

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



The background of the slide is a light gray technical drawing of a mechanical assembly, possibly a motor or engine component. It features various parts, surfaces, and callouts with numbers such as 80, 68, 24, 30, 86, 84, 82, 50, 32, and 52. The drawing is rendered in a clean, line-art style.

Introduction & Welcome by TPAC Vice Chair

Elisabeth Escobar
Vice Chair, Trademark Public Advisory
Committee

UNITED STATES
PATENT AND TRADEMARK OFFICE



Opening Remarks

Laura Peter
Deputy Under Secretary and Deputy
Director

UNITED STATES
PATENT AND TRADEMARK OFFICE

uspto

Operational news and updates

Commissioner for Trademarks
Mary Boney Denison

July 26, 2019

Images used in this presentation are for educational purposes only.

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PATENT AND TRADEMARK OFFICE

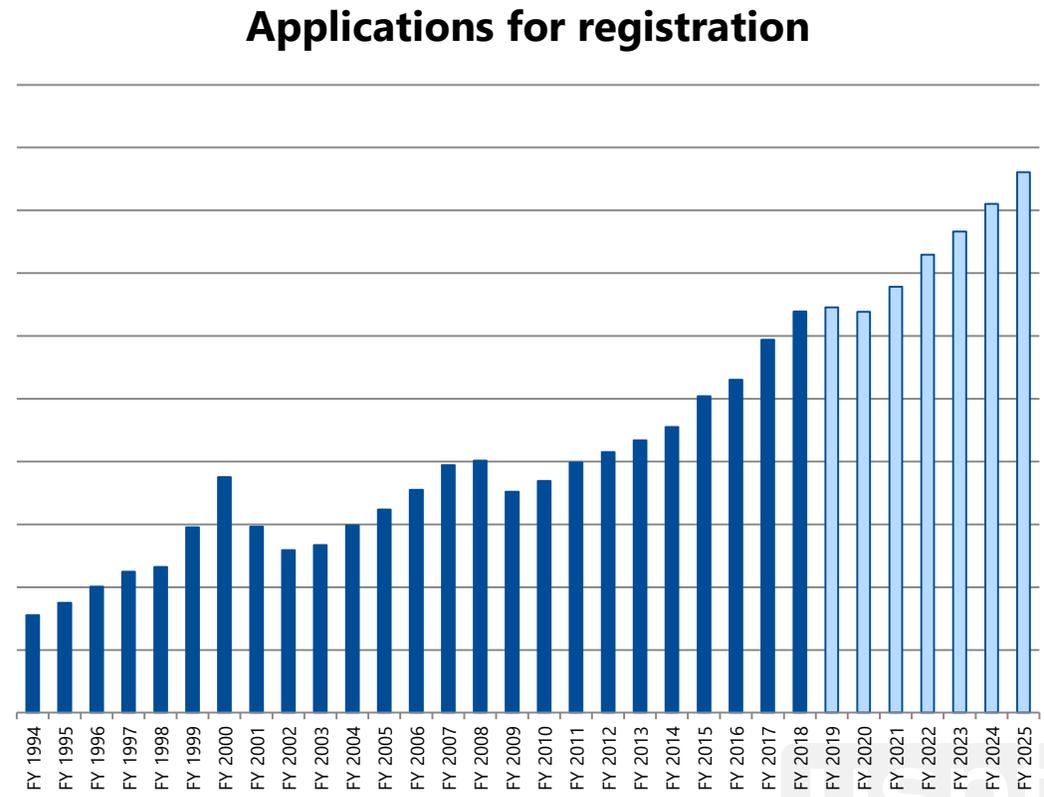


Trademarks organization staffing

- 951 Trademarks employees (7% of USPTO)
- 636 examining attorneys (67% of Trademarks)
- 83% of examining attorneys telework
- FY 2018: hired 61 new examining attorneys
FY 2019: hired 83 new examining attorneys
FY 2020: planning to hire 40 new examining attorneys

New application filing projections

- FY 2016: 530,270 classes filed
- FY 2017: 594,107 classes filed
- FY 2018: 638,847 classes filed
- FY 2019 projection:
646,000 classes filed
(1.1% increase from 2018)



Trademarks performance: pendency

FY 2019 Trademarks performance measures	FY 2019 targets	FY 2019 June Results
First action pendency First action pendency from date of filing to the first office action in months	2.5 – 3.5	2.4
Disposal pendency Disposal pendency from date of filing to issuance of a notice of allowance, registration, or abandonment – excluding suspended and <i>inter partes</i> proceedings	12.0	9.8

Trademarks performance: quality

FY 2019 Trademarks performance measures	FY 2019 targets	FY 2019 June results
First action compliance In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the first office action	95.5%	96.4%
Final action compliance In-process review evaluation of the statutory bases for which the USPTO raises issues and/or refuses marks for registration based on the examining attorney's approval or denial of the application	97.0%	96.9%
Exceptional office action Measure indicating the comprehensive quality of the first office action search, evidence, writing, and decision making	46.0%	55.2%



LAW AND POLICY



Rulemaking: U.S. counsel requirement

- Requires foreign-domiciled trademark applicants and registrants to be represented by a U.S.-licensed attorney to file trademark documents with the USPTO
- August 3, 2019 effective date
- Exam guide forthcoming

Rulemaking: U.S. counsel requirement

- **Benefits of proposed rule**
 - Ensure effective use of available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements
 - Increase confidence that registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims
 - Aid our efforts to improve accuracy of the U.S. trademark register

Rulemaking: U.S. counsel requirement

- **Impact on U.S.-licensed attorneys**
 - Will be required to enter bar membership information and confirm active member in good standing
 - Owner address required
 - Beware of foreign solicitations - persons located internationally offering to pay to use your bar information to circumvent the rule

