3 highlights of our 2002 performance by setting the stage of  
4 what happened this past year in Trademark Operations.

5 We, actually, had a very -- we had an amazing  
6 year. While we conducted a very difficult and painful  
7 reduction in force this year -- and I know we've spoken  
8 about this with the T-PAC at previous meetings -- we still  
9 were able to accomplish quite a bit in light of the  
10 extenuating circumstances and the difficulty to our  
11 organization in terms of really rocking the foundation of  
12 our organization. I wanted to share with you some of our  
13 significant milestones.

14 In the last quarter of the fiscal year in  
15 September, we achieved our goal to receive 50 percent of  
16 applications electronically which was an amazing goal and  
17 one that we're very proud of. The total for the year was  
18 30 percent average of all applications received were  
19 received electronically with 52 percent filed  
20 electronically in the month of September. And it appears

1 that with our data through October that we're looking at  
2 about that same percentage.

3           So in the four years that we have offered  
4 electronic filing to our customers, we have received more  
5 than 192,000 applications including over 330,000 --  
6 331,000 classes that were filed electronically through our  
7 trademark electronic system.

8           As you know, the Agency has received several  
9 awards and recognitions for the content and level of  
10 information that is available electronically through our  
11 web site. And none are more impressive as a recognition  
12 that accompanies the degree of acceptance than comes from  
13 having more than half of our customers choose to file  
14 electronically.

15           Applications filed for registration of  
16 trademarks dropped by nearly 13 percent in fiscal year  
17 2002 following a decline of 21 percent last year in fiscal  
18 year 2001. Nearly 207,000 trademark applications for  
19 registration of a trademark, including 258,000 classes,  
20 were filed in fiscal year 2002.

1           Application filings have declined by 31 percent  
2 in the past two years. So that's from a high of over  
3 375,000 classes in 2002 to about 258,000 this past fiscal  
4 year. The continued drop in filings, which followed two  
5 years of back-to-back annual growth of 27 percent, was  
6 consistent with the downturn in the U.S. economy.

7           The slowdown in filings, with no apparent  
8 turn-around in sight for improved economic growth or  
9 recovery, was the basis for our decision in May to proceed  
10 with the reduction in force.

11           A reduction in force in the federal sector can  
12 be conducted for one of three reasons: A lack of work, a  
13 lack of resources, or elimination of job series. The  
14 reduction in force in Trademarks was based on a lack of  
15 work.

16           At the same time the filings were continuing to  
17 decline, our examining staff levels were near their  
18 highest level ever. And that was due to much lower  
19 attrition as a result of, again, the U.S. economy and the  
20 job market.

1           The level of new applications received is a  
2 critical factor in preparing our budget request and  
3 determining staffing levels for the next fiscal year.  
4 Congress directs us, as does the administration and the  
5 user community, to operate like a business. The decision  
6 to balance our examiner staff with incoming workloads and  
7 inventory was a business and a public policy decision. As  
8 holders of the public trust, we must ensure that there is  
9 sufficient and meaningful work for our employees.

10           We ended our last fiscal year with a staff of  
11 258 examiners which is the full-time equivalent of 250.  
12 And on September 30, 101 examining attorneys were  
13 separated due to the reduction in force. This was a  
14 reduction from 389 that were on board at the beginning of  
15 the fiscal year.

16           Examination quality was 95.7 percent based on  
17 standards for assessing the, quote, "clear error,"  
18 unquote, rate for determining the types of errors that  
19 could affect the registrability of a mark which exceed our  
20 goal of 95 percent. The review of pending registered and

1 abandoned files determined the clear error rate to be 4.3  
2 percent for the year.

3 Errors related to the marks that would be  
4 considered confusingly similar under Section 2D of the  
5 statute were determined in 4.4 percent of applications for  
6 a quality rating of 5.6 percent. The quality rate of 97.1  
7 percent for filings on procedural errors.

8 During the past year, we worked to benchmark a  
9 more consistent set of quality measures that would better  
10 reflect the current quality of examinations. As a result  
11 of these efforts, we have initiated plans for the creation  
12 of a new set of measures, the first action quality and  
13 current quality. And we'll work on establishing the  
14 infrastructure needed to support incorporating the results  
15 of the reviews into the examination practice to achieve  
16 the quality objectives outlined in our 21st Century  
17 Strategic Plan.

18 MR. ALEXANDER: Anne, are those procedures  
19 published anyplace where we could take a look at them and  
20 see them?

1 MS. CHASSER: They're not in the Strategic Plan  
2 spelled out. But Lynne had presented them in our last  
3 T-PAC meeting to the T-PAC; and we received comments,  
4 favorable comments, from the T-PAC in our strategy and  
5 methodology.

6 First action pendency was at 4.3 months at the  
7 end of the fiscal year. Unlike past years when examiners  
8 have traditionally increased production on new cases in  
9 the last quarter of the year, production did not improve  
10 leaving pendency from July to September unchanged. And  
11 that was at 4.3 months.

12 The number of first actions taken by our  
13 examining attorneys declined by 45 percent from a record  
14 number taken in 2001. Only 34 percent of the examiner  
15 action was taken for examining new cases in 2002. So that  
16 plays into the first action pendency. And that's compared  
17 to last year, 2001, of 54 percent of the actions were  
18 taken for first action.

19 Production was focused instead on taking second  
20 action and disposals which resulted in a record number of

1 applications being completed leading to reduced  
2 inventories. And this resulted in more applications were  
3 registered and disposed of by the Office than any previous  
4 year during fiscal year 2002.

5 Total Office disposals were 228,000 including  
6 284,000 classes. And registrations increased by more than  
7 33 percent to 133,200 including 164,500 classes. Average  
8 pendency registration on issuing (inaudible) allowances,  
9 excluding registrations of files with notices of  
10 allowances, was 19.9 months. And that was an increase  
11 from the 17.8 percent reported a year earlier.

12 Disposal pendency increased due to the record  
13 number of files that were processed for disposal, many of  
14 which had been in the system for several years. So you  
15 can see that we're clearing out the back end of the  
16 process, trying to get our process in synch.

17 Our total inventory of pending applications was  
18 reduced by 6 percent. And that was from 510,000 files to  
19 about 479,000. But more significantly, the inventory of  
20 applications available for examination, and that's

1 including new and amended applications, was reduced by 30  
2 percent from 332,000 at the start of the year to 2,330.

3 MR. ALEXANDER: Do we have --

4 MS. CHASSER: Wait. 200 -- no, it's 318,000  
5 classes at the end of the year. The decreases, due to  
6 lower filings as well and a concerted effort to complete  
7 work on applications already under examination, are still  
8 in process. And that's pending publication registration.

9 As a result of this focus, the inventory of  
10 files under active examination by our examining staff was  
11 reduced considerably. Applications previously approved by  
12 examiners were processed, reducing the inventory of  
13 applications in the process by 36 percent.

14 In the past two years alone, the Office has  
15 received more than 20,300 petition requests under 2.66 to  
16 revive an application. We made real progress in that last  
17 year as well by granting or disposing 12,300 with actions  
18 taken on an additional 3,900 requests. This is more than  
19 double the number that was addressed in 2001. The number  
20 of petitions filed under 2.146 actually declined by about

1 100 to 500 requests.

2           Our performance results in 2002 were based on  
3 several factors: The reduced level of new applications,  
4 the record low number of unexamined applications at the  
5 start of the fiscal year, the number and the age of  
6 in-process applications in the pending inventory, the  
7 suspension of production incentive awards, the large  
8 number of examining attorneys that were on detail during  
9 significant portions of the year, and, of course, the  
10 announcement of the reduction in force which had an effect  
11 on the overall productivity of our office.

12           Our strategy for the past year, given the  
13 reality of continued lower than normal filings and the  
14 potential risk for running out of work for an examining  
15 staff, was to redirect our work force to reduce the number  
16 of outstanding requests for petitions, to work to complete  
17 applications under examination in an ITU, to increase the  
18 number of applications that could be registered or  
19 disposed of, and, finally, to allow us to better manage  
20 the transition from a paper-based process to an electronic

1 environment by 2004.

2           So given the challenges and the extraordinary  
3 circumstances faced in this past year, we achieved our  
4 stated objectives for the year.

5           And as I mentioned earlier, with the dawn of the  
6 new fiscal year, we just have received -- the President  
7 has signed Legislation H.R. 2215, making Madrid Protocol a  
8 reality. And we have one year from the date that the  
9 President signed the legislation to deposit the records in  
10 the international bureau in Geneva.

11           So we certainly have our challenges ahead of us  
12 this year. But I think we're up to the task.

13           Next, what I'd like to do is ask Bob Anderson to  
14 brief you on the status of our efforts regarding the U.S.  
15 PTO's 21st Century Strategic Plan.

16           MR. ALEXANDER: Thank you, Anne. So if anybody  
17 wants to address the rest of the group, press the button  
18 on the speaker in front of you and be sure to turn it off  
19 after you're finished.

20           MR. ANDERSON: My name is Bob Anderson for

1 anyone who doesn't know me. Before I get started on the  
2 Strategic Plan, there is a one-page sheet that's coming  
3 around. You saw another version of this earlier in the  
4 year. This is basically substantially revised based on  
5 comments that we received from the Public Advisory and  
6 other bar groups about materials that were in the  
7 Strategic Plan.

8 This morning a comment was made about the  
9 revision for 2004. The Agency is going to try to have a  
10 draft fairly well completed by mid January. We would like  
11 to get comments, requests for revisions, and anything else  
12 from the Public Advisory before that date so we can  
13 incorporate them into the revision.

14 We plan on starting revision on the materials  
15 fairly soon. We will be sharing those materials with the  
16 Public Advisory as it goes along. What you have in front  
17 of you is pretty much where we are today on doing those  
18 revisions.

19 There are, I suppose, four major areas. And  
20 I'll start at the bottom first, implementation. The

1 trademark information system, which is our E-government  
2 electronic system for electronic file management and  
3 examination changes, will concur concurrently on or about  
4 November 2, 2003. The implementation date has been moved  
5 from October 1, 2003, to November 2 to comport with  
6 implementation of the Madrid Protocol.

7 We will be building the electronic processes for  
8 handling the Madrid Protocol and electronic file  
9 management into the TIS system concurrently. We do have a  
10 set of requirements for the protocol in draft form. I  
11 will be in meetings later this week to finalize those  
12 requirements. But we plan on implementing TIS, the  
13 protocol, and any changes in examination about November 2,  
14 2003.

15 Madrid Protocol, of course, as Anne indicated,  
16 will implement on November 2, 2003, 365 days. We do have  
17 to deposit the essential package at the international  
18 bureau in Geneva. That normally takes place three months  
19 in front of the implementation date. Current planning is  
20 that we would deposit the instrument three months ahead of

1 November 2, and we would start receiving applications on  
2 November 3.

3           And any legislation mentioned in this paper  
4 would be put forth in 2003 or when we have the opportunity  
5 to do so, either in a Technical Corrections Package or  
6 some other U.S. PTO package that's on the Hill. The only  
7 legislative change that is still in this package is the  
8 proposal to eliminate signature on the affidavits and  
9 declarations accompanying applications and other papers  
10 into the office.

11           MR. ALEXANDER: Bob, is there any reason why the  
12 requests that the Trade Mark Public Advisory Committee has  
13 made for the past two years to make the appointment of the  
14 advisory committee an annual term, is there any reason why  
15 that cannot be put into a legislative package?

16           We've been asking for a legislative package to  
17 do that for two years now. And it troubles me that we  
18 submit any legislation of any type from the U.S. PTO which  
19 does not include that as part of that our job of  
20 attempting to turn out a report with a half a year of not

1 having full membership. I think the point at which we can  
2 keep asking for it to be done without the affirmative  
3 assurances from the PTO that somebody can do something  
4 about it has passed.

5 MR. ANDERSON: Not being in the office that  
6 handles our legislative packages, that type of amendment  
7 would be appropriate for a technical corrections bill.  
8 I'm not real sure that we would put that forward.

9 MR. ALEXANDER: Is there anybody here in the  
10 office who can tell us who puts this forth?

11 MS. BERESFORD: We could draft something, and it  
12 would have to be cleared with the Patent side of the house  
13 and same AIPA legislation. We're not completely convinced  
14 that the essential legislation would solve the problem  
15 because it's when the folks are appointed that is also an  
16 issue.

17 So we are talking about it and we're looking  
18 into it. But it isn't part of the Strategic Plan. It's  
19 just a problem with briefing (inaudible).

20 MR. ALEXANDER: Let me place on the record that

1 we've been asking for this for two years. We are not the  
2 appropriate body to draft the legislation. Legislation  
3 has been drafted and submitted. And I think it should be.  
4

5 If Congress asks for the input of the Trademark  
6 Public Advisory Committee and the Patent Public Advisory  
7 Committee by February 2, which is actually the legislation  
8 for the Strategic Plan, and our hands are tied because we  
9 have people coming in and out like a merry-go-round during  
10 the year, I think the time has come that we need somebody  
11 in the U.S. PTO to take responsibility for doing this and  
12 telling us who's going to do it and when.

13 And I realize late appointments are also a  
14 problem. But we can really deal with that a lot better  
15 than we can by the constitutional provision of  
16 appointments being for the full year. Now, I realize you  
17 could draft something. But is there anybody here who can  
18 tell me how that gets into the legislative hopper from the  
19 U.S. PTO?

20 MS. BERESFORD: Well, I'll have to get Agency

1 approval and OMB approval and approval in a number of  
2 other areas in order to get it as part of a new  
3 administration bill.

4 MR. ALEXANDER: Well, we're about to enter  
5 another year with the same problems we've had in the past.

6 MS. CHASSER: Miles, we can certainly look into  
7 that and report back to you before our next meeting.

8 MR. ALEXANDER: Well, how about a report back  
9 from somebody within 30 days before our next meeting as to  
10 whether or not anything --

11 MS. CHASSER: Done.

12 MR. ALEXANDER: -- can be done. And -- I'm  
13 sorry. The first year shame on you; the second year,  
14 shame on me.

15 MR. ANDERSON: The E-government part of the  
16 Strategic Plan is probably the major focus. You will note  
17 that I've added the Madrid Protocol. That was not  
18 included before even though, in the TIS system, we were  
19 going to build in a structure for the Madrid Protocol.  
20 The protocol itself will require additional changes in

1 existing electronic systems.

2 TIS is essentially an electronic file wrapper  
3 with electronic file management called the Trademark  
4 Information System. The electronic file wrapper will  
5 become the official record for examination purposes.

6 You will note that I'm not saying that this will  
7 replace the paper file wrapper for this point. For  
8 internal use for examination purposes, the electronic file  
9 wrapper, available through the TIS system, will be the  
10 record that the examiner uses for examination and for  
11 communication with the applicant.

12 Scanning-on-demand of paper records that have  
13 not been captured electronically, we are currently doing  
14 this for all incoming correspondence. If a letter or any  
15 piece of correspondence arrives at the office regarding  
16 any application, it is scanned into the ticker system and  
17 stored with a serial number related to that application.  
18 A good portion of the outgoing correspondence is being  
19 captured in the system now but not all of it.

20 When TIS becomes effective, we will have in

1 place capture of all paper electronically and all outgoing  
2 electronic correspondence in the system. And all incoming  
3 paper will be either scanned or deposited in the system  
4 electronically.

5 We have a goal of 80 percent electronic  
6 communication for non-protocol filings by November 2 next  
7 year. We have a goal of 100 percent for anything to do  
8 with the Madrid Protocol. The implication of that is, if  
9 you are going to file into the protocol, we will be  
10 putting forth a proposed CFR change to require electronic  
11 filing.

12 So if you're a U.S.-based applicant and you're  
13 going to file a new basic application with Request for  
14 Extension of Protection, you will need to file it  
15 electronically.

16 If you're a U.S. applicant and you're going to  
17 file a Request for Extension of Protection under the  
18 protocol based on an existing pending application or an  
19 existing registration, you will have to file that Request  
20 for Extension of Protection electronically. All payments

1 would be made electronically to the office.

2 We will move to an electronic Official Gazette.

3 We are in the process of making that changeover sometime  
4 probably around mid-year 2003.

5 The result will be reduced paper-handling cost  
6 and reduced contractor cost. We now have contractors  
7 doing most of the paper handling in the office.

8 Gradually, as we eliminate the movement of paper through  
9 our law offices, contractor staff will be eliminated also.

10 So it will have a very minimal impact on government  
11 employees because we have, for quite some period of time,  
12 been contracting out positions that were primarily focused  
13 on the moving or handling of paper in the office. As we  
14 handle less paper, contractor staff will be removed.

15 And we plan on electronic exchange with the  
16 international bureau of WIPO for all applications coming  
17 into the country, better known as Requests for Extensions  
18 of Protection, electronically. This would include the  
19 text and the image associated with the application.

20 A few changes that will happen. Under the

1 international bureau standards, you can file a mark for  
2 color using a color drawing. As you know, currently, you  
3 must mark up the drawing to show color. When the protocol  
4 implements, we will accept color drawings. We will  
5 publish in the Gazette in color. And we will issue  
6 certificates in color at that point. U.S. applicants  
7 under the protocol will all be allowed to file color  
8 drawings if they wish to do so.

9 MR. ALEXANDER: Bob, what is the plan for pseudo  
10 marks and design marks?

11 MR. ANDERSON: Well, a pseudo mark is added to  
12 our records to enable or enhance searching. That won't be  
13 affected by the protocol at all. We would add pseudo  
14 marks and design search codes. We will actually receive  
15 Request for Extension of Protection from the international  
16 bureau with designed search codes for figurative elements  
17 on the drawing. We will check those design search codes  
18 and add if necessary. But we will receive information  
19 with design search codes. They will not have pseudo  
20 marks, and they will not have the other information that

1 we tend to have for the records.

2 MR. ALEXANDER: I ask this in context not of  
3 just Madrid. But it has been the case of national filing,  
4 I seem to recall one of the gentleman who is here present,  
5 that there were a lot of problems eliminating paper design  
6 marks in coding and the errors that were coming in.