Rulemaking: mandatory electronic filing

- **Mandatory use of TEAS for all trademark filings and email to communicate with the USPTO except in cases of:**
 - International agreements requiring acceptance of paper submissions from certain countries
 - Specimens for scent, flavor, or other non-traditional marks
 - Postal service interruptions or emergencies
- Final rule cleared OMB; next step is the Office of the Under Secretary and Director final review and signature
- Petition process for requesting acceptance of paper submissions under limited circumstances
- www.uspto.gov/trademark/laws-regulations/mandatory-electronic-filing
- Expected to be implemented on October 5, 2019

Section 2(a): *Brunetti*

- Supreme Court issued *Brunetti* decision on June 24, 2019 holding the immoral or scandalous provision of Section 2(a) unconstitutional
- New Exam Guide 2-19: *Examination Guidance for Section 2(a)'s Scandalous Marks Provision after Iancu v. Brunetti*

Status of proposal to allow multiple insurance extensions

- Legal Policy attorney drafting notice of proposed rulemaking
- Reviewing an earlier draft of a similar proposed change

Cannabis-related trademarks

- **Controlled Substances Act (CSA) – 21 U.S.C. §§801-971**
 - Marijuana is a controlled substance under federal law, regardless of state law.
 - We will refuse drug paraphernalia under the CSA as well.
 - Review is done on a case-by-case basis – See TMEP §907 and §1205.
- **2018 Farm Bill and corresponding amendments to CSA**
 - Hemp (no more than 0.3% THC) is no longer a controlled substance under the CSA.



Cannabis-related trademarks

- **Examination Guide 1-19 (May 2, 2019)**
 - Exam guide covers examination of marks for cannabis and cannabis-related goods and services after enactment of the 2018 Farm Bill.
 - CSA will not bar applications for hemp products filed on or after December 20, 2018.
 - Applications filed prior to December 20, 2018 may request that the examining attorney amend the filing date.
 - Use of hemp in foods or supplements may violate Federal Food Drug and Cosmetics Act (FDCA).
 - For services involving cultivation or production of hemp, examiner will inquire as to applicant's authorization.

Quality and training

- May 29
 - INTA industry training: cheese industry
- June 11
 - U.S. counsel rule
 - Advanced training for examining attorneys on identifying and refusing digitally created or altered specimens of use and using Trademark Rule 2.61(b) to request information about evidence of use in commerce
- August 12-14
 - Trademark Office-wide training
 - Topics to include: X-Search refresher; mandatory electronic filing; specimens

INITIATIVES



Improper behavior

Submitting fake or altered specimens

Submitting false claims of use in U.S. commerce

Using unauthorized practitioners

Making unauthorized address changes

Misleading Solicitations

Trying to circumvent U.S. counsel rule

Addressing improper behavior

Proof of use audit program

The USPTO began a pilot program in 2012 and made it permanent in 2017, giving the USPTO the authority to cancel audited registrations with unsubstantiated use claims or to delete unsupported goods and services.

Excluded unauthorized foreign practitioners

The commissioner has excluded specific foreign practitioners from appearing before the USPTO.

Proof of actual use in examination

Updated examination guidance to require examiners to refuse mocked-up and fake specimens and to use the 37 CFR §2.61(b) request for information authority to request evidence of use in commerce.



Addressing improper behavior

Improved readability of declaration

The declaration was reformatted to make it more readable and to make the signer acknowledge the required statements by checking a box next to each one, thereby increasing the likelihood that the signer will read the declaration and appreciate the significance of swearing to use for each and every good or service listed.

Expedited cancellation pilot for non-use or abandonment claims

Implemented TTAB pilot program for cases raising non-use or abandonment claims to identify the types of procedures needed to accelerate disposition of those claims; considering whether to make permanent.

Issued U.S. counsel final rulemaking

The USPTO issued a final rule requiring all foreign-domiciled trademark applicants and registrants to be represented before the USPTO by a lawyer licensed to practice law in the U.S.

Specimen database: Developing specimen database to enable examining attorneys to see highly similar specimens used by multiple applicants

Login: To prevent unauthorized changes USPTO will be implementing a login system requirement for all filings



Special task force

- Developed in response to the significant increase in unauthorized and improper activities in connection with trademark filings
- Goals include:
 - Developing and implementing policies, procedures, and technology solutions to effectively address fake/altered specimens, false claims, unauthorized TEAS submissions, and other efforts to circumvent the Rules of Practice in Trademark Cases
- Contacting other federal agencies for best practices and feedback on available technical solutions for privacy and fraud detection

Decluttering initiative: proof-of-use audit program

- This permanent program was launched November 1, 2017.
- The program improves the integrity of the Trademark Register.
 - Allows us to cancel audited registrations with unsubstantiated use claims or remove unsupported goods and services from others
- **Your registration may be audited if you meet both requirements:**
 - You filed a Section 8 or 71 declaration of use.
 - Your registration includes at least one class with four or more goods or services, or at least two classes with two or more goods or services.
- If audited, we will require submission of proof of use for additional goods/services in registration to ensure that register accurately reflects marks that are in use in the United States for all goods/services identified in registrations.
- uspto.gov/trademarks-maintaining-trademark-registration/post-registration-audit-program

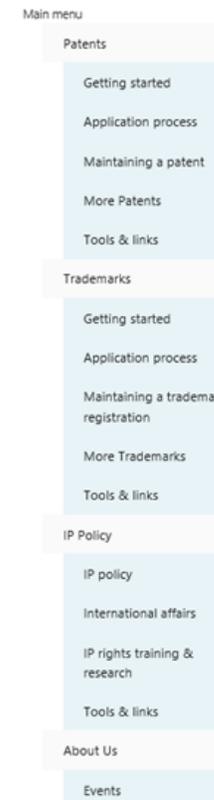
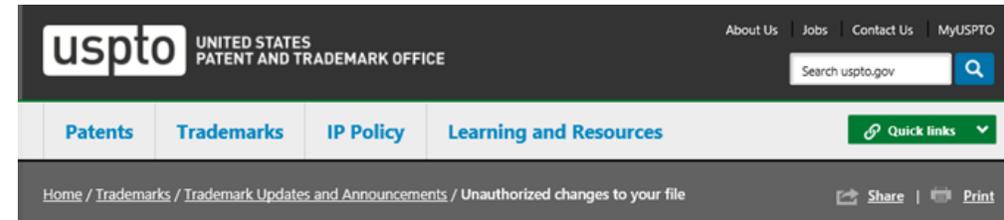
Proof-of-use audit program results so far

November 2017 – June 28, 2019

- 4,661 first actions issued by examiners on project
- 2,708 responses received
- 50.1% of registrations with response deleted at least some goods or services
- 79% of respondents represented by an attorney
- 21% of respondents pro se

Unauthorized changes

- Unauthorized parties have filed forms through TEAS making changes to trademark records.
- This affects a very small number of total applications and registrations.
- The USPTO intercepts the vast majority of unauthorized changes.
- We created a webpage where customers can get information on steps to take if impacted (search “unauthorized changes” on www.uspto.gov).
- MyUSPTO login will be required for TEAS forms by the end of 2019.



Unauthorized changes to your file

Unauthorized changes have been made to a number of active trademark applications and registrations. These changes may be part of a scheme to register the marks of others on third-party “brand registries.” Unauthorized parties have filed forms through our Trademark Electronic Application System (TEAS) to make these changes. Although these instances affect a small percentage of total applications and registrations, we want to make sure our customers are aware of the problem as we work to resolve it.

You may receive an email message from the USPTO notifying you of a requested change to your application or registration. For example, when we receive a request to change the primary email correspondence address of record, we may send this email alert to the **prior** primary email correspondence address to alert the applicant, registrant, or attorney of the change.

Please note that this automated email message alert is generated **immediately** after the electronic form requesting to change the primary correspondence email address is submitted. However, it may take up to 72 hours after we receive the request before the change is actually processed or the filing becomes available for viewing through the Trademark Status and Document Retrieval (TSDR) system.

If you received an email alert message and were not expecting it, you should take the following steps:

1. **Confirm the change was not authorized.** Review the new primary email address in the message to determine if you recognize it. If the address belongs to somebody else within your organization or belongs to a law firm with which you have a current or past relationship, it is possible the change was unexpected but still authorized.
 - If you have recently hired an attorney, revoked an attorney, or changed attorneys, a change of correspondence alert will usually result when we are notified of the change.
 - If the change was unexpected, but you recognize the party who requested the change, please consider whether communication with the other party will resolve the issue before reporting it to us.
2. **If the change still appears to be unauthorized,** report it to us by forwarding the original “alert” email message to TEAS@uspto.gov with the following information:
 - Your name **and** your direct telephone number
 - The application serial number(s) and/or registration number(s) affected by the allegedly unauthorized change

Action plan

Short-term solutions

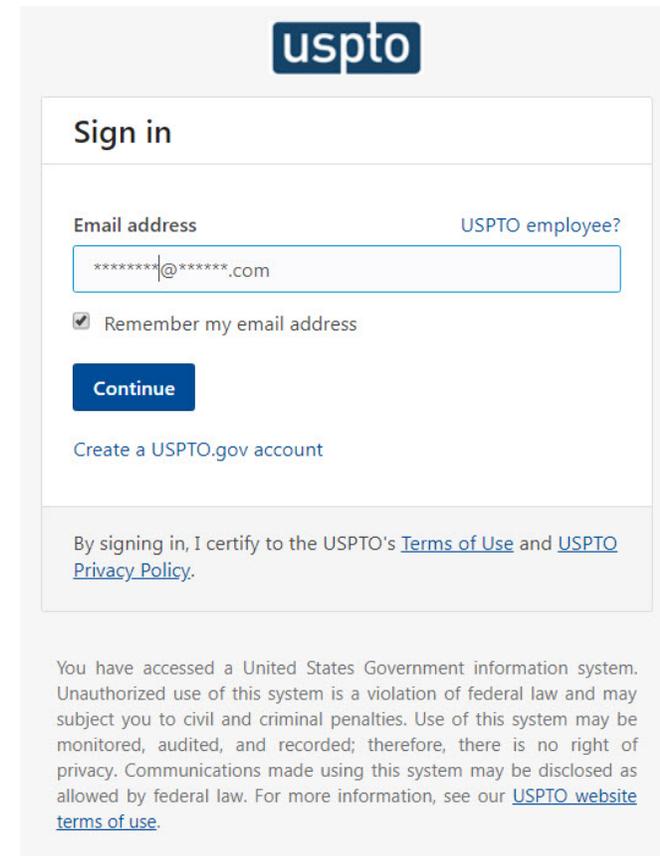
- Assigned full-time staff to monitor this issue and contact affected customers
- Created a [webpage](#) (search “unauthorized changes” on www.uspto.gov)

Long-term solutions

- TEAS log in with authentication and authorization (customized COTS product)

Phase 1 – fall 2019

- Use an existing uspto.gov account or sign up for a new one at <http://my.uspto.gov>.
- Log in through <http://my.uspto.gov> or click on the TEAS form you want to use and you will be prompted to log in.
- Once logged in, file as usual through TEAS.