7 MR. ANDERSON: Right.

8 MR. ALEXANDER: It would seem that that would be  
9 exacerbated with the international filings. I just wanted  
10 a discussion of that area, not just in the context of the  
11 protocol, but in the context of our general ability to  
12 deal with design marks.

13 MR. ANDERSON: Well, if I could get through the  
14 Strategic Plan stuff first, I'll be glad to go back and  
15 talk about that other stuff if you wish to do so.

16 I do want to get into examination. There was  
17 one very controversial aspect dealing with examination in  
18 the office that had to do with using certified searches or  
19 contract searches. Both terms were being used. That will  
20 be eliminated from the new version of the Strategic Plan.

1           There will be three options for examination.  
2           The first option is to file electronically, get a first  
3           action in one month, registration or NOAH in nine months  
4           or less. The applicant would be required to file  
5           electronically on all communications and with a  
6           30-day-response period or less for anything dealing with  
7           the application.

8           The 30-day-response period would not be a change  
9           in the statutory response period. It would simply be a  
10          change for applications filed under this option. If you  
11          wish to use the option for filing, you would have to  
12          respond in 30 days.

13          MR. ALEXANDER: Bob, what is the assurance that  
14          the U.S. PTO will be able to meet its response time when  
15          we don't know the level of applications nor fully the  
16          impact yet of the reduction in force? And are you talking  
17          about statutory provisions that state response within 30  
18          days?

19          MR. ANDERSON: No. As I indicated, Miles, the  
20          provision will be done through a change in the CFR. The

1 applicant will have the option of using this method for  
2 filing. But part of the quid pro quo will be, if you wish  
3 to have expedited examination, you will need to respond in  
4 30 days to an office action.

5 MS. KANE: Is there going to be a cost  
6 difference?

7 MR. ANDERSON: It will be a lower cost.

8 MS. KANE: It would be a lower cost.

9 MR. ALEXANDER: Lower or -- please comment.

10 MR. ANDERSON: It will not be an increased cost.

11 As you are aware, there's a regular controversy about the  
12 fee structure that was proposed by the Agency for a  
13 differential between electronic and paper filing. That  
14 has not been resolved to my knowledge.

15 It could very well end up -- although we can  
16 change our fees through the rule-making process, the other  
17 proposal is that we should charge more for this type of  
18 filing rather than less. That will clearly be subject to  
19 comment through to rule-making process. If large segments  
20 of the public would rather pay a higher fee for expedited

1 examination, I'm sure the Office would be willing to  
2 accommodate that.

3 MR. ALEXANDER: I guess I'm puzzled. We had  
4 talked in the past about a \$50 increment for paper filing.

5 MR. ANDERSON: Right.

6 MR. ALEXANDER: Are you saying that this will  
7 have the same fee less the \$50 that would be added on for  
8 paper filing?

9 MR. ANDERSON: The initial proposal here was  
10 straight-up electronic filing would have stayed at three  
11 and a quarter. Paper filing would have gone to 375. The  
12 fee for expedited processing would have been \$50 lower or  
13 \$275.

14 As I explained at the last meeting, we believe  
15 that we can operate this system at a lower cost simply  
16 because electronic processing can be done at a lower cost  
17 in the office. We, in fact, save a substantial amount of  
18 money when we eliminate paper-handling requirements.

19 MR. ALEXANDER: I understand the difference  
20 between paper and electronic. But this is a 30 day. I

1 mean, if you file electronically and you don't do the 30  
2 day deal, what is the fee?

3 MR. ANDERSON: The fee wouldn't change. You  
4 would just lose the right to gain rapid examination.

5 MR. ALEXANDER: So the fee would be the same  
6 whether you went the 30 day route or not.

7 MR. ANDERSON: If you got into the system, we  
8 would not charge an increase. Although, we would be open  
9 to proposals, I assume, to charge an additional fee if you  
10 don't comply with the CFR.

11 MS. KANE: I thought you said it was going to be  
12 a lower fee.

13 MR. ANDERSON: It would be a lower fee. The  
14 initial proposal was \$275 for expedited examination, \$325  
15 for straight electronic filing, and \$375 for paper filing.

16 So expedited examination would be a lower fee simply  
17 because we could move it through the office more quickly  
18 and we would have the guarantee of electronic  
19 communication at all points.

20 Now, if the Public Advisory would like to

1 suggest to us that, if the applicant fails to file, say, a  
2 response to the office action electronically, we should  
3 then impose an additional fee to get it up to \$325, I  
4 probably wouldn't object to that.

5 MR. ALEXANDER: How many options are there going  
6 to be in the new Strategic Plan?

7 MR. ANDERSON: Three.

8 MR. ALEXANDER: Rather than the four original  
9 codes.

10 MR. ANDERSON: Yes. The contract or certified  
11 search has been dropped. And it will be dropped. We are  
12 not giving it any further consideration.

13 MR. ALEXANDER: You have a paper filing at the  
14 highest rate.

15 MR. ANDERSON: Right.

16 MR. ALEXANDER: Electronic filing had a little  
17 fashion of the existing fee and the proposal of the \$50  
18 reduction if you go on the fast track.

19 MR. ANDERSON: Yes.

20 MR. ALEXANDER: And what is the benefit to the

1 public of the fast track?

2 MR. ANDERSON: Well, in particular, we've had  
3 very frequent discussions with segments of the bar about  
4 getting to some type of expedited examination or special  
5 handling. We do, in fact, have a special handle procedure  
6 which is done through the petition's process. Many times  
7 --

8 MR. ALEXANDER: Would you explain that to the  
9 group because I think not everybody is familiar with that.

10 MR. ANDERSON: Okay. You can file a Petition to  
11 Make Special. What happens is the office will make the  
12 application special, put a little red card on top of it,  
13 and, theoretically, that application will be handled more  
14 promptly than other applications.

15 One aspect of it is that the applicant still has  
16 the option of responding in six months, so on and so  
17 forth.

18 We have also found that many times the handling  
19 of the petition itself adds time to the applications.  
20 Many times the applicants are, in fact, advised by people

1 in the Office not to file a Petition to Make Special  
2 because it pulls the application out of the routine  
3 examination process and sometimes ends up slowing it down  
4 as opposed to speeding it up.

5           Petitions to Make Special are most commonly  
6 filed in situations where the applicant would like to have  
7 a registration to put in front of the court or to block  
8 importation of counterfeit goods at the port of entry. We  
9 believe an expedited examination process could answer some  
10 of the concerns that the bar has had about the examination  
11 process itself in that we believe we could register  
12 applications more promptly.

13           MR. ALEXANDER: Well, the design patent field,  
14 if there's an infringement, there's a procedure for an  
15 extra fee to get expedited treatment as I understand it.

16           MR. ANDERSON: Right.

17           MR. ALEXANDER: This concept is applicable for  
18 entities that want more rapid processing of their  
19 applications without respect to whether there's a specific  
20 reason such as blocking imports or infringement that's

1 going on.

2 MR. ANDERSON: That would be the case, yes.

3 MR. ALEXANDER: Some corporations, I understand  
4 from speaking to colleagues, would feel like they had to  
5 use the expedited system always for fear that, if they  
6 didn't use it, they would be saying to the public and to  
7 others that this is not an important application. And I'm  
8 wondering whether we're going to clog things up with  
9 everybody asking for expedited treatment and it being  
10 impossible for the U.S. PTO to meet that type of demand.

11 MR. ANDERSON: Well, as I said, the one  
12 advantage to the expedited processing from the PTO  
13 standpoint is the applicant would be required to do  
14 everything electronically. Now, one aspect of that is,  
15 for instance, response to office action. All data that  
16 comes back or all information that comes back to the  
17 office would be in an XML tag document.

18 The application, rather than sending us a change  
19 to an identification of services or goods, it says  
20 something like "after the word cafe in the term restaurant

1 services in the nature of a bar or in the nature of a cafe  
2 add the word bar," they would have to give us the entire  
3 identification or an image of the new record and we would  
4 overlay that in our data base, keeping the old record of  
5 record in the data base but adding the new one. We don't  
6 need then to go in and do specific edits in the data base.

7 This system is based on overlaying records with  
8 the image of the new data as opposed to going in and  
9 trying to do amendments to records which is an area where  
10 we oftentimes have problems in keeping track of things.  
11 We believe the added efficiency of going to an electronic  
12 system would allow to us manage and handle this data  
13 without problem and to keep the applications moving.

14 Further, if you look at some of the other  
15 requirements, the applicants would be required to use the  
16 U.S. Goods and Services Manual. There would be an  
17 indication of that in the record. Therefore, there would  
18 be very few or almost no refusals on Goods and Services  
19 which is the most common refusal that examiners make.

20 We believe that this would eliminate a great

1 deal or a number of the problems that we currently see in  
2 applications of a procedural nature. It should probably  
3 reduce the refusal process to, generally speaking, the  
4 refusal on relative or absolute ground. With that done,  
5 because we only make refusals in absolute or relative  
6 grounds refusals in about 20 to 22 percent of our files,  
7 that would substantially reduce the impact on examiners  
8 during the examination process.

9 MR. ALEXANDER: So the basic purpose of this is  
10 more to encourage electronic filings than any other single  
11 motive.

12 MR. ANDERSON: No. The basic purpose of this is  
13 to improve the efficiency and the effectiveness of the  
14 office and to allow us to improve the general quality of  
15 our operation.

16 MR. ALEXANDER: Is there any way of doing this  
17 without multiple-level applications of expedited  
18 applications? In other words, is there any other way of  
19 requiring the use of the standard description of goods?

20 MR. ANDERSON: Well, the Office, as I think

1 you're aware, went out with a proposal for mandatory  
2 electronic filing. I think it's fair to say that it went  
3 over roughly like a lead balloon. We also went out with a  
4 proposal to have a \$50 fee differential between electric  
5 and paper filing. I guess the weight probably dropped  
6 from lead to maybe brick. But it was not well received  
7 either.

8           The reality is the bar in general does not like  
9 the Office putting a mandatory requirement on them.  
10 Putting three options on the table, we believed, was a way  
11 to continue to allow people to file on paper if they  
12 wished to do so, to use a truncated electronic system if  
13 they didn't wish to comply with everything to get an  
14 expedited filing, and to use the expedited filing process  
15 if they want to fully participate in where the office is  
16 going with E-government.

17           MR. ALEXANDER: What happens if the applicant  
18 agrees to go the expedited route and then they don't  
19 respond within 30 days as attorneys tend not to do? Does  
20 it drop into the second class? Doesn't that create a

1 quagmire of moving from one category to another?

2 MR. ANDERSON: Well, the second part of this is,  
3 Miles, you are talking about the current system where  
4 we're managing paper records. Unfortunately, we don't  
5 have time today. But we are in the process of beta  
6 testing a new system called FAST that will help us start  
7 to manage the files better. We believe that with  
8 electronic file wrapper, and because multiple people can  
9 access the file at the same time, many of the problems  
10 that you see today with the paper system will either be  
11 immureded fairly substantially or disappear.

12 I won't guarantee you that this is going to be  
13 the perfect system. But I will guarantee you that many of  
14 the problems you see today with paper records are going to  
15 be substantially immureded as we move to electronic  
16 filing. We have seen it with electronic filing itself.  
17 And the system keeps getting improved.

18 MR. ALEXANDER: I guess I'm more concerned with  
19 the inertia of attorneys to change the method in which  
20 they do business. And when you tell somebody if they

1 respond within 30 days and that attorney is on trial or  
2 their house counsel is negotiating acquisitions in China  
3 and it just doesn't get done, what happens? Does it drop  
4 into the next category of nonexpedited? Is there a  
5 penalty? Is there a --

6 MR. ANDERSON: Well, it would definitely drop  
7 into the category of nonexpedited. And as I indicated  
8 earlier, if the Public Advisory would like to make a  
9 recommendation to the Office that there be an additional  
10 penalty or that a fee be added for the person who does not  
11 comply, we would certainly be willing to propose that in  
12 the CFR setting up expedited examination.

13 MR. ALEXANDER: Well, would you be willing to  
14 propose just two classes of applications, one with normal  
15 electronic filing and one with paper filing with a  
16 difference in fee without having multiple levels within  
17 the electronic filing?

18 MR. ANDERSON: If that's the recommendation of  
19 the Public Advisory, I'm sure it will certainly be given  
20 consideration by the Office. I mean, the Office was

1 attempting to answer a need that has been put on the table  
2 a great number of times by members of the public.

3 If the public no longer believes that there's  
4 any need for expedited handling of applications, we would  
5 be more than willing to go along with that I think.

6 MR. ALEXANDER: The members of the public you  
7 speak about, I think, are corporations which want to file  
8 to stop imports or bring suit as opposed to the general  
9 public.

10 MR. ANDERSON: Right.

11 MR. ALEXANDER: What we're really talking about  
12 is, generally, corporate entities that have a bona fide  
13 need to stop counterfeits from cutting in or registering  
14 with customs or to bring suit. But the trademark area,  
15 unlike the patent area or the copyright area, you don't  
16 need a registration to bring suit. You do need a  
17 registration at customs.

18 I'm wondering whether we're creating a whole new  
19 system or 20 or 50 applications a year that have a need to  
20 be at customs. And whether it would create a very complex

1 system that will result in people agreeing to do something  
2 which, I believe, they will not comply with in  
3 overwhelming numbers once the pressures of time come  
4 about. And I question whether or not the Patent and  
5 Trademark Office can comply with expedited responses on a  
6 regular basis.

7           And my fear is we're creating a very complex  
8 system when perhaps it ought to be an expedited petition  
9 for customs processing when we can show there's  
10 counterfeiting and not just be pulled out of the routine  
11 application processing and put in the deep six but  
12 actually gets expedited.

13           It seems a lot easier to handle it the way the  
14 design patterns are handled and maybe charge an extra fee  
15 if the customs registration is needed and deal with those  
16 50 applications rather than deal with three completely new  
17 categories many of which do not require expedited  
18 treatment but will automatically ask for it.

19           MR. ANDERSON: Well, I can only the assume is  
20 that, as the Chair of the Public Advisory, you are in the

1 process of giving the Office advice on what you would like  
2 to see. We are more than willing to take that advice. If  
3 the public wishes to have a single examination system,  
4 that's fine with me. I mean, to some degree, I've got no  
5 horse in the race.

6 MR. ALEXANDER: Well, neither do we. We're just  
7 representing the public at this point.

8 MR. NICHOLSON: Bob, is there any information  
9 about how popular the existing system is to expedite a  
10 petition to make special? Do people --

11 MR. ANDERSON: I can't tell you off the top of  
12 my head how many petitions to make special we get. But I  
13 guess that the number is relatively low.

14 MR. NICHOLSON: I think what Miles might be  
15 inferring here is maybe fixing that and specifically  
16 looking at the reasons why it exists to begin with rather  
17 than tinkering with a two-tiered sort of electronic-filing  
18 system which really seems to be for other reasons.

19 MS. KANE: Have you gotten feedback from these  
20 other bar organizations that didn't like what has been

1 suggested, that had the lead balloon and the brick  
2 reaction, to the interest in expedited treatment?

3 MR. ANDERSON: Well, generally speaking, I mean  
4 I participated in several forums on the topic of the 21st  
5 Century Strategic Plan. And my own observation -- and I  
6 don't have any concrete data to back this up. But  
7 generally speaking, corporate America has liked the  
8 concept of being able to move in the system relatively  
9 quickly; and generally speaking, law-firm America has  
10 tended to raise objections to it. I don't know why  
11 there's that divergence between the two parties. But, you  
12 know, I could only guess at it.

13 MR. ALEXANDER: One point in the past discussed  
14 a rationale for nonpaper filing. In other words,  
15 encouraging electronic filing by having a filing date that  
16 was immediate when you filed. So in an ITU, for example,  
17 you had constructive national use immediately when the  
18 electronic filing was received; and where the paper,  
19 without a certificate of mailing, getting credit had a  
20 matter of days' delays and maybe more than days' delays.

1 MR. ANDERSON: Right.

2 MR. ALEXANDER: It strikes me that probably, if  
3 it's properly publicized as potential malpractice on the  
4 part of an attorney that did not use electronic filing,  
5 that would give you a tremendous impetus to get electronic  
6 filing.

7 MS. KANE: Isn't that the lead balloon problem,  
8 though? Isn't that what the public has cried out against?

9 MR. ALEXANDER: That's not the public. That's  
10 the vested interest of the bar.

11 MS. KANE: All right. The public has proposed

12 --

13 MR. ALEXANDER: Not lawyers.

14 MS. KANE: Lawyers, corporations, individuals --  
15 where did you get your balloon reaction from?

16 MR. ANDERSON: Well, it pretty much is dependant  
17 on which type of group I'm talking to. As you know, some  
18 bar groups are made up of primarily corporate types and  
19 other bar groups are made up primarily of law firms and  
20 some are a mix. And usually, depending on the

1 compensation of the group, is resulting in a variance in  
2 reaction to these proposals.

3 Now, I do want to emphasize there will  
4 essentially be no difference in examination. I mean,  
5 again, it's probably unfortunate that we didn't give you a  
6 demo of the FAST system today. Because one of the things  
7 that will happen in the FAST system is, when an amendment  
8 is received by the office, the case immediately goes into  
9 the examiner's dockets.

10 Today when we receive an amendment, first, it's  
11 processed through the mail room. And then it gradually  
12 winds its way upstairs. If the application is not in the  
13 awaiting-response docket, it doesn't get matched. And  
14 they have to wait and find the applications.

15 And, you know, applications get checked out for  
16 various purposes, members of the public using the public  
17 search room. They get checked out for copying by the  
18 Office of Public Records. They get checked out by other  
19 examiners because they want to take a look at the file.

20 Sometimes the files are just misplace in the

1 office because we still do have about 550,000 applications  
2 floating around that office down there. It is hard for us  
3 to keep a handle on everything, in particular, given the  
4 rapidity with which these files move.

5 As you know, every six months these files have  
6 to have something happen to them. And in many instances,  
7 it happens more quickly than every six months. We get  
8 thousands of request for changes of address or changes of  
9 correspondence or minor changes to the applications that  
10 are outside the boundary of the normal examination.

11 Under this system, when a piece of paper arrives  
12 at the office, it will be immediately scanned into the  
13 system and added to the record.