The screenshot shows the USPTO sign-in interface. At the top is the 'uspto' logo. Below it is a 'Sign in' section with an 'Email address' field containing '*****@*****.com' and a 'USPTO employee?' checkbox. A 'Remember my email address' checkbox is checked. A blue 'Continue' button is present, along with a link to 'Create a USPTO.gov account'. Below the sign-in form is a disclaimer: 'By signing in, I certify to the USPTO's Terms of Use and USPTO Privacy Policy.' At the bottom of the page is a larger disclaimer: 'You have accessed a United States Government information system. Unauthorized use of this system is a violation of federal law and may subject you to civil and criminal penalties. Use of this system may be monitored, audited, and recorded; therefore, there is no right of privacy. Communications made using this system may be disclosed as allowed by federal law. For more information, see our USPTO website terms of use.'



Phase 1 – fall 2019

MyUSPTO has three ways to provide two-step authentication:

- 1. Email**
 - A six-digit code will be sent to the primary email address associated with your uspto.gov account.
 - If the code is not used within 20 minutes, it will no longer be active and a new code will need to be requested.
- 2. Authentication app**
 - A six-digit code will be generated by a RFC 6238-compliant authenticator app.
 - In order to be used, the application will need to be installed and configured on your device.
- 3. Phone call**
 - A six-digit code will be generated and a phone call made to the verified number on your account. You must verify and enable the number through your account page.



Phase 2 – winter 2019/2020

- Current and new uspto.gov account holders will verify their identity
- Identity proofing prevents “impostor” accounts

Phase 3 – spring 2020

- **Customers will be able to create roles and delegate authority to other accounts.**
 - Attorneys may authorize multiple staff accounts to access and edit filings.
 - Customers may restrict any unauthorized users from making changes to an application or registration.

Specimen protest pilot program

- Streamlined process is for the public to report improper specimens.
- Email submissions should include either:
 - Objective evidence of third-party use of images identical to the specimen of record
 - Registration or serial numbers showing identical specimens bearing different marks
- Effective immediately, to align with new Exam Guide 3-19 on examining digitally created or altered and mockup specimens, protests will be granted when any specimen of record raises concerns about actual use in commerce.
- Additional submission guidelines and details on the process are on our website under “Recent postings.”
- Send submissions to TMSpecimenProtest@uspto.gov.

Specimen rule revision

- Proposed revision to Rule 2.56 with the new mandatory electronic filing rule
- Updated language codifies current specimen requirements in case law and the TMEP. For example:
 - Requires URL and access or print date for webpage specimens
 - Requires that specimens show use of the mark placed on the goods, on containers or packaging for the goods, or on labels/tags affixed to the goods

Misleading solicitations

- **Collaboration: working with stakeholders to find solutions**
 - Informal interagency working group on combatting fraudulent solicitations
 - 2017 roundtable with TPAC and numerous bar groups and government agencies
 - TM5 project co-led by the European Union Intellectual Property Office (EUIPO) and the USPTO
- **Education: warning applicants and registrants at key stages**
 - Warnings on application filing receipts, office action cover emails, and paper notices mailed with each trademark registrations
 - Examples of notices and video explanation on our webpage “Caution: misleading notices”
- **Prosecution: working with Department of Justice (DOJ) on criminal prosecutions**
 - 2017: Two men pled guilty to stealing \$1.66 million from U.S. trademark applicants and registrants; third man was convicted.
 - 2018: We sent two attorneys to DOJ to work on criminal prosecutions.
 - 2019: We extended the USPTO attorneys’ work with DOJ on criminal prosecutions.

Efforts to enhance customer experience

- **Implementing four customer touchpoint surveys**
 - Website content (August 2018)
 - Trademark Assistance Center (October 2018)
 - MyUSPTO (April 2019)
 - Application prosecution (May 2019)
- **Improved TESS guidance (summer 2018)**
 - “Get ready to search – classification and design search codes”
 - “Using the Trademark Electronic Search System”
- **Working on dramatically improving our website so customers can find, understand, and use the information they need, including:**
 - Improving the organization of materials
 - Petitions decisions since 2013
 - “Why hire a private trademark attorney?”
 - Timelines for trademark application and post-registration



INTERNATIONAL



TM5

- **Comprised of the 5 largest trademark offices:**
 - China National Intellectual Property Administration (CNIPA)
 - European Union Intellectual Property Office (EUIPO)
 - Japan Patent Office (JPO)
 - Korean Intellectual Property Office (KIPO)
 - USPTO
- **Projects include, among others:**
 - Combatting Bad Faith Filings
 - Common Status Descriptors
 - ID List
 - Non-traditional Marks
 - Image searching
 - Anti-Counterfeiting
 - Misleading (Fraudulent) Solicitations
- **Focuses on exchange of information and collaboration and harmonization projects regarding trademark matters to benefit users**



IP attachés around the world



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CHINA

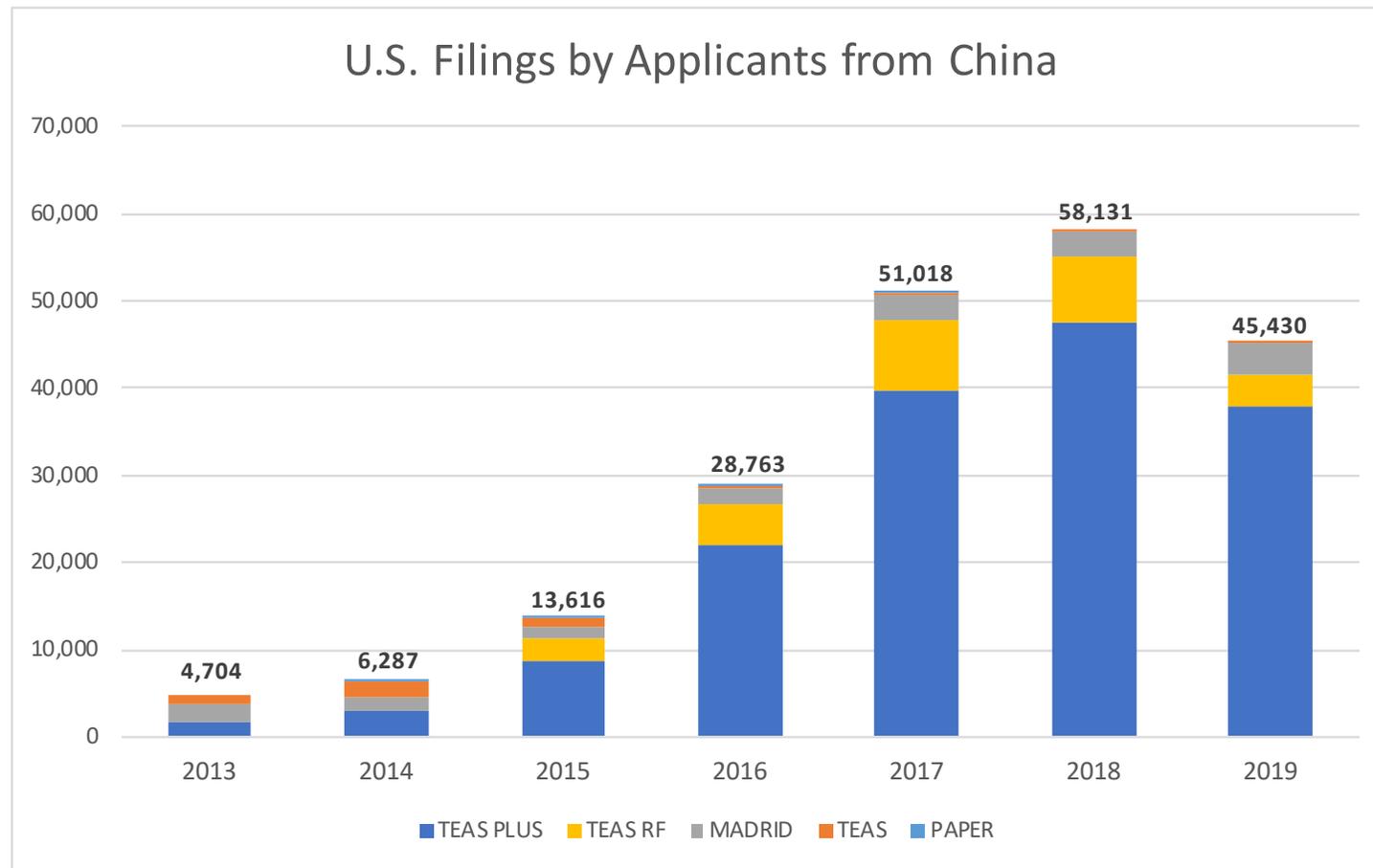
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Focus on China

- Influx of filings from China
- Filing incentives from local governments
- Concerns about legitimacy of many filings
 - Specimen issues
 - Bad faith filings
- Counterfeiting



U.S. filings by applicants in China



IT RESOURCES



My.USPTO.gov

- Trademark docket
 - Share collections in dockets with other MyUSPTO users
- Trademark form finder widget
 - Widget identifies forms using plain language rather than current form names
 - Includes a search box to search the form names
- Next widget: Trademark Electronic Application System (TEAS) Plus Short Form
 - Initial scope: intent-to-use (ITU) word marks, TEAS Plus fee basis
 - Status: expected roll out mid-August



TRADEMARK FORM FINDER

Search

- > File an application
- > Respond to correspondence from the USPTO
- > Respond to a Notice of Allowance
- > Make changes to your application
- > File documents after your mark is registered to maintain or change your registration
- > Change an address
- > Change attorney or domestic representative information
- > File a late response
- > Respond to a Notice of Abandonment
- > File a petition
- > File forms related to the Madrid Protocol
- > File an appeal, opposition, or cancellation with the TTAB
- > Record an assignment for ownership transfers or changes in name, entity type, or citizenship

[All trademark forms](#)

USPTO TM Status App



Apple



Google

USPTO TM Status App

- Available on Apple App Store and Google Play
- Search application and registration numbers
- Notifications of selected status changes
- Reflects updated status changes within minutes
- Share, bookmark, or create notebooks for saving information
- No account necessary



Policy and International update

Shira Perlmutter

Chief Policy Officer and Director and
Director for International Affairs

July 26, 2019

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PATENT AND TRADEMARK OFFICE

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Legislative/Governmental Affairs Update

Branden Ritchie

Director of Government Affairs and
Oversight

July 26, 2019

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The 116th Congress

Changes in leadership of the House/Senate Judiciary committees

U.S. House of Representatives



Committee on the Judiciary

Jerry Nadler (D-NY-10), Chairman

Doug Collins (R-GA-9), Ranking Member

Subcommittee on Courts, Intellectual Property, and the Internet

Hank Johnson (D-GA-4), *Chairman*

Martha Roby (R-AL-2), *Ranking Member*

U.S. Senate



Committee on the Judiciary

Lindsey Graham (R-SC), Chairman

Dianne Feinstein (D-CA), Ranking Member

Subcommittee on Intellectual Property

Thom Tillis (R-NC), Chairman

Christopher Coons (D-DE), Ranking Member

The 116th Congress



- USPTO-related hearings
 - Senate Judiciary Committee's Subcommittee on Intellectual Property, "Oversight of the U.S. Patent and Trademark Office" (March 13, 2019)
 - Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, "Hearing to Review the FY2020 Budget for the U.S. Department of Commerce" (April 2, 2019)
 - House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet, "Lost Einsteins: Lack of Diversity in Patent Inventorship and the Impact on America's Innovation Economy" (March 27, 2019)
 - Senate Judiciary Committee's Subcommittee on Intellectual Property, "Trailblazers and Lost Einsteins: Women Inventors and the Future of American Innovation" (April 3, 2019)
 - House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet, "Oversight of the U.S. Patent and Trademark Office" (May 9, 2019)
 - House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet, "Counterfeits and Cluttering: Emerging Threats to the Integrity of the Trademark System and the Impact on American Consumers and Businesses" (July 18, 2019)