14 MS. KANE: So this means the examiner would get  
15 it more or less right away.

16 MR. ANDERSON: It will be in the examiner's  
17 docket immediately.

18 MS. KANE: And so, then, you don't perceive  
19 problems with the Trademark Office being able to adhere to  
20 the action in 30 days.

1 MR. ANDERSON: I don't see the same problems  
2 that we have today, no.

3 MR. ALEXANDER: I think there's a difference  
4 between the same problems you have today (inaudible). Bob,  
5 you know I regard you as another great public servant.  
6 Don't take any of this personally.

7 MR. ANDERSON: No.

8 MR. ALEXANDER: It's really just questioning.  
9 For example, I was personally surprised at the Strategic  
10 Plan's Second Set of Eyes being eliminated to fast track  
11 applications which are mainly going to be corporate  
12 applications where people who can afford to or are  
13 motivated to pay the extra money having a second shot at  
14 determining whether or not a substantive rejection is  
15 appropriate, whereas the run-of-the-mill applications  
16 didn't get that Second Set of Eyes.

17 That stuck me as inconsistent with the general  
18 public interest of having all applications treated from a  
19 quality standpoint in the same way. And I suspect that  
20 was not the intention. But that's how it read to a number

1 of us.

2 MR. ANDERSON: Yeah. That was not the  
3 intention. And you will note that on here it's been  
4 amended to say "filing." Those who may be familiar with  
5 the Patent side of the shop, the Second Set of Eyes was  
6 added first in business method patents. And it is now  
7 being expanded further into the corps based on the success  
8 in business method.

9 We will be doing the same thing. If a Second  
10 Set of Eyes proves to be a successful way to enhance the  
11 quality of the examination process, we would then look at  
12 expanding it further into the corps. But until we have  
13 proof of concept, particularly in the trademark side, we  
14 do not want to get into doing a huge investment in adding  
15 people for second-set-of-eyes review.

16 MR. ALEXANDER: But your pilot is only on Option  
17 1. The pilot doesn't include a representative sampling of  
18 Option 1 and the other option. And I don't know if that's  
19 discriminatory on the face even in the pilot.

20 MR. ANDERSON: Well, it would actually be fairly

1 random because any examiner in the corps could be handling  
2 an expedited application. Since any examiner in the corps  
3 could potentially get an expedited application, that means  
4 any examiner in the corps has an equal opportunity to do  
5 something which would result in a second-set-of-eyes  
6 review kicking the application back to the examiner.

7 MR. ALEXANDER: Random to the corps but not  
8 random to the applicant.

9 MS. BERESFORD: Just one thing I want to clear  
10 up. The expedited applications are less expensive.  
11 There's a lower fee for them.

12 MR. ALEXANDER: But not now.

13 MS. BERESFORD: Well, we are having them until  
14 we get the new system in. So the proposal would be to  
15 have them be less expensive. So to get a  
16 second-set-of-eyes review, it costs more to get this.

17 MR. ALEXANDER: Cost for you to hire an attorney  
18 to agree to a 30-day response so the cost could be  
19 substantial.

20 MS. BERESFORD: Yeah. And the other process,

1 the thing that I think hasn't been said, is to look at the  
2 substantive issues in the file that would be all of the  
3 quality review which might be doing (inaudible). That's  
4 what they would be looking at.

5 MR. ALEXANDER: I don't know anybody else's  
6 reaction of the T-PAC as a quorum. I sure would like to  
7 be not the only one talking. If I'm not expressing  
8 thoughts that others are thinking, let me know.

9 MR. PRICE: I'll accept your invitation. Griff  
10 Price here.

11 Bob, I'd like to ask a question. And then I  
12 have a reaction to Option 1 as I now understand it.

13 Is it the intention of the Trademark Office  
14 ultimately to encourage all electronic communications with  
15 the Office in connection with applications as I understand  
16 it?

17 MR. ANDERSON: Yes, absolutely.

18 MR. PRICE: That seems to be the principle  
19 objective that Track 1 is directed to. And it seems to me  
20 that Track 1, as it's written here with the lower

1 examination fee, is not really put forward to satisfy the  
2 needs when they arise for expedited as fast as possible  
3 examination, for example, in connection with a customs  
4 actions; but rather it is to promote electronic  
5 communications after the application is filed throughout  
6 the examination process.

7           And if I'm correct about that, why would it not  
8 be more effective simply to fold these aspects of Track 1  
9 into Track 2 until all electronic communications with the  
10 Office can be achieved?

11           MR. ANDERSON: Well, in discussions with various  
12 bar groups, and, again, I can only refer back to the U.S.  
13 PTO's proposal for mandatory electronic filing, there's  
14 clearly a segment of the bar that has very strong feelings  
15 about making anything mandatory, period.

16           There's clearly a segment of the bar that  
17 thought, if we made electronic filing mandatory, it would  
18 detract in the effectiveness of the trademark registration  
19 system in that there was a concern that some people who  
20 could only file on paper would not be able to get into the

1 system.

2 Similarly, there's a big difference between  
3 filing electronically. We have a large number of  
4 applicants today who file their initial application  
5 electronically, and that's the end of electronic  
6 communication with the Office.

7 And in looking at this proposal, we put three  
8 options on the table. One which would primarily be  
9 focused on total electronic communication; one that would  
10 be focused on filing electronically and then communicate  
11 as you wish to do so; and, third, paper filing. And then  
12 you could communicate, continue to communicate, on paper  
13 or even start to communicate electronically.

14 This proposal was based on essentially a number  
15 of things that had happened over the past 18 months  
16 regarding the Office's effort to move towards mandatory  
17 electronic filing. Mandatory electronic filing, from our  
18 viewpoint, was probably a proposal that was a bit too  
19 early given where things are today.

20 So we have put this alternative on the table to

1 offer, one, if you want to do everything electronically  
2 and conform to our rules about giving us overlays of data  
3 as opposed to saying, you know, add this word to the ID.  
4 If you're going to change the applicant's name or the  
5 applicant's address and name, give us the whole thing  
6 rather than just give us "add something to it"; and try to  
7 give us a complete application at the point of filing.  
8 Use the identification of Goods and Services Manual to  
9 minimize the opportunity for there to be errors in the ID,  
10 so on and so forth.

11 We believe that if there were three levels of service,  
12 yes, eventually, everyone would probably move toward  
13 electronic filing. But we believe we have to give the  
14 trademark community the opportunity to make that decision  
15 on their own as opposed to hitting them with a  
16 two-by-four.

17 MR. MOYER: The company I work for, Proctor and  
18 Gamble, has been a big supporter of electronic commerce;  
19 and we continue to be. My feeling is that the three  
20 options, it creates a fundamental change to how trademarks

1 get examined. Someone mentioned earlier, we're down a  
2 hundred examining attorneys; so there's a lot coming all  
3 at once.

4 Plus, on Option 1, as I now understanding it,  
5 there's a 30-day-response time required by the applicant.

6 And that will create a significant burden on the  
7 applicant. And I worry about the presumption or the  
8 appearance of not going that route. It's like, well, you  
9 couldn't really have been that interested in that  
10 trademark if you chose Option 2.

11 I'd really like the PTO to be thinking about  
12 trying to do this just economically. In other words, you  
13 have two options. You can either go electric, or you can  
14 go by paper. And you get lower fees if you go electric.  
15 And you make a correlation between the lower fees and the  
16 cost savings that the Trademark Office realizes as a  
17 result of that.

18 But that seems logical. I think it could be  
19 sold to the public. And then you don't get into this  
20 which one should I chose and be worried about negative

1 implications about what option is chosen.

2 MR. MULLER: I'm not sure in reality this is  
3 three options. I mean, I can't see why anybody would file  
4 under Option 2.

5 MR. ANDERSON: You know, I can't speak to that.  
6 I can only tell you what our current experience is.  
7 Applicants today have the option of doing everything  
8 electronically. And we have an electronic Office Action  
9 Response Form. We allow the applicant to give the  
10 examiner the option of sending communications to the  
11 applicant electronically. And there are fairly good  
12 number of applicants who have chosen to do that. We have  
13 a fairly good number of applicants who are in fact  
14 responding to the examiner using the Office Action  
15 Response Form.

16 I don't know what motivates people to do or to  
17 engage in certain behaviors in dealing with the Office.  
18 Just speaking about the response to office action, as you  
19 know, statutorily now, it's six months. We haven't done  
20 any studies recently. But studies done several years ago

1 indicated the following: The two big times that  
2 applicants tended to respond to an examiner's office  
3 action was, one, the first month and, two, the sixth  
4 month. There was also almost nothing on second, third,  
5 fourth, or in the fifth month. There was a gradual rise  
6 that started in the fourth month, fifth month. But the  
7 big period was the sixth. The second biggest period was  
8 the first month after the applicant got the letter.

9 Now, I don't know if the same thing pertains  
10 today because, as I've said, we haven't looked at it in a  
11 long time. My guess would be the imposition of responding  
12 in a month is not perhaps as big as has been stated here  
13 because quite a few people do it.

14 MR. MULLER: But still, if I could just follow  
15 this point up one more time.

16 There is no incentive not to file under Option 1  
17 if you want to file electronically. It reduces your fees,  
18 and there's no penalty to go from Option 1 to Option. So  
19 everybody will file under Option 1. And then the office  
20 will have to be burdened with deciding when you convert

1 from Option 1 to Option 2.

2           It would seem that you would have a lot easier  
3 time in the Office just to have one option, which is file  
4 electronically, set forth certain criteria, which may be a  
5 combination of these two, instead of trying to parse the  
6 good electronic applications from the bad electronic  
7 applications.

8           MR. PRICE: Yes. I would like to agree with Kim  
9 Muller. I think that's exactly what the situation appears  
10 to be and to the extent that the objective of Option 1  
11 seems to be to encourage all electronic filing and  
12 examination of applications.

13           If Option 2 were supplemented simply by  
14 providing that the Trademark Office would, to the extent  
15 possible, either by rule or practice, respond on an  
16 expedited basis to every communication filed  
17 electronically, I think you would have the best of both  
18 Option 1 and Option 2 in a very simple package.

19           MS. KANE: I'm on the fence at the moment. But  
20 one thought that has occurred to me is that, if you get a

1 first response, if the Patent Office responds in 30 days,  
2 there may be a number of applications which will go  
3 through. You'll have it. And then there may be some  
4 responses that will show you there are problems here and  
5 it's going to take some doing to get the application  
6 through.

7           So maybe there isn't going to be this awful  
8 presumption of my understanding of his comment's on that,  
9 that if you go from the initial 30 day, the initial fast  
10 track, and then drop to a not-so-fast track, that might be  
11 understandable in light of a lot of circumstances  
12 including what the response you got from the Patent and  
13 Trademark Office and where your product is at the time and  
14 possible infringements or not infringements, that sort of  
15 thing.

16           And I guess my question is just how much of a  
17 burden will it be from the administrative aspect of  
18 sorting out the ones that, after the 30 days when the  
19 applicant doesn't come back within 30 days, where do they  
20 go into the system then at that point? At what stage do

1 they --

2 MR. ANDERSON: Well, again, this was not  
3 contemplated for implementation until after we moved to  
4 electronic file management. The time frames or flags  
5 regarding these applications would be built into that  
6 system. If the application is flagged as an expedited  
7 application and the applicant does not respond in 30 days,  
8 it is would automatically go into a different track.

9 MR. ALEXANDER: Does the fee go up?

10 MR. ANDERSON: Well, again, as I indicated  
11 earlier, if the Public Advisory Committee wishes to advise  
12 Under Secretary Rogan that the fee should go up, I'm sure  
13 that would be taken into consideration before we do that  
14 second version of the Strategic Plan.

15 MR. ALEXANDER: I'm troubled by the fact that  
16 somebody has an electronic filing now. It doesn't have to  
17 continue electronically now. It can convert to paper  
18 anytime during the process. Right.

19 MR. ALEXANDER: Yes.

20 MR. ALEXANDER: And if you have a two level, if

1 you get a reduced fee for going to Option 1 and then you  
2 don't comply, it would seem almost mandatory that you  
3 would have to pay something more or else it would tend  
4 that everybody would take Option 1 if they could stop it  
5 at any time without paying any additional fee or penalty  
6 which doesn't serve the purpose. It would intend to  
7 reduce the income of the PTO.

8 MR. ANDERSON: Well, the purpose that it does  
9 serve is there's a great efficiency to the Office to  
10 getting a complete application at the front end of the  
11 system. A large amount of examination time is spent on  
12 incomplete applications.

13 You know, in hindsight, probably one of the  
14 mistakes the Office made with the Trademark Law Treaty  
15 Revisions was to allow applications to be filed with  
16 minimal requirements at the front end of the system. That  
17 has resulted in some applications that come in with fairly  
18 minimal information resulting into what may amount to an  
19 unnecessary office action.

20 The filing of a complete application

1 electronically, the use of the Goods and Services Manual,  
2 a requirement that the applicant give the Office  
3 everything necessary so as to have a complete application,  
4 would have an impact on examination that, I believe, would  
5 be positive in that there would be fewer procedural  
6 refusals.

7 MR. ALEXANDER: But the fee comes in and a  
8 reported complete application comes in and a description  
9 of goods comes in and the examiner gets it; and low and  
10 behold, they're screwed up and they haven't met those  
11 requirements. You've got to send it back, ask for an  
12 additional fee, say they haven't complied. Right?

13 MR. ANDERSON: The examiner may notify the  
14 applicant, you did not respond in 30 days, therefore, your  
15 expedited examination is off. But that would be  
16 relatively easy to do in the electronic environment.

17 MR. ALEXANDER: No. I'm talking about the  
18 electronic file that comes in and it purports to meet the  
19 requirements for the reduced fee.

20 MR. ANDERSON: Right.

1 MR. ALEXANDER: And everything else. But it  
2 doesn't. They fouled up the description of goods; they  
3 haven't given you the complete application.

4 MR. ANDERSON: Well, I would have to say, if the  
5 applicant did not comply with the expedited process at the  
6 front end, they would then have a division fee and lose a  
7 filing date. They must have a complete application.

8 MR. ALEXANDER: Right.

9 MR. ANDERSON: And if the rules of practice say  
10 that, for a complete application, you must use the  
11 identification of Goods and Services, et cetera, et  
12 cetera, and it does not comport with that, they have the  
13 potential of losing a filing date.

14 MR. ALEXANDER: But you have another whole  
15 category of applications that have been kicked back which  
16 is an administrative nightmare if they're substantial is  
17 what I'm saying. And I don't know whether they would be  
18 or wouldn't. But let me --

19 MR. MULLER: Can I make one more comment, Miles?

20 MR. ALEXANDER: Sure.

1 MR. MULLER: I see something that is troubling  
2 here. And that is that, if you are filing in Category 1  
3 and you don't respond and you fall into Category 2, it  
4 seems that the time processing in Category 2, electronic  
5 and paper, are exactly the same. And I thought the Office  
6 was going to try to encourage people to go from paper to  
7 electronic.

8 So it would seem to me that if you're going to  
9 have three tiers, if you decide that's what you're going  
10 to do, the third tier ought to have a longer time if  
11 that's politically correct than it would be on the second  
12 tier.

13 MR. ANDERSON: Well, today a paper filer and  
14 electronic filer are prosecuted in exactly the same time  
15 frame. We do not give priority to one over the other.  
16 And there was no intention of changing that priority  
17 between the paper and electronic filer in the future. The  
18 only reason there's a difference for Option 1 is the  
19 Office was going to get some benefit off of that option.

20 The goal here was not to disadvantage or to

1 change the relationship between the paper and electronic  
2 filer in the future. The goal was to add an option that  
3 would potentially enhance the efficiency of the Office and  
4 perhaps give applicants something they have oftentimes  
5 said they want which is an expedited registration process.

6 If that was a bad goal, you know, that's...

7 MR. PRICE: If, in fact, the Office undertook to  
8 respond within a shortened period of time to all  
9 electronic communications during the examination process,  
10 wouldn't the result be that Track 2, the E-filing track,  
11 would issue in a shorter period of timing on average?

12 MR. ANDERSON: Currently, the examiners, once an  
13 amended file reaches their desk, have a set period of time  
14 in which they have to respond to the correspondence from  
15 applicant.

16 Now, given some of the backlogs we've had  
17 recently, we have not necessarily been hitting those times  
18 at all points.

19 Again, we believe that the electronic file  
20 management system is going to allow the examiner to better

1 manage their dockets. The docket will show up on their  
2 desktop with files colored green, yellow, and red. A red  
3 file is a file that has gone beyond the set time for a  
4 response. A yellow file is a file that's approaching the  
5 response time. A green file is one that's just arrived in  
6 the examiner's docket.

7 The examiner, at any point of the day, any time  
8 of any week, will be able to pull up their docket and see  
9 what the status of files are in their docket.

10 Our examining attorneys have generally been very  
11 good about meeting those dates. About the only times they  
12 don't meet those dates are when we have been in the  
13 situation of horrendous backlogs or their dockets simply  
14 get too big. They then have the option of going to the  
15 manager and asking for an extension on the time to respond  
16 to a response from the applicant. Generally speaking, a  
17 large number of our examiners maintain zero on overdue  
18 cases. So I don't think the world will change there.

19 The applicant responds in 30 days. The examiner  
20 currently has 21 days from the date of arrival on their

1 desk to respond to that case. So the turnaround time  
2 would be 30 days from the applicant; 21 days from the  
3 examiner.

4 The difference with the expedited process would  
5 be the examiner would get an amendment on their desk that  
6 would be an overlay or image of the data in the  
7 application. The examiner would be reviewing something  
8 that would be much easier to review than some of the  
9 amendments that we get today.

10 I mean, quite frankly, the bar does not do a  
11 good job of giving us information. We would be asking the  
12 bar to change their behavior to get the expedited  
13 examination. I believe the examiners would not have much  
14 problem meeting their performance appraisal plan  
15 requirements because the bulk of them meet that  
16 requirement today in a system that's primarily focused on  
17 paper.

18 MR. ALEXANDER: Let me exercise the prerogative  
19 of the chair for a minute. We could spend the whole  
20 afternoon on this subject, and we need to move on. I'll

1 take one last comment from Siegrun, and then let's move on  
2 to some of the very serious questions that are raised  
3 ranging from recertification to the use of nonattorneys  
4 and so forth that are still on this page and have not been  
5 addressed.