Legislative activity

116th Congress

Hot issues in Congress related to trademarks

- Trademark filings with inaccurate / fraudulent use claims
- Anti-counterfeiting efforts by the U.S. government
- Irreparable harm
- FLAG Act
- Franchisor / franchisee relationship

USPTO is aggressively monitoring these efforts



Legislative activity

116th Congress

USPTO's legislative priorities

- Continuity of service during lapse in funding
- Investment authority for USPTO's internal operating reserve
- Elevate IP attaché rank
- Clarify statutory authority to suspend deadlines during emergencies and severe outages
- Technical assistance to Congress on section 2(a) reform in light of the Supreme Court's decision in *Brunetti*



THANK YOU

Branden Ritchie

Director

Office of Government Affairs and
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Branden.Ritchie@USPTO.GOV

USPTO budget update

Sean Mildrew

Acting Chief Financial Officer

July 26, 2019

UNITED STATES
PATENT AND TRADEMARK OFFICE



Agenda

- **FY 2019 status**
- **FY 2020 budget**
- **FY 2021 budget**
- **Biennial fee review**

FY 2019 STATUS: FEES

- Trademark fee estimate is \$340.6M.

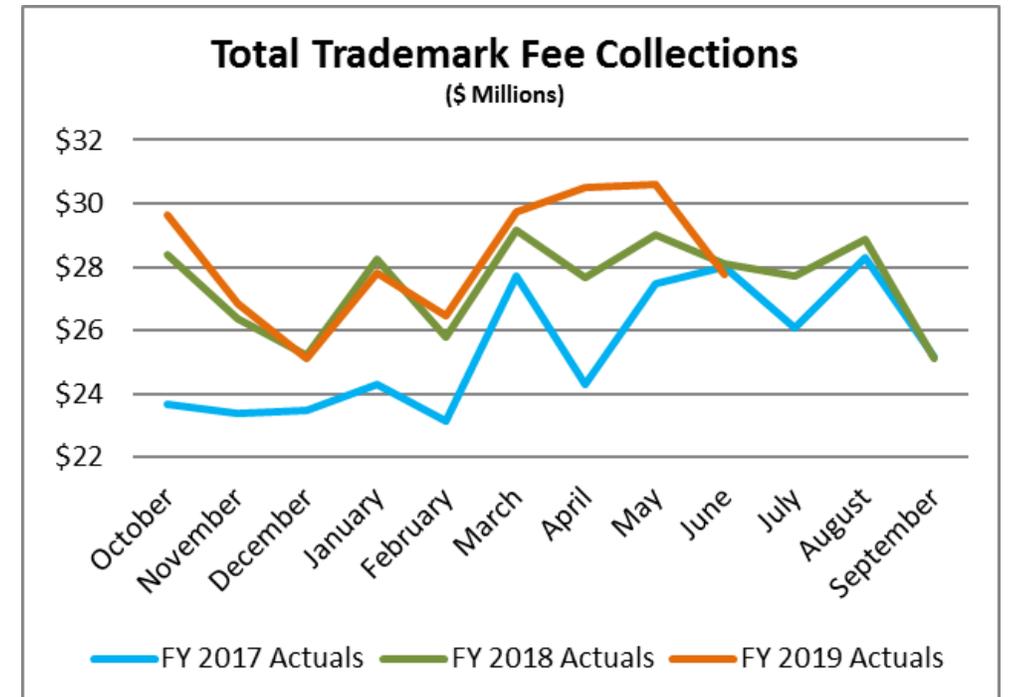
Total Trademarks collections (dollars in thousands)

FY 2017		FY 2018		FY 2019	
Actual	Actual	Increase	Plan	Increase	
\$305,033	\$328,976	7.9%	\$340,635	3.5%	

- Collections through June 30th are currently 2.9% above the corresponding FY 2018 timeframe.

Trademarks Year-to-date comparison (dollars in thousands)

FY 2017		FY 2018		FY 2019	
Actual	Actual	Increase	Actual	Increase	
\$225,485	\$247,309	9.7%	\$254,516	2.9%	



FY 2019 status: fees *(continued)*

- Fee collections through June 30, 2019 are \$679.3K, or 0.3%, above YTD plan

Year-To-Date Collections *(Dollars in Thousands)*

	YTD Plan	Actual	Percentage Variance	Dollar Variance
Application Filings	\$136,111	\$137,907	1.3%	\$1,796
Maintaining Exclusive Rights	61,115	59,705	-2.3%	(1,409)
Intent to Use/Use Fees	36,678	37,271	1.6%	593
Trademark Trial and Appeal Board	6,496	6,108	-6.0%	(388)
Other	13,436	13,524	0.7%	88
Total Trademark Fees	\$253,836	\$254,516	0.3%	\$679



FY 2019 status: end of year funding

Projected end-of-year funding as of June 30, 2019:

Trademarks	
(\$ in thousands)	
Projected income summary	Actual
Fee collections – end-of-year	\$340,635,205
Actual prior year carryover	135,295,784
Other income – current apportionment	6,235,544
OIG transfer	(149,104)
<i>Total projected income</i>	<i>482,017,429</i>
Projected spending	
Actual commitments and obligations	281,528,430
Projected spending for remainder of year	84,140,862
<i>Total projected spending</i>	<i>365,669,292</i>
Total projected operating reserve	\$116,348,137

FY 2020 budget

- The House Committee report issued on June 3, 2019 recommends appropriating \$3.45B which aligns to the FY 2020 President's Budget request level.
- As of July 17th, USPTO is waiting for the Senate markup of the budget.
- Congress has until October 1 to enact a budget or a continuation resolution.

FY 2021 budget

- USPTO is working on its FY 2021 OMB budget submission.
 - The PACs and DOC will receive a draft to review in late August 2019.
 - The final document is scheduled to be submitted to OMB on September 9, 2019.
 - The public will see USPTO's final FY 2021 budget request in February 2020

Biennial fee review

- USPTO is reviewing and analyzing possible fee proposals to best support:
 - Sustainment of operations and mission-critical support activities
 - Funding performance enhancements to maintain level of service excellence and adapt to major macro-economic shifts; and
 - Alignment of revenue with cost to incentivize better IP investment and projection

Questions and comments

Sean Mildrew

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Trademark Trial and Appeal Board Update – Q3 FY2019 YTD Report

TTAB Chief Judge Gerard Rogers
July 26, 2019

UNITED STATES
PATENT AND TRADEMARK OFFICE



FY 2019 TTAB STAFFING

FY 2019 TTAB staffing	FY 2018 EOY results	FY 2019 actual, target or projected	As of July 1, 2019	Variance
JUDGES and ATTORNEYS				
Administrative Trademark Judges	22	(actuals) 24	23	Increases planned
Interlocutory Attorneys	17/1	14/2	14/2	

FY 2019 TTAB INCOMING FILINGS

FY 2019 TTAB incoming filings	FY 2018 EOY results	FY 2019 actual, target or projected	As of July 1, 2019	Variance
TYPE OF FILING Notices of Appeal Extensions of Time to Oppose Notices of Opposition Petitions to Cancel	3,223 19,208 6,496 2,253		2,484 14,909 5,011 1,773	+2.8% +3.5% +2.9% +4.9%

Trends in new filings

Type of filing	FY16 (% +/- FY15)	FY17 (% +/- FY16)	FY18 (% +/- FY17)	By Quarters in FY19	Year to date as of July 1, 2019 (% +/- FY18)
Appeals	3,121 (+4.3%)	3,158 (+1.2%)	3,223 (+2%)	866; 747; 871	2,484 (+2.8%)
Extensions of time to oppose	19,055 (+11.2%)	18,490 (-3%)	19,208 (+3.9%)	4,672; 4,673; 5,564	14,909 (+3.5%)
Oppositions	5,881 (+11.2%)	6,156 (+4.7%)	6,496 (+5.5%)	1,599; 1,632; 1,780	5,011 (+2.9%)
Cancellations	1,848 (+4.8%)	2,101 (+13.7%)	2,253 (+7.2%)	565; 599; 609	1,773 (+4.9%)

FY 2019 TTAB PERFORMANCE MEASURES

FY 2019 TTAB performance measures	FY 2018 EOY results	FY 2019 actual, target or projected	As of July 1, 2019	Variance
PRODUCTION – DECISIONS				
Cases decided on merits	585		424	-3.4%
Precedential decisions issued	39	35-40	27	on target
Contested motions decided	1,318	(target)	896	-9.4%
Uncontested motions processed	32,807		27,426	+11.5%



FY 2019 TTAB performance measures	FY 2018 EOY Results	FY 2019 Actual, Target or Projected	As of July 1, 2019	Variance
<p>PENDENCY – Contested motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p> <p>(2) Age of single oldest contested motion ready for decision at end of reporting period</p>	<p>9.4 weeks</p> <p>11.9 weeks</p>	<p>(targets)</p> <p>8-9 weeks (avg.)</p> <p>12 weeks or less</p>	<p>11 weeks</p> <p>23.3 weeks</p>	<p>above target</p> <p>above goal</p>
<p>INVENTORY – Contested motions ready for decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	<p>165</p>	<p>Cases with motions 150-190 (target)</p>	<p>234</p>	<p>above target range</p>

FY 2019 TTAB performance measures	FY 2018 EOY results	FY 2019 actual, target or projected	As of July 1, 2019	Variance
<p>PENDENCY – Final decisions (cancellations, oppositions, ex parte appeals) Measured from ready for decision date until mailing for final decisions, excluding precedents, in appeals and trial cases during reporting period</p>	8.6 weeks	10-12 weeks (target)	12.9 weeks	above target range
<p>INVENTORY – Cases ready for final decision The number of pending appeals and trial cases in which briefing was completed, or in which briefing and arguments were completed, thus becoming ready for decision on the merits, as of the end of the reporting period</p>	Ex parte appeals 74 Oppositions 33 Cancellations 21 Concurrent Use 2 <u>Total:</u> 130	Total case inventory 130-170 (target)	Ex parte appeals 158 Oppositions 74 Cancellations 34 Concurrent Use 1 <u>Total:</u> 267	above target range

Trends – cases ready for decision

Final decisions on merits appeals and trial cases	FY16 (% +/- FY15)	FY17 (% +/- FY16)	FY18 (% +/- FY17)	By Quarters in FY19	Year to date as of July 1, 2019 (% +/- FY18)
Maturing to RFD (ready for decision) (appeals/trials)	687 (+11.3%) (529/158)	679 (-1.2 %) (517/162)	650 (-4.3%) (473/177)	191; 185; 201 (128/63); (126/59); (132/69)	577 (767) (+18.4%) (386/191)
Awaiting decision at end of period (appeals/trials)	83 (-25.9%) (56/27)	93 (+12%) (65/28)	130 (+39.8%) (74/56)	197; 213; 267 (131/66); (129/84); (158/109)	267 (+105.4%) (158/109)