6 MS. KANE: I'm a little concerned about the loss  
7 of a filing date when you go the E-filing application  
8 route and you don't have everything complete. And your  
9 comments about the bar and their sloppiness is probably  
10 well-taken. And there are going to be people out there  
11 who think they're getting (inaudible) and then they turn  
12 out to not even having a filing date. And when do they  
13 find that out?

14 And I'm just expressing concern there that  
15 people...

16 MR. ANDERSON: They would find it out as quickly  
17 as the electronic does today, which is within 24 hours.

18 MR. ALEXANDER: Presuming they're in the office  
19 and they got the response.

20 MR. ANDERSON: If we get an application today

1 where the applicant doesn't pay the fee or there is  
2 substantive information missing from filing at the point  
3 of filing -- and keep in mind that with the TLT revisions,  
4 you give us the applicants name, goods and services, a  
5 correspondence address, and a mark; and you've got a  
6 filing date.

7 MR. ALEXANDER: But not if the goods did not  
8 fully conform.

9 MR. ANDERSON: Under the expedited application,  
10 if the goods were not in conformance with the Goods and  
11 Services Manual, which could be checked electronically,  
12 you would potentially not get a filing date for an  
13 expedited filing because you would be short fees. And as  
14 you know, the fee is statutory. You cannot get a filing  
15 date in the Office unless the full fee is paid.

16 If the application did not conform with the  
17 expedited standard and you gave us the fee for an  
18 expedited application, you would be short fees; therefore,  
19 you would not get a filing date.

20 MR. ALEXANDER: We will give you more input. I

1 thought it was important that you get some feel for our  
2 reaction as we go through. And I would expect our annual  
3 report to give you more. And then when we actually get  
4 the printed proposal of the revised Strategic Plan, I  
5 would propose that we have a meeting pretty quickly and  
6 certainly before your February date deadline to Congress  
7 to report back to give us this.

8 MR. ANDERSON: On the expedited examination,  
9 essentially, you have all the information on this piece of  
10 paper that you would need to provide some feedback to the  
11 Office. And I think, you know, from the standpoint of  
12 value of the Office, it would be better for us to get  
13 feedback early as opposed to later.

14 MR. ALEXANDER: Well, I think you got some  
15 today.

16 MR. STIMSON: Well, we need to have a formal  
17 recommendation from the Public Advisory Committee. I mean  
18 there's been a lot of discussion here today. But for  
19 advice, we need to have something on paper that says we  
20 don't like expedited examination or we believe you should

1 charge an extra fee if a party files expedited and then  
2 fails to following the rules.

3 MR. PRICE: I have a motion. If now is our time  
4 to give our opinions, in the abstract, I think it's a good  
5 idea. And as a trademark owner, I would be very tempted  
6 to pay less to get a quicker response. And I think I  
7 would mostly file under the expedited procedure even if I  
8 didn't need to for a customer or corp but that it would  
9 just be done that much sooner. I wouldn't have to worry  
10 about it.

11 I think there's been enough concerns, very good  
12 ones raised. I think, for example, you would have to  
13 charge the extra \$50 if somebody didn't meet the deadlines  
14 otherwise everybody is going to file under this. And I  
15 think that's going to create some administrative issues.  
16 And I think there's been a number of good points here.

17 So my suggestion would be that we recommend that  
18 this be put off for now. I think we need more experience  
19 with the two-tiered system before we go to the  
20 three-tiered system. So my suggestion for T-PAC would be

1 to recommend to the Trademark Office that we not go to the  
2 expedited tier at this point until they have more  
3 experience with the E-filing.

4 MR. ALEXANDER: Does T-PAC want to take a vote  
5 on this? Or do they want to give further consideration to  
6 it, take a look at the draft of the annual report in terms  
7 of whether or not that fits this recommendation, which I  
8 suspect would be consistent with it, but may spell it out  
9 a little bit more?

10 MS. KANE: Maybe it would help the PTO if we did  
11 a vote at least so we can have a feeling.

12 MR. ALEXANDER: Okay. All those who are  
13 inclined, voting members of --

14 MR. PRICE: I'd like to ask for a second because  
15 I want to propose a friendly amendment.

16 MR. ALEXANDER: Griff, please.

17 GROUP: Second.

18 MS. KANE: I second.

19 MR. PRICE: I'd like to propose as a friendly  
20 amendment to your motion that we suggest to the PTO that

1 the aspects of Option 1, which would contemplate that the  
2 Trademark Office respond on an expedited basis to all  
3 electronic communications, be incorporated into the  
4 E-filing tract of that two-tract system.

5 MR. STIMSON: I will accept that amendment.  
6 That was one of the good points that I thought was raised  
7 during the discussion and ought to be taken into account.

8 And I think part of our response should not only be that  
9 we oppose it at this time but to come up with some very  
10 specific and positive recommendations as to how to make  
11 this better even though we don't go to the three-track  
12 system. And that would be one of our recommendations.

13 MR. ALEXANDER: Any discussions? All those in  
14 favor.

15 GROUP: Aye.

16 MR. ALEXANDER: All those opposed. You'd like  
17 to abstain.

18 MS. LOTT: I'd like to abstain.

19 MR. ALEXANDER: Does anybody else abstain? And  
20 I vote with the majority.

1 I would say that there are other ways, as I  
2 suggested, to encourage at least the initial electronic  
3 filing and that is by the advantage of an immediate filing  
4 date as opposed to a delayed filing date because attorneys  
5 are very frightened of malpractice. And a three- or four-  
6 day delay in filing dates could result in an intervening  
7 application. A lot of attorneys, once that's publicized,  
8 are not going to take that risk.

9 It does not solve the follow-up problem of  
10 continuing the electronic track. And I'd like the T-PAC  
11 to give some consideration as to how we can encourage  
12 continuing on the fast track.

13 And one way, certainly, would be a penalty if  
14 you drop off the electronic filing once you elect to go  
15 that route with your application and you cease using it as  
16 much of the savings is gone. And, therefore, it strikes  
17 me as something that needs consideration in terms of if  
18 you convert to a paper file or if any time you file paper  
19 and pay an additional fee.

20 Is there any reaction to adding that to the

1 resolution, that the additional paper fee, if we have an  
2 additional paper fee, is applicable at the time of filing  
3 but if at any time you cease to use the electronic means  
4 to communicate? Thoughts?

5 MR. STIMSON: I'd like to think about that a  
6 little more before going on record about the fee increase.

7 MR. ALEXANDER: Let's defer that. Bob, why  
8 don't you go ahead. We're going to go over your time  
9 limit. We expected to do that.

10 MR. ANDERSON: Okay. I mentioned the Second Set  
11 of Eyes which would be a pilot. If there is some change  
12 to the three-tier examination proposal, we would still  
13 propose to run a pilot of some type on second-set-of-eyes  
14 examination. We might do something like patents where we  
15 select a particular class that we would take a look at or  
16 run it in one or two law offices or something like that.

17 But before we implemented it throughout the  
18 organization, we would run a pilot to see if there was any  
19 return on investment of that nature. There is a  
20 recognition it will not be cost free.

1 Any questions?

2 MR. ALEXANDER: Well, I think the question that  
3 I posed is the Second Set of Eyes is that it not be given  
4 to just electronic fast track filing as we're now talking  
5 about perhaps not having a three-level system. That may  
6 be not as important. But I'm still inclined to want to  
7 see that all applicants have an equal chance to have a  
8 Second Set of Eyes on a pilot basis so that statistically  
9 the paper filer and the electronic filer and the  
10 electronic filer who converts to paper all have the same  
11 likelihood of having that pilot go to them as opposed to  
12 just --

13 MR. ANDERSON: Well, again, it's electronic file  
14 management. It would be relatively easy for us to do  
15 random sample selection on files for second-set-of-eyes  
16 review.

17 MR. ALEXANDER: Is that the general --

18 MR. MULLER: I understand that you have a  
19 quality review program already in place to review  
20 applications.

1 MR. ANDERSON: Yes. It's mentioned -- it's  
2 called institute in process review to catch examination  
3 problems early in the process; correct the problems with  
4 training and guidance. Lynne Beresford is heading up that  
5 effort. She and Sharon Marsh and a small group of people  
6 who are on detail currently from the Office of Trademark  
7 Quality Review and three or four senior attorneys who have  
8 been added to the process are setting this up.

9 The goal is to take a look at applications early  
10 in the process as opposed to back-end review which mostly  
11 looked at cases that were beyond saving in a sense.

12 The in-process review is taking a look at first  
13 actions and trying to arrive at a standard for the review.

14 Once that standard is set, it will be implemented  
15 throughout the organization. And any application under  
16 examination would have the potential of being chosen for  
17 the in-process review.

18 They are being selected on a random sample  
19 basis. This is not looking at every application. Once we  
20 have the standards established and once we have the -- I

1 would assume about maybe 2003 -- it will take the place of  
2 old Office of Trademark Quality Review which did  
3 end-of-process review as opposed to in-process.

4 MR. ALEXANDER: Do you want to continue? That  
5 was very helpful.

6 MR. ANDERSON: Okay. New areas. The other  
7 thing on here is establish a pilot project using attorney  
8 and nonattorney or paralegal examiners in examination  
9 process.

10 The attorney would review and handle all  
11 applications where there's any relative or absolute ground  
12 of refusal. In other words, a substantive or a legal  
13 refusal would be done by an attorney, period.

14 Nonattorney examiners would take over files  
15 where there were only procedural issues in the file. I  
16 suppose the best example is, if there's something wrong  
17 with the identification of goods and services that does  
18 not bear on the substantive aspect of the file, it would  
19 be handled by a paralegal or potentially handled by a  
20 paralegal.

1 MR. NICHOLSON: Could you explain a little bit  
2 more how that would work because it seems to me that  
3 you're adding a step.

4 MR. ANDERSON: Well, the examiner would be  
5 working with one or more paralegals. If the examiner  
6 looked at the file, did not find relative or absolute  
7 grounds of refusal but noticed there was something wrong  
8 with the ID, they would have the option of passing the  
9 case to a paralegal so the paralegal could handle the  
10 change in ID.

11 And as you know, and as I've indicated this  
12 previously, about 80 percent of the applications that go  
13 out have a nonsubstantive refusal in it. It ranges from,  
14 you know, please amend the ID, you didn't provide the  
15 state of incorporation, so on and so forth.

16 And I want to emphasize again that there are no  
17 plans to implement this until we have electronic file  
18 management. But one major advantage with electronic file  
19 management is more than one person can access the file at  
20 the same time. It also allows the examiner to quickly

1 notify the paraprofessional or paralegal to take a look at  
2 the file and to give a note in process that is being built  
3 into the system to tell the paralegal what they believe  
4 needs to be done.

5           You will notice that I also said the paralegals  
6 or nonattorney examiners will be trained in pretty much  
7 the same manner as an attorney. They will be able to  
8 recognize things like relative and absolute grounds where  
9 they may have been missed or where something in the file  
10 changes and pass it back to the examiner who has  
11 responsibility for the file.

12           MR. ALEXANDER: What are the qualifications to  
13 be a paralegal?

14           MR. ANDERSON: We're trying to set it up so that  
15 there is a requirement that they have at least a bachelors  
16 degree. We would not exclude attorneys from taking one of  
17 the jobs. But you would have to have at least a bachelors  
18 degree. Or a positive education requirement is the way  
19 the federal government refers to it.

20           MR. MULLER: I just had a comment. Isn't this

1 the way it works on post registration --

2 MR. ANDERSON: Yes.

3 MR. MULLER: -- of applications today?

4 MR. ANDERSON: Yes. The post registration  
5 paralegal examiners, there are no lawyers working in that  
6 area. They do substantive examination on all post  
7 registration papers filed.

8 A similar thing happens in the ITU unit.  
9 Paralegal examiners examine the initial filing of a  
10 statement of use before it is forwarded to the law office  
11 to be sure that the statement of use comports with the  
12 statute. So we have a fairly large number of employees in  
13 the organization who are, in fact, doing procedural-type  
14 examination today on substantive and nonsubstantive  
15 grounds.

16 MR. ALEXANDER: When you say "substantive," what  
17 are you talking about? Do you mean substantive or  
18 procedural when you were talking about post registration?

19 MR. ANDERSON: Post-registration examiners, in  
20 fact, refuse to accept certain applications for renewal

1 and for affidavits of continued use. If the refusal to  
2 accept a paper, I believe, is substantive in nature in  
3 that someone who has the registered mark then loses his  
4 rights.

5 MR. ALEXANDER: Well, we're talking about  
6 substantive in a different context for descriptiveness or  
7 for --

8 MR. ANDERSON: Right. Absolute and relative  
9 grounds would be handled by the attorneys in the law  
10 office.

11 I think the point was that we do have a number  
12 of paralegal nonattorney examiners who are, in fact,  
13 making fairly high-level decisions about owner rights in  
14 trademarks and, in particular, in trademark registrations  
15 or the ability to get a mark registered after the filing  
16 of a statement of use.

17 MR. ALEXANDER: The same would be true if you  
18 don't have the check with the application, then you don't  
19 get a filing date.

20 MR. ANDERSON: Absolutely.

1 MR. ALEXANDER: By substantive, you don't mean  
2 substantive legal grounds; you mean failure to follow  
3 statutory rules that are --

4 MR. ANDERSON: Failure to follow statutory  
5 requirements, yes.

6 But I'm not for sure what the distinction would  
7 be, for instance, in a likelihood of confusion refusal by  
8 an examining attorney and a paralegal examiner who gets  
9 evidence of continued use and the specimens don't match  
10 the mark. I mean, they are making a legal decision in a  
11 sense that the use of the mark today varies in a  
12 substantive manner from the use of the mark when the  
13 application was originally registered. I mean they are  
14 doing an analysis that is very similar to likelihood of  
15 confusion.

16 MR. ALEXANDER: The lines get muddied. And I  
17 think that's one of the concerns that's being expressed.

18 Do we have a list of nonsubstantive matters that  
19 would be considered by the paralegals if eventually the  
20 application process is approved? Has anybody categorized

1 substantive against nonsubstantive when those areas are  
2 mixed?

3 MR. ANDERSON: Well, generally speaking, Section  
4 1 and Section 2 of the statute cover the relative and  
5 absolute grounds. The other materials, for instance,  
6 specificity on identifications is in Section 1 of the  
7 statute. But it is normally not considered to be a  
8 relative or absolute grounds of refusal.

9 MR. MULLER: When you conduct a pilot project  
10 like this, do you normally report back to the public the  
11 results of the program before implementing it on an  
12 across-the-board basis?

13 MR. ANDERSON: Yes.

14 MR. MULLER: You do. Because I would suggest  
15 that when you do that, that you outline for the public  
16 just what it is that you consider to be procedural and  
17 what is not procedural that these people are going to do.

18 This is one of these situations where people that are not  
19 familiar with how the infrastructure of the office works  
20 simply cannot appreciate whether these people are going to

1 do meaningful work that's going to be productive and not  
2 duplicative of examining corps.

3 MR. ANDERSON: Well, if we run a pilot and we  
4 discover that a nonattorney or a paralegal examiner cannot  
5 perform substantive work or if the work at all duplicates  
6 what an examiner does, I would suggest to you that the  
7 Office would probably drop the pilot as being  
8 unsuccessful.

9 At least two or three times during my career in  
10 the office, we have looked at using nonattorneys as  
11 assistants to examiners. I participated in one program  
12 back in, I guess, the late '80s as an examiner. It didn't  
13 work well. Now, the idea at that time was that they were  
14 going to doing searches for us and some other  
15 miscellaneous work.

16 The proposal here is not to have these folks  
17 doing searches. The proposal here is the attorney would  
18 be the first viewer of the application. And if they  
19 didn't find anything in it that would result in a relative  
20 or absolute grounds of refusal but saw that the ID needed

1 to be amended, they would simply pass it to the paralegal.

2 And the paralegal would generate the letter and deal with  
3 the applicants on that specific issue.

4 It should save attorney time. It should give  
5 the attorneys the opportunity to engage in what could be  
6 better defined as legal work at almost all points. And  
7 they could pass off some of the procedural things that,  
8 quite frankly, probably absorb time unnecessarily today.

9 MR. MULLER: One last comment. I just hope that  
10 if you do this you don't disqualify people that don't have  
11 a college education that are doing good work today in  
12 post-registration administration. So I would hope that  
13 you would either grandfather those people in or make  
14 exceptions for them. That was all.

15 MR. ANDERSON: The proposal for positive  
16 educational requirement would only apply for people who  
17 were starting new in the office. If you were already in  
18 the office and essentially qualified for the position, you  
19 would still be qualified.

20 MS. FAINT: I'd like to respond to this

1 proposal. The examiners by and large are not in support  
2 of it and believe that it, in essence, is a kind of almost  
3 dumbing down of our job in that it adds a procedural layer  
4 to things that actually makes our job more difficult.

5           As it would go right now, at least as we see it,  
6 there is within the federal system a different kind of  
7 responsibility that we have. Almost a different order of  
8 people would necessarily be under us. It's somewhat  
9 different than private practice in that we would not train  
10 those people and would not have -- we would have  
11 responsibility for the work that they turn out without  
12 having the requisite management control over them and the  
13 quality of their work. And that's what we see as a  
14 problem.

15           Also in the past, there have been studies  
16 conducted here at the Trademark Office that have shown  
17 that the work done by examiners and the way that we do it  
18 now is really one of the best ways to do it. And we see  
19 that as significant and what we want to continue to do.

20           MR. ALEXANDER: Thank you. How extensive would

1 the pilot be?

2 MR. ANDERSON: Initially, it would probably be  
3 limited to one or two law offices.

4 MR. ALEXANDER: Why don't we go ahead and try to  
5 finish up. We're about a half-hour behind, but I  
6 envisioned this being the same type of questions that we  
7 would have had in the last part of the portion of this  
8 program. So I don't think we're duplicating anything.

9 MR. ORESKY: Bob, I've got one question. It  
10 seems to me that identification of the problem is the most  
11 important step you can take, knowing that there's a  
12 problem there. And I'm having difficulty seeing that the  
13 examiner would identify the problem and then save time by  
14 telling someone else to write up probably a form paragraph  
15 or something like that relating to the problem.

16 MR. ANDERSON: I guess the only way I can  
17 respond to that is I have had an number of examining  
18 attorneys send me e-mail messages. These are folks who  
19 apparently bothered to read the Strategic Plan, suggesting  
20 that they liked the idea. It's not something that is

1 entirely formulated yet. But there are a number of  
2 attorneys in the organization who have expressed a  
3 positive view towards using nonattorney or paralegal  
4 examiners to supplement their work. You know, their  
5 primary complaint is, look, I get engaged in a lot of  
6 procedural stuff that takes away from substantive  
7 examination.

8 I don't have a clear answer to the question. As  
9 I've indicated, we have tried to use nonattorney examiners  
10 in the past in primarily a paper system. And it didn't  
11 work well. We want to take another look at it after we  
12 get to electronic file wrapper and electric file  
13 management. If it doesn't work, it doesn't work. And  
14 then we don't do it.

15 MR. ALEXANDER: Last question. Siegrun.

16 MS. KANE: Well, in a situation where the  
17 examiner begins by looking it over and doesn't see an  
18 absolute or, whatever you call it, substantive grounds for  
19 rejection but notices an identification of goods problem  
20 and then it goes to the paralegal who says, sorry, the

1 identification of goods is no good and yet comes...

2 I mean you are then going back to the examiner  
3 again, aren't you, because the goods are different and  
4 maybe there's going a different scope of search? And  
5 that's maybe something to consider.

6 MR. ANDERSON: Normally, it wouldn't change of  
7 scope of the search because the only thing that can happen  
8 is the ID would be narrowed not expanded. So the original  
9 search should cover it. And if the identification has  
10 changed so radically that it doesn't fall under the  
11 original ID, that's a problem for the applicant also.

12 As is indicated here, there would only be one  
13 examiner regardless of whether they were an attorney or  
14 paralegal handling the file. If the paralegal took over  
15 the file to amend the identification of goods and  
16 services, when the file comes back to their desk and they  
17 look at it again, they will have essentially the same  
18 substantive training as an examiner. If they see a  
19 problem, they will shift the case back to the attorney and  
20 examiners.

1 MR. ALEXANDER: Bob, we have bullet points still  
2 to go through.

3 MR. ANDERSON: Sure. I'm assuming you're  
4 talking about recertification.

5 MR. ALEXANDER: Yeah, right. Unless there was  
6 something else above that that you wanted to discuss.

7 MR. ANDERSON: No. Recertification of knowledge  
8 skills and ability for attorneys and nonattorneys after a  
9 set period of time.

10 This is to ensure that someone's skills don't  
11 get out of line with what they're doing. I mean the  
12 reality is that the law changes constantly. Continuing  
13 legal education is commonly used in states with mandatory  
14 bars to keep people up with training.

15 We would do something very similar to that  
16 inside the Office to ensure that our examining attorneys  
17 are, in fact, knowledgeable about the current state of  
18 trademark law, up-to-date on examination, so on and so  
19 forth. The focus would be on maintenance and improving  
20 skills.

1 I mean one of the comments we sometimes get is  
2 that some of our older examiners don't seem to be in tune  
3 with the current state of the law. This is to ensure that  
4 people are keeping up with the law.

5 MR. ALEXANDER: That's anybody over 70 and  
6 doesn't have a Blackberry.

7 MR. MULLER: Just a couple of questions here.

8 I just wonder if this is a real problem and  
9 whether or not certification has any causation to a better  
10 application review? I think the Office should encourage  
11 people to get updates on their education and to improve  
12 their skills, and every three years seems to be about  
13 right.

14 But I would think that there's already a process  
15 and already a method to award and monitor productivity and  
16 excellence of examiners. And maybe instead of an overall  
17 recertification, it may be better to take those very few  
18 examiners who aren't doing a good job on examination and  
19 having private counseling with them to increase their  
20 productivity and excellence instead of trying to implement

1 a whole apparatus around every examiner to require that  
2 they do certain things every three years.

3 MS. LOTT: I just wondered if the terminology  
4 recertification indicates that there is presently a  
5 certification program in place. And could you just  
6 confirm that?

7 MR. ANDERSON: There is not a certification in  
8 place today. The requirement to be hired in the office is  
9 that you have graduated from law school and eventually  
10 that you are admitted to one of the bars in the United  
11 States. That is your certification. You are qualified as  
12 an attorney.

13 MR. ALEXANDER: I think all lawyers, I have  
14 mentioned this previously, view with fright having to take  
15 a new bar exam every three years.

16 MR. ANDERSON: If I could add, this would not be  
17 a bar exam. We have, in fact, just started testing an  
18 on-line program. And what it amounts to is we would ask  
19 attorneys, for instance, to go take a course on merely  
20 descriptive refusals. As part of the course, they are

1 asked certain questions. If they don't get the answer  
2 right, then they go back through it again.

3 The goal is to get people, to have people be  
4 familiar with the current state of the law. This is not  
5 technically a bar exam. This will be an on-line training  
6 activity. We have one quick course developed. We are in  
7 the process of developing another.

8 But examining attorneys would be required to go  
9 through this stuff during the course of their employment.

10 MR. ALEXANDER: Is this set out in the Strategic  
11 Plan proposal with specificity, or is it just sort of  
12 recertification in general?

13 MR. ANDERSON: It's stated very broadly as  
14 recertification.

15 MR. ALEXANDER: That's my problem in that there  
16 are some areas where the Strategic Plan uses a code term  
17 that could mean anything from a bar exam to CLE and we  
18 don't know where in between that may fall. And for us to  
19 say, yes, we believe in recertification without knowing  
20 what it involves, that presents a problem for the T-PAC to

1 just put a stamp of approval which could mean almost  
2 anything.

3 MS. FAINT: I think, also, it could be somewhat  
4 overkill to a problem that is really much simpler. The  
5 examiner corps very often would like to have training and  
6 often responds positively to offers of training and often  
7 asks for additional training which we don't receive.  
8 Which is something different than requiring to us go  
9 through a process where we have to be recertified,  
10 whatever that means, and may have particular meanings and  
11 requirements under a particular state bar that people may  
12 also find something they don't want to be exposed to.

13 I think that if the problem is that we want to  
14 improve examination and we want to make sure that people  
15 are up on the law, then the way to do that is to offer  
16 relevant training and in a timely fashion particularly  
17 when people ask for it.

18 MR. ALEXANDER: And, Bob, would you go through  
19 the next?

20 MS. BERESFORD: We have already, as Bob has

1 indicated, done one on-line training. And we have another  
2 one that should roll next month. And if the T-PAC is  
3 interested in this method that they're using, we'd be more  
4 than happy -- I know you're going to get a demonstration  
5 of the FAST System -- to have you sit down and do one of  
6 our on-line training exams. The ones we've piloted thus  
7 far are fairly short, 15 to 20 minutes.

8 MR. ALEXANDER: I think we'd certainly be  
9 interested to see what it is. Whether or not the T-PAC  
10 wants to take the test...

11 MS. BERESFORD: As an attorney, you have to live  
12 with risk here.

13 MR. ALEXANDER: Attorneys are infamous as not  
14 being risk takers.

15 MS. BERESFORD: And we would be more than happy  
16 to set up an opportunity for you to see what we're doing  
17 with this pilot web-based training that we're doing with  
18 these attorneys.

19 MR. ALEXANDER: The last question, Larry, before  
20 we go on.

1 MR. ORESKY: Two questions. Number one, have  
2 you tested this with supervisors? And, secondly, I  
3 thought I read someplace that this is going to be a  
4 condition for promotion which conflicts or may be viewed  
5 as conflicting with nonpunative which I also read in  
6 another paper.

7 MR. ANDERSON: Regarding your question on having  
8 tested this with supervisors, that's an interesting  
9 question. We are moving to electronic communication in  
10 the office. We just reached an agreement with NTEU that  
11 all of our examiners would use electronic systems.

12 The first people we're training are the  
13 supervisors, including the managing attorneys and senior  
14 attorneys. And there will be a brief test afterward to  
15 ensure that they fully understand the system because they  
16 will be expected to be at least as proficient as any  
17 examiner in the office.

18 The answer to your question is, yes, managers  
19 and supervisors will be going through the same training as  
20 examining attorneys to ensure that their skills are

1 up-to-date.

2           As to the second, I believe that was in the  
3 Patent proposal. I don't believe it was in the Trademark  
4 one. We do not plan on using this for promotion purposes  
5 or anything like that. We have what we believe is a very  
6 good performance appraisal plan which, generally speaking,  
7 covers those areas. Thank you.

8           MR. ALEXANDER: Okay. Next.

9           MR. ANDERSON: Reinforced Trademark  
10 Assistance/customer Relationship Management Center.

11           As those of you who have used our Trademark  
12 Assistance Center know, many of you have had quite a  
13 number of complaints about it. We have made some changes  
14 recently in the Trademark Assistant Center which has  
15 substantially improved their services.

16           The next step is to move it into more of a  
17 Customer Relationship Management Center in which the  
18 information they get about problems in the office will, in  
19 fact, be incorporated into improving office services.

20           This will be done through an electronic system.

1 They will gather the information. We will look for  
2 patterns, and then we will take advantage of those  
3 patterns to make changes in what we do. This is a device  
4 used in corporate America fairly commonly, and we plan on  
5 instituting it in the office.

6 MR. ALEXANDER: There are two general approaches  
7 that I think corporate America takes. And I think it is  
8 to have a scientific sampling of customers in terms of  
9 whether or not, on a random basis, they are happy with the  
10 services being given and so forth and with all of the  
11 questions that you would ask.

12 A second message is called a hotel room card  
13 (inaudible). You put a card in the rooms that is sent to  
14 the headquarters of the hotel, not to the hotel management  
15 there, indicating did you like the service, were the  
16 people courteous, was the food good, et cetera.

17 Have we ever tried the second? I know we've  
18 tried the first where we've taken random customers and had  
19 conferences with them. Have we ever tried to either on a  
20 random basis or with everybody or with everybody for a

1 specific period of time or a random group for a specific  
2 period of time enclosed a form with every Trademark  
3 response and every Trademark Trial and Appeal Board  
4 opposition saying when these procedures are over, please,  
5 give us your evaluation of the following?

6 MR. ANDERSON: Well, this is probably going to  
7 be a little more detailed answer that you want. We,  
8 unfortunately, are employees of the federal government.  
9 And part of our activities are governed by the Office of  
10 Management and Budget. And they have this little document  
11 called the "Paperwork Reducing Act."

12 If we want to send out a piece of paper to the  
13 public and have them respond back to us, we have to get  
14 permission of the Office of Management and Budget to do  
15 that because that is information collection.

16 In the past when we have tried to do that, we  
17 have tended to give up on it because working one of these  
18 things through the Office of Management and Budget is  
19 tantamount tanned to trying to herd a herd of buffaloes  
20 through a very narrow lane by hand.

1 MR. ALEXANDER: Or a herd of cats.

2 MR. ANDERSON: Yeah, a herd of cats, whatever.

3 One time we did add a paragraph, form paragraph,  
4 to office action letters. But we had a very low response  
5 rate on it. We gave applicants the opportunity to send  
6 correspondence back to the Office of Trademark Quality  
7 Review. We've had very low response rates.

8 We do do random -- well, we have been doing  
9 customer service random samples. We get about a 35  
10 percent response rate, or we get back about 35 of every  
11 hundred we send out. It is very difficult for the  
12 government to do those types of surveys because of the  
13 Paper Reduction Act.

14 MR. NICHOLSON: Bob, would you be bound by the  
15 same rule if it was done electronically?

16 MR. ANDERSON: Yes. It makes no difference  
17 whether it's electronic or on paper. Any time that we  
18 poll our customers, we do have to have specific permission  
19 from the Office of Management and Budget to do that.

20 MR. ALEXANDER: There are possibly organizations

1 in the field that could do it at their own expense and  
2 probably get an even more scientific sampling and it would  
3 not be affected by union PTO contracts and any other  
4 restrictions.

5 MR. ANDERSON: Right.

6 MR. ALEXANDER: And you may want to consider  
7 that. Why don't you go on to the last one.

8 MR. ANDERSON: New appraisal plans with a focus  
9 on quality of examination on electronic communication.

10 We did, in fact, propose a new performance  
11 appraisal plan. After we were approaching the end of the  
12 period for negotiation and had not resolved, I think it's  
13 fare to say a large number of issues that were  
14 incorporated in the new performance appraisal plan,  
15 further, because we were just starting up on our  
16 in-process quality review activity, we came to a  
17 conclusion that perhaps if we had a little more  
18 information about the quality of the examination, we might  
19 be able to do a better path in the future.

20 We approached NTEU with a proposal that the quid

1 pro quo was they would agree to communicate electronically  
2 with applicants. In other words, the electronic portion  
3 of the new path but separate from the performance  
4 appraisal plan. And in return, we would leave the old  
5 performance appraisal plan in place. They had a  
6 membership meeting and agreed to reach that understanding  
7 with us.

8 We now have an agreement with NTEU that they  
9 will engage in electronic communications when requested by  
10 the customer. They will essentially do the things to get  
11 us ready for moving to the Trademark Information System.  
12 In exchange, the old performance appraisal plan is still  
13 in place untouched.

14 MR. ALEXANDER: What is the problem with the old  
15 performance appraisal plan?

16 MR. ANDERSON: Some of our managers and senior  
17 attorneys felt that the quality element under the  
18 performance appraisal plan did not adequately measure the  
19 quality of examination, and they did put a proposal on the  
20 table which we then offered to the union.

1           We were not able to reach any substantive  
2 agreement on most aspects of the proposal. And because of  
3 the importance of moving to E-government is a major goal  
4 of this administration to move to an E-government  
5 environment, we believed that, if we could reach an  
6 agreement with NTEU on the E-government portion, that  
7 would essentially put us ahead of the game. And there  
8 were some managers who were not all that uncomfortable  
9 with the old performance appraisal plan.

10           MR. ALEXANDER: Are you uncomfortable with the  
11 old one?

12           MR. ANDERSON: My own view is I believe we need  
13 to have a better understanding that we should be gaining  
14 through the in-process quality review before we put a  
15 proposal on the table regarding quality.

16           I mean one of the things we're trying get at  
17 with the in-process quality review is an understanding  
18 about what is a good quality office action. What type of  
19 quality do you as a customer of this office want and what  
20 type of quality do we need to improve our services to you

1 as customer?

2 MR. ALEXANDER: Have you ever considered an  
3 ombudsman system whereby there's like an inspector general  
4 in the office where customers feel free to raise  
5 complaints. I've heard the concept that the customer is  
6 afraid of examiner retaliation or afraid of customer  
7 retaliations which might come as a result. We find out  
8 little from either.

9 MR. ANDERSON: I've heard that theory. And, I  
10 mean, I have to tell you from my own point of view that I  
11 believe it is simply a theory. There may be individual  
12 examiners and there may be individuals who have on  
13 occasion "retaliated" quote, unquote, for a customer  
14 complaint or something. All I would have to say is that  
15 if it was brought to the attention of the office, we would  
16 take action on it.

17 MR. ALEXANDER: Was there anything, say, as to  
18 an ombudsman as an anonymous ability to receive anonymous  
19 complaints or at least receive complaints and keep the  
20 source confidential?

1 MR. ANDERSON: Well, there may be. It would be  
2 a new activity in the Agency. And I'm not quite sure how  
3 it would be constituted. In the past, when activities  
4 have been, for instance, under the Commissioner of  
5 Trademarks, it has been a concern that the Commissioner or  
6 Assistant Commissioner of Trademarks has an interest in  
7 looking good; therefore, they would skew the results.

8 I suppose a totally independent activity would  
9 be of value. But I'm not quite sure how you would  
10 institute it in the federal sector. It's very difficult  
11 to have something be totally independent.

12 MS. FAINT: I would say, regarding our  
13 performance plan and quality, that there's a difference  
14 between a focus on quality and a focus on timeliness and  
15 punitive responses to a lack of timeliness in that the  
16 most recent performance appraisal plan that was proposed  
17 seemed to focus more on the timeliness element.

18 But more than that as far as quality, it was  
19 requiring a quality rating of essentially over 99 percent  
20 which usually isn't required except in cases of life and

1 death or matters of national security, which I don't think  
2 we can argue trademarks are.

3 I think that, in looking at quality, the way you  
4 get better quality from people is you give them better  
5 tools and you give them better training. That's certainly  
6 been my own experience. And I think it's something we  
7 should look at more in the future as a more cooperative  
8 approach to quality.

9 MR. ALEXANDER: Thank you. Bob, thank you very  
10 much for your patience with all of us. Does anybody have  
11 anything else? Yes.

12 MR. STIMSON: I apologize because I know we're  
13 running late, but I do think the Strategic Plan is very  
14 important and I think two hours is not enough to discuss  
15 it. I did have a couple of questions, too.

16 First one, has there been any change to the  
17 original proposal about the fee increases? I know there  
18 was some proposal about changing the approval or the cost  
19 of living and what the Director or the Commissioner could  
20 do. I wondered what the status of that was. And then I

1 have a second comment.

2 MR. ANDERSON: The proposal to give the Director  
3 authority to adjust the fees above CPI has been dropped at  
4 his own discretion. So any proposals to raise fees above  
5 CPI would be announced through the rule-making process,  
6 and the public would have a full shot at comment and  
7 stating their concerns about it before the fee increase  
8 would take place.

9 Regarding the other proposals on increasing fees  
10 in the Agency, it is my understanding that there are  
11 several proposals floating around. I don't know exactly  
12 what the status is. I can only tell you that there is a  
13 CPI increase that is, I believe, about ready to go or has  
14 already gone. In Trademarks it will, I believe.

15 Well, the CPI this year was something like 1.8  
16 percent or something very low. It will have an impact on  
17 raising the filing fee which was in the original CPI  
18 announcement, I believe, by \$10. So the filing fee will  
19 go from 325 to 335.