FY 2019 TTAB performance measures	FY 2018 EOY results	FY 2019 actual, target or projected	As of July 1, 2019	Variance
TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents				
Appeals (441 decided FY18; 286 to date in FY19)	35.8 weeks		40 weeks	+11.7%
Trial cases (144 decided FY18; 138 in FY19)	140.3 weeks		148 weeks	+5.5%
ACR trial cases (19 decided FY18; 19 decided in FY19 and 9 pending at end of June)	106.3 weeks		125.6 weeks	+18.2%

Continuing interest in ACR

- Speed can be realized (though it is not a given)
- Imagine efficiencies ... and agree to them!
- Mutual informal exchanges of documents
- Limitations on discovery
- Broader use of Notices of Reliance
- Summary judgment-style trial
- Stipulations re: facts and authenticity of evidence
- Remember your burden(s) of proof

Expanded call for input on SPO

- Comment period closed June 30, 2019
- Idea Scale & Direct distribution to stakeholder IP groups

Expanded call for input on SPO

- Six questions/subjects for comment
- Access to Attorneys' Eyes Only (trade secret or commercially sensitive) information/material?
- Three tiers or two, of confidentiality?

Expanded call for input on SPO

- Comments received to date are split
- Overall - no clear consensus for changes on in-house access to AEO or on the number of tiers of confidentiality

Expanded call for input on SPO

- Comments representing customer groups or companies
- 2 votes for, 2 against, 1 compromise suggestion on in-house access to AEO
- 4 votes for keeping two tier designations

Expedited Cancellation Interests

- Safeguarding due process, presumptions, and attaching to registrations
- Creating a fast, efficient proceeding, but still allowing for possible settlement talks
- Identifying “in-between” types of cases (e.g., no need if default judgment likely; unsuitable for cases in need of detailed fact-finding) – where’s the middle ground?

Pilot program – objectives

- Identify abandonment and non-use cancellation cases most suitable for some sort of “expedited” proceeding
- Discuss with parties application of ACR procedures that could be used most effectively in such proceedings
- Involve board attorney and judge participating in discovery conferences in cases that board identifies as suitable candidates

Pilot program – early results

- Default rates are high in cancellation cases and growing
- 44% in all cancellation cases
- 49% when the case includes abandonment or nonuse claim
- 55% for cases with only nonuse claims
- 60% for cases with only abandonment claims

Pilot program – early results

- More than 135 cases found eligible to date
- Nearly 70 conferences held to date, and orders for conferences have been issued in multiple cases
- Parties in 12 cases agreed to use of some form of ACR; a number of others agreed to consider ACR as the case progressed, or to discuss the possible use of ACR with the assigned interlocutory attorney at a later conference.
- *TV Azteca, S.A.B. de C.V. v. Martin*, 128 USPQ2d 1786 (TTAB 2018)

Pilot program – early findings

- Many uncontroversial cases result in default or early settlement.
- In many cases involving pleaded or asserted claims of ongoing use, petitioner wants to investigate or question the claimed use via discovery.
- Discovery is almost always desired in cases where the primary issue is excusable nonuse/intent to resume use.

Pilot program – future uses?

- Identify (1) possible changes to Trademark Rules to support a separate new expedited cancellation proceeding, (2) possible expansion of early intervention pilot into cases involving other issues, and (3) possible adaptation of current ACR procedures.

Thank you.
Questions? Comments?



Trademark IT update

Rob Harris
Trademark portfolio manager
July 26, 2019

UNITED STATES
PATENT AND TRADEMARK OFFICE



Activity since last TPAC

- System updates to support U.S. Counsel rule changes (effective August 3) completed
- System updates to support Mandatory Electronic Filing (MEF) rule changes in progress
- Beta testing of the Trademark Electronic Application System (TEAS) Plus Short Form dependent on U.S. Counsel effective dates
- The “TM Status App” made available May 8

Activity since last TPAC

- A short-term solution implemented to allow frequent bulk users to keep using the Trademark Status and Document Retrieval (TSDR) application programming interface
- Artificial intelligence solutions for anti-fraud and image search capabilities being researched
- Trademark systems modified for deployment of Win10 laptops to Trademark and TTAB business units
- Beta testing for Exam continued (see next slide for details)

Beta testing for Exam

- **Original plan for phase one:**
 - Time period: November 26, 2018 to January 16, 2019
 - 10-20 unique testers
 - Functionality required: Letters of Protest, TMNG 66(a) applications, formatted office actions

Beta testing for Exam

- **Current status of phase one plan:**
 - Time period: November 26, 2018 to present
 - Extended due to TMNG 66(a) application testing, which began January 20
 - Approximately 100 users during the beta period
 - Both defects and enhancements received as part of valuable feedback from TMNG users
 - 300 incidents have been resolved
 - 42 remaining incidents are in development
 - 32 incidents will be included in the next deployment

Critical success factors for Exam

- ✔ All office actions and briefs must be sent electronically (508 compliant) or on paper via a print queue to the correct customer address and/or appropriate business unit, e.g., TTAB or Madrid.
- ⚠ All office actions must be displayed identically in TSDR, i.e., what the external user sees; and in TMNG, i.e., what USPTO personnel see.
- ✔ Dockets are complete and correct. Dockets include: amended, new case, Statement of Use, potential abandonment, TTAB/jurisdiction, suspension check, corrections, and print.

Critical success factors for Exam

- ✔️ TMNG must possess quality data.
- ✔️ System performance must be equal to or greater than the current FAST 1 and X-Search systems.
- ⚠️ Examination capability must exist to research and prepare a properly formatted office action with supporting evidence, i.e., fix the TMNG editor.

Questions & Comments

General Public