20 Now, as for the differential between electronic

1 and paper filing, to my understanding, that's in total  
2 limbo at this point. I understand that there are some bar  
3 groups who have essentially agreed to the concept. When  
4 it would come in, I don't know because I believe it will  
5 be tied up with the statutory fees in Patents. And until  
6 fee legislation is introduced, probably in the next  
7 congress, nothing will happen with that.

8 MR. ALEXANDER: I think it's important because I  
9 received a communication from the U.S. PTO indicating  
10 that, since we had not filed any objection or caveat to  
11 the proposed CPI increase, we were deemed to have been in  
12 accord with it. And I would like to sort of correct that  
13 assumption because we generally do not respond. We  
14 respond through our meetings. And I think that the T-PAC  
15 is on record, if I'm not mistaken, as opposing any fee  
16 increase of any type while there's diversion and while the  
17 income of the U.S. PTO exceeds the budget outlay of the  
18 PTO after or before diversion.

19 Anybody on T-PAC have a different recollection  
20 of what our position is? So I want to make that of record

1 because it would assume that our failure to respond in  
2 another form is an acquiescence of CPI or any other  
3 increase.

4 MR. ANDERSON: I can't speak to that.

5 MR. ALEXANDER: I know you can't. I was just  
6 making a statement for the record.

7 MR. STIMSON: Second question, you've been  
8 telling us for two years about the cost benefits from  
9 electronic filing and how a lot of the future budget  
10 planning, Strategic Plan, for the office was based on  
11 achieving a certain level of electronic filing. And up to  
12 now in the most recent month, I think it's at 50 percent  
13 electronic filing, I wonder if you've done any studies or  
14 benchmarking to indicate whether the level of cost savings  
15 you projected have been borne out, in fact, as we're up to  
16 a relatively high level.

17 And the second part of that question is: With  
18 that high level of electronic filing, what is the current  
19 status of the staffing of the groups that been handling  
20 the paper filing, if there's any reduction in that area

1 as, presumably, there's less work to do?

2 MR. ANDERSON: The last study we did on the  
3 relative costs between paper and electronic filing income,  
4 for incoming paper application, it costs us slightly over  
5 \$50 to process it from the point of receipt at the front  
6 door to when it gets to the examiner's desk. I believe it  
7 was something like \$50.28.

8 The cost for processing an electronic  
9 application through the same time frame was about \$13.  
10 The differential was right around \$37 or \$38. So the cost  
11 differential was in that range.

12 Regarding whether we've had any savings, we  
13 recently recompeted the contract for handling applications  
14 at the front end. They process fees, open up the mail, so  
15 on and so forth. That contract came in at a lower cost  
16 than previous contractors, and there is less staffing on  
17 the contract simply because they are processing less  
18 paper.

19 I can't give you the exact amount, but there is  
20 a differential in the savings between what we were paying

1 when we were 100 percent paper and what we are paying now  
2 that we are on average 38 percent electronic and 50  
3 percent in the last couple of months. We anticipate that  
4 costs will keep dropping as people move towards electronic  
5 filing.

6 MR. STIMSON: I guess a general question aside  
7 from the specifics of differentials. Has there been  
8 anything in your experience so far with electronic filing,  
9 the 38 percent or the 50 percent, that causes you to  
10 reconsider the original budgetary assumptions underlying  
11 your electronic filing rules?

12 MR. ANDERSON: I'm not sure if I understand the  
13 question.

14 MR. STIMSON: In other words, hypothetically,  
15 before electronic filing went in, there were assumptions  
16 made that it was going to have a certain impact on the  
17 budget, that is, there are going to be certain savings.  
18 Now you've been living with it for a couple years. You're  
19 up to a certain level. Do those original projections  
20 still hold true or have you learned anything to indicate

1 that you will save more than you thought or save less or  
2 is everything staying at the same level?

3 MR. ANDERSON: Okay. On a relative basis,  
4 considering filing levels, our budget request is smaller  
5 for fiscal year '03 and '04 than it would have been had we  
6 not had electronic filing. We have, in fact, been  
7 reducing costs on a relative basis even though absolute  
8 costs may be increasing.

9 MR. STIMSON: I still don't think I'm getting  
10 that. I think, originally, there was a projection. For  
11 example, I think it was \$8 million worth of saving if you  
12 get an 80 percent electronic filing.

13 MR. ANDERSON: Right.

14 MR. STIMSON: Does that figure still hold based  
15 on your experience so far?

16 MR. ANDERSON: Yes. That \$8 million was largely  
17 based on contract cost. At the front end of our  
18 environment, we have a contractor who handles a lot of the  
19 work. The cost of that contract at one point was right  
20 around \$7 million. As we move towards electronic filing,

1 that will be reduced.

2 Now, it's very hard to speak to this directly  
3 because, again, we're in the government. The unique thing  
4 about government contracts is the law escalates the cost  
5 of the contract every year because labor rates increase.  
6 You also negotiate the contracts and you try to get the  
7 best cost. We negotiate under what's called "Section 8A"  
8 which means these are minority contractors.

9 It's very hard to give you -- at one point, it  
10 was going to be 7 million, and today it is 3 million  
11 because 38 percent of our stuff is coming in  
12 electronically.

13 I can tell you that the cost of the front-end  
14 contract is being reduced. What I can't tell you is if  
15 it's all due to electronic filing or better rates on the  
16 contract, so on and so forth. I mean we do try to  
17 negotiate good contracts.

18 MR. ALEXANDER: Bob, you may recall at the very  
19 beginning I asked something about design marks.

20 MR. ANDERSON: Right.

1 MR. ALEXANDER: You said that you would get to  
2 that in the Strategic Plan. I think we're there.

3 MR. ANDERSON: If I could ask Mr. Williams to  
4 come to the front here.

5 Earlier this year, after the Agency put a  
6 proposal on the table to close both the Patent and  
7 Trademark paper search rooms, there was an informal study  
8 done by a group. They're short name is NIPRA, I believe.

9 Anyway, they reported a very high error rate on design  
10 search coding and other coding related to new  
11 applications.

12 At the same time internally, Price Waterhouse  
13 Cooper, who was on contract with us then, had done a  
14 couple of informal studies related to problems with  
15 contracts handling data through the system, particularly  
16 the quality of their work.

17 When the design search coding thing came up, and  
18 because of the very high error rate reported, I ordered a  
19 couple of things be done. One, the contractor was sent a  
20 cure letter or a get-well letter. Two, government

1 employees who were supposed to be performing 100 percent  
2 quality review on the work being done by the contractor,  
3 but who apparently were not, were told that they would  
4 begin performing their jobs in accordance with direction.

5           The contractor and the government got into a  
6 discussion. And this is where you get into government  
7 contract problems again. The contractor claimed, well, I  
8 would have done better had the government kept me up to  
9 date and kept me informed about problems, so on and so  
10 forth.

11           I don't know where the total problem led. But  
12 it is clear that there were some problems with the initial  
13 process, that being new applications through the office,  
14 which meant that some stuff was getting into our system  
15 with less than stellar quality.

16           Exactly how bad it was, I cannot tell you. I  
17 can tell you that I did order a design search code study  
18 done that looked at all of the -- that took a random  
19 sample of the population of applications filed between  
20 January 1, 2001, and March 2002, or approximately 18-

1 months worth of filings.

2           That study indicated an error rate on design  
3 search coding that was fairly high, in fact, way too high  
4 to be acceptable. It was done on the basis of, if an  
5 examiner was doing a likelihood of confusion search, was  
6 there error in the design search coding that would have  
7 affected the outcome of this search, i.e., the examiner  
8 probably would not have found the mark.

9           It was found that -- let me see what the exact  
10 number was -- 18 percent. I don't recall it off the top  
11 of my head. Anyway, about 18 percent of the records had  
12 an error such that, if an examiner was doing an likelihood  
13 of confusion search, they would not have found the record.

14           We then looked at which codes were most  
15 frequently coded incorrectly. Now, if you would like a  
16 copy of this, I can give it to you. There weren't things  
17 that were unanticipated: Geometrics, human figures, and  
18 so forth.

19           We used this information in dealing with  
20 bringing a new contractor in. The major emphasis in the

1 contract is on the quality of the contractor's work. Mr.  
2 Williams, who is heading up that area, I believe, fully  
3 understands what the instructions are. That quality will  
4 improve. And the contractor's work will improve. And all  
5 work will be 100 percent quality reviewed by government  
6 employees before it is loaded into our systems. They do  
7 quality review, and they make corrections to it.

8           Now, I am not saying that 100 percent of the  
9 work will be perfect. What I am saying is it will be a  
10 lot better than it was before.

11           A question that has frequently been asked is:  
12 Are you going to go back and redesign search code and  
13 cleanup all of that old data? My response to that  
14 question goes like this. We asked for originally 1.5  
15 billion in our budget. We have now dropped it to 1.365  
16 billion. The Senate has marked us at 1.14.

17           Essentially, the Senate has given the Agency  
18 enough extra money to pay the 4.1 percent pay increase  
19 that has been proposed by the Senate for federal  
20 employees. No more. They did not give us money for

1 promotions. They did not give us money for step  
2 increases. They did not give us money for increases in  
3 contract cost. They did not give us any other money what  
4 we call "adjustments to base" in the federal sector.

5 As Sandy has indicated, we believe we may get  
6 some money from the House; but that is still up in the air  
7 because we are in a situation of deficit in the federal  
8 sector with a potential war with Iraq coming up, so on and  
9 so forth.

10 A long way to get to my point which is we don't  
11 have the money to do a data base cleanup. We did a large  
12 data base cleanup back in the mid '80s. It was run by a  
13 person who is now in the private sector named Mark  
14 Bergsman. We took a very large number of employees and  
15 had them do redesign search code in a very large number of  
16 records.

17 However, at that point, the data base had about  
18 800,000 records in it. Today, the data base has three  
19 million records in it. The cost of going back and  
20 cleaning up those records would be fairly significant.

1           We do plan on putting in place an activity that,  
2 hopefully, will work better than it has in the past which,  
3 if a design search cord error is reported to us, the error  
4 will be corrected. But that's the best we will be able to  
5 do with this. We do not have the funds to sponsor a very  
6 large cleanup of our data base.

7           Now, there's other data that is in question.  
8 When a new application is filed, particularly if it's on  
9 paper, we scan the application in. We OCR it. In the  
10 past, we used to do key entry on the application data.

11           MR. ALEXANDER: What does OCR mean?

12           MR. ANDERSON: Optical characters read the data.

13           MR. ALEXANDER: Everybody knew that but me. I'm  
14 sorry.

15           MR. ANDERSON: Then we load it into our data  
16 base. The data in question is the data that's being  
17 questioned by the public relative to accuracy. All the  
18 data, except for the design search code specifically as  
19 the application moves through the application process to  
20 registration, is cleaned up during that process. The

1 registrations we issue, with the possible exception of the  
2 design search code, the data is in very good shape once we  
3 issue the registration.

4 Now, for the applications that fall out of the  
5 system through abandonment, they don't get cleaned up as  
6 much on the way to abandonment as a registration does. At  
7 the back end of the system after the examiner approves the  
8 case for publication for opposition, it goes to a  
9 contractor. The contractor cleans up the data. The mark  
10 is published for opposition.

11 We do review the Official Gazette before the  
12 date of publication. With new procedures we have, we get  
13 a draft print copy of the Gazette. We have two or three  
14 people on staff who go through it. They try to pick up  
15 obvious errors and have those corrected before the mark is  
16 actually published for opposition.

17 Again, the process is not perfect. But we don't  
18 believe we have a high level of errors in the text data  
19 and mark data that is in the certificate of registration  
20 once it issues because there is pretty much of a constant

1 cleanup process through the examination process. We  
2 believe that in the future the data that we are entering  
3 into our systems will be of better quality because of  
4 contract changes and because of the quality review process  
5 at the front end.

6 One thing that does give me some encouragement.

7 I do stay in contact with many of the private data  
8 companies, Thompson & Thompson, and so forth. They tell  
9 me that the quality of data they get today is much better  
10 than what they got in the past. They don't give me  
11 factual information on that. But I am taking that at face  
12 value. Because one of a things that a company like  
13 Thompson does is they clean the data up a lot of times  
14 before they put it out. They are telling me that they  
15 have fewer problems with the data than they did in the  
16 past.

17 MR. ALEXANDER: When they clean it up, it gets  
18 cleaned up by you as well.

19 MR. ANDERSON: No. They do not give us their  
20 cleanup. I mean Thompson, for instance, because of what

1 they do and the services they offer to you as members of  
2 the public, add design search code way over what we do. I  
3 mean we compare design search codes with them. Where we  
4 put a relatively small number because we are designing  
5 search coding for examiner searching, they put a  
6 relatively large number. They also have additional design  
7 search codes that we don't use at all. They design search  
8 code on many things that we do not design search code.

9 MR. ALEXANDER: A flying pig might turn up under  
10 birds and pigs in theirs, but just under pigs in yours.

11 MR. ANDERSON: Well, they design search codes  
12 letters, for instance, in the mark. We don't do that.  
13 They do elements that we don't consider.

14 MR. ALEXANDER: Let me move on to the last  
15 couple of questions. We've run short of time.

16 There have been a number of complaints to the  
17 T-PAC members about the files not be being transferred  
18 from an examiner who is now gone to a new examiner or  
19 having been transferred and the applicant having no idea  
20 of who it's gone to and not being able to identify

1 examiners keyed to applications on line so that you have  
2 somebody calling the examiner who is no longer here, get  
3 voice mail, and never get a response call again, never get  
4 a response.

5 But even more important on an ongoing basis, if  
6 somebody leaves or is reassigned, the applicant's attorney  
7 having some way of getting in touch to the person being  
8 assigned to the file.

9 I understand from the Strategic Plan that there  
10 have been union objections to identifying all examiners in  
11 connection with the files as a matter of public record. I  
12 question the concerns that exist for what, I assume, are a  
13 minimal number of calls that an examiner may get that they  
14 should not get. But I can see no reason for at least the  
15 attorney handling the application not being advised of the  
16 reassignment of the file.

17 MR. ANDERSON: Ron and Debbie can probably  
18 address this better than I since they're closer to  
19 operations. It is my understanding that all of the files  
20 that were in docket with another examiner's name on it

1 after the reduction in force took place have been  
2 reassigned to another examiner. There may be some  
3 instances in which that has not happened. But if they  
4 were in the awaiting response docket, they should have  
5 been reassigned.

6 As for putting the examining attorney's name up  
7 on TAR, it was on there for a short period of time. NTEU  
8 raised objections to that. And it was taken off of TAR at  
9 that point. Kathleen can probably address that better  
10 than I.

11 The examining attorneys name is a matter of  
12 public record for the file. It is available in the public  
13 search room through TRAM. And when the mark is published  
14 or registered, the examining attorney's name is on the  
15 certificate of registration. I mean the examining  
16 attorney assigned to the file is a matter of public  
17 record.

18 If the files have, in fact, been assigned to an  
19 examiner who is still in the office, that would be  
20 available in the TRAM system. We haven't been routinely

1 notifying applicants of the reassignment of the file  
2 because we don't have a good and easy way of doing that.  
3 If we did, we would.

4 MR. HACK: In addition to reassigning the file,  
5 if the file wasn't assigned to a particular examiner, the  
6 voice mail was changed to give you the phone number of the  
7 examiner that the case was assigned to.

8 MR. ALEXANDER: Please identify yourself,  
9 please.

10 MS. COHN: Debbie Cohn. I personally haven't  
11 received any complaints from anybody on that issue of  
12 reassignment. But there was a period of maybe a few days  
13 from the end of fiscal year on September 30, which was the  
14 last day of work for the people who were RIF'ed. And  
15 during that few-day period was when we did that transition  
16 of assigning the files, running (inaudible) and having the  
17 managers all change their voice messages so that callers  
18 would get the accurate information.

19 So it may be possible that somebody could have  
20 called right after somebody left but before that had

1 happened.

2 MR. ALEXANDER: Thank you.

3 MR. MULLER: Could we hear why it's a problem to  
4 put the names on the TAR? I can't fathom why that would  
5 be a problem if it's available in the search room.

6 MR. ALEXANDER: Well, I asked Howard Freidman at  
7 lunch today. And his response was there were harassing  
8 calls that examiners were getting from people that were  
9 not involved in the files that they were handling or else  
10 calls about unrelated files because they just picked up  
11 their name.

12 I don't think they were harassing in the sense  
13 of personal harassment. It was just a matter that they  
14 were being contacted without having any connection to the  
15 matter that was the subject of the call.

16 MR. PRICE: Was that a substantial problem?

17 MR. ALEXANDER: I asked him if it was  
18 substantial, and I did not get an answer that was very  
19 clear. So I don't think he knew. But we can make our  
20 recommendation.

1 Is there anything else before we move on?

2 MR. ANDERSON: I can add that it's very easy for  
3 us to put the name back on TAR. It's, basically, a snap.

4 MR. ALEXANDER: I suspect we will consider  
5 recommending that because I have heard no reason that  
6 makes it clear to me that it's any different than an  
7 attorney having changes in the white pages of the phone  
8 book. You probably get more harassing calls  
9 (inaudible)...

10 MS. FAINT: Well, I think part of the  
11 consideration for that, too, comes from the fact that we  
12 have to deal with the calls while also under production  
13 system. So we don't get time off the clock to deal with  
14 what can often be substantial pro se concerns about  
15 applications. And we are also pushed to give quality  
16 customer service. So we can't just hang up on those  
17 people. We've had to deal with them.

18 MR. ALEXANDER: I feel the same way when I get a  
19 call.

20 MS. FAINT: But you probably get to set more of

1 your own schedule.

2 MR. ALEXANDER: Anything else? Okay. Lynne.

3 MS. BERESFORD: I think Bob did most of the  
4 briefing.

5 MR. ALEXANDER: By the way, if anybody needs to  
6 take a bathroom break, we're going to continue right  
7 through and one of your colleagues will catch you up on  
8 this.

9 MS. BERESFORD: And you all have some handouts  
10 on our approach to Madrid. Bob said most of it. So let  
11 me run quickly through this. And I think where I'd like  
12 to begin, actually, is with the flow charts that I have.  
13 And I'm going to start with those.

14 The first one is labeled "U.S.  
15 Applicant/Registrant Seeking International Registration."

16 And I want to start there because one of the things I  
17 have found with Madrid is that, if you can get the lingo  
18 down and you know what people are talking about when they  
19 say certain things, it really makes the whole process a  
20 lot easier.

1 U.S. Trademark Owners that file with the United  
2 States Patent and Trademark Office are going to file an  
3 international application. They're not going to file a  
4 Request for Extension for Protection. They're going to  
5 file an international application with us. And that  
6 international application will have to have underlying it  
7 as a basis a basic U.S. application of registration.

8 That basic U.S. application of registration  
9 forms the basis for the international application. And  
10 the job of the United States Patent and Trademark Office  
11 is to certify to WIPO that the particulars in the  
12 international application are the same as the particulars  
13 in the underlying basic application or registration.

14 So that means that the goods are contained in  
15 the basic application of registration, that the owner is  
16 the same, and that the mark is the same. In other words,  
17 the two applications, the international application and  
18 the basic underlying U.S. application of registration, are  
19 on all fours with each other.

20 The PTO makes that determination, and it

1 forwards the international application with the  
2 information from the basic application of registration to  
3 WI, to the International Bureau of WIPO.

4           And if we do that within two months of the  
5 filing of the international application, your  
6 international registration date will be the date of the  
7 filing at the U.S. PTO. So one of the reasons we're  
8 anxious to do this electronically is because we see  
9 there's a lot of ability to meet that time line using  
10 electronic information.

11           Obviously, if an applicant filing an  
12 international application goes to the U.S. PTO data base  
13 and populates its international application out of the  
14 information that's available in our data basis, they pull  
15 the mark out, they pull the goods and services out, you  
16 have a situation where you are always going to have  
17 automatic congruence between the international application  
18 and the underlying basic application registration. So  
19 doing this electronically offers a lot of benefits to both  
20 applicants and to the PTO.

1           Once WIPO gets the international application, it  
2 looks to see if it's formal. And formal generally means  
3 you've paid your fees; you have the basic information.  
4 There's a long list of information in the rules that you  
5 have to have in your international application, and all  
6 the stuff that you'd expect. You know, you have to have  
7 an applicant name and address for process, et cetera, et  
8 cetera, et cetera.

9           If all those formalities are met, usually within  
10 two days, WIPO has an international registration for you.

11          And what they do is they forward the information in that  
12 international registration to your designated countries.  
13 They ask for an Extension of Protection into those  
14 designated countries.

15          So once the designated countries get that  
16 information from the international registration, they  
17 begin the process of examination according to their  
18 national laws.

19          Questions? This is half of the process. Okay.

20          This is what happens if you're a U.S. trademark owner or

1 you represent a U.S. trademark owner and you are wanting  
2 to get an international registration for that trademark  
3 owner and extend protection for that international  
4 trademark registration into any of the current 56  
5 countries that are members of the Madrid Protocol.

6 Now, we're going to look at the process in  
7 reverse. And here we will be talking about a foreign  
8 trademark owner, a non-U.S. trademark owner, who seeks an  
9 extension of protection to the United States.

10 That person will make an application for international  
11 registration to WIPO. And WIPO, if that person has  
12 selected the U.S. as a designated country, will forward to  
13 us a Request for Extension of Protection into the United  
14 States.

15 And once we receive that Request for Extension  
16 of Protection, we will begin the examination of that  
17 request. The Request for Extension of Protection will  
18 have in it all of the information out of the international  
19 registration. So it will have contained the mark and the  
20 goods and services and the owner name and an address, et

1 cetera, et cetera, et cetera.

2 And under the legislation that was signed on  
3 November, 2, the language of the legislation says, We will  
4 examine these requests for extension of protection exactly  
5 like we examine a regularly filed U.S. application.

6 So we will be applying exactly the same  
7 standards to these Requests for Extension of Protection.  
8 Our plans at the moment, again, are to receive them  
9 electronically and to interleave them with the regularly  
10 filed U.S. trademark applications. They will have the  
11 same kinds goods and services examination, the same kind  
12 of 2D, 2A, 2Aa, et cetera, the exact same manner of  
13 examination once this Request for Extension of Protection  
14 comes into the United States.

15 MR. MULLER: May I ask a question, Lynne?

16 MS. BERESFORD: Sure.

17 MR. MULLER: So if you're a French company and  
18 you apply at WIPO in French language, it comes to you in  
19 French language?

20 MS. BERESFORD: No. Currently, Madrid is two

1 languages, of course, French and English. WIPO does all  
2 the translating of the essential parts of the  
3 registration. They have actually a big translator program  
4 there.

5           So they translate goods and services. They will  
6 translate certain things about the -- they will  
7 transliterate a mark into English and French if it's in  
8 non-Latin characters and do some other things like that.  
9 But, essentially, they do the translation.

10           And, there is currently a proposal before the  
11 Assembly of the Madrid Union that Spanish be added to  
12 Madrid as a third language in Madrid. I don't know  
13 whether that will go anywhere. But this is certainly  
14 something that's pending.

15           Examination begins. Under the scheme that we've  
16 elected as the United States, we have to raise all issues  
17 in the examination process, all substantive refusals  
18 within 18 months. We don't see any problem with that  
19 given our years of pendency where we've had first actions  
20 and usually second and third actions before 18 months.

1           And if we don't, if the issue is not raised in  
2 the examination process in that 18-month period, then the  
3 Office is stopped from raising the issue in examination.  
4 And, again, doing this electronically is something that  
5 gives us an opportunity to put an automatic flag into the  
6 system, to do other things to make sure that the Request  
7 for Extension of Protection doesn't fall through the  
8 cracks in examination.

9           Okay. If it's approved for publication, it's  
10 gone through examination, there are two possibilities.  
11 It's either going to get published in the Official  
12 Gazette; or we didn't approve it, and it gets appealed to  
13 the TTAB or abandoned.

14           If it's published in the Official Gazette, we  
15 have the possibility of opposition. One change in this  
16 process is that, in general, all grounds identified for  
17 opposition have to be identified within seven months of  
18 the beginning of the opposition period. So this will be a  
19 change in opposition practice.

20           Now, if there's no opposition, then the

1 extension of protection is given the same kind of  
2 presumptions that attach to a regularly filed U.S.  
3 application that registers, that is, the presumption is  
4 under 7C, that mark was in use nationwide as of the date  
5 of -- I can't -- it's gone out of my mind. It's given the  
6 7C presumptions.

7 We'll stop there. Okay. Questions?

8 MS. KANE: The last box, Extension for  
9 Protection, it says, "either registration or the date of  
10 extension request."

11 MS. BERESFORD: Yes.

12 MS. KANE: Whichever one is first or what?

13 MS. BERESFORD: No. You can have an extension  
14 of protection that's filed with the international  
15 application. Then it will have the international  
16 registration date. You can have an extension of  
17 protection that's filed after the international  
18 registration becomes effective, and then that has the date  
19 of the filing of the extension of protection.

20 So let me give you an example. Suppose we have

1 a French company, Lancome. They file a new application in  
2 France. And they file a request for an international  
3 application at the same time. Presuming it's April 1,  
4 presuming that this is all done within the two-month  
5 period, the extension gets to the United States, that  
6 extension request will have the April 1 filing date, the  
7 date they filed the international application.

8           Supposed Lancome already has an international  
9 registration and now U.S. joins. The date of their  
10 international registration is 1939. Now, the U.S. joins.

11       And they want to extend the rights under the  
12 international registration to the United States. They  
13 file a Request for Extension of Protection. The date of  
14 that Request for Extension of Protection, again, assuming  
15 that it's processed in the 2-month period that's required  
16 to maintain the original filing date, will be the date  
17 that we give that filing in the United States.

18           So it depends on whether their request is filed  
19 concurrent with the international application or after  
20 international registration.

1 Other questions? I see many puzzled looks here.

2 Yes.

3 MR. MULLER: No. I withdraw my question.

4 MS. BERESFORD: You withdraw your question.

5 Okay.

6 Now, I did this first because I kind of want  
7 everybody to get the lingo here coming in from U.S.  
8 trademark applicants, U.S. trademark owners. We've got  
9 international applications coming in from foreign  
10 trademark owners. We've got Requests for Extension of  
11 Protection. And we have what's called the basic  
12 application or registration that underlies the  
13 international application.

14 Now, back to the beginning of my slide  
15 presentation here. I've already said that a request will  
16 be examined like a regularly filed U.S. application.

17 Can we go back to the beginning, or are we not  
18 backtracking here?

19 The basis for a Madrid filing, that is, a basis  
20 for extension of protection in the United States, this

1 will be a new basis. We now have four filing bases and  
2 three registration bases. And we'll now have a fourth  
3 basis. We now have 44D and E as filing bases, ITU, and  
4 use. And we have -- I'm sorry. We have two registration  
5 bases, use and ownership of a foreign registration. Now,  
6 we'll have three.

7           We'll have a Madrid basis. And the Madrid basis  
8 will be you own an international registration, you've made  
9 a Request for Extension of Protection into the United  
10 States, and you've made a statement of bona fide intent to  
11 use the mark in the United States. Those will be the  
12 three bases.

13           Under this scheme, there will be no requirement  
14 of use of the mark in the extension of protection in the  
15 United States prior to registration. So these will be  
16 examined very much like a Section 44 filing.

17           In order to file for international application  
18 in the United States, you must be a national of, be  
19 domiciled here, or have a real and effective commercial or  
20 industrial establishment here in the United States. So in

1 order to file an international application in the U.S.  
2 PTO, you have to be a national of the U.S. and be  
3 domiciled here or you have to have a real and effective  
4 industrial commercial establishment here.

5           The owner of an international registration who  
6 files into the Madrid system from another country has  
7 exactly the same requirements. To use the system, the  
8 owner of the international registration must be domiciled  
9 in, be a national of, or have a real and effective  
10 industrial or commercial establishment in a contracting  
11 party.

12           For those of you who have dealt in the Madrid  
13 system before, you may have run into the problem with  
14 assignments. You cannot assign an international  
15 registration to a trademark owner who is not a national of  
16 or domiciled in or has not got a real or effective  
17 industrial or commercial establishment in a member country  
18 of Madrid. That's not going to change under our  
19 implementation of Madrid because that's a basic part of  
20 the treaty.

1           The U.S. PTO plans to require TEAS for all  
2 requests for international applications. All the filings  
3 going to WIPO will be sent electronically. And incoming  
4 requests for extension of protection will also be received  
5 electronically.

6           Madrid applications will be examined on the same  
7 time frame as regularly filed U.S. applications. We will  
8 issue Certificates of Extension of Protection. And the  
9 law says they are the equivalent of a registration on the  
10 principle register and the implementing legislation. And  
11 that should be a clue to everyone that we will not be  
12 allowing Madrid filings on the supplemental register.  
13 It's not open to supplemental registration.

14           We will be publishing the Madrid extension for  
15 protection in the Official Gazette for opposition. And  
16 although, under the Madrid protocol, renewal can be  
17 affected by mere payment of the fee at WIPO, we will still  
18 require Section A, that is, Post-Registration Affidavits  
19 of Use, in order to maintain the certificate of extension  
20 of protection.

1           So we will be requiring affidavits of use of  
2 these between the 5th and the 6th year, 9th and 10th year,  
3 19th and 20th year, et cetera. We felt it was very  
4 important that we still have a means of taking deadwood  
5 off the register given our very large register if the mark  
6 wasn't actually in use here in commerce. So we will  
7 continue to do that.

8           WIPO will notify the U.S. of such things as  
9 renewal, assignments, and other pertinent information.

10           That's a very quick overview of Madrid. I think  
11 one other thing I can say about it is, when the U.S.  
12 applicant files a request for international application  
13 and gets an international registration, that international  
14 registration remains dependent for five years on the basic  
15 application of registration in the United States. So that  
16 underlying application of registration must remain viable  
17 for the international registration to remain viable.

18           And should the basic application or registration  
19 fail in the first five years, the international  
20 registration will also fail, will also go down. And all

1 the extensions of protection will fail at the same time.

2 Under Madrid you have the opportunity to convert  
3 your extensions of protection in that circumstance to  
4 regular national filing by once more paying the regular  
5 national fee. You keep your filing date. You keep  
6 everything else that you have with your extension of  
7 protection. So that is better than completely losing it,  
8 but that's an important aspect of the system, certainly an  
9 important thing to consider for filing under Madrid.

10 MR. PRICE: You could have that option whether  
11 or not the failure of the underlying registration occurs  
12 within or beyond the five years.

13 MS. BERESFORD: No. I'm sorry. Maybe I  
14 misunderstood your question. You don't have the option  
15 unless there's a failure of your international  
16 registration.

17 MR. PRICE: Right.

18 MS. BERESFORD: As a result of the basic  
19 application of registration failing in the first five  
20 years.

1 MR. PRICE: Right.

2 MS. BERESFORD: But that's the only time you can  
3 convert. You can't say at eight years your basic  
4 application of registration fails, the international  
5 registration continues, your extensions of protection  
6 continue, and you don't have an opportunity to convert.

7 Did I answer your question?

8 MR. PRICE: Yes.

9 MS. BERESFORD: Okay. Thank you.

10 MR. MULLER: Lynne, I hate to say this, but I  
11 don't feel like I've had enough time to get used to this  
12 Madrid. But my question is: Is the Office, assuming you  
13 have a budget, going to take any kind of shows on the road  
14 to tell applicants around the country what they can do in  
15 Madrid and how to do it? Or are you going to rely on  
16 others to do that?

17 MS. BERESFORD: Well, I think, judging from the  
18 phone calls and e-mails that I've been getting, and I  
19 think Bob has been getting and, I think, Anne has been  
20 getting, there will be an office show-on-the-road. I

1 don't know exactly how with the budget crisis, how it will  
2 work.

3           But we will certainly, especially, we've just  
4 now started -- we've just sat down a little group of us  
5 and started formatting out of the regulations, how the  
6 regulations should be set out, where we need regulations,  
7 and exactly what the issues are going to be as always when  
8 you're writing regulations.

9           And as we get three or four or five more months  
10 down the road, we will pretty much have mapped all of that  
11 out. And at that point, we will have identified issues  
12 which we will probably bring here for discussion. But we  
13 will also be wanting to be telling people how we plan to  
14 operate the system besides -- you know, we'll be getting  
15 further down.

16           This is very, very high level. We'll be getting  
17 further down into the weeds. What happens when you  
18 provide a translation of your goods and services into  
19 French and WIPO disagrees and the notify the Office and  
20 the applicant? How do we expect that to be handled?

1           There's all kinds of subissues that will have to  
2 be discussed. Decisions will have to be made whether  
3 those should be in the regulations or whether they should  
4 be in the exam guide or what should happen. And as we get  
5 further along, we will want to share that because,  
6 obviously, we want people to know really how to operate  
7 the system. Otherwise, it's not useful.

8           MR. MULLER: One last question. These  
9 viewgraphs were handed out this morning at the executive  
10 session and we were told that these are confidential, that  
11 they're not to be shared with others.

12           MS. BERESFORD: They have been shared with  
13 millions around the plant already.

14           MR. MULLER: That's what I was getting at.

15           MR. ALEXANDER: Only the budget.

16           MS. BERESFORD: It's only the budget. I'm  
17 sorry. They just got into the packet because I was going  
18 to talk about it.

19           MR. ALEXANDER: Unless there's -- go ahead.

20           MR. PRICE: Lynne, I think I saw some slides on

1 the screen that were not included in the packet that we  
2 received this morning. Do you have a more complete  
3 presentation that you've been giving?

4 MR. STIMSON: They're just out of order.

5 MR. ALEXANDER: She flashed through a number of  
6 them quickly in the middle.

7 MS. BERESFORD: It's done with smoke and  
8 mirrors. Actually, there are 30 slides. There is a  
9 longer presentation. But I hesitate to hand out my slides  
10 if I can't answer questions about them because I find  
11 people are very apt to be confused because you can only  
12 put so much on a slide. You can't really say everything  
13 you need to say.

14 I would be more than happy to give a longer,  
15 more in-depth look at this. I highly recommend reading  
16 the basic documents. There's nothing like reading the  
17 legislation. It's only a few pages long. And there's  
18 nothing like the Preview of Protocol. The salient parts  
19 of it are probably only 10 or 12 pages. A lot of this has  
20 to do with the administration of the WIPO. The

1 regulations I recommend, too. They are long and daunting.

2 MR. ALEXANDER: We have things available on the  
3 web and on e-mail. Thank you, Lynne, for rushing through.

4 I really appreciate it because we do want to get to the  
5 TTAB.

6 The last two items that are on our agenda we  
7 sort of melded into Bob's presentation. Unless somebody  
8 else has additional questions for Bob at the end, I'd like  
9 to get into the TTAB and then discussions in connection  
10 with the annual report.

11 JUDGE SAMS: I don't have a whole lot to say in  
12 the prepared remarks since the last time we met. It's  
13 only been, I guess, two or three months. So not a whole  
14 lot has happened. But the end of the fiscal year has  
15 happened, so I want to give you a little bit of an update  
16 on where we ended up at the end of the fiscal year.

17 First slide shows that the pendency and final  
18 actions continue to improve for this fiscal year. And we  
19 ended up at the end of the year with seven weeks for final  
20 decision from the time a case was ready for the final

1 either on brief or after an oral hearing.

2 Summary judgment --

3 MR. ALEXANDER: That's average, I take it.

4 JUDGE SAMS: That's the average. Well, yes,  
5 that's the average.

6 MR. ALEXANDER: Do we know what the maximum is?

7 JUDGE SAMS: The maximum was not much more. It  
8 was something along the lines of 12 weeks, I believe, at  
9 the most. And I think there were only a few that were  
10 over that. I think that there were only three that were  
11 much above the average. So we're doing pretty well. And  
12 the median was something less than seven weeks.

13 Next chart shows summary judgments which we saw  
14 a little bump up this year. But I think this is only a  
15 temporary situation.

16 This is one of the problems of a mixed sort of  
17 electronic and paper records files. A few of the paper  
18 records popped up which had some older cases, older  
19 summary judgment motions, in them. And when we got those  
20 decided, it intending to increase the average toward the

1 end of the year.

2 We only have something like 40 or so total  
3 summary judgements. And they're all, at the moment, being  
4 worked on. So we don't have what you could call a backlog  
5 in summary judgements. And I fully suspect that the time  
6 to decision will continue to go on a downward trend and  
7 that this is just a bump in the road.

8 MR. STIMSON: What is the reason why it takes  
9 twice as long to pendency, that it is twice as long for a  
10 summary judgment motion than to final decisions when it  
11 would seem to require less time to decide on summary  
12 judgement...

13 JUDGE SAMS: Well, the simple answer is who's  
14 doing them. We have a staff of judges up to a full  
15 staffing. We don't have the full staffing of  
16 interlocutory attorneys. But they do a whole lot of other  
17 things than summary judgements.

18 And our judges do just final decisions. And the  
19 number of final decisions that we've received has  
20 continued to go down so that we're able to get to those

1 fairly quickly.

2 We do sometimes farm out the summary judgments  
3 motions as we find them to the judges as well as the  
4 interlocutory attorneys. That tends to keep it down.

5 My answer is I'm not quite sure except for these  
6 older cases that tend to pop up from time to time.

7 Honestly, once they're assigned, it only takes a fairly  
8 short time to get them decided. So not quite the seven  
9 weeks of the final but not much more. That 17 weeks is  
10 kind of skewed because of some of those older cases that I  
11 mentioned. That's all the information --

12 MR. ALEXANDER: Do you have any reporting  
13 requirement after 90 days when something may have been  
14 decided where it has to be reported back to you with a  
15 reason?

16 JUDGE SAMS: Well, the answer is not a formal  
17 reporting requirement. But we tried to assign all cases  
18 in a much shorter period of time than that. And unless  
19 they pop up after they're already 90 days old, those are  
20 assigned immediately once we find them.

1           In other words, nothing is lingering after  
2 having been assigned, or very few are lingering once  
3 they've been assigned.

4           MR. ALEXANDER: Would a procedure make sense  
5 that is comparable to some Federal District Court  
6 procedures where anything that is in the hands, ready to  
7 decide, that's 90- days old or some other period is  
8 reported back to you as a matter of public record and the  
9 judge who has it has to give some sort of reason that it's  
10 still lingering?

11           JUDGE SAMS: Well, in a sense, we have a sort of  
12 system like that. We constantly monitor what hasn't been  
13 decided. And the managers and supervisors in the  
14 operation are always in contact with the judges, in my  
15 case, or Mary Francis Bruce, who is head of the  
16 interlocutory staff, is in contact with them, monitoring  
17 spreadsheets that show how old every single case is.  
18 They're all logged into the system.

19           So that kind of -- it's not a question of the  
20 interlocutory judges reporting to us how old. We know

1 what's there because we have the spreadsheets that show  
2 us.

3 MR. ALEXANDER: I'm concerned about is we tend  
4 to hear the aberrational cases. Somebody complains to us.  
5 You won't believe it, it's nine months or a year, and I  
6 still haven't heard anything. And there's the old rule,  
7 you never ask the judge to rule if you don't want to be  
8 viewed as harassing (inaudible).

9 JUDGE SAMS: Well, I hope that's not true with  
10 us. I think we have a little more friendly disposition  
11 than that. I would suggest that, anything that old, you  
12 should ask about. Or long before that, you should contact  
13 us because we don't have that kind of backlog anymore as a  
14 matter of course.

15 I think also we're putting a lot of eggs in the  
16 electronic basket which is allowing us to monitor things  
17 much better than we could monitor paper.

18 MR. ALEXANDER: Well, who should we refer  
19 someone who has actions (inaudible).

20 JUDGE SAMS: Either to me or to Mary Frances

1 Bruce.

2 MR. ALEXANDER: And are you sure the person  
3 (inaudible).

4 JUDGE SAMS: Oh, sure. Yes, there's not a  
5 problem there.

6 On the issue of other motions, that's the next  
7 slide, they continue to drop, too. It's 11 weeks for  
8 other contested motions. And I believe that will probably  
9 also be on a downward trend as we get our interlocutory  
10 attorneys on task to do those contested motions.

11 Let's go to the next slide which shows you our  
12 filings as a comparison between fiscal year '01 and '02.

13 As you see, we had this year the highest number  
14 of overall filings we've ever had. Oppositions were up  
15 about 30 percent from the previous year; cancellations up  
16 over 25 percent. And appeals were down, just about 2  
17 percent from last year, FY '01, which happened to be the  
18 highest in history, and 20 percent above FY '00.

19 So you can see that we continue to receive  
20 fairly high levels of filings. Whether that changes in

1 the coming years, based on the filings and the examining  
2 operation, has yet to be proved. But right now, we have  
3 sufficient work to occupy us.

4 MR. ALEXANDER: What procedures do you have for  
5 the counterpart of a specious complaint being filed in  
6 district court, somebody who files a opposition based upon  
7 dilution of a mark but nobody has ever heard of or  
8 something that normally you have a disciplinary procedure  
9 for under Rule 11 or some other method in federal district  
10 court? And are you running into much of that?

11 JUDGE SAMS: I don't think that we are running  
12 into too much of that. We do have the ability to consider  
13 a motion under Rule 11. And we have, on occasion, invoked  
14 it in an egregious situation. Also, there's motions to  
15 strike pleadings that can be filed.

16 Obviously, we are very circumspect in how we  
17 handle those. We don't grant them that often. But there  
18 are all of the federal rule mechanisms available to us to  
19 consider those.

20 MR. ALEXANDER: Except a monetary --

1 JUDGE SAMS: Right. We don't have the  
2 sanctions of awarding fees. The strongest disciplinary  
3 means we have is to grant judgment to a party. And we do  
4 that very infrequently. There's, also, if it's an  
5 attorney problem, of course, we have the whole office of  
6 enrollment and discipline who can handle that. But I'm  
7 assuming that you're not talking about attorney  
8 misconduct.

9 MR. ALEXANDER: I think I mentioned the last  
10 time that right after the 1990 (inaudible) that permitted  
11 the opposition based on dilution you had 1,700 in a very  
12 limited period of time. And if you looked at what they  
13 were in federal court, we would have created serious  
14 problems for plaintiff's attorneys.

15 JUDGE SAMS: I don't think it's worked out to be  
16 a terrible problem for us. We still have a remarkably  
17 high number, percentage of cases, which disappear before  
18 they go to a final decision as those that were decided in  
19 fiscal year 2000. Something like 98.5 percent were  
20 decided before the final hearing before a panel of judges.

1           Also, of the ones that were decided on the  
2 merits, there was -- well, there was not a single case  
3 that was solely based on dilution. And the only one that  
4 I can remember was the Toro case which came out last year  
5 which was decided at least on one ground of dilution.

6           MR. ALEXANDER: We had talked before about  
7 mediation and encouraging it in a more positive manner.  
8 It's rarely used by the TTAB (sound fading). Do you have  
9 any thoughts on how we might better encourage that  
10 particularly in cases that might be identified as  
11 appropriate for mediation if they've been around for a  
12 while?

13           JUDGE SAMS: We're still thinking. This is the  
14 kind of thinking that this committee can help us with, I  
15 think, to figure at what point it would be best for us to  
16 offer the mechanism of mediation.

17           One of the things that we thought about, in  
18 context of possibly doing a system of mandatory initial  
19 disclosures, is, after disclosures, at that point to offer  
20 an opportunity for mediation.

1           Now, there may be other points in the process  
2 where mediation might also be effective. But I would be  
3 interested to hear from those who have experience in the  
4 field. And I know one of your committee members has a lot  
5 of experience in the field. At least one would have to  
6 say about that and what might be appropriate for us.

7           MR. ALEXANDER: You may recall there was some  
8 real resistance to the concept of the mandatory initial  
9 exclusions on the (inaudible) TTAB proceedings and  
10 oppositions to perform a very different function. And I  
11 think you'll probably hear from the T-PAC on that and  
12 their views which we're polling.

13           But from what I heard in the discussion at the  
14 last meeting, there's a reluctance to parallel TTAB  
15 proceedings to Federal District Court proceedings. In the  
16 mediation area, I assume that -- well, let me ask you  
17 rather than assume. Do you think it's appropriate for the  
18 use of outside mediators or TTAB judges as the mediators  
19 or interlocutory attorneys or magistrates as mediators?  
20 What would you recommend between the choices?

1 JUDGE SAMS: Well, I won't say that we have come  
2 to the point where we're ready to make a formal  
3 recommendation. But it occurs to me that the staff  
4 resources required to do that in-house would be possibly  
5 substantial, which would (inaudible) with our own staff.

6 From our point of view, obviously, having an  
7 outside mediator that the parties would go to, away from  
8 our premisses for the time being, it makes more sense or  
9 at least it's less costly to us.

10 MR. ALEXANDER: How about identifying cases for  
11 mediations which you can't (inaudible) has to be done from  
12 within? Is there any mechanism where that could be done  
13 if you have a court of appeal, a circuit court of appeal,  
14 designated cases for mediation?

15 JUDGE SAMS: We could do that. We have thought  
16 about how we might structure that. And we haven't made  
17 any decisions about what, A, to do it; and B, exactly how  
18 we should do it. But I think we would have certain  
19 flexibility to setting a program as long as it's not too  
20 resource intensive.

1 MR. ALEXANDER: And I noticed the responses to  
2 the inquiries from either AIPLA or INTO that suggested  
3 oral hearings by telephone. Is there any reason -- and  
4 one of the responses was it would be very expensive to  
5 have video hearings.

6 Is there any reason why telephone hearings could  
7 not be used widely in arguing motions in federal district  
8 court or would not be appropriate for both motion hearings  
9 and for the final hearing which is just oral arguments?  
10 You really don't have to see somebody to comprehend what  
11 they're saying in oral argument.

12 JUDGE SAMS: Right. As you know, we've been  
13 encouraging, for a couple or more years in the motions  
14 area, telephone conferences with the interlocutory  
15 attorneys. And we continue to encourage that. We've had  
16 a lot of success on telephone decision-making in the  
17 motions area.

18 As far as the final decision is concerned, so  
19 far it has just been a matter of just facilities, of how  
20 we could set it up. We haven't had that many requests.

1 So it hasn't been much of an issue with us. To the extent  
2 there is a demand for it out there, we could probably  
3 arrange to start doing it.

4 In the long term, I think we are moving toward  
5 the ability to have a teleconferencing facility; so we  
6 could do that with almost any case that went to a final  
7 oral hearing on the merits.

8 MR. ALEXANDER: That's a very inexpensive  
9 process compared to flying to Washington.

10 JUDGE SAMS: Yes. And once we have the  
11 facilities to do that, then, obviously, we would encourage  
12 that use.

13 MR. ALEXANDER: What facilities are necessary  
14 other than a conference call phone?

15 JUDGE SAMS: Well, some kind of conferencing  
16 facility. What we're thinking about is maybe a courtroom  
17 fixed out with teleconferencing mechanisms.

18 MR. ALEXANDER: Is there any reason you can  
19 think of why a lot of the discovery disputes, which are  
20 parties asking and conferring (inaudible) and filing a

1 motion to compel and then a brief outlining the discovery  
2 that's at issue. Is there any reason why the TTAB could  
3 not follow or should not follow the procedure that some  
4 federal district courts are following before any motion is  
5 filed and briefs are filed that there be a sort of a  
6 pre-motion hearing to go over the dispute which normally  
7 disposes of 90 percent of the things that are being asked  
8 for and one party or the other is going to be (inaudible)  
9 sitting on or challenging would be amenable to a rule that  
10 would require that sort of telephone conference on  
11 discovery to avoid that burden on interlocutory counsel?

12 JUDGE SAMS: I don't think I would be against  
13 it. In some respects, we have aspects of it already.  
14 Many of you know our rule with respect to motions to  
15 compel require consultation before filing the motions to  
16 compel. Plus, also, we have, as I mentioned the telephone  
17 conferencing procedure to use in those kinds of cases  
18 where we think we can cut off or one of the parties thinks  
19 it can cut off an extensive paper motion practice by  
20 having a possibility of immediate decision by telephone.

1           As far as setting discovery by means of either a  
2 conference with the judge or one of the interlocutory  
3 attorneys at the beginning of the process so that the  
4 discovery gets on the right track, it was one of the ideas  
5 that I mentioned as ideas at that the last meeting. We're  
6 thinking about it and would appreciate your input.

7           MR. ALEXANDER: The reason I covered that is  
8 we're required to give an annual report. And if we're  
9 going to give recommendations, I would sort of like to  
10 know your views before we deal with that issue.

11          JUDGE SAMS: Right. And I certainly don't think  
12 it's a bad idea. And I believe the suggestion that I was  
13 kicking around last time was, at the request of either  
14 party, we might hold that kind of conference.

15          MR. ALEXANDER: There was some discussion about,  
16 I think, you reported that 40 or 60 percent of the  
17 requests for extension of time resulted in a second 30-day  
18 extension of time. Is it your view that a 60-day  
19 extension at the beginning makes more sense just due to  
20 administrative problems?

1 JUDGE SAMS: Yes. That can. Right now that can  
2 be very helpful to us. In some respects, our problem is  
3 being overtaken, happily, by events. And that is our  
4 electronic filing. We are poised in the not too distant  
5 future to be able to handle extensions of time  
6 electronically (inaudible) automatically if they're in a  
7 proper form.

8 So in a sense, this problem may be solved before  
9 too long without any necessity for filing a 60-day rather  
10 than a 30-day request.

11 MR. ALEXANDER: Is there a substantial cost for  
12 the extension of time that goes on and on and all parties  
13 and see what happens in the market place, and should there  
14 be a need for extensions of time past a certain period?

15 JUDGE SAMS: There is obviously no cost in  
16 processing those extension. As I just mentioned, there  
17 may not be any substantial cost in the future if we can  
18 get these processed electronically by a form up on the web  
19 or the web site without having to process them at all as  
20 long as they're filled out properly.

1 MR. ALEXANDER: Why don't I let you finish.

2 JUDGE SAMS: Sure. I don't have a whole lot  
3 more to say. Let's go on to the next slide.

4 I want to give you just a little bit of an  
5 update on our E-government efforts. We are very close to  
6 having a form, our first electronic form, up. It's going  
7 to be for filing first extensions of time to oppose. And  
8 we anticipate that very soon, within the first quarter of  
9 this fiscal year, other forms will follow soon, we hope  
10 within the year.

11 And we are also poised to be able to take e-mail  
12 filings much sooner than we thought we were going to be  
13 able to. Right now, as a matter of fact, the technical  
14 part is pretty much solved. We're now trying to figure  
15 out the administrative side of how we're going to  
16 communicate this to the public and how we want to take  
17 them in. But almost any cases will be able to be filed  
18 with this and fed into our TTABIA workflow system. This  
19 is great news for us, and I think it's going to be great  
20 news for those who practice before us.

1           BISES on the web that -- TTAB status information  
2 system, entering this fiscal year, we have the capability  
3 to check extensions of time to oppose so that you can go  
4 to that part of our web site and find out whether there's  
5 been an extension of time filed.

6           MS. LOTT: Do you know what the lag time is  
7 between requiring a motion for request of extension and  
8 when it is getting into the data base?

9           JUDGE SAMS: No, I don't. It is -- we'll let  
10 Mary Frances Bruce answer that.

11           MS. BRUCE: Once we receive it and scan it. As  
12 soon as it's indexed with the number, I think, so about  
13 two weeks. But I don't want to swear to that. I think  
14 that it's about two weeks.

15           MS. LOTT: Thank you.

16           JUDGE SAMS: To refresh your memory in case you  
17 did forget, I wanted to end up this discussion with the  
18 TTABIS system. I think it's the next slide.

19           We are now, I can announce, just about to  
20 implement fully the TTABIS electronic workflow system

1 within the TTAB, which means, essentially, we have an  
2 electronic file wrapper which all the staff do their work  
3 on by moving desktop to desktop electronically.

4 We just completed negotiates with NTEU 245 which  
5 will bring the last four people onto the system. And then  
6 as soon as they're trained, everyone will have been  
7 trained. And we will begin using our internal workflow.  
8 We're very excited about this. And this will, I think,  
9 have many benefits to be reaped including no more lost  
10 files because they'd be electronic, no more lost papers  
11 and no lag time with matching papers to files, the sort of  
12 problems that we've seen before.

13 It's going to take a while, obviously, for  
14 everybody to get used to it. Particularly, once we get  
15 the electronic filing forms up and get you accustomed to  
16 using e-mail filings to bring things into our electronic  
17 workflow system, I think everything should be moving much  
18 more smoothly than it ever did before.

19 I don't have any more information. I know there  
20 were a lot of others you might want to talk about. I'd be

1 happy to do that.

2 MR. ALEXANDER: Any other questions?

3 JUDGE SAMS: Assuming there's any time left.

4 MR. ALEXANDER: I think it's incredible that  
5 you've gotten three and a half years of pendency to weeks  
6 in a matter of about three years. Is there a reason for  
7 that drastic change? Is it additional judges? Was it a  
8 different approach? Maybe we can learn from that or other  
9 aspects of the operations.

10 JUDGE SAMS: I think it's a combination of  
11 factors. Clearly having enough staff to do it is one  
12 thing. Shifting workloads around so that we can get the  
13 work to the people who are ready to do it is another.  
14 There's the management of workloads involved in that, too.

15 But I think, principally, it's a question of just having  
16 the staff to do it.

17 MR. ALEXANDER: Any other questions? We thank  
18 you very much.

19 Are there any other questions while we still  
20 have Bob and the others here?

1           If there are no other questions, I thank  
2 everybody for your presence, your participation, and  
3 cooperation in all of our future work which is headed in  
4 front of us. The meeting is adjourned.

5           [Meeting adjourned at 4:30 p.m.]

6                           -oo0oo-  
7

1 CERTIFICATE OF STENOTYPE REPORTER

2 I, Jane F. Hoffman Stenotype Reporter, do hereby  
3 certify that the foregoing proceedings were reported by me  
4 in stenotypy, transcribed under my direction and are a  
5 verbatim record of the proceedings had.

6  
7  
8 \_\_\_\_\_  
9 JANE F. HOFFMAN